



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: December 21, 2017

Staff Contact: Darren Schulz, Public Works Director

Agenda Title: For Possible Action: To adopt a Resolution determining that Carson City's ownership interest in Water Permit 36079 (Certificate 11627) for 8.62 acre feet annually of water located in Washoe Valley is not required for public use and the sale of these water rights is desirable and in the best interest of the City pursuant to NRS 533.550 and NRS 332.185, thereby authorizing the sale of these rights to Julian Smith in the amount of \$25,000. (Stephanie Hicks; SHicks@carson.org)

Staff Summary: Following the Board's motion in May of 2017 to proceed with the sale of Carson City's ownership interest in Water Permit 36079 (Certificate 11627) for 8.62 acre feet annually of water located in Washoe Valley, staff advertised and posted the bid process on August 24, 2017, through Carson City's online bid management system. The sale was advertised for a minimum bid amount of \$50,000, the appraised value of the water rights. On September 21, 2017, only one bid received was for the amount \$25,000. On October 5, 2017, staff requested the flexibility to pursue all possible avenues to effectuate the sale in order to obtain the highest possible purchase price for the City. Since this time, staff and the City's water rights consultant have reached out to other interested parties; however, no other higher offers have been received.

Agenda Action: Formal Action/Motion

Time Requested: Consent

Proposed Motion

Move to adopt Resolution No. 2017-R-_____ determining that Carson City's interest in Water Permit 36079 (Certificate 11627), located in Washoe Valley totaling 8.62 acre feet, is not required for public use and to authorize the sale of these water rights to Julian Smith in the amount of \$25,000.

Board's Strategic Goal

Efficient Government

Previous Action

April 7, 2016 - The Board of Supervisors approved a motion to direct staff to have the water under Permit 36079 (Certificate 11627) appraised and sold on the open market for an amount not less than the appraised value.

May 18, 2017 - The Board of Supervisors adopted Resolution No. 2017-R- 11 determining that Carson City's interest in Water Permit 36079 (Certificate 11627) for 8.62 acre feet annually of water is not required for public use and the sale of these water rights is desirable and in the best interest of the City pursuant to NRS 533.550 and NRS 332.185, and authorized method of open market sale for said personal property through the City's online Bid Management System, giving staff the authority to accept final and highest bid.

October 5, 2017 - The Board of Supervisors authorized staff to pursue all possible avenues to effectuate the sale of the water rights and for the highest dollar amount possible.

Background/Issues & Analysis

The City's water rights in Washoe Valley associated with Well #12 are currently unused and cannot be moved to another site where they could be utilized by Carson City. As such, the water rights are subject to forfeiture for non-use.

On April 2016, the Board of Supervisors approved a motion to direct staff to have the water under Permit 36079 appraised and sold on the open market for an amount not less than the appraised value. The appraisal was completed and the water rights were valued at \$50,000.

In March of 2017, an update to the appraisal was completed and no new records of sale were found. Therefore, the value of the water rights remains at \$50,000. In May of 2017, staff brought a resolution to the Board pursuant to NRS 533.550 and NRS 332.185. NRS 533.550 requires that when a public body sells water rights, at least one public hearing must be held at which public comment was solicited and specific findings must be made. NRS 332.185 allows the City to dispose of personal property in any manner, including, without limitation, at public auction, if the City determines that the property is no longer required for public use and deems such action desirable and in the best interests of the local government.

The Board made the required findings and adopted Resolution No. 2017-R- 11 determining that Carson City's interest in Water Permit 36079 (Certificate 11627) is not required for public use and the sale of these water rights is desirable and in the best interest of the City. Additionally, the Board authorized method of open market sale for said personal property through the City's online Bid Management System, giving staff the authority to accept final and highest bid.

On August 24, 2017, the sale of water rights was posted on the City's online Bid Management System and notice was published in the newspaper. The sale was advertised for a minimum bid amount of \$50,000, the appraised value of the water rights. On September 21, 2017, only one bid received was for the amount \$25,000; therefore, this bid was denied.

On October 5, 2017, the Board authorized staff to pursue all possible avenues to effectuate the sale of Carson City's interest in Water Permit 36079 and for the highest dollar amount possible. Since this time, staff and the City's water rights consultant have reached out to other interested parties; however, no higher offers have been received. Mr. Smith has contacted staff to advise that he was still interested in purchasing the water rights for \$25,000.

