



Town of Castle Rock

Agenda Memorandum

Agenda Date: 10/20/2020

Item #: 16. **File #:** TMP 2020-636

To: Honorable Mayor and Members of Town Council

From: Mark Marlowe, P.E., Director of Castle Rock Water
Matt Benak, P.E., Water Resources Manager
Lauren Moore, Water Resources Program Analyst

Update: Water Court Cases

Executive Summary

Acquiring, changing, using and protecting the Town's water rights is a key component of the Town's long-term renewable water plan as well as an important aspect of managing our groundwater rights. This requires the Town to file applications in Water Court and oppositions where an application by another entity has the potential to injure the Town's water rights. The Town is continuing to use Lyons Gaddis as our water attorneys and W.W. Wheeler Associates for engineering support. The purpose of this memorandum is to update Town Council on the Town's current Water Court cases.

The Town currently has four active cases where we are the applicant. Three of these cases are particularly noteworthy. One of these cases is bringing all of our current non-renewable groundwater rights up to date since 1997 and putting them into a "combined well field", meaning we can use any of our groundwater rights from any of our deep wells. This improves overall operations. Two of the other cases are a huge part of our long term renewable water plan related to imported water. These cases are to create an augmentation plan and establish some other water rights related to our Box Elder Project which will bring 2,500 acre feet of renewable water per year to the Town in the future. There are nine active cases that the Town is opposing that could injure our water rights, one upcoming application for the Town that may be filed in 2020, and one case that the Town will oppose in 2021. These cases are summarized in Attachment A with additional details in the following discussion.

To date in 2020, Castle Rock Water has spent just under \$432,000 of our budgeted \$635,000 on this work. In 2021, Castle Rock Water has budgeted \$485,000.

Discussion

The Town of Castle Rock has four active Water Court cases in which the Town is the applicant. These cases are summarized below:

1. 19CW3039 - This case was filed February 28, 2019. This is an application for the Denver

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Basin Groundwater Well Field and is to include all the new water rights dedicated to the Town (since 1997) in an overall well field to make operations and accounting more streamlined. This case is before the Water Referee and has multiple opposers. Opposers have until October 28, 2020 to provide additional comments. Centennial is ready to stipulate, which leaves Castle Pines Metro District and Parker Water & Sanitation District as the remaining opposers. The case will be re-referred in November.

To date, the Town has spent \$68,164 on this case between legal fees and water resource consulting fees. Discussions with our Legal Counsel indicate that it may take an additional \$15,000 of work to conclude this case.

2. 19CW3229 - This case was filed December 11, 2019. This is a diligence application that exchanges water from the Plum Creek Regional Wastewater Plant Outfall (PCWRA) to the former Castle Rock Wastewater Treatment Plant Outfall (TCR WWTP) in order to replace out of priority alluvial well depletions (see Attachment B for a drawing showing this exchange). A final decree was filed on September 15, 2020. This case provides work done towards completion of the appropriation from December 2013 to December 2019 as required by the conditional water right.

To date, the Town has spent \$4,655 on this case between legal fees and water resource consulting fees.

3. 19CW3231 - This case was filed December 13, 2019. This is an augmentation plan application for the Box Elder Creek Well Field, which will allow the Town to divert water at the Box Elder Creek Well Field for municipal use as well as a change of junior water rights and conditional water rights. This case is before the Water Referee and has 18 opposers' which include: Aurora Water, Bijou Irrigation District, Box Elder Creek Ranch Water Company, Centennial Water, Central Colorado Water Conservancy District, City of Boulder, City of Englewood, East Cherry Creek Valley, Farmers Reservoir & Irrigation Co, Greatrock North Water & Sanitation District, Henrylyn Irrigation District, Northern Colorado Water Conservancy District Public Service Company of Colorado, Rangeview Metropolitan District, South Adams County Water & Sanitation District, State Engineer and Division Engineer for Water Division No. 1, Sublette, Inc., and United Water & Sanitation District. Castle Rock must provide a response to opposers' comments and a revised decree by December 14, 2020. If successful, this augmentation plan would allow for an additional 2,500 AF of supply to the Town on an annual basis from our Box Elder Creek property.

