



City of Missoula, Montana
Item to be Referred to City Council Committee

Committee: Public Works

Item: Flynn-Lowney Ditch Acquisition from the Hellgate Valley Irrigation Company

Date: September 23, 2021

Sponsor(s): Jeremy Keene

Prepared by: Katie Emery

Ward(s) Affected:

☒ Ward 1	☐ Ward 4
☒ Ward 2	☐ Ward 5
☐ Ward 3	☒ Ward 6
☐ All Wards	☐ N/A

Action Required:

Approve the acquisition of the Flynn-Lowney Ditch from the Hellgate Valley Irrigation Company.

Recommended Motion(s):

I move the City Council: Approve the closing and waiving of all contingencies per the July 22, 2021 Purchase Agreement between the Hellgate Valley Irrigation Company and the City of Missoula.

Timeline:

Referral to committee:	September 27, 2021
Committee discussion:	September 29, 2021
Council action (or sets hearing):	October 4, 2021
Public Hearing (if required):	N/A
Deadline:	N/A

Background and Alternatives Explored:

The City of Missoula entered into a Purchase Agreement with the Hellgate Valley Irrigation Company (HVIC) on July 22, 2021 to acquire the water rights, easements, and structures related to the Flynn-Lowney irrigation ditch, contingent on securing necessary funding, City Council approval, due diligence, and approval by HVIC shareholders.

Public Works & Mobility staff recognized that if the Flynn-Lowney ditch could be decommissioned, there would be significant cost savings in culverts and stormwater facilities associated with the Mullan BUILD project. Mullan BUILD is constructing new roads at Mary Jane Boulevard, England Boulevard and George Elmer Drive that need to cross the Flynn-Lowney ditch. These costly crossings could be eliminated if the ditch were decommissioned. Furthermore, City Public Works & Mobility staff also became aware through the Mullan BUILD stormwater design process that water leaking out of the ditch elevates the groundwater table in the area. The higher groundwater levels would prevent the use of stormwater sumps in the vicinity of the ditch, resulting in a more expensive and land-intensive solution to build surface or subsurface stormwater detention facilities. If the ditch could be decommissioned, the cheaper sump alternative would be available for the Mullan BUILD project.

City Public Works & Mobility staff in conjunction with WGM Group reached out to board members of the Hellgate Valley Irrigation Company (HVIC), owners of the Flynn-Lowney ditch. The City Inquired whether the HVIC would consider selling the City its ditch assets (including water rights), with the proceeds being used to drill new wells for the active irrigators. The HVIC board was interested in this concept because they have difficulty maintaining the diversion structure in the Clark Fork River and getting enough flow into the ditch to satisfy the irrigators' needs. The City and WGM Group worked with John McKinnon of the HVIC to estimate the costs of drilling these wells or in some cases installing a new pump in an existing well that could be used to irrigate the property. Other shareholders who no longer use the water will also receive compensation from the proceeds of the asset sale. The negotiation led to a mutually-agreed purchase price of \$804,000 for the ditch assets and water rights.

An informational presentation was provided to the Public Works Committee on May 12, 2021. The Mayor and HVIC board executed a Purchase Agreement on July 22, 2021. The HVIC shareholders approved the Agreement by majority vote on August 23, 2021, and City Public Works & Mobility and City Attorney's staff completed due diligence on September 15, 2021.

The City is responsible for the cost of water rights permitting to transfer the surface water rights which were previously owned by the ditch company to the wells which will be owned by individual property owners. The City had an initial discussion with personnel from the Department of Natural Resources and Conservation (DNRC) to determine what process could be used to transfer water rights from the ditch to individual wells. This process is anticipated to take 12-18 months. The DNRC recognized that there would be a timing issue between when the ditch is closed off and when water rights will be formally transferred to wells. The DNRC indicated that the wells would be allowed prior to transferring the water rights.

The City is also responsible for the cost of drilling two wells that will be used for irrigation and test wells for future municipal water production wells planned in the area. This includes one well on Airport property and one well on Clouse family property. The total estimated cost of the project to acquire the ditch assets is \$990,000.

There are many benefits associated with the decommissioning of the Flynn-Lowney ditch. Closing the ditch will prevent the entrainment of hundreds of trout and other species into the ditch that occurs every year. Portions of the water rights no longer used by irrigators will be available for transfer to in-stream flow rights in the Clark Fork River. The ditch diversion structure has also caused the active river channel to migrate further south, which has caused significant bank erosion that currently threatens the riverfront trail. This channel migration also impacts the function of the Silver Park boat ramp. Removal of the ditch diversion structure would allow the channel to be reconstructed, the bank to be stabilized and the boat ramp to be modified. Public Works & Mobility staff have met several times with staff from the Montana Department of Fish, Wildlife and Parks to develop concepts for how the river channel could be modified in the future.

There are many other community benefits associated with the decommissioning of the Flynn-Lowney ditch, including freeing up lands for development that are currently occupied by the ditch, more flexibility for stormwater designs associated with private developments in the Mullan BUILD area and improved roadway safety by eliminating the large ditch running parallel to several major roadways. It is important to note that the current project only entails acquisition of the ditch assets. Any work to reclaim the ditch, remove the diversion structure or redesign the river channel and river bank would be part of a future project. The purchase of the ditch assets will allow the ditch intake to be closed so that no water will flow through the ditch in 2022.

Financial Implications:

The project was included in the FY2022 Public Works & Mobility Capital Improvement Program, utilizing Transportation Impact Fees, Water Utility Development funds, grants, and private fundraising. Additionally, the Missoula Redevelopment Agency approved funding for consulting

services related to the water rights permitting. The CIP request form showing the proposed funding is attached.

Public Works & Mobility will continue to seek to recoup the cost of the acquisition by monetizing the value of the excess water rights and easements. The Clark Fork Coalition is applying for funds from the Columbia Basin Water Transactions Program, which would compensate the City for the portion of water rights ultimately transferred to instream flows, and Public Works & Mobility is continuing discussions with landowners that would benefit by removing easements that currently encumber developable land. These funds would be applied toward future projects to reclaim the irrigation diversion, provide bank stabilization, and other improvements to the Clark Fork River.

Links to external websites:

<https://www.engagemissoula.com/flynn-lowney-ditch-acquisition-restoration-project>