NRS 533.550 requires the Board of Supervisors to make specific findings and to hold at least one public hearing at which public comment was solicited before selling water rights. Staff recommends that the Board of Supervisors approve the sale of the water rights based on the following findings and responses:

(a) The sale or lease of the water right is consistent with the prudent, long-term management of the water resources within the jurisdiction of the public body;

The subject City water rights were acquired by Carson City in order to drill wells to find a dependable source of good quality water supply to support new residential development in the Lakeview area in the late 1970's and 1980's. The Lakeview wells proved to be problematic for the City with water quantity and quality being issues. Well #12 was the only well source that Carson City has in Washoe Valley. Well #12 was a poor producer, did not meet water quality standards, and therefore is no longer in service. An inter-basin transfer of water rights is unlikely to be approved and the water rights are subject to forfeiture for non-use. Staff believes that the sale is consistent with the prudent, long-term management of the City's water resources as there is a very limited amount of water in Well #12 (8.62 acre feet) and there are no other viable candidate sites in Washoe Valley on which to drill a municipal well to supply such a small amount of water to the Carson City system.

(b) The sale or lease of the water right will not deprive residents and businesses within the jurisdiction of the public body of reasonable access to water resources for growth and development;

Carson City residents and businesses within the Lakeview area are served by the Eagle Valley portion of the water system. Therefore, the sale of the water rights will not deprive residents and businesses within the jurisdiction of reasonable access to water resources for growth and development.

(c) The sale or lease of the water right is a reasonable means of promoting development and use of the water right; and

If the water rights are not sold, they will be subject to forfeiture for non-use. Sale of the water rights is the only means of promoting development and use of these water rights.

(d) The means by which the water right is sold or leased reasonably ensures that the public body will receive the actual value of the water right or comparable economic benefits.

The City had an appraisal prepared to determine the value of the water rights. However, efforts to sell the water rights through the City's online Bid Management System did not result in receipt of the minimum bid price of the appraised value of \$50,000. Further, after attempts by staff and the City's water rights consultant, no additional higher bids have been received. Although the market value of the City's water rights was appraised at \$50,000, these rights are set to expire. If the water rights are not sold, both the water rights and any value they may hold will be forfeited by the City. Therefore, due to time constraints and risk of forfeiture, staff is recommending that the offer of \$25,000 from Mr. Smith be accepted as a comparable economic benefit.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 533.550 Sale or lease of water right by public body for more than 5-year term.

NRS 332.185 allows the City to dispose of personal property in any manner, including, without limitation, at public auction, if the City determines that the property is no longer required for public use and deems such action desirable and in the best interests of the local government.

Financial Information

Is there a fiscal impact? Yes No

If yes, account name/number: 520-0000-372-75-00 Miscellaneous Other Revenue;

520-3502-435-03-09 Professional Services

Is it currently budgeted? Yes No

Explanation of Fiscal Impact: Net fiscal impact would be the proceeds from the sale minus the costs associated with selling the water (appraisal, etc.).

Alternatives

Do not adopt a Resolution determining that Carson City's interest in Water Permit 36079 (Certificate 11627), located in Washoe Valley totaling 8.62 acre feet, is no longer required for public use and the sale of these water rights is desirable and in the best interest of the City pursuant to NRS 533.550 and NRS 332.185, and approve a Sale Agreement with Julian Smith for these water rights in the amount of \$25,000.

Propose alternative method for open market sale of water rights.

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

RESOLUTION NO. _____

A RESOLUTION DETERMINING THAT CARSON CITY'S OWNERSHIP INTEREST IN WATER PERMIT 36079 LOCATED IN WASHOE VALLEY, CONSISTING OF 8.62 ACRE FEET, IS NOT REQUIRED FOR PUBLIC USE AND THE SALE OF THESE WATER RIGHTS IS DESIRABLE AND IN THE BEST INTERESTS OF THE CITY AND THAT SAID SALE SHALL BE MADE PURSUANT TO NRS 533.550 and NRS 332.185.