To date, the Town has spent \$900,391 on this case and 19CW3232 (collectively known as the Box Elder Project) between legal fees and water resource consulting fees. Discussions with our Legal Counsel indicate that it may take an additional \$245,000 of work in 2021.

4. 19CW3232 - This case was filed on December 13, 2019. This is a diligence application for Plum Creek Diversion (formerly Ravenna Diversion) and Castle Rock Reservoirs (formerly Sedalia Reservoirs) absolute and conditional storage rights. This case is before the Water Referee and Castle Rock has until October 31, 2020 to respond to opposers' comments. Opposers additional comments are due January 15, 2021 and a status conference is scheduled on January 28, 2021. If successful, this case would prove beneficial to the Town by making any conditional water rights absolute, as well as providing any work done since completion of appropriation as required by the conditional water right.

To date, the Town has spent \$900,391 on this case and 19CW3231 between legal fees and water resource consulting fees. Discussions with our Legal Counsel indicate that it may take an additional \$245,000 of work in 2021.

The Town has nine current active cases where the Town is an opposer. Costs for opposition to date in 2020 have been \$37,758. Costs are typically on the order of \$55,000 annually.

1. 17CW3122 - The Town is currently an opposer in the Perry Park Water & Sanitation District's change of Gove Ditch water right and amended plan for augmentation. This case is before the Water Judge and a status conference was held on September 10, 2020. If a settlement is not made with the opposers, trial briefs, witness lists, and exhibits are due by October 12, 2020. Trial is scheduled for October 26, 2020 thru October 28, 2020. The Town is opposing this case because it may cause injury to the Town's absolute and conditional water rights that are decreed to divert from East Plum Creek, West Plum Creek, and Plum Creek.
2. 18CW3038 - The Town is currently an opposer in the Castle Pines North's changes of Lupton Bottom and Meadow Island #1 Ditches water rights. This case is before the Water Judge and negotiations are in progress. A status conference is scheduled on September 26, 2020. If a settlement is not made with the opposers, trial briefs, witness lists, and exhibits are due by October 19, 2020. Trial is scheduled for November 2, 2020 thru November 12, 2020. The Town is opposing this case in order to protect the Town's operations from injury and to ensure that the proposed decree outlines the reuse operations on East Plum Creek and Plum Creek.
3. 18CW3039 - The Town is currently an opposer in the Dominion Water & Sanitation District's conditional surface, storage and exchanges, including at Castle Rock's structures (such as the Plum Creek Diversion and Castle Rock Reservoir No. 1). This case is before the Water Judge and negotiations for an excess capacity agreement are in progress. A status conference is scheduled on November 2, 2020. Trial is scheduled for July 26, 2021 thru July 30, 2021. The Town is opposing this case in order to protect the Town's future operations of Plum Creek, Town-owned infrastructure, and storage rights. Additionally, the applicant has no right to use of the Town's structures as claimed in the application.

