

RESOLUTION NO. 67-18

RESOLUTION AUTHORIZING THE FILING OF WATER COURT
APPLICATIONS FOR APPROPRIATIVE RIGHTS OF EXCHANGE
FROM POINTS ON THE ARKANSAS RIVER AND ITS
TRIBUTARIES UPSTREAM TO PUEBLO RESERVOIR

WHEREAS, pursuant to Section 12.1.110 of the City Code of the City of Colorado Springs, Colorado, the City of Colorado Springs (the “City”), acting by and through its enterprise Colorado Springs Utilities (“Utilities”), is the sole provider of water service to the property and the residents within the corporate boundaries of the City; and

WHEREAS, the Charter of the City of Colorado Springs at Section 6-50 provides: “The City shall have the authority to buy, exchange, augment, lease, own and control water and water rights;” and

WHEREAS, Utilities’ water supply planning documents, including its Integrated Water Resources Plan, demonstrate that Utilities needs additional water supplies, including supplies derived from the Arkansas River Basin, to meet an approximately 41,000 annual acre-foot supply gap based on the reasonably anticipated future demands of its customers over a reasonable planning period; and

WHEREAS, the Colorado Water Plan at Section 6.4 provides that “Future municipal water demands contribute to an increasing pressure to transfer agricultural water rights to help satisfy urban demands and other non-agricultural water needs across the state. Agricultural interests are concerned about the possibility of drying up more agricultural lands in the future. If Colorado continues down its current path...[t]he Arkansas River Basin could lose another 17 percent of its total....Across the state, water stakeholders want to minimize buy-and-dry in a way that respects property rights, recognizes the importance of agriculture in Colorado, and supports a sustainable agricultural industry—while identifying solutions to provide water for municipal needs. As numerous groups, including the Colorado Agricultural Water Alliance and the IBCC, have indicated, a variety of alternative options have the potential to appreciably decrease the projected permanent losses of irrigated acres in Colorado. These options, referred to as [Alternative Transfer Methods or] ATMs,...offer voluntary, not mandatory, tools that enable both farmers and water users to depart from the status quo;” and

WHEREAS, water derived from ATMs (“ATM Water”) cannot currently be conveyed or delivered using the City’s Southern Delivery System Pipeline; and

WHEREAS, to support the development of ATMs in the Lower Arkansas River Basin, in Case No. 05CW96, Water Division 2, the City, acting by and through Utilities, obtained absolute and conditional appropriative rights of exchange (the “05CW96 Exchanges”) that allow the City to: (1) exchange ATM Water from Pueblo Reservoir to specified locations in the Upper Arkansas River Basin for subsequent delivery into the City’s municipal water supply system, and (2) exchange, reuse and successively use to extinction the reusable return flows of ATM Water; and

WHEREAS, in part to support the development of ATMs, in pending Case No. 16CW3056, Water Division 2, the City, acting by and through Utilities, has requested conditional appropriative rights of exchange (the "16CW3056 Exchanges") that allow the City to: (1) exchange the sewered and non-sewered return flows derived from ATM Water from their point of introduction to Fountain Creek, tributary to the Arkansas River, to specified locations in the Fountain Creek Basin for subsequent delivery into the City's municipal water supply system, and (2) exchange, reuse and successively use to extinction the reusable return flows of ATM Water; and

WHEREAS, by Resolution No. ____, City Council authorized the City, acting by and through Utilities, to purchase up to 2,500 shares of stock (the "2,500 Shares") in the Lower Arkansas Water Management Association ("LAWMA") that represent a *pro rata* ownership interest in the portfolio of senior Arkansas River water rights held by LAWMA ("LAWMA's Water Rights"); and

WHEREAS, Utilities intends to close on the purchase of the 2,500 Shares by the end of July 2018; and

WHEREAS, at or before closing on the 2,500 Shares, Utilities intends to enter into an agreement with LAWMA under which Utilities will forego the *pro rata* allocation of water to its 2,500 Shares in five out of every ten years and, in exchange, in the remaining five out of every ten years, LAWMA will directly deliver fully-consumable water to the mainstem of the Arkansas River above John Martin Dam that is decreed or otherwise authorized for municipal and industrial uses within the City's existing and future service (the "Water Sharing Agreement"); and

WHEREAS, the Water Sharing Agreement constitutes and gives rise to an ATM under the Colorado Water Plan and the water made available thereunder is considered to be ATM Water; and

