



STAFF REPORT

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
Adriana Alfaro, Water Resources Program Analyst

Title: ***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 and Miller Groundwater Engineering 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 and three pending cases where we will be the applicant. Two of the cases are related to Castle Rock's future water rights along the lower South Platte River at Fremont Butte Reservoir. Castle Rock is partnering with Parker Water & Sanitation District and Lower South Platte Water Conservancy District on the Platte Valley Water Partnership (PVWP) Project. Two of the applications are for changing the place of use for senior water rights (Deer Creek and Meadow Ditch) that the Town recently acquired. Finally, one application is for proving that Castle Rock Water conducted its proper diligence on conditional renewable water rights associated with the Heckendorf wells. There is one active case in which the Town is an intervenor and another that we are a plaintiff. There are twelve cases that the Town is or was opposing that could have a negative impact (i.e. injure) our water rights. These cases are summarized in **Attachment A** with additional details in the following discussion.

To date in 2024, Castle Rock Water has spent \$594,306 of our budgeted \$891,000 on costs related to water court cases of which \$39,114 was spent on our Box Elder case.

History of Past Town Council, Boards & Commissions, or Other Discussions

On September 25, 2024, an update on the water court cases was presented to Castle Rock Water Commission.

Discussion

The Town has five active and three pending Water Court Cases in which the Town is the applicant. These cases are summarized below:

1. 21CW3185 – This case was filed on October 25, 2021. This is an application for a conditional storage right on the South Platte River at (a future) Fremont Butte Reservoir. The case is before the Water Judge. The status conference is scheduled on April 29, 2025 and the trial is scheduled between October 12 to October 30, 2026. The Town's case is trailing Parker and Lower South Platte's Case No. 19CW3253. This is a project with Parker Water and Sanitation District (PWSD) that would divert water from the lower South Platte River and pipe it south and west to Rueter-Hess Reservoir for delivery to Parker and the Town. There are 35 opposers to the case. One opposer has stipulated.

To date in 2024, the Town has spent \$20,680 on this case between legal and water resources consulting fees.

2. 22CW3155 – This case was filed on October 27, 2022. In this case, the Town seeks conditional rights of appropriative right of exchange on Plum Creek and East Plum Creek to reuse and successively use to extinction the Fremont Butte Water Rights (21CW3185) for all decreed purposes after the first use in the Town's municipal system. The case is before the Water Referee. The status conference is scheduled for December 28, 2024 and the Town's responses to opposer's comments are also due that day. There is one opposer remaining and three who have stipulated. As of June 28, 2024, the case has not yet been re-referred to the Water Judge.

To date in 2024, the Town has spent \$2,281 on this case between legal and water resources consulting fees.

3. 23CW3061 – This case was filed on May 31, 2023. The Town seeks change to the Deer Creek water rights and exchanges. The case is before the Water Referee. There are seven opposers remaining and one opposer has stipulated. Opposer's comments are due October 4, 2024. The Town is to respond to comments December 6, 2024. The status conference is scheduled December 17, 2024.

To date in 2024, the Town has spent \$21,470 on this case between legal and water resources consulting fees.

4. 24CW3037 – This case was filed March 27, 2024 and is an application for the change of Meadow Ditch water rights and exchanges. There are 7 opposers and the status conference is scheduled for November 14, 2024.

To date in 2024, the Town has spent \$7,571 on this case between legal and water resources consulting fees.

5. 24CW3052 – This case was filed in April 2024 and is an application for diligence for the Heckendorf Wells and Exchange. There are no opposers and we are prepared to file motion for entry of ruling.

To date in 2024, the Town has spent \$7,272 on this case between legal and water resources consulting fees.

6. 24CW_____ – Pending application for diligence on Chatfield Refill and Pump Station. Diligence application due 10/31/2024.

To date in 2024, the Town has spent \$22,463 on this case between legal and water resources consulting fees.

7. 25CW_____ – Pending application for diligence 12CW232 (1985 wells and prior exchanges). Diligence application due 9/30/2025.

To date in 2024, the Town has spent \$0 on this case between legal and water resources consulting fees.

8. 25CW_____ – Pending application for diligence 17CW3211 Plum Creek Diversion and Storage. Diligence application due 10/31/2025.

To date in 2024, the Town has spent \$0 on this case between legal and water resources consulting fees.

The Town has two cases in which we are the plaintiff.

1. The case is known as Parker v. Rein Case No. 21CW3046 (23SA141). The question is related to whether or not non-tributary 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. This case is being appealed at the Supreme Court. This case has been fully briefed and oral argument occurred May 7, 2024. We are awaiting the Supreme Court decision which is expected in November 2024.

To date, the Town has spent \$125,646 on this case and previous work opposing the proposed non-tributary rules leading up to this case for legal fees. In 2024, the Town has spent \$6,975 on this case.

2. The Town filed Castle Rock v. Rein Case No. 22CW3145. The case is currently under a Motion to Stay pending the outcome of 21CW3046. Case 21CW3046 is now going to the Supreme Court. See previous item for more details.

To date in 2024, the Town has spent \$25.50 on this case.

The Town has twelve current active cases where the Town is an opposer.

Costs for opposition to date in 2024 have been \$301,758. Costs are typically on the order of \$55,000 annually.

