

AGENDA ITEM SUMMARY

City Council



STAFF

Darren Parkin, Halligan Project Manager
Donnie Dustin, Senior Water Resources Engineer

SUBJECT

Resolution 2025-083 Authorizing the City Manager to Execute an Agreement with the Colorado Water Conservation Board for Protected Mitigation Releases from the Halligan Water Supply Project.

EXECUTIVE SUMMARY

This purpose of this item is to seek authorization for the City Manager to execute an agreement with the Colorado Water Conservation Board. Pursuant to the *Halligan Water Supply Project: Fish and Wildlife Mitigation and Enhancement Plan*, the City will seek a Water Court decree to protect the City's reservoir releases from diversion by others. These are called "protected mitigation releases" under the applicable statute. Once completed and operational, this will create legally protected stream flows in the approximately 22 miles of the North Fork of the Cache la Poudre River between Halligan Dam and Milton Seaman Reservoir. An agreement with the Colorado Water Conservation Board is required to begin this effort.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

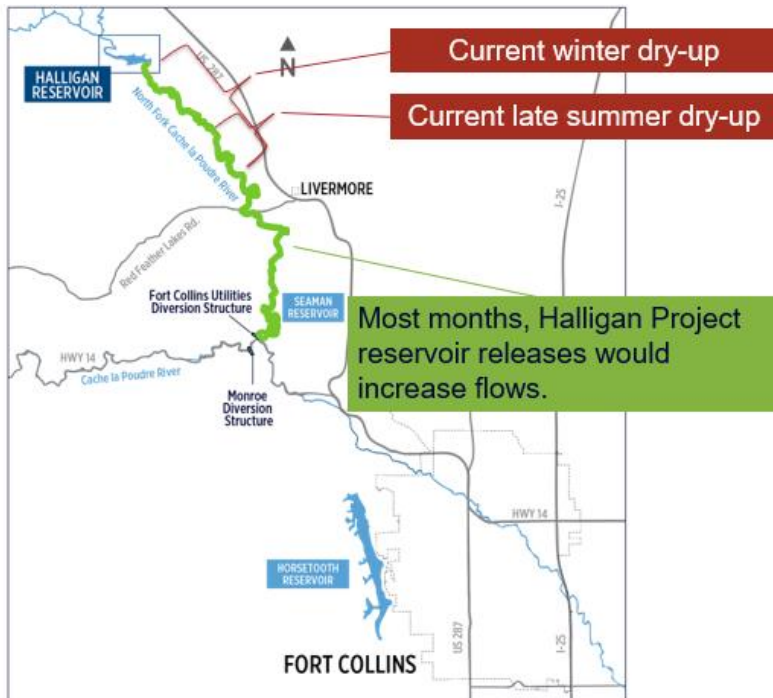
Halligan Water Supply Project Generally. The City is pursuing the Halligan Water Supply Project ("Halligan Project"). This project primarily entails the enlargement of Halligan Reservoir on the North Fork of the Cache la Poudre River ("North Fork"). The existing Halligan Reservoir has a capacity of 6,408 acre-feet, which is owned and used by the North Poudre Irrigation Company ("Ditch Company") for the irrigation of lands north of Fort Collins. Through the Halligan Project, the City will replace the aging, over 115 year-old existing Halligan Dam with a new dam. The new dam will increase the reservoir's capacity by 8,200 acre-feet. After completion, the Ditch Company will continue to use its 6,408 acre-feet of capacity in the enlarged reservoir for irrigation, and the City will use the new 8,200 acre-feet of capacity for the City Water Utility's needs.

Additional information and background are available on the City's website: fcgov.com/halligan.

Historical and Current Reservoir Operations. The Ditch Company has owned and operated the existing Halligan Reservoir for over 115 years, since its construction in the early 1900s. The Ditch Company

typically fills Halligan Reservoir in the fall and winter by completely closing the reservoir's gates. This dries up a significant stretch of the North Fork below Halligan Dam throughout the winter.

In the summer, the Ditch Company releases its stored water from the reservoir into the North Fork below Halligan Dam. This water flows about six miles downstream to the Ditch Company's diversion for its North Poudre Canal. The Ditch Company typically "sweeps" the river throughout most of the summer and fall by diverting all available flows into the canal. This dries up a significant stretch of the North Fork below this diversion throughout the late summer and fall. These dry up locations are shown on the figure below.



City's Reservoir Releases in the Halligan Project. When the Halligan Project is operational, the City will operate the enlarged Halligan Reservoir to meet the City Water Utility's needs in a way that also addresses the dry up locations that occur from the historical and current reservoir operations. While the Ditch Company will continue to use its water as it has historically, the City's new capacity in the enlarged reservoir will allow the City to use its water to greatly improve flows on the North Fork.

The City will first store its water in its 8,200 acre-feet of capacity of the enlarged Halligan Reservoir. For the City to deliver this water into the Water Utility's system, the City will release its water into the North Fork below Halligan Dam. The City's water will float down about 22 miles of the North Fork to the City of Greeley's Milton Seaman Reservoir on the North Fork. The City's water will pass through that reservoir to and continue to the confluence with the main stem of the Cache la Poudre River at Gateway Natural Area. The City will then generally divert a like amount of water into its pipelines located just upstream.

