



Legislation Details (With Text)

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Title: A Resolution authorizing the use of eminent domain to acquire interests in real properties needed for the Southern Delivery System Project's Upper Williams Creek Reservoir

Presenter:
Lyman Ho, Project Manager, SDS Land Manager
Jerry Forte, P.E., Chief Executive Officer, Colorado Springs Utilities

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Attachments: 1. SDS Condemnations_City Council Presentation_2017-09-12.pdf, 2. SDSResolutionAuthorizingUseofEminentDomainRES_2017-08-10.pdf, 3. Signed Resolution 97-17

Date	Ver.	Action By	Action	Result
9/12/2017	1	City Council	adopted	Pass

A Resolution authorizing the use of eminent domain to acquire interests in real properties needed for the Southern Delivery System Project's Upper Williams Creek Reservoir

Presenter:

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Summary:

Colorado Springs Utilities ("Utilities") is seeking City Council approval of the attached Resolution authorizing the use of eminent domain to acquire interests in four parcels of real property. Despite repeated attempts by the City and Colorado Springs Utilities to negotiate an amicable acquisition of the Properties, Utilities has been unable to negotiate an agreement for the purchase of the needed interests in the Properties. Staff will continue to make all reasonable efforts to reach a negotiated settlement for the purchase and sale of the Properties; however, obtaining the authority to proceed with eminent domain with respect to three properties and a Possession and Use Agreement and eminent domain with respect to a fourth property will allow the Utilities to construct the Project if agreements with the property owners cannot be reached.

Previous Council Action:

City Council previously approved Resolution No. 134-13 determining the necessity, and authorizing the acquisition of, and entry into possession and use agreements for, certain real property for Southern Delivery System Project Improvements, including the acquisition of interests in real

properties identified as Property Nos. 1 through 3, below.

Background:

Since 2013, the City of Colorado Springs, on behalf of Utilities, has acquired approximately 2,188.5 acres of land for the Southern Delivery System Project's Upper Williams Creek Reservoir. The Upper Williams Creek Reservoir will consist of constructing a 30,500 acre-foot reservoir and associated drain and fill pipelines and buffer. Utilities has attempted to negotiate acquisition of the Properties described in the Resolution, but has been unsuccessful despite repeated attempts to negotiate a purchase of the Properties. Utilities will continue to attempt to negotiate with the owners of the Properties. A history of the negotiations is provided below:

I. Property No. 1 - Fee acquisition of a portion of Tax Schedule No.45000-00-124

Utilities is seeking to obtain a 26-acre portion of a 40-acre parcel. The 26-acre portion does not include the residence or any other improvements, and Utilities would allow the property owner to retain a 20-foot access easement to provide the owner with access from Bradley Road using the existing access road. This property would be used as part of the reservoir and to provide part of the required 1,000 foot buffer.

Utilities first contacted the property owner in January 2008 and has had numerous communications with the owner since 2008. In July 2016, Utilities issued a Notice of Intent to Acquire the property. Utilities made its original offer on February 2017 with a response deadline in June 2017. Utilities made a final offer on July 14, 2017. The property owner has previously refused to consider or discuss selling any portion of the property.

II. Property No. 2 - Fee acquisition of Tax Schedule No. 45000-00-122

Utilities is seeking to obtain this 40-acre parcel from the couple who own and reside on the property. This property would be used for the reservoir, a 1,000-foot buffer, and enhanced watershed protection purposes. A larger parcel upstream from this site has already been acquired.

Utilities first contacted the property owners in December 2007 and has had numerous communications with them since 2007. A formal Notice of Intent to Acquire was sent to the property owners in August 2016. Utilities made an initial offer to acquire the property in April 2017. The property owners rejected the initial offer. Utilities reiterated its original offer with a deadline to respond on June 23, 2017 and the property owners responded with a counteroffer for this and Property No. 3 that was significantly higher than Utilities' offer. Utilities made a final offer on July 18, 2017.

III. Property No. 3 - Fee acquisition of Tax Schedule No. 45000-00-121

This property is owned by the same owners as Property No. 2. Utilities seeks to acquire this 80-acre parcel for reservoir, buffer, and enhanced watershed protection purposes.

As with Property No. 2, Utilities first contacted the property owners regarding this property in December 2007 and has had numerous communications with them since 2007. Utilities provided a formal Notice of Intent to Acquire the property to the property owners in August 2016. Utilities made an offer to acquire the property in April 2017. The property owners rejected the initial offer. Utilities reiterated its original offer with a deadline to respond on June 23, 2017 and the property owners responded with a much higher counteroffer. Utilities made a final offer on July 18, 2017.

IV. Property No. 4 - Easement acquisition across a portion of Tax Schedule No. 55000-00-324

Utilities seeks to acquire a 150-foot wide easement to accommodate a portion of the two drain and fill pipelines needed for the Project. The property consists of almost 600-acres of land and is currently vacant

and used for cattle grazing. The proposed easement will bisect the property.

At the initial meeting with the property owner to explain the location and purpose of the easement, the owner expressed that the easement width was too wide and that by bisecting the property, it may render the remaining property undevelopable. They indicated that the easement would need to be condemned as a result of those factors. Utilities provided a formal Notice of Intent to Acquire the easement on July 24, 2017. Utilities will still be meeting with the owner to determine whether the easement width or depth could be modified to address the owner's concerns. Utilities will seek to enter into a Possession and Use Agreement with the owner and will only file a condemnation petition for this easement if negotiations fail; however, based on the property owner's initial response to Utilities' inquiries, Utilities expects condemnation may be required.

Financial Implications:

The real property interests will be acquired using Colorado Springs Utilities Southern Delivery System funds. The owners of the properties will be afforded just compensation for the property interests, either through a negotiated settlement or a court proceeding.

Board/Commission Recommendation:

N/A

Stakeholder Process:

Staff has had multiple communications with the property owners and will continue to make all reasonable efforts to reach a negotiated settlement for the purchase and sale of the property interests.

Alternatives:

City Council may approve, modify, or deny approval of the attached Resolution.

Proposed Motion:

Move approval of the proposed Resolution authorizing the use of eminent domain to acquire interests in real properties needed for the Southern Delivery System Project's Upper Williams Creek Reservoir.

N/A