

City of Carson City
Agenda Report

Item # 9-3A

Date Submitted: June 19, 2009

Agenda Date Requested: July 2, 2009
Time Requested: Consent Agenda

To: Mayor and Supervisors

From: Public Works Department

Subject Title: Action to adopt Resolution No. _____, a Resolution Approving an Interlocal Agreement by and between Carson City and Douglas County Relating to the Exchange of Water Rights and Finding That the Sale of the Water Rights to Douglas County in Exchange for Other Water Rights Will Be in the Best Interests of Carson City. (Burnham)

Staff Summary: Adoption of the Resolution approving this agreement will resolve the protest regarding transfer of Lompa water rights to Douglas County.

Type of Action Requested: (check one)
(XXX) Resolution () Ordinance
() Formal Action/Motion () Other (Status Report)

Does This Action Require A Business Impact Statement: () Yes (XX) No

Recommended Board Action: I move to adopt Resolution No. _____, a Resolution Approving an Interlocal Agreement by and between Carson City and Douglas County Relating to the Exchange of Water Rights and Finding That the Sale of the Water Rights to Douglas County in Exchange for Other Water Rights Will Be in the Best Interests of Carson City.

Explanation of Recommended Board Action: The Agreement between Carson City and Douglas County will resolve the protest regarding transfer of Lompa water rights to Douglas County. Carson City will file an Application to Change 32.5 acre feet of its municipal water rights to the well site in Douglas County near Wal-Mart off Topsy Lane. When the application is ready for action by the State Engineer, Carson City will deed 32.5 acre feet of water to Douglas County in exchange for a deed from Douglas County of 32.5 acre feet of irrigation water under the Lompa rights that Carson City has previously protested.

Fiscal Impact: Minimal

Funding Source: Water Fund

Explanation of Impact: Application and Transfer Fees.

Alternatives: Do Not Approve

Supporting Material:

1. Resolution and Interlocal Agreement relating to the exchange of water rights between Douglas County and Carson City.

Reviewed By: [Signature]
(Department Head)

Date: 6.23.09

Concurrences: [Signature]
(City Manager)

Date: 6/24/09

[Signature]
(District Attorney)

Date: 6-23-09

Nancy Paulson
(Finance Director)

Date: 6/23/09

Board Action Taken:

Motion: _____

1) _____ Aye/Nay

2) _____

(Vote Recorded By)

RESOLUTION NO. _____

RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BY AND BETWEEN CARSON CITY AND DOUGLAS COUNTY RELATING TO THE EXCHANGE OF WATER RIGHTS AND FINDING THAT THAT THE SALE OF THE WATER RIGHTS TO DOUGLAS COUNTY IN EXCHANGE FOR OTHER WATER RIGHTS WILL BE IN THE BEST INTERESTS OF CARSON CITY.

WHEREAS, any two or more political subdivisions of the State of Nevada may enter into cooperative agreements for the performance of any governmental function, including the exchange of property, pursuant to NRS 277.045; and

WHEREAS, Carson City and Douglas County are both political subdivisions of the State of Nevada; and

WHEREAS, NRS 277.045 provides that every such agreement must be by formal resolution or ordinance of the governing body of each political subdivision included and must be spread at large upon the minutes, or attached in full thereto as an exhibit, of each governing body; and

WHEREAS, the parties to the Interlocal Agreement by and between Carson City and Douglas County Relating to the Exchange of Water Rights desire to adopt and approve such agreement as required by NRS 277.045. A copy of the agreement is attached to this Resolution as Exhibit "A;" and

WHEREAS, NRS 244.281 authorizes the sale of real property to another governmental entity if the sale restricts the use of the real property to a public use and the Board of Supervisors finds that the sale will be in the best interests of Carson City; and

NOW, THEREFORE, BE IT RESOLVED, that the terms and conditions of the Interlocal Agreement by and between Carson City and Douglas County Relating to the Exchange of Water Rights are hereby adopted and approved; and

BE IT FURTHER RESOLVED, that the Carson City Board of Supervisors finds that the sale of the water rights to Douglas County in exchange for other water rights will be in the best interests of Carson City; and

BE IT FURTHER RESOLVED, that the Interlocal Agreement by and between Carson City and Douglas County Relating to the Exchange of Water Rights shall be spread at large upon the minutes or attached in full thereto as an exhibit, and that a copy of this Resolution shall be sent to Douglas County.

Upon motion by Supervisor _____, seconded by Supervisor _____, the foregoing Resolution was passed and adopted this _____ day of _____, 2009 by the following vote:

AYES: _____ NAYS: _____

ABSENT: _____ ABSTAIN: _____

Robert L. Crowell, Mayor
Carson City, Nevada

ATTEST:

Alan Glover, Clerk
Carson City, Nevada

INTERLOCAL AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2009, by and between DOUGLAS COUNTY Nevada, a political subdivision of the State of Nevada, hereinafter referred to as DOUGLAS; and CARSON CITY, Nevada, a consolidated municipality under the Nevada Revised Statutes, hereinafter referred to as "CARSON".

