

JOURNAL OF COMMISSION WORK SESSION
May 18, 2010

City Commission Work Session

Mayor Winters presiding

CALL TO ORDER: 5:45 p.m.

ROLL CALL: City Commissioners present: Michael J. Winters, Robert Jones, Bill Bronson, Mary Jolley and Fred Burow. Also present were the City Manager, City Attorney, Directors of Fiscal Services, Park and Recreation, Public Works and Planning and Community Development, the Executive Director of the Housing Authority, Interim Library Director, Police Chief, Assistant Fire Chief and the Administrative Secretary.

WATER RIGHTS UPDATE

City Manager Greg Doyon explained that representatives from PBS&J and Water Right Solutions, Inc., two companies representing the City on two different fronts regarding water rights, were asked to provide water right updates on their respective processes.

City Water Plant Supervisor Mike Jacobson, explained that PBS&J will report on a solicitation letter for the purchase of water rights by the City of Great Falls. Water Right Solutions, Inc. will discuss the status of the water rights adjudication process and the water rights change application involving the Highwood Generating Station (HGS).

Julie Merritt of PBS&J reported that their consulting firm was hired in September 2009, by the City of Great Falls to investigate the possibility of purchasing existing water rights due to concerns over future water needs. She explained the first step was to consider the available data sources and locate suitable water rights that could be purchased by the City. Criteria used to determine suitable water rights included location. First considered were upstream river basins—Smith River, Dearborn River, Missouri River and Sun River. She noted that water rights with good seniority were first investigated because the City is concerned that downstream hydropower has sizeable, senior water rights. Size was also considered because procurement of multiple water rights may be necessary to create enough volume for the City. The only other large volume use located was irrigation water rights. Ms. Merritt added that a list was presented to a team of City representatives, with rankings based on information from DNRC that included potential problems, and finally, a mailing list was compiled.

Ms. Merritt stated the next step was to develop language to prepare a letter to mail to the list of water right owners to determine those who may be interested in partnering with the City of Great Falls. If the Commission approves the language in the letter, she stated the letter will be mailed to approximately 45 water right owners.

Ms. Merritt added that the U.S. Bureau of Reclamation was contacted regarding the possibility of the City leasing water from Canyon Ferry for future use. Water is available for lease; however, further investigation is being done because the Bureau of Reclamation is a junior user in

comparison to the hydropower, given the possibility of drought.

Mr. Doyon asked the Commission to provide comment/suggested changes on the proposed letter. He noted the team working on the project includes Fiscal Services Director Coleen Balzarini, Mike Jacobson, Director of Planning and Community Development Mike Haynes, City Attorney Jim Santoro and himself.

Commissioner Jolley asked what timeframe is considered when determining future water needs. Ms. Merritt explained that the City wants to insure that, if any time in the future a large commercial or industrial user locates in the City, they would have that availability. Currently there is a finite amount of water left in the water reservation. The amount that will be needed by the Highwood Generating Station (HGS) is unclear at this time. Mr. Doyon explained there are three major water users that, if operated/expanded to full capacity, could use up the remaining reservation. They include Malteurop NA, Inc., Montgomery Energy (though nothing has been heard from them in the last year and a half) and HGS, which will not require as much water since it is no longer a coal plant.

Mr. Doyon added that sessions around the State indicate water rights discussions are in their infancy compared to Nevada, California or Arizona. He explained this is an appropriate time to be thinking ahead and preparing to meet future water needs.

Ms. Merritt reported municipalities across the State are struggling with this issue. Great Falls is within an area that is a closed basin to any new service water appropriations. The only way to obtain a new use is to retire an existing use. At this time the State does not have any kind of water banking system. Some legislation is currently being discussed in the Water Policy Committee, but she believes that will be a struggle.

Ms. Merritt explained that some strategies discussed include finding an irrigator willing to work with the City. He may be looking to retire and could sell his water right and the City could lease it back to him. He can continue to irrigate his land until that water is needed by the City.

