



CITY OF FERNLEY

CITY COUNCIL

AGENDA REPORT

Meeting Date: March 17, 2021

REPORT TO:	Mayor and City Council
REPORT THRU:	Brandi Jensen, City Attorney
REPORT FROM:	David Rigdon, Special City Water Attorney
REVIEWED BY:	Daphne Hooper, City Manager

FINANCIAL IMPACT: Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>	CURRENTLY BUDGETED: Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>	FUND/ACCOUNT: N/A
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ACTION REQUESTED: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Receive/File

AGENDA ITEM: Staff Report (For Possible Action): Possible Action to Approve an agreement with C.H.R.H., Limited regarding water rights previously dedicated to, and banked with, the City. The Agreement clarifies that 46.424 acre-feet of banked water credits remain available for C.H.R.H. Limited to assign to future will-serve commitments and extends the time to use said credits for an additional 10 years (until March 17, 2031).

Business Impact (per NRS Chapter 237): <input type="checkbox"/> A Business Impact Statement is Attached. <input checked="" type="checkbox"/> A Business Impact Statement is not required because this is not a rule (term excludes vehicles by which legislative powers are exercised under NRS Chapters 271, 278, 278A, or 278B).

Agenda Item Brief: <ol style="list-style-type: none">1. Between 1997 and 2000 C.H.R.H. Limited dedicated water rights to Fernley totaling 241.965 acre-feet. The deeds stated that C.H.R.H. Limited may use the dedicated water to support the issuance of will-serve commitments for a period of 25-years.2. Since the time of the dedication, C.H.R.H. Limited has used 195.541 acre-feet of the water rights to support the issuance of will-serve commitments.3. The proposed agreement grants C.H.R.H. an additional 10-years (until to use the remaining water rights.

See attached report for background, analysis, alternatives.

RECOMMENDED MOTION:

“I move to approve the proposed ‘Agreement Regarding Beneficial Interest In Banked Water Rights’ with C.H.R.H. Limited and authorize the Mayor to execute the agreement on behalf of the City of Fernley.”

ALTERNATIVES:

Alternatively, the Council may: (1) choose to reject the proposed agreement, or (2) identify changes the Council would like to make to the agreement and request staff conduct additional negotiations to have those changes included within the agreement.

BACKGROUND:

Between January 28, 1997 and August 11, 2000, C.H.R.H. Limited executed three deeds conveying certain Newland Project water rights to the Town of Fernley. The total quantity of water conveyed by the deeds is 241.965 acre-feet. The terms of the deeds stated that the water rights could be used by C.H.R.H. Limited to support the issuance of future will-serve commitments from the Town’s municipal water system for a period “not to exceed 25 years from the date of the conveyance.” Thus, the ability to use the water rights to secure will-serve commitments is set to expire between January 28, 2002 and August 11, 2025.

Formal banking agreements for water dedications were not developed and used prior to Fernley’s incorporation as a city. Therefore, the only terms governing the use of this water are those contained in the original water rights deeds (see attached).

The City and the Dedicator have reviewed their records and agree that 195.541 acre-feet of the dedicated water has already been used to support the issuance of will-serve commitments, leaving a balance of 46.424 acre-feet. The Dedicator has indicated he wishes to assign his interest in the remaining water to other parties and, to do so, would like to have a formal agreement with the city that: (1) acknowledges the amount of water remaining available under the agreement, (2) clarifies that the water rights may be assigned to third parties, and (3) extends the time to use the water rights for an additional 10-years (until March 17, 2031).

ANALYSIS:

The City’s outside water attorney (Taggart & Taggart, Ltd.) has negotiated the proposed agreement with C.H.R.H. Limited. The terms of the proposed agreement have been reviewed by City staff and are consistent with similar agreements previously approved by the City Council. Accordingly, staff recommends approval of the proposed agreement as drafted.

FINDINGS:

N/A

LEGAL IMPLICATIONS:

Clarifying the terms governing the banking of the water rights and extending the time in which the water rights can be assigned to will-serves will provide greater certainty regarding the rights and obligations of the parties thereby avoiding future disputes.

FINANCIAL IMPLICATIONS:

N/A

ATTACHMENTS:

- 1) Draft Agreement
- 2) Document No. 201885 (January 28, 1997 Water Rights Deed)
- 3) Document No. 206759 (June 23, 1997 Water Rights Deed)
- 4) Document No. 251167 (August 11, 2000 Water Rights Deed)