WHEREAS, Carson City currently has an ownership interest in Water Permit 36079 (Certificate 11627) for a total of 8.62 acre feet annually of water located in Washoe Valley ("Washoe Valley water rights") but does not presently derive any benefit from the Washoe Valley water rights as treatment would be required and no usable infrastructure exists for the delivery of water from that site; and

WHEREAS, Carson City staff has determined that the construction of infrastructure and treatment for the delivery of water from the site would be impractical or impossible and therefore the Washoe Valley water rights are expected to expire for nonuse and revert to the State of Nevada in early 2018; and

WHEREAS, on May 18, 2017, the Carson City Board of Supervisors adopted Resolution No. 2017-R-11 determining that the Washoe Valley water rights are not required for public use and the sale of those rights is desirable and in the best interests of Carson City pursuant to NRS 332.185, and therefore authorized a method of open market sale for the Washoe Valley water rights to be sold to the final and highest bidder; and

WHEREAS, the water rights to be sold to the final and highest bidder were appraised at a value of fifty thousand dollars (\$50,000.00) and it was determined, in accordance with the best interests of Carson City and in compliance with state law governing the sale of water rights owned by a local government, that the sale would be for an amount not less than this appraised value; and

WHEREAS, by the close of the open market sale conducted on Carson City's online Bid Management System, only one bid was submitted and because it was in an amount less than the required minimum bid of fifty thousand dollars (\$50,000), it was rejected; and

WHEREAS, on October 5, 2017, the Carson City Board of Supervisors authorized staff to pursue all possible avenues to effectuate the sale of the Washoe Valley water rights and for the highest amount possible; and

WHEREAS, despite the best efforts of Carson City staff and those of a professional water consultant retained by Carson City to identify prospective buyers, the only such person identified remains the person who submitted the sole bid during the open market sale process; and

WHEREAS, the person who submitted the sole bid during the open market sale process offered an initial bid of twenty-five thousand dollars (\$25,000.00) for the Washoe Valley water rights and continues to have an interest in purchasing the rights for the same amount; and

WHEREAS, pursuant to NRS 533.550 it has been determined by the Carson City Board of Supervisors that:

1. The sale of the Washoe Valley water rights is consistent with the prudent, long-term management of the water resources within Carson City;
2. The sale of the Washoe Valley water rights will not deprive the residents and businesses within Carson City of reasonable access to water resources for growth and development;
3. The sale of the Washoe Valley Water rights is a reasonable means of promoting development and use of the water rights as the nonuse of those rights by Carson City will result in expiration of the rights and reversion of ownership to the State of Nevada; and
4. The means by which the Washoe Valley water rights are to be sold ensures that Carson City will receive the actual value of the water rights or comparable economic benefits in that although the rights have been appraised at fifty thousand dollars (\$50,000.00) and the proposed sale will be for the amount of twenty-five thousand dollars (\$25,000.00), the value of the rights will be reduced to zero when they revert to the State of Nevada; and

WHEREAS, NRS 332.185 allows Carson City to dispose of personal property in any manner, including, without limitation, at public auction, if Carson City determines that the property is no longer required for public use and deems such action desirable and in the best interests of Carson City; and

WHEREAS, on December 21, 2017, pursuant to NRS 533.550 the Carson City Board of Supervisors obtained public comment and duly considered recommendations and made required findings for the proposed sale of the Washoe Valley water rights; and

WHEREAS, the proposed sale of the Washoe Valley water rights is consistent with NRS 332.185;

NOW, THEREFORE, BE IT RESOLVED, that the Carson City Board of Supervisors hereby authorizes the sale of its Washoe Valley water rights to Julian Smith for the amount of twenty-five thousand dollars (\$25,000.00).

Upon motion by Supervisor _____, seconded by Supervisor _____, the foregoing Resolution was passed and adopted this 21st day of December, 2017 by the following vote.

VOTE: AYES:

NAYS: _____

ABSENT: _____

ABSTAIN: _____

Robert Crowell, Mayor

ATTEST

Susan Merriwether, Clerk
Carson City, Nevada

WATER RIGHTS PURCHASE AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 2017 by and between Smith Trust, hereinafter referred to as "Buyer", and Carson City, hereinafter referred to as "Seller", regarding the purchase by Buyer of underground water rights. Buyer and Seller (also individually referred to herein as "Party" or collectively as "Parties") agree as follows:

1. **Water Rights:** Seller agrees to sell and Buyer agrees to buy from seller 8.6236 acre feet of water rights identified as all of Permit No. 36079, Certificate No. 11627. The water rights are appurtenant to the Carson City Municipal District, pursuant to Nevada Division of Water Resources, drawing on file under Map 35830.

