



Town of Castle Rock

Agenda Memorandum

Agenda Date: 10/19/2021

Item #: **File #:** TMP 2021-832

To: Honorable Mayor and Members of Town Council

Through: David L. Corliss, Town Manager

From: Mark Marlowe, P.E., Director of Castle Rock Water
Matt Benak, P.E., Water Resources Manager
Heather Justus, P.G., Water Resources Project Manager

Update: Water Court Cases *[Cases located in Douglas County, Weld County and other areas near the Lower South Platte River]*

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 file oppositions where an application by another entity has the potential to injure the Town's water rights. The Town is continuing to contract with Lyons Gaddis as our water attorneys and W.W. Wheeler Associates for water resources consulting support. The purpose of this memorandum is to update Town Council on the Town's current Water Court cases.

The Town currently has five active cases where we are the applicant. One of the cases is part of our long-term renewable water plan. Two of the cases provide augmentation for two existing ponds in the Town's parks and open spaces. One of the cases is diligence for water rights, and the other is to change tributary (renewable) underground water rights. There is one active case in which the Town is an intervenor. There are seven cases that the Town is or was opposing that could injure our water rights. In addition, there are two upcoming case applications. One for new water rights on the Lower South Platte River to be filed by the end of October 2021 and one for due diligence that is due 4/30/2022. These cases are summarized in Attachment A with additional details in the following discussion.

To date in 2021, Castle Rock Water has spent just under \$325,000 of our budgeted \$485,000 on this work. In 2022, Castle Rock Water has budgeted \$450,000 for legal and water resources consulting fees.

Discussion

The Town has five active Water Court Cases in which the Town is the applicant. These cases are

summarized below:

1. 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 multiple opposers. There are seventeen opposers remaining in the case and four opposers have stipulated. Trial is anticipated in the second half of 2023. 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 \$1,147,290 on this case and 19CW3232 (collectively known as the Box Elder Project) between legal fees and water resources consulting fees. Discussions with our Legal Counsel indicate that it may take an additional \$245,000 of work in 2022.

2. 20CW3175 - This case was filed November 25, 2020. This is a diligence application for the Ravenna water rights filed in Case No. 05CW270 on Plum Creek. The Town is requesting to make part (0.83 cfs) of the (3.0 cfs) Plum Creek Diversion conditional water right absolute. It is likely that the remainder of the water right will be made absolute in the future. In addition, the decreed annual volume under the Plum Creek Diversion direct flow water right is 332.3 acre-feet, conditional. At this time the Town is requesting that 13.0 acre-feet of the annual volume under this direct flow be made absolute. Currently 2.0 cfs of the "filling right" for Castle Rock Reservoir No. 1 is absolute and 1.0 cfs is conditional. In this application, the Town is requesting an additional 0.89 cfs be made absolute for a total amount of 2.89 cfs, leaving 0.11 cfs as the remaining conditional portion. There is one opposer remaining and one stipulated. We anticipate settlement in the last quarter of 2021.

To date the Town has spent \$5,345 on this case between legal and water resources consulting fees.

3. 21CW3047 - This case was filed April 16, 2021. The application provides augmentation water for Paintbrush Park Pond, which is an on-channel pond on an unnamed tributary of East Plum Creek, located in the Meadows. The pond surface area is 1.4 acres with estimated depletion due to evaporation of 2.4 acre-feet annually. The State Engineer approved a Substitute Water Supply Plan (SWSP) which is in effect until the decree is final. There is one opposer and comments are due 10/22/21. A status conference with the Referee Settlement is set for 10/28/2021. Settlement is anticipated the first quarter of 2022.
4. 21CW3109 - This case was filed July 16, 2021. The application provides augmentation water for Mitchell Gulch Pond, which is an on-channel reservoir on Mitchell Gulch, a tributary of Cherry Creek. This pond is located within Founders Village, has 0.75 acres of surface area and a maximum depletion due to evaporative losses of 1.86 acre feet annually. The opposition deadline was 9/30/2021.

To date the Town has spent \$12,803 on the two pond augmentation cases between legal and

water resources consulting fees.

