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**TO:** Fruita City Council and Mayor

**FROM:** Kimberly Bullen, Public Works Director

Mary Elizabeth Geiger, City Attorney

**DATE:** AUGUST 29, 2023

**AGENDA TEXT:** CONTINUANCE OF ORDINANCE 2023-07, SECOND READING An Ordinance authorizing the conveyance of water rights and real property of the City referred to as Enoch's Lake located on Pinon Mesa – *Public Works Director Kimberly Bullen and City Attorney Mary Elizabeth Geiger (Continued from the July 18, 2023, Regular City Council meeting)*

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## **BACKGROUND**

This matter is the continued Public Hearing from July 18, 2023, on Ordinance 2023-07, Second Reading. In continuing the hearing, City Council requested additional information as follows:

1. How does the Glade Park Water Users Association make decisions?
2. With regard to the County Road accessing Enoch's Lake and trails near the area, what entity governs those, and can they be closed to the public?

### **1. Glade Park Pipeline Water Users Association**

Pursuant to the Glade Park Pipeline Water Users Association ("GPPWUA") bylaws there is an annual meeting to elect four officers (President, Vice-President, Secretary and Treasurer) and three "At Large" positions. The annual meeting is an all-membership meeting of GPPWUA. There are monthly meetings of the board during the water season (approximately May-September) and when needed meetings will be called in the off-season. The board meetings are open to GPPWUA members and are on the second Monday of each month. Both the annual meeting and the board meetings are chaired by the President but are informal in nature. When issues arise, they are discussed by the board. Generally, decisions are reached on any outstanding issues through consensus though occasionally votes have been taken. Information is transmitted to the City regarding board decisions, but the City does not attend the GPPWUA meetings and does not hold any membership in the board or GPPWUA itself. With regard to the decision to disconnect the Enoch's Lake pipeline from the GPPWUA pipeline to the best of the City's knowledge, that decision was made by the GPPWUA board. Use of City owned water rights by GPPWUA is purely on a contractual basis.

## **2. County Road and Public Trails**

City staff reached out to Mesa County regarding Eighteen Mile Road which is the road to and beyond Enoch's Lake and received information from the County Public Works Director and County Surveyor. Mesa County commented that the road in question is a public road and has been maintained by the County for many years, with inspection reports dating back to 1977. The County will continue to maintain the road as it is even if the sale of Enoch's Lake goes through as that is not a basis for stopping maintenance and as other private parcels and federal lands are accessed by this road after it passes Enoch's Lake. According to the County, since the road has been in existence for so long and continued to be in use without protest, it would take all property owners accessing from the road to petition for the County to consider vacating it, including the consent of the U.S. Forest Service ("USFS"). The County Surveyor confirmed that S 18 Road is shown on the Mesa County GIS as a valid petitioned right of way.

**Road Book & Page:** Road Book 2 Page 98

**Commissioners Recording:** Commissioners Book 3 Page 453

**Road Viewer Report 1:** 270

**Road Plat 1:** B2P12

City Staff also contacted the Bureau of Land Management (BLM) and received an email from BLM's Realty Specialist stating there are not any BLM trails in the area of Enoch's Lake and the closest route on BLM managed land is 2.5 miles away. In a follow up email, BLM clarified that they don't manage any trails in this area because it is private land.

City staff also contacted the USFS and received an email from the Acting District Ranger stating there are a total of six trails on the Forest accessed by Eighteen Mile Road. Ridge ATV Trail #646 and Black Pine Trail #647 are both accessed from the road. The trailhead for #646 is located on private land adjacent to Eighteen Mile Road, but the Forest Service received an easement from the landowner. These trails may also be accessed from the west side of the Forest, but if the county road were ever closed, the loss of access from the east would be an impact to the public and a decreased opportunity for a "loop experience". Therefore, it is likely that the USFS would not acquiesce to any requests to close Eighteen Mile Road. The other four trails in the area are non-motorized trails with probably the highest use by mountain bikes. The USFS also has "adopt-a-trail" agreements with COPMOBA and Backcountry Horsemen for the non-motorized trails. See attached map showing Eighteen Mile Road and the trails.