WITNESSETH:

WHEREAS, NRS 277.045 authorizes political subdivisions of the State of Nevada to enter into agreements to perform any governmental function, including the exchange of property; and

WHEREAS, CARSON and DOUGLAS are both political subdivisions of the State of Nevada; and

WHEREAS, CARSON and DOUGLAS desire to exchange water rights in order to resolve the protest filed by CARSON of the transfer of Lompa water rights to DOUGLAS; and

WHEREAS, it is contemplated that there will be no net difference in actual water exchanged and that each entity will pay for the costs to transfer each of the rights.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, it is hereby agreed by and between the parties as follows:

AGREEMENT

The parties agree as follows:

1. CARSON will file with the State Engineer an Application to Change 32.5 acre-feet of its municipal underground water rights to the well site in Eagle Valley, Douglas County near Wal-Mart off Topsy Lane.
2. When the application in paragraph 1 above is ready for Action by the State Engineer, CARSON will deed the 32.5 acre-feet of underground water rights to DOUGLAS. CARSON and DOUGLAS agree that the use of the underground water rights will be restricted to a municipal or quasi-municipal use.
3. DOUGLAS will deed the 32.5 acre-feet of irrigation groundwater rights under Permit 71000, also known as the Lompa water rights CARSON has previously protested with the State Engineer, to CARSON.

4. CARSON will withdraw its protest of the Lompa water rights on file with the State Engineer upon exchange of deeds pursuant to paragraphs 2 and 3.
5. CARSON and DOUGLAS will pay its own costs for each transfer application and will conduct any necessary hearings as required by the State Engineer.
6. Notices shall be delivered to the parties at the following addresses:

TO CARSON: ANDREW R. BURNHAM
 PUBLIC WORKS DIRECTOR
 3505 BUTTI WAY
 CARSON CITY, NV 89701

TO DOUGLAS: CARL RUSCHMEYER
 PUBLIC WORKS DIRECTOR
 P.O. BOX 218
 MINDEN, NV 89423

7. To the fullest extent of NRS Chapter 41 liability limitations, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described herein. The indemnifying party conditions this indemnification obligation upon service of written notice within thirty (30) days of the indemnified party's notice of actual or pending claims or cause of action. The indemnifying party shall not be liable to hold harmless any attorney's fees and costs for the indemnified party's chosen right to participate with legal counsel.
8. The parties do not waive and intend to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Actual damages for any breach shall never exceed the amount of funds that have been appropriated for payment under this AGREEMENT, but not yet paid for the fiscal year budget in existence at the time of the breach.
9. This AGREEMENT and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the exclusive jurisdiction of the Nevada district courts for enforcement of this AGREEMENT.
10. The parties are associated with each other only for the purposes and to the extent set forth in this AGREEMENT. Each party is and shall be an entity separate and distinct from the other party and shall have the right to supervise, manage, operate, control and direct

performance of the details incident to its duties under this AGREEMENT.

11. It is specifically agreed between the parties executing this AGREEMENT that it is not intended by any of the provisions of any part of the AGREEMENT to create in the public or any member thereof a third party beneficiary statutes hereunder, or to authorize anyone not a party to this AGREEMENT to maintain a suit for personal injuries or property damage pursuant to the terms and or provisions of this AGREEMENT.
12. Neither party shall be deemed to be in violation of this AGREEMENT if it is prevented from performing any of its obligations hereunder for any reason beyond its control, including, without limitation, strikes, inmate disturbances, acts of God, civil or military authority, act of public enemy, accidents, fires, explosions, earthquakes, floods, winds storms, failure of public transportation, or any other similar serious cause beyond the reasonable control of either party. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of this AGREEMENT after the intervening cause ceases.
13. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.
14. The illegality or invalidity of any provision or portion of this AGREEMENT shall not affect the validity of the remainder of this AGREEMENT and this AGREEMENT shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this AGREEMENT unenforceable.
15. The parties hereto represent and warrant that the person executing this AGREEMENT on behalf of each party has full power and authority to enter into this AGREEMENT and that the parties are authorized by law to engage in the activities which form the subject of this AGREEMENT.
16. This AGREEMENT shall not become effective until and unless approved by appropriate official action of the governing body of each party.
17. Except as otherwise provided for by law or this AGREEMENT, the rights and remedies of the parties hereto shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, the recovery of actual damages and the prevailing party's reasonable attorney's fees and costs.
18. This AGREEMENT constitutes the entire agreement of the parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions,

and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this AGREEMENT specifically displays a mutual intent to amend a particular part of this AGREEMENT, general conflicts in language between any such attachment and this AGREEMENT shall be construed consistent with the terms of this AGREEMENT. Unless otherwise specifically authorized by the terms of this AGREEMENT, no modifications or amendment to this AGREEMENT shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT.

"Carson"
CARSON CITY

By: _____
Robert Crowell, Mayor Date

Attest:

Alan Glover, Clerk-Recorder Date

Approved as to legality and form:

Neil A. Rombardo, District Attorney Date
By: Deputy District Attorney

"Douglas"
DOUGLAS COUNTY

By: _____
Nancy McDermid, Chair

Attest:

Ted Thran, Clerk/Treasurer Date