These cases are summarized below:

1. 19CW3253 – The Town was 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 during 2024. This case is before the Water Judge. The Town was opposing this case because it may have caused injury to Town’s water rights on the South Platte River and Box Elder Creek. It is also important to note that the Town may partner with PWSD on the project which is related to this water court case, the Logan Farms Project (i.e. Platte Valley Water Partnership). The Town has stipulated. The trial is scheduled for August 11, 2025 to August 29, 2025, but the Town is no longer opposing so we will just monitor progress. Outcomes in this trial will impact or ability to get approval on our water right application in the same location, case number 21CW3185, see above.

To date in 2024, the Town has spent \$433 on this case.

2. 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 Judge. We are awaiting final trial transcripts (written Rule 41(b) motions to be filed within 25 days). The Town is opposing this case because it may cause injury to Town’s water rights on Box Elder Creek in Case No. 19CW3231.

To date in 2024, the Town has spent \$271,868 on this case.

3. 21CW3193 – The Town was an opposer in the Central Colorado Water Conservancy District application for appropriative rights of exchange and approval of augmentation plan including exchanges. The case is currently before the Water Judge, and the Town has stipulated. The Town was opposing this case due to potential injury to Town’s water rights on Box Elder Creek.

To date in 2024, the Town has spent \$1,825 on this case.

4. 22CW3103 – The Town is currently an opposer to the Perry Park Metropolitan District’s application for water rights and approval of plan for augmentation with conditional rights of exchange. The case is before the Water Referee. The status conference is scheduled for January 15, 2025. The Town is opposing this case due to potential injury to Town’s rights on West Plum Creek.

To date in 2024, the Town has spent \$120 on this case.

5. 22CW3111 – The Town was an opposer to the Castle Pines Metropolitan District’s (CPMD) application for changes of non-tributary groundwater rights. The case is before the Water Referee. The Town has stipulated. The Town was opposing this case due to disputed ownership of the groundwater between the two entities. The Town has already claimed ownership of the disputed groundwater with the Town’s wellfield case 19CW3039, but has agreed to release that minor ownership of 8.8 AF annually (in the Denver aquifer).

To date in 2024, the Town has spent \$8,914 on this case.

6. 23CW3011 – The Town was an opposer to the Greatrock Water and Sanitation District application for new conditional and absolute water rights and amendments to plans for augmentation. The case is before the Water Referee. Castle Rock has stipulated. The Town was opposing this case due to potential injury to Town’s water rights on Box Elder Creek.

To date in 2024, the Town has spent \$148 on this case.

7. 23CW3121 – The Town is currently an opposer to the Parker Water & Sanitation District application for change of water rights (Herzog Ditch shares). The case is before the Water Referee. On October 18, 2024, Parker’s proposed ruling and engineering is due. On December 20, 2024, the opposer’s (Town’s) comments are due. The status conference is scheduled for January 7, 2025. The Town is opposing this case due to potential injury to Town’s water rights on Cherry Creek.

To date in 2024, the Town has spent \$1,953 on this case.

8. 23CW3124 – The Town was an opposer to the Lloyd Land application for underground water rights, an amendment of underground water rights, and approval of a plan for augmentation. The case is before the Water Judge. Castle Rock has stipulated. The Town was opposing this case due to potential injury to Town’s water rights on Box Elder Creek.

To date in 2024, the Town has spent \$4,854 on this case.

9. 23CW3129 – The Town is currently an opposer to the Mountain Plains Investment Corporation application for change of water rights and addition of replacement water to the existing plan for augmentation. The case is before the Water Judge. The status conference is scheduled for October 3, 2024. The Town is opposing this case due to potential injury to Town’s water rights on Cherry Creek.

To date in 2024, the Town has spent \$1,252 on this case.

10. 23CW3180 – The Town is currently an opposer to the Central Colorado Water Conservancy District application for change of water rights to include alternate places of storage and alternate points of diversion. The case is before the Water Referee. The status conference is scheduled for August 27, 2024. The Town is opposing this case due to potential injury to the Town’s water rights in Chatfield Reservoir and Rueter-Hess

Reservoir. The Town is trying to work with Central Colorado Water Conservancy District to partner on this water right.

To date in 2024, the Town has spent \$5,197 on this case.

11. 24CW3088 – The Town is currently an opposer to the Central Colorado Water Conservancy District application to make conditional water rights partially absolute and for finding a reasonable diligence. The case is before the Water Referee. No deadlines are yet set. The Town is opposing this case due to potential injury to the Town’s water rights in Chatfield Reservoir.

To date in 2024, the Town has spent \$215 on this case.

12. 24CW3094 – The Town is currently an opposer to the Mount Carbon Metropolitan District application for findings of reasonable diligence. The case is before the Water Referee. No deadlines are yet set. The Town is opposing this case due to potential injury to the Town’s water rights in Chatfield Reservoir.

To date in 2024, the Town has spent \$186 on this case.

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 negotiations. 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 other as-directed matters. To date in 2024, Castle Rock Water has spent \$594,306 of our budgeted \$891,000 on costs related to water court cases of which \$39,114 was spent on our Box Elder case. Legal services cost for the Town to date have been \$322,506 while engineering services have cost \$241,800.

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 while being protective of the Town’s water rights. 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