



WASHOE COUNTY

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STAFF REPORT

BOARD MEETING DATE: January 12, 2016

DATE: December 17, 2015

TO: Board of County Commissioners

FROM: Kimble Corbridge, P.E., Project Manager, Engineering & Capital Projects, Community Services Department, 328-2041, kcbridge@washoecounty.us

THROUGH: Dwayne Smith, P.E., Division Director, Engineering and Capital Projects, Community Services Department, 328-2043, desmith@washoecounty.us

SUBJECT: Approve a Big Ditch Use and Maintenance Agreement between Washoe County and Big Ditch Company, retroactive to December 1, 2015 and through June 30, 2021; [approximate annual cost \$3,579.60] for operation and maintenance associated with stormwater conveyance into Big Ditch. (Commission District 2.)

SUMMARY

The Community Services Department is seeking approval of a Use and Maintenance Agreement with Big Ditch Company to include compensation for the County's share of the annual maintenance as a result of utilizing portions of the irrigation ditch to convey stormwater.

This agreement has been previously approved with the Lake Ditch Company and similar agreements have been previously approved for Steamboat Canal and Last Chance Canal, all recognizing the use of portions of the irrigation ditches used for the conveyance of stormwater.

Washoe County Strategic Objective supported by this item: Safe, Secure and Healthy Communities.

PREVIOUS ACTION

On May 28, 2013, the Board of County Commissioners (Board) approved the Lake Ditch Use and Maintenance Agreement.

On September 27, 2011, the Board approved Use and Maintenance Agreements with Steamboat Canal and Last Chance Canal.

On April 19, 2005, the Board approved an Agreement with Steamboat Canal for Use and Maintenance of the Steamboat Canal.

There has been no previous action by the Board regarding the Big Ditch.

AGENDA ITEM # _____

BACKGROUND

Washoe County road rights-of-way convey drainage to four different irrigation ditches, namely the Steamboat, Last Chance, Lake and Big Ditches, each operated by individual private ditch (canal) companies. The drainage patterns are believed to have existed in this fashion since the ditches were originally constructed to serve agricultural interests in the Truckee Meadows. To our knowledge, no formal use or partnership agreements existed between the County and the ditch (canal) companies prior to 2005 when the County entered into an agreement with Steamboat Canal.

As a result of the budget crisis, Department of Public Works (DPW) began to question why these agreements existed for two and not all of the companies as well as question the legal principle of paying for the use of a drainage ditch. The resulting research with the assistance of the department's Deputy DA caused the department to conclude that the County has a vested prescriptive easement and should not be paying for the right to drain runoff into drainage features that have existed nearly as long as Washoe County and for which the County has a prescriptive easement.

Placing a dollar value on the maintenance completed by the ditch companies that is associated with stormwater in lieu of irrigation water is difficult at best. The previous agreements called for the County to pay for most maintenance costs associated with that portion of the ditch within unincorporated Washoe County including all the insurance costs. Another complicating factor is that the cost per linear foot varied considerably between the ditch companies even though the physical characteristics of the ditches are very similar. After five years under this system of cost allocation, the County and the ditch companies entered into negotiations to reevaluate the cost share system and have come up with the principles outlined below and contained in the proposed agreements.

PRINCIPLES OF AGREEMENT

In order to facilitate the development of fair and affordable agreements with all ditch companies, in 2011, the following principles of agreement were used:

1. All ditch companies should be treated the same.
2. Washoe County believes that it has a prescriptive right to use the ditches since they have been receiving runoff from roadside ditches since nearly their inception. We also believe that we have a duty to maintain a drainage easement that handles "County drainage". However, we do not have a duty to maintain the ditches to a higher level of service as may be required for irrigation delivery purposes.
3. Washoe County should enter into an agreement with the ditch companies to compensate for an equitable portion of their maintenance expenses. This is based on our belief that some of the maintenance performed by the ditch companies benefits the County in that it helps perpetuate drainage flows originating from County assets. Payment should be based on the linear footage of ditch measured from the most upstream contribution of significant runoff from a County roadside ditch to the downstream terminus of the ditch. As the ditches are physically similar and traverse similar terrain, the percent of the cost per linear foot paid by County should be the same for all four ditches.
4. The total amount of payment should be established based on the principle that the County pays for the maintenance required to perpetuate drainage, while the ditch company pays for the maintenance required to deliver irrigation water. Since those