Commissioner Jolley questioned what volume is being considered. Ms. Merritt responded that the only suitable water rights located were irrigation water rights and those at or more than 250 acres were considered. She added the need will probably include a few of the possible 45 water right owners. Ms. Merritt explained the Bureau of Reclamation is currently leasing water at approximately \$30 acre/foot/year. DNRC guideline for individual household use is approximately an acre/foot/year. The average household use is quite a bit less than an acre/foot/year for a small City lot. Director of Public Works Jim Rearden noted there are approximately 20,000 households in the City.

Mr. Jacobson reported that the purchase of water rights is an option currently being pursued. Well drilling and reuse of wastewater for irrigation are also options. He noted that some examination of irrigation from wells has been done.

Commissioner Jones questioned the revenue source for the legal time to negotiate one-on-one with irrigation water users. Mr. Jacobson explained that existing water rates will fund this effort.

He added that the purchase of water rights would require millions of dollars and that would impact rates.

Commissioner Jones questioned if further consideration should be given to well drilling. Mr. Jacobson stated that all options are still open. Commissioner Jones stated he would prefer to put the letter on hold until he has an opportunity to speak to members of the team working on the project. Mr. Doyon explained the letter is an inquiry to determine potential individuals who may be interested in selling water rights. The Commission would have to go through a process to authorize a purchase. He added there has been discussion about irrigating parks using municipal wells. If the City were to grow, the consumption and volume needs are hard to determine.

Mr. Doyon explained the Commission authorized the contract with PBS&J which included proceeding forward with a solicitation letter. Ms. Merritt agreed that Task 2 of the contract included sending out the letter and follow up. Commissioner Jolley asked what response will be given when asked how much will be paid for water rights. Ms. Merritt responded that identifying the value of a particular water right is a process. Task 3 or 4 of PBS&J's contract would include evaluation of water rights of interested sellers to determine worth. Mr. Rearden added that a negotiated value would have to be weighed against the cost of other options.

Mayor Winters asked if the City could perform its own water right investigation rather than paying a consultant. Mr. Doyon explained that, even if an interested party is found, the history of the water right must be investigated to determine viability. Ms. Merritt added there are a lot of paper water rights that must be differentiated. She stated comparison has been made with information in the water right record with some historic information on the location of historic irrigation. That helped determine the list probably contains viable water rights, but a much deeper evaluation would be needed before negotiation would be recommended.

Commissioner Jolley questioned if there are examples in Montana of similar water rights purchases. Ms. Merritt noted the City of Missoula is in the process with an area that will be developed and annexed into the City. The water rights that were appurtenant to that particular property will be retired to make up for the new development. The Town of Stevensville purchased water rights from other users to retire in order to provide water for new use. She added that in order to drill a well in basins that are closed to new appropriations, water must be purchased and retired. She added there is a petition before DNRC concerning low volume wells (35 gallons/minute, 10/acre/feet/year) to change the definite of combined appropriation. Drilling small volume wells in the future may no longer be acceptable.

David Schmidt, Principal and Senior Water Rights Specialist of Water Right Solutions, Inc., reported working with the City since approximately 2003, starting with the malting plant and moving on to other projects. His experience includes working in water rights for 33 years, DNRC for 15 years, U.S. Fish and Wildlife Service in 10 western states as Regional Water Rights Specialist, and consulting for 13½ years.

Mr. Schmidt reported there was controversy a couple years ago that the City claimed an excessive volume of 53,574 acre/feet on their 1889 Right—four acre/feet too much. His calculation showed 53,569.9 acre/feet. Mr. Schmidt reported claim amendments were prepared

with a volume determination of 20,140 acre/feet, based on population records. No objections were received on the 1889 Right. He noted, however, issue remarks were placed on the other two that no volume was claimed. The reasoning was that in 1966 and 1971 the capacity of the intake structure near White Bear Island on the Missouri River was changed to about 150 cfs. He added the consumptive volume used pre-1973 is associated with the 1889 Right.