### **Background of City of Fruita Mountain Water (Including Enoch's Lake)**

The City of Fruita owns and maintains water rights and a water supply system on the Pinon Mesa, south of Glade Park. In 1907, 23 miles of wooden pipeline was constructed from the Pinon Mesa through the Colorado National Monument to provide a potable water supply to the City. In the following decades, the City constructed Reservoirs 1, 2 and 3 to better supply the pipeline. However, as Fruita's population continued to grow, the water from the reservoirs was not sufficient to supply the City its water and in 1983 when Fruita's population was 3,668, Fruita entered into an agreement with Ute Water Conservancy District to become the domestic water provider for Fruita. At that time, the pipeline through the Colorado National Monument was abandoned and since then, the City has not used these water rights as a water supply to the City for any purpose. Additional information on Fruita Mountain water and properties is available at <https://www.fruita.org/publicworks/page/fruita-mountain-water-properties>.

Enoch's Lake (aka Mirror Lake Reservoir No. 1) is roughly 36 miles from the City of Fruita and is surrounded by private property. It was deeded to the City in 1956, but it is not clear that it was ever

connected to the pipeline providing domestic water service to the City. Over the years, there have been a number of challenges associated with the management of this property for public recreational use including illegal camping, trespassing, theft, vandalism, fire outside fire pits and left unattended, illegal fireworks, discharging firearms, discarding trash on private property, using private property to discard human fecal waste, and numerous calls to law enforcement. These issues led to the City closing Enoch's Lake to overnight camping following consultation with the Mesa County Sheriff's Office and surrounding private property owners in 2016.

Water from Enoch's Lake cannot be delivered to or used within the City's limits as there is no pipeline to Fruita, nor would it be financially or legally feasible to construct one through the Colorado National Monument. The water rights are not decreed for municipal use (although there is evidence that the lake was constructed earlier, water rights were not decreed until 1941 with an appropriation date of 1935). In addition, utilizing City resources to manage this property, including maintenance of the dam and associated water works, and pulling these resources out of the demands of core services within City limits is not an efficient use of City resources considering there is no value received in the City for the property and water rights.

Section 2.11 of the City of Fruita City Charter authorizes the City to convey City-owned property by adoption of ordinance. The City has received an offer to purchase the remaining Enoch's Lake water rights and surrounding real property for a cash payment of \$500,000 and forgiveness of the City's remaining non-monetary performance obligation to Mr. Ron Tipping in the amount of \$140,000 pursuant to a 2013 Contract under which Mr. Tipping had provided repair work to the Enoch's Lake dam and the Fruita Reservoir No. 1 dam (as part of that agreement, pursuant to Ordinance No. 2013-16, the City conveyed water rights in Mirror Lake Reservoir No. 2 and land adjacent to that and Enoch's Lake to Ronald Tipping, Rodney Power and William Patterson) This offer under consideration is greater than the appraised market value of \$425,000 the City received March 12, 2023, from a certified general appraiser.

## **FISCAL IMPACT**

The conveyance of real property will result in a cash payment of \$500,000 and forgiveness of an additional \$140,000 non-monetary performance obligation the City has remaining with Mr. Ron Tipping for work he performed on Enoch's Lake Reservoir and Reservoir #1, both owned by the City.

## **APPLICABILITY TO CITY GOALS AND OBJECTIVE**

The City of Fruita's primary goal is to provide necessary core services to residents and businesses within the City limits. As a municipal organization, the City is focused on aligning resources, time, and talent to provide high-quality services while positively impacting and increasing the quality of place, economic health, and lifestyle of the Fruita community. The Fruita Mountain Water Properties have provided necessary services to Fruita in the past but are no longer considered core services for the City of Fruita as they can no longer be used within the City limits. Evaluating and determining future steps with the City's Mountain Properties and water rights is detailed in the City's Strategic Plan.

## **OPTIONS AVAILABLE TO THE COUNCIL**

1. Adopt Ordinance 2023-07, SECOND READING, An Ordinance authorizing the conveyance of real property of the City referred to as Enoch's Lake and water rights located on Pinon Mesa.
2. Decide not to adopt Ordinance 2023-07.

## **RECOMMENDATION**

It is the recommendation of Staff that the Council by motion:

- **ADOPT ORDINANCE 2023-07, SECOND READING, AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF FRUITA AND RONALD TIPPING, RODNEY POWER AND STAN MUHR FOR THEIR PURCHASE OF 51.41 ACRES KNOWN AS ENOCH'S LAKE AND THE WATER RIGHTS KNOWN AS MIRROR DITCH NO. 1, MIRROR LAKE RESERVOIR NO. 1 (aka Enoch's Lake) and SPRINGS R AND N and AUTHORIZING THE CONVEYANCE THEREOF**