

**MINUTES OF LAYTON CITY
COUNCIL STRATEGIC PLANNING
WORK MEETING**

JUNE 29, 2021; 3:10 P.M.

**MAYOR AND COUNCILMEMBERS
PRESENT:**

**MAYOR JOY PETRO, ZACH BLOXHAM, TOM
DAY, DAWN FITZPATRICK, AND CLINT MORRIS**

EXCUSED:

COUNCILMEMBER DAVE THOMAS

STAFF PRESENT:

**ALEX JENSEN, GARY CRANE, MASON KJAR,
STEPHEN JACKSON, TERRY COBURN, PAUL
APPLONIE, WES ADAMS, AND KIM READ**

KAYS CREEK IRRIGATION:

**JOE LOVE, JOANNA STOWELL, SCOTT GREEN,
DAVID WRIGHT, WADE GREEN, AND JON
GREEN**

The meeting was held at Fire Station 51, 530 North 2200 West, Layton, Utah.

Mayor Petro opened the meeting and turned the time over to Staff.

DISCUSSION – KAYS CREEK/LAYTON CITY AGREEMENT

Mason Kjar, City Attorney, reminded the Council of previous discussions it had regarding the proposed agreement with Kays Creek Irrigation and pointed out discussions specific to the agreement had also taken place with Kays Creek. Following the discussions on behalf of both parties he summarized the following; the City was agreeing to assume the business, system, rights, and governing issues associated with Kays Creek Irrigation. He identified one of the issues of concern expressed by Kays Creek, which referenced terminated shares were respective to a specific parcel of property and shared an example to illustrate the point. He explained this change had been addressed in the agreement. He also pointed out the development limitations specific to properties in the APZ (Accident Potential Zone) and mentioned the exaction requirement would be significantly less. He identified the language included in the agreement specific to water exaction for these properties allowed those water shares to be rolled into the ‘water bank’. David Wright, Kays Creek Counsel, suggested including language which would allow those to be divided into fractional shares and both Gary Crane, City Attorney, and Mr. Kjar expressed agreement with the suggestion. A discussion took place specific to the designated amount of the ‘fraction’ which should be identified. Stephen Jackson, City Engineer suggested one half acre foot.

Mr. Kjar directed the Council to the ‘Additional Shares’ portion of the agreement and explained how those could be dedicated or deposited with the City in addition to how the shares could be used/transferred.

Councilmember Day expressed concern with that provision which could potentially restrict availability to pressurized water to be used for agriculture purposes during a drought year and a discussion followed. Mr. Wright expressed his opinion this was something which could be addressed and the discussion continued. Alex Jensen, City Manager, pointed out there would be no way to identify the amount of water used within the pressurized system and the discussion continued. Mr. Wright suggested the water in the pressurized system would need to be metered in order to identify when the user has met the limit of the amount of water equivalent to the “additional shares”. He believed language could be included to ensure no owner was deprived of the value of the respective shares and the discussion continued. Mr. Crane pointed out the different options and language which could be implemented to allow that particular use of additional shares.

Mr. Kjar spoke specifically to #7 – Option, of the Agreement. He reminded the Council, eventually the City would be operating a pressurized secondary utility system and Kays Creek, including the reservoirs, would eventually be assumed by the City as a public entity. He pointed out the identified deadline of January 1, 2030 and explained the proposed additional option allowed greater flexibility in placing water shares in the dedicated bank; however, control of the sale would retain with the shareholder. Mayor Petro asked about inheritance of the water shares and Mr. Wright responded that would also be applicable to any successors or heirs in those instances. Mr. Kjar mentioned added language referenced appraisals and the discussion continued. Mr. Jensen pointed out just as a shareholder couldn't be forced to sell the water, the City couldn't be forced to purchase the water.

Mr. Wright inquired if there were other peculiar parcels which development restrictions or limitations existed and Mr. Crane responded the only parcel he could think of was the Nature Conservancy.

Councilmember Fitzpatrick requested clarification regarding exaction requirements for development in the APZ and Mr. Crane responded development in the APZ would most likely be storage units and the open space would continue with the three acre feet. Mr. Kjar also explained how the additional exaction would be applicable as identified in language on page 5 of the proposed agreement.

Mr. Crane mentioned one of the questions and concerns was specific to Kays Creek Staff and stated it was the City's intent to incorporate Staff within the future and suggested there would be a need for knowledgeable staff.

Mr. Crane expressed his desire to allow Mr. Wright an opportunity to discuss how to proceed for both parties to approve the agreement. Mr. Wright explained Kays Creek Board would need to adopt a Resolution to recommend to the Shareholders to approve the Agreement; and those Shareholders would also need to adopt a Resolution approving the Agreement, at which time it would go into effect. He clarified the Resolutions cannot be finalized until the Agreement was finalized. He expressed concern how the transaction would be addressed if there were shareholders opposed to approving the Resolution and a discussion took place. He pointed out there was a provision which allowed a corporation to transfer assets and suggested the pressurized system could be considered a piece of the larger assets of Kays Creek Corporation and proposed other assets would transfer to the City over time.

Mr. Crane explained Mr. Wright also had to address the issue of residents which had been told water shares existed when property was purchased; however, received no certificate reflecting that existence and indicated both Kays Creek and the City intended to consider those residents shareholders. Mr. Wright stated he would also re-structure Articles of Incorporation and Bylaws for the reservoirs and suggested changing the name to Kays Creek Reservoirs; however, that decision would need to be made in the future by the City.