5. 21CW3142 - This case was filed August 26, 2021. This is an application to change the tributary underground water rights decreed in Case No. 85CW480 on East Plum Creek. The water rights are associated with alluvial wells AL-1 through AL-20 for withdrawal from the East Plum Creek alluvium. The Town seeks an alternate point of diversion, alternate place of storage and a change of place of use of the remaining conditional amounts. The proposed alternate points of diversion and storage are the Plum Creek Diversion for direct use, and for storage in Castle Rock Reservoir Nos. 1 and 2, Plum Creek Reservoir and Rueter-Hess Reservoir. In addition, the Town would like to divert the conditional rights at the Plum Creek Diversion and discharge the conditional water rights before beneficial use for subsequent storage at Chatfield Reservoir. The opposition deadline is 10/31/21.

To date the Town has spent \$6,155 on this case between legal and water resources consulting fees.

The Town has one pending case in which we are an intervenor. The case is known as Parker v. Rein Case No. 21CW3046. The question is related to whether or not nontributary groundwater is subject to a total allowed withdrawal. This question concerns the Town's deep Denver Basin groundwater and the legal ability to continue to withdraw water in the legislatively defined "average annual amount" in perpetuity or until the supply has been exhausted. The initial status conference was 9/27/21. To date the Town has spent \$65,738 on this case and previous work opposing the proposed nontributary rules leading up to this case for legal fees.

The Town has two upcoming cases as an applicant one which will be filed in 2021 and one which will be filed in 2022. The first is a water right on the lower South Platte as part of Parker Water's Logan Farms Project. The second is for the due diligence for the exchanges on Plum Creek and its tributaries in Case No. 2012CW296 which will make additional conditional water rights absolute.

The Town has seven current active cases where the Town is an opposer. Costs for opposition to date in 2021 have been \$9,306. Costs are typically on the order of \$55,000 annually. These cases are summarized below:

1. 18CW3232 - The Town is currently an opposer in the Castle Pines Metropolitan District change of water rights and conditional appropriative rights of exchange that propose to use Castle Rock's infrastructure in Sedalia. The status conference is set for 11/19/2021. The applicant's expert disclosures are due 12/28/21 with opposers' expert disclosures due 4/26/22. The trial date is set for 10/4/22. 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 the Town's structures as claimed in the application unless the applicant comes to a separate intergovernmental agreement with the Town in the future.
2. 19CW3211 - The Town was an opposer in the Parker Water & Sanitation District's (PWSD) expansion of nontributary well fields. The Town was opposing this case because it may have caused injury to the Town's water rights adjacent to Parker's groundwater and well fields. The

Town wanted to make sure that the application contained the appropriate protective terms and conditions. Time on the docket has expired, and the Town stipulated with Parker successfully ensuring the appropriate protective terms and conditions.

3. 19CW3253 - The Town is currently an opposer in the PWSD 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. Time on the docket expired 8/31/21. The applicant has until 10/15/21 to respond to opposer comments. 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). It is also important to note that Castle Rock may partner with PWSD on the project which is related to this water court case, the Logan Farms Project.
4. 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. The Town has stipulated. The Town was opposing this case because it may have caused injury to the Town's water rights along West Plum Creek and the Town wanted to ensure that Denver JetCenter diverted in-priority. The Town was successful in ensuring there will not be any injury.
5. 20CW3214 - The Town is currently an opposer in the State Land Board, Rangeview Metropolitan District and Pure Cycle application to change conditional water rights and amend their augmentation plan. The case is currently before the Water Referee. The status conference is 10/15/21. The Town's comments concerning the SWSP are due 10/15/21. Town is opposing this case because it may cause injury to the Town's water rights on Box Elder Creek in Case No. 19CW3231.
6. 21CW3022 - The Town is currently an opposer in the Lloyd Land application for change of water right and approval of an augmentation plan. This case is before the Water Referee with opposer comments due 10/15/21 and a status conference scheduled for 10/28/21. The Town is opposing this case due to potential injury to the Town's water rights in Case No. 19CW3231.
7. 21CW3091 - The Town is currently an opposer in the Central Colorado Water Conservancy District's application to add wells to their existing augmentation plan. The initial status conference is scheduled for 10/19/21. The Town is opposing this case due to potential injury to Castle Rock's water rights in Case No. 19CW3231.

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 resources consulting services related to support of Water Court cases and the Town's water rights, water resources planning and evaluation, preparation of technical memos and engineering reports, water rights accounting, and

Item #: File #: TMP 2021-832

other as-directed matters. In total, the Town budgeted \$485,000 for Water Court cases in 2021. The Town has spent a total of \$324,643 on legal services and water resources consulting services in 2021, of which \$156,982 was spent on our Box Elder case. In 2020, a total of \$600,158 was spent on services related to Water Court cases.

