



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** June 3, 2021

Staff Contact: Darren Schulz, Public Works Director

Agenda Title: For Possible Action: Discussion and possible action regarding a proposed Water Lease Agreement between Carson City and the Carson Water Subconservancy District ("CWSD"), a short-term lease expiring on June 30, 2022, permitting Carson City to use up to 100 acre-feet of surface water from the Upper and Lower Lost Lakes Reservoirs at no cost beyond permit fees, which are anticipated to be \$780, and authorization for the Mayor to sign the Water Lease Agreement. (Darren Schulz, dschulz@carson.org)

Staff Summary: On May 19, 2021, the CWSD Board of Directors approved the Water Lease Agreement, which, if approved by the Board of Supervisors, will provide Carson City with up to 100 acre feet of additional surface water for use between October 1, 2021 and March 31, 2022. It has been the past practice of Carson City to lease these water rights as part of our conjunctive use management plan.

Agenda Action: Formal Action / Motion **Time Requested:** Consent

Proposed Motion

I move to approve the agreement as presented and authorize the Mayor to sign.

Board's Strategic Goal

Sustainable Infrastructure

Previous Action

The Board of Supervisors approved similar agreements on July 2, 2020 and July 18, 2019, as well as in 2015 and 2016.

Background/Issues & Analysis

In order to provide additional surface water rights for the conjunctive use program, a lease of Carson River storage rights has been negotiated with the CWSD. The City, per the Alpine Decree, cannot pump decreed river water rights from the Carson River during the months of October through March. However, these rights will have been stored within the Lost Lakes reservoirs during the irrigation season, which allows for their use during the winter months, under conditions which will be stipulated by the State Water Engineer and Federal Water Master.

In 2020, the City's Water Lease Agreement with CWSD cost the City \$57 per acre-foot of water, plus a \$780 permit fee to the State Engineer, for a grand total of \$6,480. The 2019 cost was similar (\$55 per acre-foot of water).

This year, the only cost to the City is the permit fee of \$780. CWSD has opted not to charge the City on a per-acre-foot basis because it can no longer do so without incurring significant costs. The United States Forest Service ("USFS") is conducting their five-year review of CWSD's special use permit for the Lost Lakes.

The USFS developed a new method for calculating the fees associated with the permit. Currently, CWSD pays \$83 per year. Under USFS's new method, CWSD's permit fee would have gone up to over \$6,000 per year. However, USFS agreed to waive CWSD's fee because the City is a government agency, provided CWSD does not impose charges for the Lost Lake water.

Applicable Statute, Code, Policy, Rule or Regulation

Carson City Charter § 2.275; United States v. Alpine Land & Reservoir Co., 503 F. Supp. 877 (D. Nev. 1980) (the "Alpine Decree")

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: Water Fund - Water Purchase Expense 5203502-500454

Is it currently budgeted? Yes

Explanation of Fiscal Impact: Reduction in budget up to \$780, available Water Purchases budget for FY 2022 is \$820,000.

Alternatives

Do not approve the proposed Water Lease Agreement and provide other direction to staff.

Attachments:

[2021-22 Lost Lakes Water Lease Agmt w Carson City.pdf](#)

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)



WATER LEASE AGREEMENT

Lost Lakes

This Water Lease Agreement is entered into between the CARSON WATER SUBCONSERVANCY DISTRICT, a political subdivision of the State of Nevada, by and through its duly constituted Board of Directors (hereinafter "CWSD") and CARSON CITY, a political subdivision of the State of Nevada, by and through its duly constituted Board of Supervisors (hereinafter "CITY").

WITNESSETH:

WHEREAS, CWSD holds title to 219.0 acre feet of water rights, including storage rights in Upper and Lower Lost Lakes Reservoirs, Claim Numbers 812 and 813 in the Alpine Decree; and

WHEREAS, CITY desires to use CWSD water for one (1) year for use within the boundaries of CITY for municipal purposes; and

WHEREAS, CWSD has made or will make any necessary application(s) to the State Engineer for permission to use CWSD's water rights for the purposes contemplated under this Agreement.

THEREFORE, in consideration of the mutual undertakings and for other good and valuable consideration, the parties agree and contract as follows:

1. **Term of Agreement /Use of Water**

The term of this Agreement shall commence on the date both parties have executed the Agreement and shall continue through June 30, 2022. CITY agrees to use an amount not to exceed 100.0 acre feet of CWSD water from Lost Lakes.

CWSD will not charge for water pumped by CITY. As used in this Agreement, the term "water delivery season" means the period beginning October 1, 2021, and ending March 31, 2022. The amount of water that can be pumped by CITY shall be determined by the actual amount of water released from Lost Lakes less any loss of water determined by the State Engineer or the Federal Water Master, due to conveyance from Lost Lakes Reservoirs to CITY's point of re-

diversion. .

2. Costs of Diversion and Delivery of Water

CWSD will submit the Temporary Permit to the Nevada State Engineer and pay the application fees. The City will reimburse CWSD the fees once CWSD receives the Temporary Permit from the State Engineer. CWSD shall bear the costs of delivery of the water to CITY's point of re-diversion, including the costs of operation and maintenance of upstream storage facilities and payment of water fees to the Federal Water Master. CITY shall bear the costs associated with pumping the water from the two induction wells (Well Numbers 25 and 41B), measuring devices, pipelines, and other transporting devices. The City must first use all the Mud Lake water before pumping the Lost Lake water.

