

Council Agenda Summary

March 1, 2022

Key Staff Contact: Sean Chambers, Water & Sewer Director, 970-350-9815

Title:

Introduction and first reading of an ordinance authorizing the divestment of water rights from the Larimer and Weld Irrigation Company and Windsor Reservoir and Canal Company in exchange for water rights from the Water Supply and Storage Company.

Summary:

This ordinance authorizes the trade and divestment of City of Greeley-owned water rights through a Water Rights Trade Agreement ("Agreement") with Longs Peak Dairy, LLC ("LPD"). The Agreement authorizes the trade of Greeley's six shares of stock in the Larimer and Weld Irrigation Company ("LWIC") and 12 shares of stock in the Windsor Reservoir and Canal Company ("WRCC") for LPD's two shares of stock in the Water Storage and Supply Company ("WSSC"). Staff and the Greeley's outside water law legal counsel have analyzed the water rights, risks associated with change of water rights case and the water resource engineering to determine that trade would be favorable to Greeley now and into the future. Therefore, the staff recommends the trade, and cites the following reasons:

- 1) Among the water sources the Water & Sewer Department acquires, WSSC is the certain for use in the Greeley system and therefore our highest priority;
- 2) Asset prices of WSSC are escalating far more rapidly than LWIC and WRCC;
- 3) The market value of the two WSSC shares is \$1.0 million or more higher than the market value of the LWIC and WRCC shares;
- 4) WSSC shares include an allocation of trans-basin water that can be fully consumed and reused in the Greeley system;
- 5) The reliable water supply yields for WSSC water rights (i.e., the amount of water that can be reliably delivered to the city) are well-established, whereas yields from LWIC and WRCC rights are not established and have greater uncertainty;
- 6) Changing the WSSC rights from agricultural to municipal use in Water Court is relatively streamlined given the body of legal precedents set in numerous prior WSSC change of water rights cases; and
- 7) The asset trade allows the city to incorporate the additional two WSSC shares in a Water Court change case being prepared by filing in March 2022.

Water resource engineering estimates the LWIC and WRCC shares to yield 94 acre-feet more water than the WSSC shares. However, yield estimates for LWIC and WRCC are highly uncertain because these sources have never been through a change of use case, so there is no established case law for a change to municipal use. Staff assess that the advantages of the trade outweigh the drawback of potentially less yield.

Execution of the trade requires approval by ordinance to divest the LWIC and WRCC shares. **At their January 19, 2022, the Greeley Water & Sewer Board approved the Agreement with LPD. In doing so, the Board recommended that City Council authorize the disposition of twelve shares of WRCC and six shares of LWIC.**

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	Yes
If yes, what is the initial, or, onetime impact?	<\$15,000 in diligence, inspection and closing costs
What is the annual impact?	
What fund of the City will provide Funding?	Water Acquisition Fund
What is the source of revenue within the fund?	
Is there grant funding for this item?	No
If yes, does this grant require a match?	
Is this grant onetime or ongoing?	
Additional Comments:	The trade of water rights does not include cash payment to either party. The only cost will be to perform inspection and due diligence of the water rights and for closing services.

Legal Issues:

Consideration of this matter is a legislative process. Section 17-4(c) of the City Charter requires that any sale or exchange of water, including the exchange of water rights previously acquired by the Water and Sewer Department with enterprise funds, be approved by City Council. The divestment of water rights not being used or held for a governmental purpose may be authorized by ordinance.

Other Issues and Considerations:

None

Strategic Work Program Item or Applicable Council Priority and Goal:

Infrastructure & Growth: Establish the capital and human infrastructure to support and maintain a safe, competitive, appealing and successful community.

Decision Options:

- 1) Introduce the ordinance as presented; or
- 2) Amend the ordinance and introduce as amended; or
- 3) Deny the ordinance; or
- 4) Continue consideration of the ordinance to a date certain.

Council's Recommended Action:

A motion to introduce the ordinance and schedule the public hearing and final reading for March 15, 2022.

Attachments:

Ordinance
Presentation
Water Rights Trade Agreement and Exhibits