The City's reservoir releases include:

- Winter Release Plan, where 3 cubic feet per second ("cfs") of the City's water will be released from October 1 through April 30 every year, which will prevent the historical and current dry up below Halligan Dam;
- Summer Low-Flow Plan, where the City will make releases to ensure that at least 5 cfs is in the North Fork between Halligan Dam and Milton Seaman Reservoir from May 1 through September 30, which will prevent the historical and current dry up below the North Poudre Canal; and
- Temporary Environmental Pool, where the City's water that is not yet needed for municipal supply will be released for various environmental benefits, which will address both dry up locations and other needs.

The City's reservoir releases and plans, other flow-related operational measures, and various other mitigation and enhancement items are discussed in detail in the Halligan Project's Final Environmental Impact Statement, which can be accessed here: nwo.usace.army.mil/Missions/Regulatory-Program/Colorado/EIS-Halligan/. The other flow-related operation measures include: ramping rate limitations on how the City begins and stops diversions into the enlarged Halligan Reservoir; a Peak Flow Bypass Program to help maintain flushing flows during runoff; and an end of summer flushing event below Halligan Dam.

They are also discussed in the *Halligan Water Supply Project: Fish and Wildlife Mitigation and Enhancement Plan*, dated June 7, 2023 ("Mitigation Plan"), which can be accessed here: fcgov.com/halligan/files/halliganwsp_fwme.pdf?1734035654.

(Note that, in addition to the Mitigation Plan discussed in this Agenda Item Summary, there are various other mitigation-related plans for the Halligan Project. The term "Mitigation Plan" is used in this Agenda Item Summary for simplicity.)

Mitigation Plan. In the summer of 2023, the State of Colorado approved the City's Mitigation Plan. Namely, the Mitigation Plan was approved, pursuant to (C.R.S) Section 37-60-122.2, by the Colorado Parks and Wildlife ("CPW") Commission and the Colorado Water Conservation Board ("CWCB"). The Mitigation Plan is now the official state position on the mitigation actions required of the City for the Halligan Project.

Protected Mitigation Releases. In the development of the Mitigation Plan, CPW staff expressed concern that the City's releases from the enlarged Halligan Reservoir down to Milton Seaman Reservoir could be diverted from the North Fork by other entities. Specifically, under water operations known as "augmentation plans" and "exchanges," CPW staff postulated that another entity could divert the City's reservoir releases from the North Fork below Halligan Dam, and make the City whole by delivering other water to the City at its pipelines. If this were to occur, benefits from the Halligan Project would be reduced. CPW staff thus desired that the City seek a Water Court decree under C.R.S § 37-92-102(8) (Senate Bill 18-170) to legally protect the City's reservoir releases as "protected mitigation releases" from Halligan Dam to Milton Seaman Reservoir.

Staff believes that scenarios where other entities would actually divert the City's reservoir releases are extremely unlikely for various reasons, including the remoteness of the North Fork. Nevertheless, the key operations for the reservoir releases are already integrated into the Halligan Project and would not be altered by seeking a Water Court decree. Nor would such a Water Court decree adversely affect the City's operations and yield from the project. The Mitigation Plan thus includes a commitment for the City to seek such a Water Court decree. See Mitigation Plan at pages 4-7 (pdf 77), 4-10 (pdf 80), and 5-2 (pdf 111).

Water Court Decree and Agreement. C.R.S §. 37-92-102(8) (Senate Bill 18-170) is a relatively new mechanism in Colorado water law. It authorizes the owners of new storage capacity to seek a Water Court decree to protect reservoir releases as "protected mitigation releases," if their mitigation plan calls for it. Such a decree effectively prevents others from diverting the reservoir releases from the stream and thus creates legally-protected stream flows. It does not reduce the amount of water available for use by the owner of the storage capacity.

To begin this effort, the owner of the new storage capacity must enter into an agreement with the CWCB to dedicate the reservoir releases to the CWCB. This requirement, in large part, is because rights to instream flows and similar uses can generally only be held by the State of Colorado. An agreement to dedicate the reservoir releases to the CWCB will give it the necessary legal interest to protect these reservoir releases from diversion. Such dedication will not otherwise affect the City's ownership and use of its water and water rights.

Draft Agreement with the CWCB. City staff have been working with CWCB staff on a draft Water Dedication and Delivery Agreement. A copy is attached as Exhibit A to the Resolution. The draft

agreement would be brought before the CWCB for approval at their board meetings in July and September 2025. It would allow the City to proceed with initiating the Water Court case later this year.

CITY FINANCIAL IMPACTS

Minimal. The Water Court case will require outside legal and engineering support. These anticipated costs are already included in the budget for the Halligan Project.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

City staff has previously discussed the Mitigation Plan with the Water Commission.

PUBLIC OUTREACH

The City, CPW, and the CWCB all did public notices and outreach related to the Mitigation Plan. The CWCB will do public notices and outreach for its board meetings. Notice of the Water Court application will also be made.

ATTACHMENTS

1. Presentation
2. Resolution 2025-083