

Item #8-3B

**City of Carson City
Agenda Report**

Date Submitted: July 23, 2010

Agenda Date Requested: August 5, 2010
Time Requested: Consent Agenda

To: Mayor and Supervisors

From: Public Works - Operations

Subject Title: Action to approve a Water Agreement between Silver Bullet of Nevada, LLC and Carson City for the purchase of 11.29 acre feet of Eagle Valley groundwater for \$90,320.00.

Staff Summary: Staff recommends the purchase of the above stated Eagle Valley groundwater rights, at the cost of \$8,000.00 per acre foot, to increase the City's water right portfolio.

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

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

Recommended Board Action: I move to approve a Water Agreement between Silver Bullet of Nevada, LLC and Carson City for the purchase of 11.29 acre feet of Eagle Valley groundwater for \$90,320.00.

Discussion: Silver Bullet of Nevada, LLC has offered the City an opportunity to purchase 11.29 acre feet of Eagle Valley groundwater rights (Permit #12279) at a reasonable price of \$8,000.00 per acre foot, for a total cost of \$90,320.00. See attached Water Agreement. This water will increase the City's total Eagle Valley water right to 6,721.64 acre feet.

This agreement is being brought forward in accordance with Carson City's Water Conservation Plan, January 2007, "The Water Utility will aggressively research all water right offers concerning groundwater from the Eagle Valley, Carson Valley and Dayton Valley basins to evaluate potential municipal use, necessity and priority of purchase, purchase impact on budget and rates; and if applicable negotiate a purchase for Board of Supervisors approval." The City's water right consulting firm, Resource Concepts, Inc., also recommends this purchase. Staff reviewed the cost with our water rights appraiser and the cost of \$8,000 per acre foot is still a reasonable cost in their estimation.

Fiscal Impact: \$90,320.00

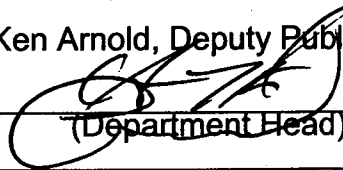
Funding Source: Water Capital Fund

Explanation of Impact: Reduction in budget by \$90,320.00

Alternatives: Do not approve.

Prepared By: Ken Arnold, Deputy Public Works Director

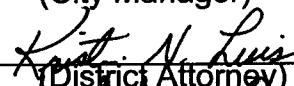
Reviewed By:


(Department Head)

Date: 7-27-10

(City Manager)

Date: 7/27/10


(District Attorney)

Date: 7/27/10


(Finance Director)

Date: 7/27/10

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

(Vote Recorded By)

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WATER AGREEMENT

This Agreement dated this _____ day of _____, 2010 is made by and between Silver Bullet of Nevada, LLC (hereinafter referred to as "Grantor") and Carson City, a consolidated municipality and political subdivision of the State of Nevada (hereinafter referred to as "City").

WITNESSETH:

WHEREAS, Grantor has legal ownership of certain permitted, certificated, or judicially decreed water rights which rights can be utilized within the Carson City Water System Service Area; and

WHEREAS, such water rights are free of any liens or encumbrances; and

WHEREAS, Grantor is desirous of selling said water rights to City; and

WHEREAS, City is desirous of purchasing said water rights in order to utilize said water rights in its municipal water system.

NOW, THEREFORE, the parties to this Agreement, in consideration of the provisions herein contained and other good and valuable consideration, do hereby agree as follows:

1. The Grantor owns or controls title to 0.18 cfs, (11.29 acre feet) of Eagle Valley Groundwater, under Permit #12279, attached hereto as Exhibit A incorporated herein by this reference.
2. The Grantor shall cooperate and the City shall complete the preparation and filing of the necessary documents with the State of Nevada Division of Water Resources, State Engineer's Office, Department of Conservation and Natural Resources, (hereinafter referred as "State Engineer") for the purpose of transfer and assigning said water right(s) to the City's legal name. All fees incident to the expense of assignment shall be borne by Grantor.
3. City shall prepare and file the application and any supporting map which may be required by the State Engineer seeking to change the point of diversion, place of use, and manner of use of the aforementioned water rights as required by Chapter 533 and 534 of Nevada Revised Statutes. City shall determine the precise well(s) and location of the point(s) of diversion, which is (are) the subject of the application(s) to change. All costs incident to filing the application(s), preparation of the supporting map, and possible administrative hearing and judicial appeals shall be borne by Grantor. Both parties agree to