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 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

**TOWN OF CASTLE ROCK WATER COURT CASES
(SEPTEMBER 2021)**

Attachment A

<i>Pending Cases as Applicant</i>			
<i>Case No.</i>	<i>Applicant</i>	<i>Claims</i>	<i>Comments and Deadlines</i>
19CW3231	Castle Rock	Application for augmentation plan, change of water rights, underground water rights, surface water rights, recharge water rights and exchanges for Box Elder Project	Before the Water Court Judge Case is on a trial track 17 opposers remaining; 4 opposers stipulated Initial status conference and trial setting conference will be set shortly to determine deadlines Trial anticipated in second half of 2023
20CW3175	Castle Rock	Application for diligence for Ravenna water rights decreed in Case No. 05CW270 on Plum Creek	Before the Water Referee No current deadlines No opposers remaining File motion for entry of decree in October of 2021
21CW3047	Castle Rock	Application for augmentation plan for Paintbrush Park Pond on East Plum Creek	Before the Water Referee 1 opposer 10/22/21 – Opposer's comments due 10/28/21 – Status conference with Referee Settlement anticipated in first quarter of 2022
21CW3109	Castle Rock	Application for augmentation plan and exchange for Mitchell Gulch Pond on Cherry Creek	Before the Water Referee 9/30/21 - Opposition deadline
21CW3142	Castle Rock	Application to change tributary underground rights decreed in Case No. 85CW480 on East Plum Creek	Before the Water Referee 10/31/21 - Opposition deadline
<i>Pending Case as Intervenor</i>			
21CW3046	Parker Water v. Rein	Complaint in Intervention and Answer in Intervention related to whether non-tributary groundwater is subject to a total allowed withdrawal	Before the Water Court Judge 6/26/23 – 5 day trial set
<i>Upcoming Case as Applicant</i>			
21CW__(TBD)	Castle Rock	Application for conditional storage right on South Platte River at Fremont Butte Reservoir	File on or before 12/31/21
22CW__(TBD)	Castle Rock	Application for diligence for exchanges on Plum Creek and its tributaries in Case No. 2012CW296	Due Diligence Deadline - 4/30/22

**TOWN OF CASTLE ROCK WATER COURT CASES
(SEPTEMBER 2021)**

<i>Pending Cases as Opposer</i>			
Case No.	Applicant	Claims	Comments and Deadlines
18CW3232	Castle Pines Metropolitan District	Application for change of water rights and for conditional appropriative rights of exchange	Before Water Court Judge 11/19/21 – Status conference 12/28/21 – Applicant’s expert disclosures due 4/26/22 – Opposers’ expert disclosures due 10/4/22– 4-day trial Issue: seeks diversions and storage in Castle Rock’s structures on Plum Creek; injury to Castle Rock’s water rights
19CW3211	Parker Water & Sanitation District	Application for expansion of non-tributary well fields	Before the Water Referee, time on docket expired 6/30/21 Castle Rock has stipulated Issue: potential well-to-well interference with Castle Rock’s wells; injury to Castle Rock’s groundwater rights
19CW3253	Parker Water & Sanitation District and Lower South Platte Water Conservancy District	Application for storage rights, appropriative rights of exchange and change of water rights on South Platte near Box Elder Creek	Before the Water Referee, time on docket expired 8/31/21 10/15/21 – Applicant to respond to comments Issue: scope of appropriation; competing priority dates with Castle Rock’s application in Case No. 19CW3231
20CW3005	Denver JetCenter	Application to make absolute a storage water right on West Plum Creek	Before Water Referee Castle Rock has stipulated 9/27/21 - Referee’s ruling entered 10/18/21- Protests to ruling due Issue: ensure water right was stored in priority; injury to Castle Rock’s West Plum Creek water rights
20CW3214	State Land Board; Rangeview Metropolitan District; Pure Cycle Corp	Application to change conditional water rights and amend augmentation plan	Before Water Referee 10/13/21 – Status conference 10/15/21 – Castle Rock’s comments to SWSP due Issue: injury to Castle Rock’s water rights in Case No. 19CW3231
21CW3022	Lloyd Land	Application for change of water right and approval of augmentation plan	Before Water Referee 10/15/21 – Opposers’ comments due 10/28/21 – Status conference Issue: injury to Castle Rock’s water rights in Case No. 19CW3231
21CW3091	Central Colorado Water Conservancy District	Application to add wells to augmentation plan	10/19/21 – Initial status conference Issue: injury to Castle Rock’s water rights in Case No. 19CW3231