

RESOLUTION NO. 149 - 22

A RESOLUTION AUTHORIZING THE PURCHASE OF FORT LYON CANAL COMPANY STOCK OWNED BY ARKANSAS RIVER FARMS, LLC FOR COLORADO SPRINGS UTILITIES AND AUTHORIZING THE FILING OF WATER COURT APPLICATIONS FOR CHANGES OF WATER RIGHTS AND APPROPRIATIVE RIGHTS OF EXCHANGE

WHEREAS, Colorado Springs Utilities' ("Utilities"), an enterprise of the City of Colorado Springs (the "City") recent 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 40,000 annual acre-foot supply gap based on the reasonably anticipated future demands of its customers over a reasonable planning period; and

WHEREAS, consistent with the Colorado Water Plan and the acquisition strategies outlined in the Integrated Water Resource Plan, Utilities is pursuing the acquisition of water supplies from the Arkansas River Basin; and

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

WHEREAS, the City, on behalf of Utilities, and Arkansas River Farms, LLC entered into that certain Purchase and Sale Agreement dated July 5, 2022, as it may be subsequently amended (the "Purchase Agreement") for the purchase of two thousand nine hundred and nineteen (2,919) shares of stock ("FLCC Shares") in the Fort Lyon Canal Company ("FLCC"), six hundred forty-four and sixty-seven hundredths (644.67) acres of land in Bent County, sixteen augmentation station and/or recharge facilities located in Bent County, Otero County, and Prowers County, Colorado, easements or assignments of easements that allow Utilities to construct, operate, and maintain water augmentation, return flow, and recharge facilities on properties owned by ARF or third parties, and rights of first refusal to purchase additional shares in FLCC and certain properties in Bent County, Colorado (collectively, the "Property"); and a condition of the purchase and sale is that Arkansas River Farms, LLC, will encumber the underlying real property with restrictive covenants that require Arkansas River Farms, LLC, or its successors in interest to dry up and revegetate portions of their property, which will allow Utilities to fully utilize the water rights associated with the FLCC Shares; and

WHEREAS, the FLCC Shares represent an ownership interest in senior Arkansas River water rights and are anticipated to yield approximately 2,919 acre-feet of renewable and reusable water to Utilities per year; and

WHEREAS, the acquisition of the Property is in the public interest and is required to meet Utilities' water customers' long-term water demands; and

WHEREAS, the acquisition of the Subject Water Rights is further supported by Utilities' Excellence in Governance Policy Manual, Instruction No. I-7, which requires that Utilities' Chief Executive Officer "direct that new and existing water resources and systems are aggressively developed"; and

WHEREAS, acquisitions of water rights are not subject to the procedures of *The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interest* ("Real Estate Services Manual"), however, Utilities has attempted to follow the Real Estate Services Manual to the greatest extent practical; and

WHEREAS, Utilities and Arkansas River Farms, LLC agree that the purchase price to be paid by Utilities for the Property is \$27,085,175.00; and

WHEREAS, Utilities requests the approval of City Council to purchase the Property for a purchase price of \$27,085,175.00; and

WHEREAS, in order to use, reuse, and successively use the historical consumptive use water derived from the FLCC Shares and other Arkansas Basin water rights in which the City acquires an interest (collectively the "Arkansas Basin Rights"), the City, on behalf of Utilities, must change the type and place of use of such water rights and must be able to deliver such water from points on the Arkansas River and its tributaries to structures upstream in the Arkansas River Basin for subsequent delivery to its existing and future service area; and

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

WHEREAS, it is technologically and economically feasible for the City, acting by and through Utilities, to change the type and place of use of the water derived from its Arkansas Basin Rights and exchange said water from points on the Arkansas River and its tributaries upstream to other structures in the Arkansas River Basin for subsequent delivery to customers in its existing and future service area; and

WHEREAS, it is necessary and desirable for the City to file applications and to obtain decrees in District Court, Water Division 2, for adjudication of changes of water rights and conditional appropriative rights of exchange that will allow Utilities to fully use, reuse, and successively use to extinction the historical consumptive use water derived from its Arkansas Basin Rights.

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

Section 1. City Council finds the acquisition of the Property to be in the public interest and in compliance with the City Charter, City Code, and all other applicable laws, and, in accordance with City Code § 7.7.1802, hereby authorizes the purchase and acceptance of the property.

Section 2. City Council authorizes the purchase of the Property from Arkansas River Farms, LLC for the agreed upon amount of up to \$27,085,175.00 with any additional closing costs.

Section 3. Utilities' Chief Executive Officer and the City's Real Estate Services Manager are authorized to execute all documents necessary to complete the acquisition of the Property and to take all steps necessary to accept the transfer of the Property to the City from Arkansas River Farms.

Section 4. City Council affirms the City's intent to fully use, reuse, and successively use to extinction the historical consumptive use water derived from its Arkansas Basin Rights through changes of water rights and conditional appropriative rights of exchange.

Section 5. The officers and staff of Utilities are hereby directed to take all actions reasonable and necessary to obtain a judicial confirmation of the changes of water rights and conditional appropriative rights of exchange described herein, including the filing of applications in District Court, Water Division 2, that change the type and place of use and will allow the City to fully use, reuse, and successively use the historical consumptive use water derived from its Arkansas Basin Rights. All actions previously taken by officials and staff on behalf of the City in the planning and furtherance of such

changes of water rights and conditional appropriative rights of exchange are hereby ratified and confirmed.

DATED at Colorado Springs, Colorado, this 11<sup>th</sup> day of October 2022.

  
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Council President

ATTEST:

  
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Sarah B. Johnson, City Clerk

