

RESOLUTION 2024-031
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT
BETWEEN THE CITY OF FORT COLLINS AND THE STATE OF COLORADO
REGARDING IMPLEMENTATION OF PORTIONS OF THE FISH AND WILDLIFE
MITIGATION AND ENHANCEMENT PLAN FOR THE HALLIGAN WATER
SUPPLY PROJECT (CHEAT GRASS AND BIG HORN SHEEP COLLARING)

A. The City is pursuing the Halligan Water Supply Project (“Halligan Project”). The Halligan Project includes the enlargement of Halligan Reservoir and the replacement of the diversion structure for the North Poudre Canal. The Halligan Project requires, among other things, a permit under Section 404 of the federal Clean Water Act.

B. In Section 37-60-122.2 of the Colorado Revised Statutes (“Statute”), the Colorado General Assembly (“Legislature”) recognized the responsibility of the state for fish and wildlife resources found in and around state waters which are affected by the construction, operation, or maintenance of water diversion, delivery, or storage facilities. The Legislature also declared that such fish and wildlife resources are a matter of statewide concern and that impacts on such resources should be mitigated by the project applicants in a reasonable manner. The Legislature stated that it is their intent that fish and wildlife resources that are affected by the construction, operation, or maintenance of water diversion, delivery, or storage facilities should be mitigated to the extent, and in a manner, that is economically reasonable and maintains a balance between the development of the state’s water resources and the protection of the state's fish and wildlife resources.

C. The Statute therefore provides that an applicant for certain water projects requiring a permit, license, or other approval from the United States shall inform the Colorado Water Conservation Board (“CWCB”), the Parks and Wildlife Commission, and the Division of Parks and Wildlife of the application and submit a mitigation proposal. If approved pursuant to the Statute, the mitigation proposal becomes the official state position with respect to mitigation for the water project.

D. The City began working with staff from the CWCB and the Division of Parks and Wildlife in early 2020 on a mitigation proposal for the Halligan Project. The extensive discussions culminated in the City’s *Halligan Water Supply Project: Fish and Wildlife Mitigation and Enhancement Plan*, dated June 7, 2023 (“Plan”).

E. Pursuant to the Statute and applicable rules and regulations, the Parks and Wildlife Commission approved the Plan on June 23, 2023, and the CWCB approved the Plan on July 19, 2023. The Plan is thus the official state position with respect to mitigation for the Halligan Project.

F. City staff and Division of Parks and Wildlife staff have been in discussions regarding an agreement to implement various aspects of the Plan. It was originally contemplated to have one such agreement. However, an agreement on the entire Plan

is expected to take several months and it is desired to begin mitigation measures regarding cheat grass and big horn sheep collaring in the spring of 2024.

G. It is therefore currently contemplated that there will be two agreements: (1) an initial agreement concerning mitigation measures regarding cheat grass and big horn sheep collaring (“Initial Agreement”); and (2) a subsequent agreement concerning the remaining aspects of the Plan (“Subsequent Agreement”). The Subsequent Agreement will be brought to City Council at a later date. The Initial Agreement is attached as Exhibit “A.”

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the City Manager is hereby authorized to execute an Agreement substantially in the form of Exhibit “A”, with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Passed and adopted on March 19, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: March 19, 2024

Approving Attorney: Eric Potyondy