

What You Will Learn About in this Legal Update:

- SDA Conference
- Water Conservation Planning and Water Efficiency Contracts
- HIPAA Compliant Responses to CORA and Litigation Subpoenas
- Why in Most Cases You Will Need an Annual Appropriation Clause in Your Contracts
- Increase in Hourly Rate of CORA Research and Retrieval Fee
- Budget Deadlines
- Certification of Delinquent Water and Sanitation Accounts
- Gallagher Adjustments

SDA Conference

We enjoy always seeing many of you at the annual SDA Conference each September and we hope you will join us for the following presentations:



Micki L. Mills

Wednesday, September 18th:

Topic: *2020 Vision for Transitioning from the Regular Elections to Irregular Elections in 2023 and Other Super Important Stuff*

9:00 - 10:00 a.m.
Castle Peak Room



Allison C. Ulmer

Thursday, September 19th:

Topic: *Layman's Roadmap to Real Estate Transactions: Getting from Contract to Closing*

9:00 - 10:00 a.m.
Torreys Peak I-II Room



Kathryn G. Winn (with Ashley Hernandez-Schiagel from Nathan Dumm & Mayer)

Thursday, September 19th:

Topic: *At-Will Employment: The Myth, the Truth, and Everything in Between*

10:15 - 11:15 a.m.
Crestone Peak III-IV



Linda M. Glesne

Friday, September 20th:

Topic: *Differing Dynamics Between Civilian and Firefighter Boards . . . And How to Work with Both (panel discussion)*

8:00 - 9:00 a.m.
Crestone Peak II-IV Room

Water Conservation Planning and Water Efficiency Contracts



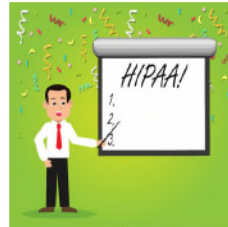
We all understand that water is an increasingly precious resource and efforts are being made on many fronts to increase its importance in zoning, land planning, and development decisions. Water providers with a demand of 2,000 acre-feet or more annually are currently required by statute (or compelled as a condition of receiving certain state grant or loan funding) to develop a

state-approved Water Conservation Plan containing certain minimum plan elements. The Colorado Water Conservation Board ("CWCB") recently published its Best Practices for Implementing Water Conservation and Demand Management Through Land Use Planning Efforts which specifically added a new requirement that Water Conservation Plans discuss land use planning efforts. The CWCB is engaging in a series of regional workshops and developing additional resources for water utilities to more successfully participate in land planning discussions to achieve the Colorado Water Plan's measurable objective of having 75% of Coloradans living in communities that have incorporated water-saving actions into land use planning by 2025.

For municipal water providers, please take note of this additional requirement when developing or updating your water conservation plans. For special districts who do not have their own authority to regulate land use planning, this may be a more challenging endeavor to implement. However, we have seen many special district clients successfully initiate and set-up positive relationships with their partnering land use entities and also with developers to enter into enforceable contracts regarding water efficiency for new construction. These contracts may restrict development to certain types of xeriscaping or limited outdoor water use, or require other more specific efficiency application. In return, the utility charges a reduced cash-in-lieu water rights fee or in some instances the water tap fee. These contracts are recorded against the property to ensure enforceability and monitored for regular compliance. Let us know if you wish to know more about this subject or wish to have us connect you with one of our clients which has formalized, and we believe perfected, this process.

HIPAA Compliant Responses to CORA and Litigation Subpoenas

Ambulance districts, hospital districts, fire districts, and dispatch centers frequently receive requests for patient information and patient care reports. Whether those requests come through an open records request, by subpoena from a private attorney or the District Attorney, or even from law enforcement, you must remember to comply with the HIPAA Privacy Rule. HIPAA broadly protects the privacy of individually identifiable health information with very limited and narrow exceptions. The Privacy Rule applies to the disclosure of physical documents and also to verbal interviews or testimony that would disclose protected health information. Health care providers are prohibited from releasing patient information without the patient's consent, or without an order from a judge. In rare circumstances information can be released to law enforcement, such as when a crime is currently being committed (but not simply to help law enforcement or the District Attorney with their investigation and prosecution of someone who has been arrested). Providers who violate the Privacy Rule are subject to hefty fines.