WHEREAS, Utilities intends to acquire, and can and will acquire, additional types and sources of fully-consumable ATM Water with points of delivery on the Arkansas River and its tributaries between Pueblo Reservoir and John Martin Dam; and

WHEREAS, Utilities is negotiating agreements with LAWMA and others for additional types and sources of fully-consumable ATM Water with points of delivery on the Arkansas River and its tributaries between Pueblo Reservoir and John Martin Dam; and

WHEREAS, in order to exchange, use, reuse, and successively use ATM Water, including the water derived from the Water Sharing Agreement, under the 05CW96 Exchanges and the 16CW3056 Exchanges, the City, acting by and through Utilities, must be able to deliver ATM Water from points on the Arkansas River and its tributaries above John Martin Dam to Pueblo Reservoir; and

WHEREAS, upon delivery to Pueblo Reservoir, ATM Water, including the water derived from the Water Sharing Agreement, can be exchanged, used, reused, and successively used to extinction using the 05CW96 Exchanges and the 16CW3056 Exchanges; and

WHEREAS, in Paragraph 12.A.3.d. of the Decree entered in Case No. 05CW96, Water Division 2, the City, acting by and through Utilities, agreed that “[t]he total volume of water exchanged [under the 05CW96 Exchanges] shall not exceed 20,000 acre-feet in any year, and shall not exceed 30,000 acre-feet in any three (3) consecutive years or 100,000 acre-feet in any ten (10) consecutive years” (the “05CW96 Volumetric Limits”).

WHEREAS, the City Council of Colorado Springs has consistently directed Utilities to develop all feasible means of implementing the use, reuse, and successive use of the City’s water resources, including ATMs; and

WHEREAS, in order to operate the Water Sharing Agreement and future ATMs, the City, acting by and through Utilities, and/or LAWMA will need to exchange ATM Water, including water derived from the Water Sharing Agreement, from points on the Arkansas River and its tributaries above John Martin Reservoir to Pueblo Reservoir; and

WHEREAS, it is technologically and economically feasible for the City, acting by and through Utilities, and/or LAWMA to exchange ATM Water, including water derived from the Water Sharing Agreement, from points on the Arkansas River and its tributaries above John Martin Dam to Pueblo Reservoir for subsequent delivery to Utilities’ existing and future service area; and

WHEREAS, water rights applications are being prepared, or will be prepared, for filing in District Court, Water Division 2, for the adjudication of conditional appropriative rights of exchange, as described herein, that will allow Utilities to fully use, reuse, and successively use to extinction ATM Water, including the water derived from the Water Sharing Agreement; and

WHEREAS, it is necessary and desirable for the City to file such applications and to obtain decrees in District Court, Water Division 2, recognizing and confirming the conditional appropriative rights of exchange described herein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS, COLORADO:

Section 1. City Council reaffirms the City’s intent to fully use, reuse, and successively use to extinction ATM Water, including the water derived from the Water Sharing Agreement, through appropriative rights of exchange.

Section 2. City Council reaffirms the City’s intent to appropriate available exchange opportunities from points on the Arkansas River and its tributaries above John Martin Dam to Pueblo Reservoir for subsequent delivery to Utilities’ existing and future service area in amounts comparable to and compatible with the 05CW96 Volumetric Limits. The rates of such exchanges will be the maximum rate at which ATM Water, including the water derived from the Water Sharing Agreement, can and will be delivered to the Arkansas River and its tributaries at points above John Martin Dam, and exchanged upstream to Pueblo Reservoir.

Section 3. City Council hereby authorizes and directs Utilities to file water rights applications in District Court, Water Division 2, either individually or with co-applicants for the adjudication of conditional appropriative rights of exchange, including the conditional appropriative rights of exchange described herein, that will allow the City to fully use, reuse, and successively use ATM Water to extinction.

Section 4. The officers and staff of Utilities are hereby directed to take all actions reasonable and necessary to obtain a judicial confirmation of conditional appropriative rights of exchange, including those described herein, that will allow the City to fully use, reuse, and successively use ATM Water to extinction. All actions previously taken by officials and staff on behalf of the City of Colorado Springs in the planning and furtherance of such conditional appropriative rights of exchange are hereby ratified and confirmed.

Section 5. This Resolution is required to protect the health, safety and welfare of the City of Colorado Springs and its citizens.


Section 6. This Resolution shall be in full force and effect immediately upon its adoption.

DATED at Colorado Springs, Colorado, this 26th day of June, 2018.

ATTEST:


Sarah B. Johnson, City Clerk





Council President