4. 18CW3232 - The Town is currently an opposer in the Castle Pines Metropolitan Districts change of water rights and conditional appropriative rights of exchange that propose to use Castle Rock's infrastructure in Sedalia. This case has been re-referred and we are awaiting Castle Pine North Metro District's direction to proceed. There are no upcoming deadlines. The Town is opposing this case because it may cause injury to the Town's absolute and conditional water rights that are decreed to divert from East Plum Creek and Plum Creek. Additionally, the applicant has no right to use of the Town's structures as claimed in the application.
5. 19CW3211 - The Town is currently an opposer in the Parker Water & Sanitation District's expansion of non-tributary well fields. This case is before the Water Referee and Parker's comments and revised proposed ruling are due on October 16, 2020. Opposer comments are due on December 18, 2020. A status conference is scheduled on January 7, 2021. The Town is opposing this case because it may cause injury to the Town's water rights adjacent to Parker's groundwater and well fields. The Town wants to make sure that the application contains the appropriate protective terms and conditions.
6. 19CW3253 - The Town is currently an opposer in the Parker Water & Sanitation District and Lower South Platte Water Conservancy District's storage rights, appropriative rights of exchange and change of water rights on the South Platte near Box Elder Creek. This case is before the Water Referee. Opposers' comments are due by October 30, 2020 and the applicant's response to comments are due by December 30, 2020. A status conference is scheduled for January 19, 2021. The Town is opposing this case because it may cause injury to the Town's water rights on the South Platte River and Box Elder Creek and this case has a competing appropriation date with the Town's case (19CW3231).
7. 20CW3005 - The Town is currently an opposer in the Denver JetCenter application to make their conditional water rights absolute on West Plum Creek. This case is before the Water Referee and opposers' comments are due by October 12, 2020. A status conference is scheduled for October 15, 2020. The Town is opposing this case because it may cause injury to the Town's water rights along West Plum Creek and the Town wants to ensure that Denver JetCenter diverts in-priority.
8. 20CW3031 - The Town is currently an opposer in the Spruce Mountain Properties, Inc. application to make their conditional water rights absolute on West Plum Creek. This case is before the Water Referee and the applicant has until October 16, 2020 to respond to the Town's comments. The Town will then provide additional comments by November 20, 2020. A status conference is scheduled for December 17, 2020. The Town is opposing this case because it may cause injury to the Town's water rights along West Plum Creek and the Town wants to ensure that Spruce Mountain Properties, Inc. diverts in-priority.

9. 20030071 - The Town is currently an opposer in the Colorado Oil & Gas Commission application for Oil & Gas Rulemaking. A hearing was held August 24, 2020 through September 10, 2020. The Oil & Gas Commission made a final ruling which adds additional protection to surface water structures and alluvial wells. In addition, upon consultation, the oil and gas industry must consider protective measures for facilities classified as domestic supplies for recharge facilities and infrastructure on ephemeral streams. Ultimately, this rulemaking provides more safeguards to protect domestic water supply from the potential of oil and gas contamination.

The Town has two upcoming or possible future cases where we would be the applicant in late 2020 and the opposer 2021. We are planning on submitting the following application in 2020:

- Plum Creek Diversion and Castle Rock Reservoirs - a diligence application for Plum Creek Diversion (formerly Ravenna Diversion) and Castle Rock Reservoirs (formerly Sedalia Reservoirs) absolute and conditional storage rights. The application deadline is November 30, 2020. This case would prove beneficial to the Town in order to make any conditional water rights absolute, if any, as well as to provide any work done since completion of appropriation as required by the conditional water right.

We are planning on opposing the following application in 2021:

- Protest to Abandonment List - The deadline to protest is July 21, 2021. The Town has received formal notice that a few wells are on this list, as well as other potential water rights. The Town is opposing this case because it may cause injury to the Town's water rights and the structures listed will need to be investigated further.

Budget Impact

In the annual budgeting process, Castle Rock Water budgets money for Legal Services related to Water Court cases, other water resource legal matters, and Intergovernmental Agreement negotiation. Castle Rock Water also budgets money for water resource consulting services related to support of Water Court cases and the Town's water rights, water resources planning and evaluation analysis, preparation of technical memos and engineering reports, water rights accounting, and other as-directed matters. In total, the Town budgeted \$635,000 for Water Court cases in 2020. The Town has spent \$120,606 on legal services, \$19,682 on consulting services, and \$291,272 on our Northern Supply Due Diligence, for a total of \$431,561 this year related to Water Court cases. In 2019, a total of \$379,427 was spent on services related to Water Court cases.

For 2021, Castle Rock Water has budgeted \$125,000 for legal fees, \$210,000 for engineering fees, and \$150,000 for Box Elder and Due Diligence.

Staff Recommendation

Staff recommends continuing to file and work water court cases as the applicant, which will provide maximum benefit for use of our water rights and file cases as an opposer where our water rights

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could be impacted. Where we are the applicant, the goal is to obtain stipulations from opposers as quickly as possible. On cases we oppose, we want to stipulate as early as possible but we must make sure we can do this while protecting our rights. Staff will continue to keep Council updated regarding active Water Court cases on an annual basis.

Attachments

Attachment A: Summary of Cases
Attachment B: 19CW3229 Map of Exchange