2. **Purchase price:** The purchase price of the Water Rights shall be \$2,899.02 per acre foot, for a total price of \$25,000.00.

3. **Conveyance of Water Rights:** Seller shall transfer to Buyer all of Seller's right, title and interest in and to said Water Rights via a Water Rights Deed.

4. **Closing and transfer of Water Rights:** Buyer agrees that Buyer will pay in full the amount of \$25,000.00 within 7 days of approval of this agreement by the Carson City Board of Supervisors. Payment must be paid in the form of a Cashier's Check made payable to the Carson City Treasurer. Upon receipt of the purchase price, Carson City will execute a quitclaim deed to the Buyer for recording and submittal to the State Engineer.

Said payment shall be made without condition to Carson City as a guarantee that the Buyer will promptly submit an Application to Change the Point of Diversion with the State Engineer, in the manner and form required. An Application to Change the Point of Diversion from the City's well must be filed with the State Engineer within 30 days of notice of approval of this agreement.

If the Buyer's Application is submitted within 30 days and is not approved by the State Engineer, 90 percent of the payment will be refundable. The Application and all associated costs and fees shall be paid by the Buyer.

5. **Seller representation and warranties:** Seller makes the following representation and warranties, and agrees to the following covenants and obligations for the benefit of the Buyer.

5.1 Seller shall cooperate with and assist buyer in obtaining approval from the State Engineer (Division of Water Resources) for transfer and change of ownership of the Water Rights.

5.2 Seller warrants that Seller has full power and authority to enter into this Agreement and to sell, transfer and convey all right, title and interest in and to the Water Rights in accordance with this Agreement.

5.3 Seller warrants that the Water Rights are not the subject of any third-party claim of any kind nor are the Water Rights subject to any other Water Rights Agreement or any agreement of other kind.

5.4 Seller shall not cause title to the Water Rights to become encumbered or clouded after the execution date of this Agreement.

5.5 Seller warrants that there are no known or threatened annexations, condemnations, suits, actions, arbitrations, legal, administrative or other proceedings or inquiries pending or threatened against the Water Rights.

5.6 Seller represents that neither the execution by Seller of this Agreement nor

5.6 Seller represents that neither the execution by Seller of this Agreement nor the consummation of the sale under this Agreement will constitute a violation of breach by Seller of any contract or other instrument to which Seller is party.

5.7 Seller warrants and represents that Seller is the owner of the Water Rights with full right, title and interest therein and with the ability and authority to convey the same to Buyer. Seller further warrants that Seller is transferring to Buyer 8.6236 acre feet (2.81 million gallons per year) of Water Rights and that if at any time it is determined that the actual amount of Water Rights transferred to Buyer is less than 8.6236 acre feet, Seller will refund to Buyer a prorata portion of the purchase price that reflects that amount of Water Rights not actually transferred.

5.8 Seller warrants and certifies that Seller is not a non-resident alien or a foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined for the purposes of federal income tax law and that the Seller, upon execution of this Agreement, will provide Buyer with the Seller's tax identification number. Seller understands that the withholding of taxes not required under Section 1445 of the Internal Revenue Code and that the foregoing certification may, if requested, be disclosed to the Internal Revenue Service.

6. Miscellaneous provisions:

6.1 Time is of the essence in this Agreement.

6.2 Any notices, communications, requests or instructions in connection with this Agreement deemed by either Buyer or Seller to be given to the other Party shall be given in writing and are to be mailed by certified mail with return receipt requested follows:

BUYER:
Smith Trust
8255 Eastlake Blvd
Washoe Valley, Nevada 89704

SELLER:
Carson City
c/o Stephanie Hicks, Real Property Manager
3505 Butti Way
Carson City, Nevada 89701
Phone: (775) 283-7904

Either Party may change their address or contact representative by prior written notice to the other Party.

6.3 This Agreement contains the entire agreement between the Parties hereto and supersedes any and all prior agreements, arrangements or understandings regarding the same subject matter as this Agreement which are null and void.

6.4 The representations, covenants, agreements and warranties contained herein shall not be discharged or dissolved upon close of escrow, but shall survive the same.

6.5 This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada and venue for any such action shall be in Carson City, Nevada.

6.6 This Agreement may not be modified, amended, altered or changed in any respect whatsoever except by further agreement in writing, duly executed by both Parties. No oral statements or representations subsequent to the execution hereof by either Party are binding on the other Party, and neither Party shall have the right to rely on such oral statements or representations.