costs have not been nor can be practically segregated, the County offers to pay 40% of the cost per linear foot based on cost records that have been presented to the County for ditch maintenance the years 2006 to 2012. In the future, as these costs will be better defined and categorized between the two functions performed by the ditches, a cost per linear footage amount should be reviewed and updated accordingly. The 40/60 proration is based on the premise that irrigation maintenance is significant in and of itself due to heavy vegetation removal caused by making water available to ditch side vegetation during the growing season and the exacting needs of the ditch liners to remain “water tight”. In addition, much of the drainage enters the ditches from sources other than County right-of-way and therefore is not a County “duty” to maintain.

5. Washoe County should work in partnership with the ditch companies to assure winter performance during the runoff season and to facilitate hauling and disposal of debris generated by the ditch companies during the spring ditch cleaning season. To facilitate this, the County maintenance supervisor and ditch company operational staff should meet twice yearly, once before and once after the irrigation season.
6. Washoe County should not be asked to pay for insurance separately since the ditch companies would likely purchase insurance whether they handled “county drainage” or not because of the large amounts of uncontrolled drainage that can enter the ditches from natural (i.e. Non-County sources such as the intercepted creeks and drainages). This cost is part of the justification to pay under 3 above and has been included in the calculation of the proposed cost per linear foot.
7. Washoe County, working in conjunction with the individual ditch companies, should develop an improvement plan. To the extent that the County can help implement the plan, the County should get a credit for work performed by County resources against the annual payment amount set forth in the proposed agreements. The “partnership” should extend to developing emergency response plans in the event of high flows that threaten to breach the ditch levees or banks.

PROPOSED COST SHARING

Washoe County’s estimated cost share for annual maintenance is approximately \$3,579.60.

Linear Feet	Cost per Linear Foot	Annual Cost	40% proration	Washoe County Share
11,775	X \$0.76	= \$8,949	X 40%	= \$3,579.60

LEGAL BACKGROUND

In 2013, in conjunction with the DA’s Office, Washoe County re-evaluated our duty to maintain these ditches and our rights to use them for County drainage. The following summarizes that understanding:

1. If County drainage from a County road or other County facility causes erosion of or deposition into the ditch, then we have a duty to correct that situation just as we would for any other drainage easement that conveys runoff from a County asset.
2. The County is not responsible for degradation of the ditch caused by natural drainage from private properties or from federal lands that abut the ditches for much of their length.
3. These ditches were constructed many years ago and since their inception, they have diverted natural drainage along their path. As some of that natural drainage became

road drainage from County facilities as they were developed many years ago, the County has prescriptive drainage easement rights to continue to use the ditch for that purpose.

4. None of the ditch companies have a standing maintenance operation year around. Therefore, the use of County staff to perform corrective maintenance during the non-irrigation season is more responsive and efficient when minor blockages or spillages occur.

Staff estimates that most of the stormwater runoff entering the ditches is from natural drainages coming off of federal lands and from private properties adjoining the ditch.

FISCAL IMPACT

The FY16 budget for ditch maintenance agreements is \$164,850, and did not take into account this new agreement. Budget authority is located in the Engineering and Capital Projects cost center/account 105500-710200. The estimated cost for FY16, including the Big Ditch Use and Maintenance Agreement, is approximately \$168,083. The difference between the estimated and the approved budget is approximately \$3,233 will be made up through savings in other CSD services and supplies line items for the current fiscal year

RECOMMENDATION

It is recommended that the Board of County Commissioners approve a Big Ditch Use and Maintenance Agreement between Washoe County and Big Ditch Company, retroactive to December 1, 2015 and through June 30, 2021; [approximate annual cost \$3,579.60] for operation and maintenance associated with stormwater conveyance into Big Ditch.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "Move to approve a Big Ditch Use and Maintenance Agreement between Washoe County and Big Ditch Company, retroactive to December 1, 2015 and through June 30, 2021; [approximate annual cost \$3,579.60] for operation and maintenance associated with stormwater conveyance into Big Ditch."