



AGENDA ITEM SUMMARY

City Council

STAFF

Katie Donahue, Natural Areas Director
Matt Parker, Natural Areas Sr. Supervisor
Eric Potyondy, Legal

SUBJECT

First Reading of Ordinance No. 035, 2023, Authorizing the City Manager to Execute Agreements, Conveyances, and Other Documents to Incorporate the Spring Cañon Waste Way Ditch.

EXECUTIVE SUMMARY

The purpose of this item is to approve the City's conveyance of its 2/12ths fractional ownership of the Spring Cañon Waste Way Ditch (Ditch) to a newly formed and incorporated Spring Cañon Wasteway Ditch Company (Ditch Company), and thereby receive 2/12ths share of the Ditch Company. This item would also authorize the City Manager to execute related agreements needed to form the Ditch Company. This administrative restructuring of the Ditch and water right ownership will allow for a variety of efficiencies including easier shareholder transfers, providing a single point of contact, and improving coordination of Ditch maintenance.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The Natural Areas Department became a 2/12th owner of the Ditch and its water right with the acquisition of Eagle View Natural Area in 2002. The other 10/12ths are owned by four others along the Ditch. This Ditch and its water right are not part of Fort Collins Utilities' water supply system. The Ditch begins diverting seepage and other water near Zach Elementary and continues to the east along Eagle View Natural Area south of Fossil Creek Reservoir, later passing under I-25.

Unlike most ditches in the region, this Ditch is not "incorporated." This means that its owners own fractional interests of the Ditch and water right. This makes coordination for work on the Ditch cumbersome because work on the Ditch must generally be approved by all of the owners. Even simple projects can thus confront a need for more and more complicated paperwork and agreements. Further, the unincorporated nature of the Ditch makes it more difficult to protect the City's and other owners' interest in the Ditch. When outside entities desire to do a project that could affect the Ditch, there is no single clear point of contact for the owners. For instance, it is difficult for outside entities to pursue mutually beneficial arrangements with the Ditch because there are so many decisionmakers involved. This can also result in projects proceeding without needed approvals.

There are a few recent projects that have become particularly challenging due to the Ditch's unincorporated status. For instance, routine maintenance work has been slowed by the need for numerous approvals from the various owners. Also, a developer is developing land east of I-25 (east of the City's GMA) that has historically been served by the Ditch. The developer desires to modify the Ditch and convey its interests to the other owners (including the City), all of which is far more complex due to the current ownership structure.

By contrast, most ditches in the region are incorporated. This means that the ditches and water rights are held by a ditch company for the benefit of the shareholders, which own the company. Ditch companies are governed by a board of directors and benefit from well-established legal and governance principles, thus providing internal organization for the owners and a single point of contact for non-owners. Ditch companies are basically a common and beneficial way that ditch owners organize themselves.

The recent challenges facing the Ditch have prompted conversations for the Ditch owners to pursue incorporation. This would involve each of the owners conveying their ownership interest in the Ditch and water right to the Ditch Company that will be formed for this purpose, in exchange for shares in the Ditch Company. Because this would involve the conveyance of City-owned property, City Council approval is required. However, this would be a unique transaction because, although there would be a conveyance, the City would still own the same amount of the Ditch and its water right; it would just be structured differently. Consequently, the City would receive a value in an amount equal to or greater than the fair market value of the Ditch and its water right because the City will retain the same proportional ownership, with the added benefits discussed above.

CITY FINANCIAL IMPACTS

Staff expect minimal financial impacts to the City associated with increased administrative duties. Staff will attend and/or conduct an annual shareholder meeting, with potential board responsibilities.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

On February 8, 2023, the Land Conservation and Stewardship Board voted unanimously to recommend City Council's approval of the Ordinance. An excerpt from the meeting minutes is attached.

PUBLIC OUTREACH

No public outreach accompanied this administrative pursuit.

ATTACHMENTS

1. Ordinance for Consideration
2. Map of the Spring Cañon Waste Way Ditch
3. Water Right Decree (excerpts)
4. Land Conservation and Stewardship Board Minutes, February 8, 2023