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execute the necessary documents and, to the extent necessary, meet the requirements of the State Engineer. Grantor will assign rights to City for purposes of filing and processing by the State Engineer of Change Application(s) required to carry out this agreement.

4. The parties agree that the reasonable value of the water rights, which are the subject of this agreement, is eight thousand dollars (\$8,000.00) per acre foot for the transferred municipal water rights. City will pay Grantor at this price per acre foot based on the State Engineer approved permit amount, less costs and fees of transfer, within 30 days of permit approval.

5. City shall accept and develop the water at one of its existing wells, future wells, or other source or point of diversion, and shall be responsible for the pumping, storing, treating, and distribution of the water in its present distribution system. It is expressly understood that the application(s), when granted by the State Engineer or made final through judicial order, shall be conveyed to the City along with the associated water rights.

6. In the event the State Engineer denies the application(s) to assign and change the point of diversion, and/or his approval is not upheld upon final administrative or judicial appeal, then this Water Agreement shall terminate without further liability on behalf of either party hereto. City shall reconvey to Grantor any water rights which are so denied or not approved for transfer as contemplated under this agreement.

7. This Water Agreement is further conditioned upon approval of all local, state and federal governmental agencies as required by Chapters 278, 533, 534 of Nevada Revised Statutes and by the Carson City Board of Supervisors.

8. The provisions of this Agreement shall be interpreted using Nevada law. The parties agree that any dispute or legal action to enforce the provisions of this Agreement must be brought in the First Judicial District Court for the State of Nevada.

9. Grantor shall pay City and/or City shall pay Grantor responsible attorney's fees and court costs incurred in any lawsuit or action instituted by City or Grantor to enforce the provisions of this Agreement upon determination of the prevailing party.

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10. This Agreement may only be amended pursuant to a written agreement signed by both of the parties.
11. Except as otherwise provided, this Agreement shall bind and inure to the benefit of the parties and their respective successors, representatives, heirs, and assigns.
12. Any delay or stoppage of business due to acts of God, enemy or hostile action, fire or other casualty, shall excuse the performance by either party in this Agreement for a period equal to any such delay or stoppage.
13. This Agreement along with any exhibits and attachments hereto constitutes the entire agreement between the parties. It is understood that all previous negotiations, discussions, and previous Agreements between the parties hereto affecting this Agreement are superseded by this Agreement.

IN WITNESS WHEREOF, the parties hereto have affixed their official signatures the day and year written below and intend to be legally bound thereby.

GRANTOR:

Michael E. Pegram 7-24-10
 Michael E. Pegram, Dated
 As Manager of Pegram, LLC

Michael E. Pegram
 Michael E. Pegram Dated
 As Manager of Pegram, LLC as Manager
 of Silver Bullet of Nevada, LLC

CARSON CITY
 BOARD OF SUPERVISORS

Robert Crowell, Mayor Dated

SUBSCRIBED and SWORN to before me
 this ____ day of _____, 2010.

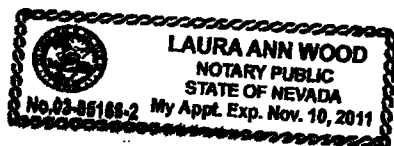
 Notary Public

ATTEST:

Alan Glover, Clerk-Recorder Dated

SUBSCRIBED and SWORN to before me
 this 21 day of July, 2010.

Laura Ann Wood
 Notary Public



APPROVED AS TO FORM ONLY

Neil Lombardo

District Attorney

By: Deputy District Attorney Dated: _____