Councilmember Day expressed his opinion the City should assume the entire system including the reservoirs all at once and requested Kays Creek explain their justification on retaining ownership of the reservoirs. Scott Green, Kays Creek, pointed out the importance of the transition taking place over a period of time and how it would be beneficial to everyone. He also mentioned the institutional knowledge associated with maintaining the reservoirs. Councilmember Day continued to express his opinion the same could be accomplished under the umbrella of the City and didn't believe there was a need for two separate companies and a discussion followed.

Mr. Crane expressed concern the inclusion of the reservoirs with the transition at this time might impact whether shareholders would agree in approving the resolution and subsequent agreement. He added the City wouldn't be opposed to taking over the reservoirs; however, that would need to be approved by the shareholders and emphasized that couldn't be forced upon Kays Creek or the shareholders. Mr. Kjar also pointed out that would initiate an immediate tax liability even under an immediate transfer and the discussion continued.

Mr. Crane suggested that could be presented to the shareholders and indicated the vote could reflect whether the transfer of the reservoirs should take place immediately or later as identified in the proposed contract. He explained how the agreement could simply be modified for that accommodation and asked Mr. Green his opinion on how the shareholders would react if the option was presented.

Mr. Green mentioned there were many shareholders concerned about the control of their water with this transition and the discussion continued. Joe Love, Kays Creek, inquired about option C and asked whether the City was prepared to immediately purchase those shares. Mr. Crane clarified he couldn't speak on behalf of the Council or the City, but didn't believe the City was prepared for that and the discussion continued. Mr. Crane clarified the City didn't want to maintain open ditches and pointed out development, in a sense, maintained the ditches and the discussion followed. He pointed out the end result would be the same under both scenarios.

Mr. Wright indicated that although it might make sense that the reservoirs be included in the agreement and transition at this time; he wasn't in a professional position to advise the Kays Creek Board on such a transaction at this time. He requested time to consider legal issues and further discuss them with Mr. Crane and Mr. Kjar.

Wes Adams, Water Supervisor, expressed his opinion the transition would be smoother without the inclusion of the reservoirs and explained City Staff didn't currently possess the knowledge to operate and maintain that infrastructure and the discussion continued. Mr. Crane pointed out the nine year time frame would disappear once the last ditch user's property was sold for development; at which time the City would enter into an agreement with the Nature Conservancy.

Councilmember Day believed all options should be presented to the shareholders and Mr. Wright indicated that would be the Board's decision. Mr. Green expressed his opinion if the shareholders rejected the proposal the opportunity wouldn't come again to the City; rather, Kays Creek Irrigation would remain and the City would ultimately be obligated to enlarge its culinary water system without any options for enlarging its secondary water system. Stephen Jackson, City Engineer, expressed his opinion the proposed transition was an acceptable proposal and would allow the City an opportunity to understand the pressurized system, while natural attrition transpired over the designated nine years. Mr. Crane emphasized the end result remained the same under both scenarios and expressed his confidence with the Board.

Councilmember Bloxham expressed his opinion it wasn't the Council's role to direct the Kays Creek Board to present something different than what had previously been discussed and presented to the shareholders. He stated he was comfortable with the agreement in the form presented by Staff.

Mr. Jensen mentioned a lot of issues had been discussed which weren't necessarily City issues and reminded the Council its fiduciary responsibility was to determine what was best for the City. He pointed out if this agreement wasn't approved, for any reason, the City's Master Water Plan would no longer be applicable and the City would have to purchase additional water to replace the water previously proposed to come from Kays Creek per the agreement. He added infrastructure had been planned for and constructed around this secondary water source, as well as the rate structure applicable to residents. He also mentioned the costs associated with purchasing the additional water would significantly impact all residents of the City and the discussion continued.

Mayor Petro asked when the Board would be presenting the agreement to the shareholders and a discussion followed at which time it was determined that meeting would realistically be in September due to noticing requirements.

Councilmember Day announced he wouldn't be in favor of anything other than the entire system with the inclusion of the reservoirs and suggested some informal conversations take place with shareholders regarding the inclusion of the reservoirs between now and September.

Councilmember Morris asked when the agreement would come to the Council for approval and Mr. Crane indicated Staff intended it be placed on the agenda for Thursday, July 15, 2021. Councilmember Morris pointed out the Board represented the shareholders and suggested a decision at the July 15 City Council Meeting wouldn't take place unless the Board was amenable to the agreement. He believed the agreement in its current draft was acceptable and fair to all and would be good for the City in the long term. He expressed appreciation to the Board for its dedication to the water system.

Councilmember Fitzpatrick expressed concern the cost of water would increase beyond just a few years to the nine years and what that cost would be to Layton City residents. Mr. Green believed those costs would be incurred by developers and not Layton City residents.

Mr. Crane recommended the following in moving forward; he suggested allowing the Kays Creek Board to determine what it would present to its shareholders and suggested the City should support its decision. He expressed confidence shareholders would be in agreement with what was proposed by the Board. He suggested directing Staff to proceed with a decision on the agreement on the July 15, 2021, City Council agenda. Councilmember Day requested to know results of the Kays Creek Board meeting.

Councilmember Fitzpatrick expressed confidence with City Staff.

Mr. Green believed this transition and agreement would be the most cost effective to both the City and Kays Creek and believed it was limited on progressing on its own. He stated the Board would meet and let the City know what would be presented to shareholders.

The meeting adjourned at 5:17 p.m.

Kimberly S Read, City Recorder