3. Treatment

CITY shall be responsible for the treatment of all water for municipal purposes, including water leased from CWSD, to applicable local, state, and federal standards.

4. Relief from Performance

In the event that the State of Nevada or a court of competent jurisdiction prevents the delivery of the surface water that is the subject of this Agreement to CITY's point of re-diversion, or if the Federal Water Master prevents the use of the subject water, CWSD and CITY are relieved from performance under this Agreement unless CWSD and CITY make a different agreement in writing.

5. Required Approval

This Agreement will not become effective unless approved by appropriate official action of the Board of Supervisors of CITY and the Board of Directors of CWSD.

6. Authority to Sign

The Parties represent and warrant that the person executing this Agreement on behalf of each respective Party has full power and authority to enter into this Agreement and that the Parties are authorized by law to perform the services set forth in this Agreement.

7. Recordation

When fully executed, CITY shall record this Agreement with the Clerk-Recorder of Carson City,

Nevada and with the Douglas County Recorder.

8. Limited Liability

CITY and CWSD do not waive and intend to assert any and all available Nevada Revised Statutes (NRS) Chapter 41 liability limitations in all cases. The contract liability of both Parties will not be subject to punitive or liquidated damages.

9. Indemnification

To the extent permitted by law, including, but not limited to, the provisions of NRS Chapter 41, each Party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other Party 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 indemnifying Party, its officers, employees and agents. CITY further agrees to indemnify and hold CWSD harmless for any claims or actions including damages, costs and attorney's fees concerning the use of this water by CITY as specified in this Agreement.

10. Preamble: Recitals

The preamble and recitals are hereby made a part of this Agreement.

11. Continuing Appropriation

Pursuant to NRS 244.320, the Board of Supervisors of CITY has no authority to bind CITY to a contract beyond the terms of the Supervisors in office at the time of the contract approval. If a future Board of Supervisors of CITY does not appropriate money for this Agreement, CITY is no longer bound by this Agreement.

12. Notices

All notices or other communications required or permitted to be given under this Agreement must be in writing and shall be deemed to have been duly given if delivered personally by hand, or mailed by first class U.S. Mail, postage prepaid on the date posted, to the other Party at the following address:

For notice purposes, the addresses of each party are as follows:

CARSON WATER
SUBCONSERVANCY DISTRICT
Attn.: Edwin James
General Manager
777 E. William St., #110A
Carson City, NV 89701
775/887-7450

CARSON CITY

Attn.: Darren Schulz
Public Works Director
3505 Butti Way
Carson City, NV 89701
775/887-2355 x- 7391

13. Severability

If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement will be construed as if the provision did not exist, the provisions will not be construed to render any other provision or provisions of this Agreement unenforceable, and the remaining terms of this Agreement will continue in full force and effect.

14. Public Records

Under NRS 239.010, CITY and CWSD information or documents may be open to public inspecting and copying. The Parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

15. Separate Entities; Independent Contractor

The Parties are associated with each other only for the purposes and to the extent set forth in this Agreement. Nothing contained in this Agreement may be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one Party whatsoever with respect to the indebtedness, liabilities, and obligations of the other Party. Each Party is and continues to be separate and distinct from the other Party, and each Party shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. The Parties' respective employees, agents, attorneys, principals, or representatives shall not be considered employees, agents, attorneys, principals, or representatives of the other Party.

16. Governing Law and Jurisdiction

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 jurisdiction

of the First Judicial District Court of the State of Nevada in and for Carson City for enforcement of this Agreement.

17. Breach

The failure of either Party to perform any obligation of this Agreement within 30 days after being given written notice by the non-breaching Party of the failure to perform shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the Parties are not exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages. In any action brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to its attorney's fees and costs, whether such a result was achieved by settlement, alternative dispute resolution or litigation. The Parties agree that, in the event a lawsuit is filed and a Party is awarded attorney's fees under this Agreement or by the court, for any reason, the rate applied to recoverable attorney's fees shall not exceed the rate of \$125 per hour.

18. Waiver

No waiver of any right or remedy shall be effective unless in writing. A waiver of any right or a party's failure to insist on strict compliance with the terms of this Agreement shall not operate as a waiver of any other right or remedy.

19. No Third-Party Beneficiary

It is specifically agreed between the Parties that none of the provisions this Agreement create in the public or any member thereof a third-party beneficiary, or grant anyone not a Party to this Agreement any right to maintain a suit for personal injuries or property damage under the terms or provisions of this Agreement.

20. Entire Agreement; Modification

This Agreement constitutes the entire Agreement of the Parties and as 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 herein. 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. No modification or amendment to this Agreement shall be binding upon the Parties unless the same is in writing and

signed by the Parties hereto.

21. Counterparts


This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which, taken together, shall constitute one and the same Agreement.

22. Force Majeure

Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, acts of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds or storms. 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 the Agreement after the intervening cause ceases.

IN WITNESS WHEREOF, the parties have executed this Agreement.

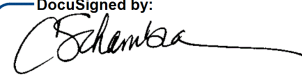
CARSON WATER
SUBCONSERVANCY DISTRICT

DocuSigned by:

18342C8ABA24431...
Robert S. Giomi, Chairman
5/25/2021
Dated: _____

CARSON CITY

Lori Bagwell, Mayor
Dated: _____

ATTEST:

DocuSigned by:

E0ECEDD1611D4A0...
Catrina Schambra, Secretary to the Board
5/25/2021
Dated: _____

ATTEST:

Aubrey Rowlatt, Clerk-Recorder
Dated: _____