

AGENDA ITEM SUMMARY

City Council

December 3, 2013

STAFF

Donnie Dustin, Water Resources Manager

SUBJECT

First Reading of Ordinance No. 171, 2013, Amending Article III of Chapter 26 of the City Code to Eliminate Water Rights Banking by the City's Water Utility.

EXECUTIVE SUMMARY

The purpose of this item is to discontinue the practice of water right banking. In order to meet the water needs of new development or redevelopment within the Water Utility service area, developers are assessed a Raw Water Requirement (RWR). Current City Code allows water rights to be submitted to the Water Utility even when no water service permit is needed in exchange for credit that can be used for later satisfaction of the RWR. Although this banking practice was helpful in the past, it is less helpful now and makes managing these water rights difficult. The proposed City Code changes would discontinue the practice of banking water right credits, but continue to allow the practice of conveying acceptable water rights for developments at the time a RWR is assessed.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

When new development or redevelopment occurs within the Water Utility service area, the development is assessed a Raw Water Requirement (RWR) that is structured to provide the Water Utility with the necessary raw water to meet the treated water needs of the development. RWR may be paid in shares of irrigation companies which convey a portion of the irrigation companies' water rights to the Water Utility, or may be paid in cash.

Section 26-150(b) of the City Code states:

The satisfaction of the minimum RWR shall be made no later than the time of issuance of the water service permit. An owner of water rights or City certificates may submit acceptable water rights and/or City certificates to the City, whether or not an application for a water service permit is pending, and be credited accordingly for raw water value. Such credit may then be used to satisfy, in whole or in part, assessed RWR on subsequent application for a water service permit. Upon request, the City will convert such credit into a City water certificate in any desired amount not to exceed the amount of credit being carried by the City and issue such certificate to the owner. Once the credits have been designated to a particular premises in satisfaction of the RWR for water service, they shall not be transferred to another property.

A portion of this City Code allows irrigation company shareholders to submit their shares whether or not a water service permit is pending and be credited accordingly. This provision allows those shares to essentially be banked for later satisfaction of RWR. The banked water shares can be either credited to the former shareholder or converted into a City certificate, which provides documentation of the credit that may be bought and sold as a commodity.

The practice of banking these irrigation company shares has been mutually beneficial to the Water Utility and the individual shareholder. The shareholder relinquished their control on the associated water from an irrigation company in exchange for no longer having to pay the annual shareholder assessments while still receiving transferrable credit for that water toward satisfying the City's RWR for future development. The Water Utility benefited from these transactions by being able to bundle the banked shares along with others to manage them, including changing them from irrigation use to municipal use as a group in state water court. Typically, Colorado water law allows municipalities to convert only the shares owned at the time of the change of use application. The Water Utility has acquired many of the accepted shares over the last several decades and has taken most of them through the water court conversion process. A second block of Southside Ditch shares (which include shares in the following irrigation companies: Arthur, Larimer County Canal No. 2, New Mercer and Warren Lake Reservoir) is nearly finalized through the conversion process. Since the water court process is lengthy and expensive and the Water Utility only anticipates the need for a final change case near build-out in about 25 years, the Water Utility no longer benefits by acquiring additional shares ahead of when they are needed. The cost to the Water Utility has been the burden of paying the annual shareholder assessments on the banked shares, and a reduced ability to control the way in which future development provides raw water in connection with treated water service.

The Water Utility regularly evaluates its water right portfolio to adapt to changes in demand and changing supply conditions. As irrigation company shares are turned in, the Water Utility assesses the increase in firm yield those shares provide. By their nature, irrigation company shares cannot provide year-round water supply without coupling them with storage accessible to the Water Utility to regulate those rights throughout the year. Since the acquisition of shares has continued while no additional storage has been obtained, the marginal benefit provided by newly acquired shares is diminished.

The Water Utility service area has a limited growth potential since it is surrounded by other water districts. As the Water Utility approaches build-out, accepting irrigation company shares in advance of development is not optimal in managing water rights for the future. Thus, as written, the current City Code provision would require the Water Utility to continue to accept irrigation company shares to an extent that may not be needed and may not be beneficial to Fort Collins Utilities.

