



Legislation Text

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A Resolution Authorizing Colorado Springs Utilities to Take All Actions Necessary to Remove Certain Water Rights From The State of Colorado's Water Right's Tabulation (Bear Creek Change in Point Diversion)

From:

Jerry Forte, P.E., Chief Executive Officer, Colorado Springs Utilities

Summary:

Utilities is seeking to maximize the use of its Bear Creek water rights by changing the point of diversion for those water rights from the existing unusable point of diversion to a new point of diversion which will allow Utilities to fully utilize the Bear Creek water rights.

Previous Council Action:

N/A

Background:

Utilities can no longer divert its Bear Creek water rights at the existing point of diversion as a result of a 1994 enforcement action issued by the Colorado Department of Public Health and Environment (CDPHE). In order to comply with this enforcement action, Utilities must allow the water associated with those water rights to flow through El Paso County's Bear Creek Regional Park. Utilities has identified a downstream location where a new intake will be constructed to divert the Bear Creek water rights, and has obtained easements on El Paso County property where a new infiltration gallery will be constructed. Filing a water court application is necessary to change the point of diversion for the Bear Creek water rights to the proposed new Bear Creek intake.

Colorado Revised Statute § 37-92-305 allows water rights holders to complete a simple change in point of diversion as long as there are no intervening surface diversion points or inflow. Utilities is seeking to change six water rights associated with the Bear Creek Pipeline and four exchange rights under the simple change of point of diversion statute; however, the remaining right on Bear Creek that the City acquired from El Paso County in the 1980's that is still associated with 2.66 cfs of the historic Bear Creek Ditch No. 1 will not be changed through this application. The point of diversion for that water right is located between the existing point of diversion for the other Bear Creek water rights and the new Bear Creek intake. There is a great deal of uncertainty about the current disposition of this water right. Part of the right may have already been abandoned in Case No. 84CW205. In addition, the right is decreed only for irrigation use, with a restricted place of use and there are concerns about the diversion history and place of use. These and other factors prevent this portion of the Bear Creek Ditch No. 1 water right from providing any meaningful water system yield or operational benefit to Utilities, and create a liability to Utilities' water rights portfolio in light of recent Water Court decisions. By abandoning the Bear Creek Ditch No. 1 irrigation right, Utilities can utilize

the simple change in point of diversion statute to file an application to move all of the remaining Bear Creek water rights to the new downstream diversion point.

Utilities' Water Resources Section evaluated the impact of abandoning the Bear Creek Ditch No. 1 irrigation water right. Based on this conservative analysis, Utilities confirmed that abandoning this water right will not reduce Utilities' water yield. Furthermore, abandoning this water right will allow Utilities to proceed in changing the point of diversion for the remaining Bear Creek water rights under the provisions of the simple change in point of diversion statute. Finally, abandoning the Bear Creek Ditch No. 1 irrigation water right is consistent with industry standard best practices of water providers periodically evaluating their water rights portfolio and retiring those water rights that do not generate yield, do not provide operational benefit, or are otherwise unnecessary.

Financial Implications:

N/A

Board/Commission Recommendation:

To be determined at the February 18, 2015 Utilities Board meeting.

Stakeholder Process:

N/A

Alternatives:

N/A

Proposed Motion:

Recommend approval of Resolution No. 15-xx directing Utilities to take the steps necessary to abandon the City's interest in the Bear Creek Ditch No. 1 water right.

N/A