Mr. Schmidt referenced a memorandum to the Commission discussing volume calculation. He noted DNRC has accepted the change in volumes, and no other objections to the water rights have been received. Mr. Schmidt referenced verified motions that will be brought to the Commission. He also referenced a Water Right Claim Examination Manual developed by the Supreme Court and provided to DNRC. He emphasized the City cannot have 53,000 acre/feet if they have not put it to beneficial use. After examination of City records, Mr. Schmidt reported that usage was not found. Using population data, Mr. Schmidt reported volume was split 25/75 between the 1966 and 1971 Water Rights. He believes the issue is settled and will be proceeding to the preliminary decree phase.

Mr. Doyon requested clarification that volume is not being changed. Mr. Schmidt explained that each water right is supplemental to one another. The end result will be 20,140 acre/feet from all three water rights, based on historic use. He noted the majority of the historic use took place pre-1973. No volume was claimed earlier because only additional flow was needed. Flow is speed and volume is amount used; valuing water rights is based on volume. Mr. Schmidt noted there is a good representation of historic beneficial use if the Commission approves these amendments.

Mr. Schmidt reported that the original reservation for the City has a priority date of July 1, 1985 and was for 6,489 acre/feet. He noted an acre/foot is 325,851 gallons (enough to cover an acre of land one foot deep).

When a coal plant was planned, Mr. Schmidt reported that the first change application was a change using the reserve right 7.17 cfs (a flow rate of a medium to small irrigation ditch) up to 3,999 acre/feet. When SME changed to a gas plant, Mr. Schmidt noted the second change application is approximately 1,072 acre/feet, or 20% of the original coal plant. He stated that Dan March, PBS&J, Bozeman is preparing a response to a letter from DNRC for the actual volume that will be used. He added the new change was only to modify the point of diversion for an infiltration gallery well that is hydrologically connected to the Missouri River.

Mr. Schmidt reported the goal is to perfect the reserved water rights prior to 2025, the deadline when the reservation will expire. After perfection of the reserved water rights, that amount of water belongs to the City in perpetuity. He added there is a big difference between leasing water and owning water.

Mr. Schmidt reported receiving several inquiries about a centralized record of the City's water rights. He stated Water Rights Solutions, Inc. has copies of copies collected from various City departments. Though there are no original records, he believes there is a compendium of their knowledge and interpretation of how these historic rights should be decreed. Mr. Doyon commented the City Clerk's office is working with Water Rights Solutions, Inc. to index and consolidate departmental files to determine if records are complete.

Mr. Schmidt noted that his experience with the Bureau of Reclamation and leased water would indicate the price of water will go up. He also stated there is a way to value water. Mr. Schmidt noted he helped the cities of Whitefish and Bozeman to acquire water rights. He reported shares in Hyalite Reservoir have been acquired to own into perpetuity.

Commissioner Jolley asked if Mr. Schmidt was involved in talking with PPL in the first change application. Mr. Schmidt responded that he was involved as part of the negotiating team with the attorneys in talking with PPL. When the change occurs, DNRC will notify all institutions. He added that the agreement with PPL guaranteed them 25% of what comes out of the City's Wastewater Plant.

Mr. Schmidt reported that questions are still being answered on the actual water requirements of the gas plant. He believes the gas plant requirements will be 20% of what was determined for the coal plant. Commissioner Jolley noted that the remaining 80% can be available to another purchaser. Mr. Schmidt explained there is an arrangement with Fish, Wildlife & Parks to be considered and the distribution of the 1985 water reservation (6,489 acre/feet) among the gas plant, Montgomery Energy and possibly a new entity that locates in Great Falls.

Commissioner Jolley questioned if the water reservation is sufficient to fulfill 100% of the needs of the malt plant, Montgomery Energy and the gas plant. Mr. Schmidt responded it would come very close, depending on communications with PBS&J to determine the water reservation.

Commissioner Burow asked if the City has a contract with Montgomery Energy. Mr. Doyon responded that Montgomery Energy was planning to build a gas plant, but the City hasn't heard from them in a year and a half.

ADJOURN

There being no further discussion, Mayor Winters adjourned the work session of May 18, 2010, at 6:30 p.m.