There are different strategies and methods for addressing each type of request. For example, in the context of pending litigation, if the requesting party cannot provide a release from the patient, the requesting attorney can file a motion for a protective order prohibiting disclosure of the protected health information outside of the context of the litigation. With law enforcement, having a form law enforcement request for release for PHI is an easy way for law enforcement to identify which exception applies to the release of the requested information.

There are many pitfalls and tricky situations that arise when responding to requests involving protected health information and we encourage you to contact us if you have questions about a specific situation or request.

Why in Most Cases You Will Need an Annual Appropriation Clause in Your Contracts

The Colorado Constitution, specifically TABOR, generally prohibits government entities from incurring multiple fiscal year financial obligations without prior voter approval. This means the vast majority of contracts involving the expenditure of public funds beyond the end of the current fiscal year must be made subject to the governing board's annual appropriation of sufficient funds to make the contract valid.

If you use one of our standard contract forms, it will contain an annual appropriation clause. If you are using a form contract from a vendor, the best practice is to also utilize one of our Standard State Provisions Addendums with the vendor form. The Addendum will contain an annual appropriation clause, which will ensure that your contract is valid. Please contact us if you need copies of either document.

Increase in Hourly Rate of Colorado Open Records Act Research and Retrieval Fee



Colorado Open Records Act ("CORA") allows government entities to collect an hourly fee, after the first hour, for research and retrieval of public records in response to a CORA request. This fee may only be collected if the entity has posted on its website or SDA Transparency Notice

website a written CORA policy including the amount of the research and retrieval fee.

Beginning July 1, 2019, and every 5 years going forward, the maximum amount of this fee is adjusted for inflation. The new maximum amount for the fee is now \$33.58 per hour after the first hour. If you adopted the previous maximum of \$30 per hour, before implementing this new fee the Board will need to adopt the new, higher fee, and also update the relevant documents such as your transparency notice and information on the District's website.

We have updated our template CORA Resolution to adopt the new fee (as well as any future increases). Please contact us if you would like a copy of the new Resolution.

Budget Deadlines

You should have received your Preliminary Certification of Valuation from the County Assessor by now and it is time to prepare for the budget season. Below are some key deadlines to keep in mind:



- **October 15th** – last day for draft 2020 Budget to be prepared and submitted to your Board
- **December 13th** – last day to certify mill levies (2020 Budget must be adopted before certifying the mill levy)
- **December 31st** – last day to adopt 2020 Budget, if not certifying a mill levy
- **January 30th** – last day to file 2020 Budget

Certification of Delinquent Water and Sanitation Accounts

Pursuant to Section 32-1-1101 (1)(e), C.R.S., special districts are entitled to certify delinquent water, sewer, or water and sewer service fees and charges to the County Treasurer. The delinquent fees will be added to the property owner's tax bill in the next tax year collected, and disbursed to the District along with other District property taxes. The fees or charges must be at least six months delinquent, and the delinquent amount must total at least \$150.00 per account.



In order to implement this collection alternative, the District must adopt a Resolution providing for the certification of the delinquent amounts to the County Treasurer at a public hearing. Notice of the public hearing must be provided to the property owner and affected parties (this would include the actual user, such as a tenant). We recommend that such notice be provided by certified mail.

The deadline for certifying such delinquent fees varies from county to county, although most counties' deadlines fall in November or December. Please note that municipalities are authorized by separate statute to certify collection of delinquent fees, but are not limited to water and sewer service fees as special districts are. Feel free to contact us to confirm the deadline in your county or discuss the process for certifying delinquent accounts.

Gallagher Adjustments

As discussed in previous Legal Updates, due to the Gallagher Amendment, the State's residential assessment rate (RAR) is set to decrease once again in 2019 (to be applied for tax collection in 2020 onwards); from its current rate of 7.20% to 7.15%. Feel free to contact us if you have any question on this adjustment may impact you or your mill levy rate.

Collins Cockrel & Cole | 390 Union Boulevard, Suite 400, Denver, CO 80228

[Unsubscribe](#) {recipient's email}.

[Update Profile](#) | [About Constant Contact](#)

Sent by cccfirm@cccfirm.com in collaboration with

Constant Contact 

Try email marketing for free today!