6.7 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, subcontractors, personal

representatives and assigns. No assignment by either Party of this Agreement shall be authorized unless the prior written authorization of the other Party has been obtained in writing. Such authorization shall not be considered unreasonable grounds for withholding authorization.

6.8 The prevailing Party in any dispute concerning this Agreement shall be entitled to reasonable attorney's fees and costs.

6.9 Neither this Agreement nor any notice provided under this Agreement shall be recorded. Such prohibition does not limit or prevent the recordation of the Water Rights Deed.

6.10 Each Party shall, at the request of the other, at any time execute and deliver to the requesting Party all such further instruments as may be reasonably necessary or appropriate in order to effectuate the purpose and intent of this Agreement.

6.11 Except as specified herein, the Parties represent to each other that they have not used the services of any real estate broker or person who may claim a commission or finder's fee with respect to the Water Rights that are the subject of this transaction, and each agrees to indemnify, defend and hold the other harmless from broker compensation claims or finder's fees arising from allegations of an agreement with the indemnifying Party.

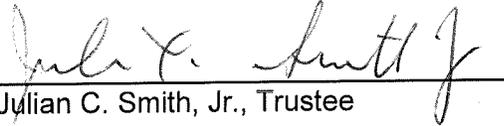
6.12 All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays, provided that if the date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

6.13 The Parties hereto acknowledge and agree that each has been given the equal opportunity to review this Agreement with legal counsel independently. The Parties have equal bargaining power and intend the plain meaning of the provisions herein. In the event of an ambiguity or dispute regarding the interpretation of this Agreement, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the Party who causes the uncertainty to exist, or against draftsmen.

6.14 Each person signing this Agreement acknowledges that they are charged with the authority to execute this Agreement.

6.15 This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create any third-party beneficiary rights in any person not a party hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.



Julian C. Smith, Jr., Trustee

STATE OF NEVADA)
CARSON CITY) ss

On this 11th day of December, 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Julian C. Smith, Jr. Trustee, Smith Trust, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument for the purposes herein stated.

WITNESS my hand and official seal.

Sandra J. Mendez
Notary Public



SANDRA F. MENDEZ
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 10-19-19
Certificate No: 99-12514-3

CITY:
REVIEWED AND RECOMMENDED BY:

Dan Stucky, City Engineer Date

APPROVED FOR LEGALITY AND FORM:

Carson City District Attorney Date

APPROVED:

Robert Crowell, Mayor Date

ATTEST:

Susan Merriwether, Clerk-Recorder Date

APN: No APN – Water Rights Only

WHEN RECORDED MAIL TO:
Stephanie Hicks, Real Property Manager
3505 Butti Way
Carson City, Nevada 89701

WATER RIGHTS DEED

THIS WATER RIGHTS DEED, is made this _____ day of _____, 2017, by and between CARSON CITY, a consolidated municipality and political subdivision of the State of Nevada (hereinafter “GRANTOR”) and SMITH TRUST, (hereinafter “GRANTEE”).

WITNESSETH:

That the GRANTOR, for and in consideration of the sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), and for other good and valuable consideration, the receipt of which is hereby acknowledged, does convey to GRANTEE, and to its successors, heirs and assigns forever, all of their right, title and interest in and to the following described water rights, in County of Washoe, State of Nevada, more particularly described as follows:

All rights, title, and interest in **Permit 36079 (Certificate No. 11627)**, being **8.6236 Acre Feet Annually**, with a diversion rate of **0.238 c.f.s.**

All on file at the State of Nevada, Division of Water Resources.

TO HAVE AND TO HOLD the said water rights, together with the appurtenances, unto said GRANTEE and to any of its heirs, successors and assigns forever.

IN WITNESS WHEREOF said GRANTOR has hereunto signed on the day and year first above written.

CARSON CITY, NEVADA,
A CONSOLIDATED MUNICIPALITY

By: _____
ROBERT I. CROWELL, MAYOR

ATTEST:

SUSAN MERRIWETHER, CLERK-RECORDER

REVIEWED AND RECOMMENDED BY:

DAN STUCKY, P.E., CITY ENGINEER

APPROVED FOR LEGALITY AND FORM:

CARSON CITY DISTRICT ATTORNEY