



TO: Mayor & City Council

FROM: Mike Bennett, City Manager & Mary Elizabeth Geiger, City Attorney

DATE: September 19, 2023

AGENDA TEXT: Enoch's Lake Sale Process and Divesting of Mountain Properties Process Discussion

BACKGROUND

The purpose of this item is for a City Council discussion and direction from City Council to staff on next steps, as requested by the City Council.

On August 29, 2023, at a continued public hearing from July 18th, City Council voted 5-1 to not adopt Ordinance 2023-07, authorizing the City Manager to execute an agreement between the City of Fruita and Ronald Tipping, Rodney Power and Stan Muhr for the 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. The offer amount was for \$640,000 (\$500,000 cash + relief of the City's non-monetary obligation to Ron Tipping in the amount of \$140,000 provided in water). Later at that meeting, during Council Reports and Actions, City Council directed staff to put on the September 19, 2023, City Council agenda, under Council Reports and Actions, an item to discuss developing process, prior to the ordinance process required by the City Charter, for listing and selling Enoch's Lake and for next steps divesting the City of owning and managing its other Mountain Properties.

History of Enoch's Lake and the Fruita Mountain Properties

This has been presented and discussed at numerous City Council meetings and is available on the City's website at <https://www.fruita.org/publicworks/page/fruita-mountain-water-properties>.

Process to Sell Enoch's Lake prior to Ordinance

After talking with the City's realtor, Lori Chesnick, and internally among staff, the following process is recommended: Have the City's realtor list the Enoch's Lake property with the MLS for thirty days. This listing will include information that the property is encumbered by the Ute Water right of first refusal (ROFR) and the 2013 Agreement with Tipping for repayment of the non-monetary obligation (which requires the release of water from the lake for use by Tipping). It would also include information that the dam is a jurisdictional dam, subject to State Dam Inspector rules and regulations. Finally, it would state that ultimately any sale would have to be approved by City Council through the ordinance process.

Other Mountain Properties

A listing of all the other Mountain Properties owned by the City is attached hereto. Some of these properties are land only, some are water only (with the structure located on U.S. Forest Service – USFS – land) and one is both. First, Staff recommends that Council adopt a Resolution to set forth in one place the reasons why the City wants to get out of the business of managing the properties and water rights.

The 125.54 acres (likely the location for Reservoir No. 4 which was never built) could also be listed in the same manner as Enoch's Lake, subject to the public road, public trail access, and water pipeline crossings. This property has no water rights associated with it.

As to all the other Mountain Properties, Council could authorize Staff to make a formal, written offer to Ute Water to donate the Mountain Water Rights (Fruita Reservoirs 1, 2 and 3 and related diversions and springs) with a deadline for Ute to either accept or decline and acknowledgement that such offer satisfies the ROFR. If Ute declines, then send the same formal, written offer of donation with timeframes other public entities such as the United States Forest Service (USFS), Colorado Parks & Wildlife (CPW), and Mesa County. While City staff have discussed such donation with staff of these agencies over the last decade or more, these agencies have shown no interest in acquiring and managing these reservoirs. Therefore, this would be a formal offer to decision makers of these entities. Staff recommend including language in the offer that is clear that if there is no acceptance the City would take steps to list the properties on the open market similar to the Enoch's Lake sale.

Fruita Reservoir No. 2 represents a unique challenge as the dam is in disrepair and the reservoir has been under a no-fill order from the State for nearly seven years. To fix the dam is estimated in the \$3 - \$4 million range. The City has pursued grant funding for repairing the dam and is still awaiting an assessment from the Natural Resources Conservation Service (NRCS) as to eligibility. In the meantime, per Council's direction, Staff posted a Request for Proposals (RFP) for breaching the dam per the State's dam breach protocol. That RFP will close on September 29, 2023. The purpose of this direction is to know the cost to breach as compared to fixing the dam. No decision has been made to breach the dam. This information regarding the no-fill order and the need to move forward with a long-term solution (repairing or breaching the dam) would need to be part of any offer regarding this reservoir.

FISCAL IMPACT

The sale and conveyance of the Enoch's Lake property could result in a cash payment to the City and resolution of the non-monetary debt owed to Ronald Tipping. The City will no longer expend employee time and funds in maintaining the property. Listing the property has no fiscal impact on the City.

The sale and conveyance of the 125.54 acres adjacent to the Fruita Picnic Area could result in a cash payment to the City. Listing the property has no fiscal impact on the City.

The conveyance of the water rights associated with Reservoir Nos. 1, 2, and 3 will result in the City no longer having to spend funds and workforce labor to maintain and repair these dams, as applicable.

Historical capital expenses for the properties are attached. These do not include the operational costs of staff time, which is significant considering the time it takes away from core service operations (like streets and sewer) in the City limits. Future expenses to repairs overtime, or other liability that could result in future expenses would also be eliminated if the City no longer owns and maintains the properties that have not provided their original intended purpose (potable water to the City) since the City began contracting Ute Water for its current and future water needs. There is no feasible way to get the water from these

assets into the City limits, and it was not enough water to serve the City in the 1980's when the City had approximately 3,600 residents compared to its current, approximately 13,600 residents.

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 (until 1983) 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. All the Mountain Properties create additional liability for the City.

OPTIONS AVAILABLE TO THE COUNCIL

- 1. Direct Staff to list Enoch's Lake Property with Lori Chesnick for a 30-day period as outlined herein.**
- 2. Direct Staff to list the 125.54 acres with Lori Chesnick for a 30-day period as outlined herein.**
- 3. Direct Staff to make a formal, written offer to Ute Water to donate Reservoir Nos. 1, 2, and 3, then to USFS then CPW as outlined herein.**
- 4. Direct Staff to follow items 1 and 3 above, but also offer Fruita Reservoir No. 1 to Ute Water as set forth in item 4.**

RECOMMENDATION

Staff would like City Council to discuss and consider the information provided herein and at the City Council meeting and provide clear direction to staff for next steps.