

RESOLUTION NO. _____-15

RESOLUTION AUTHORIZING THE FILING OF WATER COURT APPLICATIONS FOR CHANGE OF WATER RIGHTS, AUGMENTATION PLAN AND APPROPRIATIVE RIGHTS OF EXCHANGE RELATED TO THE CITY OF COLORADO SPRINGS' INTERESTS IN WATER RIGHTS OF THE FOUNTAIN MUTUAL IRRIGATION COMPANY AND CHILCOTT DITCH COMPANY

WHEREAS, pursuant to Section 12.1.110 of the City Code of the City of Colorado Springs, Colorado (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, by Resolution No. 117-14 City Council authorized the City, acting by and through Utilities, to purchase up to one hundred forty-seven (147) shares of stock in the Fountain Mutual Irrigation Company ("FMIC") and up to eight (8) shares of stock in the Chilcott Ditch Company ("Chilcott") that represent a *pro rata* ownership interest in senior Fountain Creek water rights (the "Subject Water Rights"); and

WHEREAS, on December 10, 2014 Utilities closed on the purchase of one hundred forty-four (144) shares of stock in FMIC and eight (8) shares of stock in Chilcott along with the Subject Water Rights; and

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 to the fullest extent possible and economically feasible within its municipal water supply including, without limitation, by direct use, exchange and in plans for augmentation; and

WHEREAS, in order for Utilities to fully use, reuse, and successively use to extinction the Subject Water Rights, the City intends to change the use of the Subject Water Rights to include, in addition to the existing irrigation use, all municipal uses including, without limitation, domestic, agricultural, industrial, commercial, irrigation, stock watering, fire protection, recreation, fish and wildlife preservation and propagation, recharge of Denver Basin aquifers, exchange, replacement of historical return flows, replacement of depletions resulting from the use of water from other sources, relinquishment pursuant to §37-90-137(9)(b), C.R.S., augmentation, sale or lease to other water users, and such other uses as may be allowed by law; and

WHEREAS, in order for Utilities to fully use, reuse, and successively use to extinction the Subject Water Rights, the City intends to change the place of use for such

rights to include Utilities' service area as it exists now and as it may exist in the future, including any areas served by Utilities by extraterritorial agreement or other contract and for replacement of depletions on Fountain Creek accruing between the City and the confluence of Fountain Creek and the Arkansas River. In addition, the City intends to change the place of use of the Subject Water Rights to any location within the Arkansas River Basin for which water may be delivered for augmentation, sale, or lease for such other uses as may be allowed by law; and

WHEREAS, in order for Utilities to fully use, reuse, and successively use to extinction the Subject Water Rights, the City intends to exchange the Subject Water Rights from their point of introduction to Fountain Creek upstream to the City's diversion and storage facilities on Fountain Creek and its tributaries; and

WHEREAS, it is technologically and economically feasible for Utilities to exchange the Subject Water Rights from their point of introduction to Fountain Creek upstream to the City's diversion and storage facilities on Fountain Creek and its tributaries; and

WHEREAS, in order for Utilities to fully use, reuse, and successively use the Subject Water Rights, the City intends to exchange the Subject Water Rights from the confluence of Fountain Creek and the Arkansas River upstream to Pueblo Reservoir and then upstream to the City's diversion and storage facilities on the Arkansas River and its tributaries; and

WHEREAS, it is technologically and economically feasible for Utilities to exchange the Subject Water Rights from the confluence of Fountain Creek and the Arkansas River upstream to Pueblo Reservoir and then upstream to the City's diversion and storage facilities on the Arkansas River and its tributaries; and

WHEREAS, in order for Utilities to fully use, reuse, and successively use to extinction the Subject Water Rights, the City intends to file plans for augmentation utilizing the Subject Water Rights as a source of substitute supply to replace depletions accruing on Fountain Creek between the City and the confluence of Fountain Creek and the Arkansas River; and

WHEREAS, it is technologically and economically feasible for Utilities to use the Subject Water Rights as a source of substitute supply in augmentation plans to replace depletions accruing on Fountain Creek between the City and the confluence of Fountain Creek and the Arkansas River; and

WHEREAS, water rights applications are being prepared, or will be prepared, for filing in District Court, Water Division 2 for the adjudication of changes of water rights for the Subject Water Rights, augmentation plans, and conditional appropriative rights of exchange, as described herein, that will allow Utilities to fully use, reuse, and successively use to extinction the Subject Water Rights; 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 changes of water rights for the Subject Water Rights, augmentation plans, and 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 the Subject Water Rights through changes of water rights, augmentation plans, and appropriative rights of exchange.

Section 2. City Council reaffirms the City's intent to appropriate available exchange opportunities between the point of introduction of the Subject Water Rights to Fountain Creek upstream to the City's existing diversion and storage facilities and proposed diversion and storage facilities on Fountain Creek and its tributaries. The proposed exchanges on the stream reaches listed above may also be operated to any other point of diversion or storage on Fountain Creek and its tributaries located between the points of introduction of the Subject Water Rights to Fountain Creek and the City's diversion and storage facilities on Fountain Creek and its tributaries. The rate of such exchange will be the rate at which the Subject Water Rights reach Fountain Creek and can be exchanged to the subject diversion and storage facilities. The maximum annual volume of such exchange will be limited to the total annual quantity of the Subject Water Rights that reaches Fountain Creek upstream of its confluence with the Arkansas River.

Section 3. City Council reaffirms its intent to appropriate available exchange opportunities between the point of introduction of the Subject Water Rights downstream to the confluence of Fountain Creek and the Arkansas River, then upstream on the Arkansas River to Pueblo Reservoir, then upstream on the Arkansas River to the City's existing diversion and storage facilities and proposed diversion and storage facilities on the Arkansas River and its tributaries. The proposed exchanges on the stream reaches listed above may also be operated to any other diversion or storage facility on the Arkansas River and its tributaries located between Pueblo Reservoir and the City's existing diversion and storage facilities and proposed diversion and storage facilities on the Arkansas River and its tributaries. The rate of such exchange will be the rate at which the Subject Water Rights reach Fountain Creek and can be exchanged to the subject diversion and storage facilities. The maximum annual volume of such exchange will be limited to the total annual quantity of the Subject Water Rights that reaches Fountain Creek upstream of its confluence with the Arkansas River.

Section 4. City Council hereby authorizes and directs Utilities to file water rights applications in District Court, Water Division 2 for the adjudication of changes of water rights for the Subject Water Rights, augmentation plans, and 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 to extinction the Subject Water Rights.

Section 5. That the officials and staff of Utilities are hereby directed to take all actions reasonable and necessary to obtain a judicial confirmation of changes of water rights for the Subject Water Rights, augmentation plans, and conditional appropriative rights of exchange, including those described herein, that will allow the City to fully use, reuse, and successively use to extinction the Subject Water Rights. All actions previously taken by officials and staff on behalf of the City of Colorado Springs in the planning and furtherance of such a changes of water rights, augmentation plans, and conditional appropriative rights of exchange are hereby ratified and confirmed.

Section 6. This Resolution is required to protect the health, safety and welfare of the City of Colorado Springs and its citizens.

Section 7. This Resolution shall be in full force and effect immediately upon its adoption.

DATED at Colorado Springs, Colorado, this _____ day of _____, 2015.

ATTEST:

Keith King, Council President

Sarah B. Johnson, City Clerk