The Water Utility currently has approximately 2,200 acre-feet of RWR in the credit system compared to the average annual RWR of about 350 acre-feet over the past five years. The Water Utility must pay annual assessments to the various irrigation companies for ownership of these shares. Using an average of assessment cost per acre-foot of \$25, the total annual assessments for these credits is approximately \$55,000 per year.

For the reasons outlined above, the Water Utility recommends amending the City Code to discontinue the practice of water right banking. Developers will still be able to provide acceptable irrigation company shares to satisfy the RWR, but only at the time a water service permit is required. Existing RWR credits and City certificates can still be used toward water service permits at the appropriate time. Also, if necessary, credits can still be transferred into City certificates and vice versa.

FINANCIAL / ECONOMIC IMPACT

By discontinuing the practice of water right banking, Utilities ratepayers will benefit financially by reducing potential future annual ditch company assessments from shares that might have been turned in for credit ahead of when they were needed.

BOARD / COMMISSION RECOMMENDATION

The proposed Code change was discussed with Water Board at its November 21, 2013 meeting. The Water Board unanimously recommended that the City Council discontinue the practice of water right banking.

PUBLIC OUTREACH

The proposed City Code change is an internal Utilities operational change and is intended to have minimal impact on the public. The only group potentially affected by this change would be water right shareholders who want to turn in their water rights to the City to avoid the annual assessment fees on them but who do not currently have any development in the permitting process to apply those water rights toward. There should be little to no impact to these entities since they will still be able to provide acceptable irrigation company shares to satisfy the RWR at the time a water service permit is required.

ATTACHMENTS

1. FINAL Recommendation on Water Right Credits from Unapproved Water Board Minutes (DOCX)

Excerpt from Unapproved Water Board Minutes, November 21, 2013

Code Changes Regarding Water Rights Credits

(Attachments available upon request).

Mr. Dustin presented information on this item. Staff is seeking the board's recommendation regarding discontinuing water right banking. This item will be presented to City Council on December 3, 2013.

Raw Water Requirements (RWR)

- Provides raw water to meet treated water needs
- Paid in irrigation company shares or cash
- Current Code allows shares to be submitted whether or not water service permit is pending
 - Bank shares for later RWR satisfaction
 - Credit account or City certificate

Water Right Banking

- Mutually beneficial in the past
 - Shareholder: no longer pay assessments, receive transferrable RWR credit
 - Water Utility: acquired shares ahead of need, useful for change of use in water court
- Less beneficial to Water Utility
 - Large block of Southside Ditch (SSD) shares nearly finalized
 - Need water storage to make shares useful
 - Must curtail acceptance at some point

Current RWR Credits

- About 2,000 acre-feet in current credit system
 - 5 year average RWR about 350 acre-feet per year
 - Approximately \$55,000 per year in assessments

Discontinue Water Right Banking

- Change code to discontinue banking
- Developers still about to provide acceptable shares
- Existing RWR credits and City certificates used when needed

Highlights from the discussion:

- A board member asked for clarification on the purpose of the assessments. Mr. Dustin stated the ditch companies charge assessments to each shareholder to maintain the ditches.
- A board member inquired about damage sustained during the September flood event. Mr. Dustin stated the North Poudre Irrigation Company (NPIC) sustained damage to the Fossil Creek Reservoir inlet ditch near the Drake Water Reclamation Facility (DWRF). Also, the New Mercer Ditch Company sustained damage at the river head gate.
- A board member inquired about the advantages to developers. Does staff anticipate any push back from developers regarding the change? Mr. Dustin stated developers may not like the changes, since under current Code they can avoid assessments by banking shares. Also, they may lose the convenience of handing in a block of shares they might have purchased all at once versus only as needed. But these conveniences are at the expense of Utilities and its ratepayers.

Excerpt from Unapproved Water Board Minutes, November 21, 2013

- A board member asked how this change is related to the Water Right Utilization Fee (WRUF) that was presented to the Board a few months ago. Mr. Dustin stated that it is not directly tied to the WRUF. Since Council asked for additional work on the WRUF, Utilities is considering options. A potential option would be temporarily accepting only cash instead of water rights. Therefore, the Code change might be helpful if that option were chosen.
- A board member inquired about what happens if a project falls through for a developer. What is the process with the new system? Water Engineering and Field Services Operations Manager Jon Haukaas stated final acceptance does not happen unless there is an approved and completed development. Deputy City Attorney Carrie Daggett also stated that the approach to the Code amendment being taken by staff would result in credit for water rights turned in for a development being attached to a particular property that was to be developed if a developer does not proceed with the planned development.
- A board member inquired about the percentage of developers that pay cash versus turning in the water rights. Mr. Dustin stated this varies from year to year, but is typically a 50/50 split.
- A board member inquired if this can be changed again in the future. Yes, this would require a revision to the code.
- A board member inquired if this process can remain the same so there is some flexibility in the future. Mr. Haukaas stated this may create some ambiguity in the future if the code is not changed. There is very little benefit for the City to continue the banking option. Ms. Daggett reiterated this change eliminates the code-driven process; however, this does not preclude the City from buying shares in the future.

Board Member Brown moved that the Water Board recommend that City Council adopt City Code changes to discontinue the practice of water banking. Board Member Huber-Stearns seconded the motion.

Discussion on the motion: There was no discussion on the motion.

Vote on the motion: It passed unanimously.

ORDINANCE NO. 171, 2013
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE III OF CHAPTER 26
OF THE CODE OF THE CITY OF FORT COLLINS
TO ELIMINATE WATER RIGHTS BANKING
BY THE CITY'S WATER UTILITY

WHEREAS, Article III of Chapter 26 of the City Code establishes terms and conditions related to the operation of the City's Water Utility, including terms and conditions for water service and the rates, fees, charges and other requirements associated with obtaining, or increasing the level of, water service; and

WHEREAS, included among the requirements in Article III are provisions related to the delivery of water rights, or cash in-lieu of water rights, to the Water Utility in connection with new or increased water service (the "Raw Water Requirement"); and

WHEREAS, as part of that Article, City Code Section 26-150 provides that an owner of water rights may submit those rights to the Water Utility and obtain either credit or a City water certificate to document a transferable credit, both of which may be used to meet a future Raw Water Requirement, a practice referred to as "banking;" and

WHEREAS, while there has been benefit to the Water Utility in the past of banking water rights, the continued unlimited acceptance of water rights as a credit for future, unspecified use transfers the financial obligation of water right ownership without any significant benefit to existing rate payers and interferes with the ability of the Water Utility to make changes to its raw water practices as it relates to managing its water supply; and

WHEREAS, banking of water rights results in an increased cost to the Water Utility because the Water Utility becomes responsible for irrigation company annual assessments and other costs associated with banked shares; and

WHEREAS, the elimination of water rights banking will not affect the Raw Water Requirement that applies to new and increased water service; and

WHEREAS, the City Manager and staff have recommended to the City Council that City Code Section 26-150 be amended to eliminate the banking of water rights; and

WHEREAS, based on the foregoing, it is the desire of the City Council to amend City Code Section 26-150 as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that subsection (b) of Section 26-150 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-150. Raw water requirements; satisfaction.

...

(b) The satisfaction of the minimum RWR shall be made no later than the time of issuance of the water service permit. An owner of water rights or City-issued water certificates may submit acceptable water rights and/or City-issued water certificates to the City, ~~whether or not~~ together with an application for a water service permit ~~is pending~~, and will be credited accordingly for raw water value. ~~Such credit may then be used~~ to satisfy, in whole or in part, assessed RWR on subsequent such application for a water service permit. ~~Upon request, the City will convert such credit into a City water certificate in any desired amount not to exceed the amount of credit being carried by the City and issue such certificate to the owner.~~ Once the credits water rights or City-issued water certificate have been designated to satisfy the RWR for water service for a particular premises ~~in satisfaction of the RWR for water service~~, they shall not be transferred to another property.

...

Introduced and considered favorably on first reading, and ordered published this 3rd day of December, A.D. 2013, and to be presented for final passage on the 17th day of December, A.D. 2013.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 17th day of December, A.D. 2013.

Mayor

ATTEST:

City Clerk