

Meeting Date: April 6, 2021

MEMORANDUM

To: Honorable Mayor and Members of Town Council

Thru: David Corliss, Town Manager

From: Mark Marlowe, P.E., Director of Castle Rock Water

Matt Benak, P.E., Water Resources Manager Lauren Moore, Water Resources Program Analyst

Title: Resolution Approving the 2021 Town of Castle Rock/United Water &

Sanitation District Spot Water Lease Agreement [Chatfield Reservoir, Douglas

County]

Executive Summary

Castle Rock Water is seeking Town Council approval of a resolution (*Attachment A*) for a spot water lease with United Water & Sanitation District (United). In anticipation of drought conditions this summer, United wishes to lease some of the Town's surplus water stored in Chatfield Reservoir to augment their downstream reservoir diversions from the main stem of the South Platte River. Completion of the Chatfield Storage Reallocation Project in 2020 prompted the Colorado Water Conservation Board (CWCB) to allow shareholders access to full storage amounts for the first year of storage. While the Town currently owns 590 acre feet (AF) of storage in Chatfield, storage of up to 2,000 AF was permitted until May 2021. After May, the Town will rent storage in excess of 590 AF. The Town currently has upwards of 1,250 AF of water stored in the reservoir with additional reusable supplies coming in each day.

If Council approves this lease, up to 400 AF of water would be released from the Town's Chatfield Reservoir storage account into the main stem of the South Platte River. This release would occur between _______, 2021. The Town will assess a \$340 per AF price for the water, with a minimum lease of 20 AF. Initial payment of the 20 AF lease will be required 10 days from approval of this lease, with the remaining quantity to be paid upon subsequent releases. The potential revenue for this lease is up to \$136,000. The agreement will terminate at the end of 2021.

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

Castle Rock Water Comn	nission was informed of the pr	oject at their March 24, 2021
meeting and		

Discussion

Castle Rock Water has a strategic goal to strive to maintain sustainable rates and fees, and demonstrate fiscal responsibility, accountability, and transparency. One of the tactics to achieve this goal is to maximize leasing opportunities for idle water rights. Over the past three years the Town has generated over \$130,000 by leasing idle water rights to downstream users (see **table 1** below). Until these water rights can be fully utilized by the Town, Staff will continue to seek out users that can put these rights to beneficial use.

Table 1. Revenue generated from leasing idle water rights to downstream users over the past three years.

2018	2019	2020
\$29,019.13	\$30,606.65	\$70,699.75

The Town currently owns 590 AF of storage space in Chatfield Reservoir and plans to eventually reach 2,000 AF of storage by 2031. As part of the option agreement the Town has with CWCB, the Town will purchase blocks of storage over the next 10 years. Currently, the Town is planning to take a deferral in 2021 and purchase 129 AF in 2022. This will provide 719 AF of total storage by the end of 2022. The Town will then have two deferrals remaining until the full storage space is realized within the 10-year period.

As mentioned in the Executive Summary, the Town has been able to store excess supplies in Chatfield Reservoir over the past year, which have exceeded the purchased storage amounts (590 AF). Since the Town does not physically have a way to utilize these excess storage supplies at this point in time, CWCB is developing a lease agreement with the Town to lease the option amount for \$50/AF. This lease with CWCB should be in place by May 2021, with a current annual lease rate for 1,410 AF (2,000 AF–590 AF) of \$70,500. The spot lease with United would allow the Town to further maximize storage space within the reservoir and will more than cover the annual lease option of storage space with CWCB.

Budget Impact

If Council approves the agreement, Castle Rock Water would receive \$6,800-\$136,000 of additional revenue in 2021. The revenue will be deposited into the Water Resources Fund Capital Leases account 211-4375-393.70-00.

Staff Recommendation

Staff recommends approval of the resolution as presented.

Proposed Motion

"I move to approve the resolution as introduced by title".

Attachments

Attachment A: Resolution (Not Attached)

Exhibit 1: Agreement (Sample agreement attached)

TOWN OF CASTLE ROCK/[LESSEE] SPOT WATER LEASE AGREEMENT

THIS SPOT WATER LEASE AGREEMENT ("Agreement") is entered into
RECITALS
WHEREAS, the Town owns certain water in the Chatfield Basin that is reusable and fully consumable after its first use for municipal purposes by the Town. From time to time, a certain amount of this water is surplus to the needs and obligations of the Town ("Surplus Water");
WHEREAS , the Town anticipates it will have Surplus Water available from time to time in 2021; and
WHEREAS, United desires to lease a certain portion of the Surplus Water from the Town in accordance with the terms and conditions of this Agreement for use as [Indicate location where water will be taken off of South Platte River].
AGREEMENT
NOW THEREFORE , in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and United agree as follows:
1. <u>Water Rights Lease</u> . The Town hereby leases to the <u>United</u> a minimum of <u>20</u> acrefeet (AF) of the Surplus Water ("Leased Spot Water") up to <u>400</u> acre-feet total, which will be made available as follows:
A. Between and with no additional water released thereafter.
2. Deliveries.
A. <u>Amount</u> . The Town has approximately 1,250 AF of water within its Chatfield Storage Account. The water will be withdrawn from the Town's storage account

- upon coordination with the Colorado Department of Natural Resources Division of Water Resources, who will make the requested release from Chatfield.
- B. <u>Location</u>. Release from Chatfield Reservoir into the main stem of the South Platte River.

- C. <u>Accounting</u>. United must provide the Town with a copy of the water accounting showing the date(s) and quantities of the release. This information will also be used to confirm and update the Town's Chatfield accounting forms.
- 3. <u>Lease Rate</u>. United shall pay to the Town \$\frac{\$6,800.00}{20,800.00}\$ for the minimum lease of twenty (20) acre-feet of water. Additional leased quantities shall be paid at the rate of \$340 per acre foot. Payment for the minimum lease quantity shall be made within ten days following mutual execution of this agreement and is non-refundable. Payment for the total quantity leased, less the initial payment, shall be made 10 days following the final day of the release, as described in Section 1.A. Payment to be remitted to Castle Rock Water; 175 Kellogg Court; Castle Rock, CO 80129; ATTN: Matt Benak, Water Resources Manager.
- 4. Quality of Leased Water. Leased Water shall be delivered "as is," but shall be of a quality that meets all standards and effluent limitations specified in Colorado Discharge Permit System Permit No. CO-0038547, as amended, or in any other discharge permit issued by the Water Quality Control Division or by the U.S. EPA authorizing discharges from the Plum Creek Water Reclamation Authority facility, such quality to be measured at the authorized discharge point(s) specified in any such discharge permit. By entering into this Agreement and utilization of the Leased Spot Water, the Botanic Gardens acknowledges that water meeting the requirements of this paragraph is suitable for augmentation purposes and will accept such water as meeting the terms of this Agreement.
- 5. <u>Lease Term.</u> The term of this Agreement shall commence upon its execution and expire December 31, 2021. By mutual written agreement of the Parties, this Lease Agreement may be renewed on the same or on different terms.
- 6. <u>Lessee's Obligations</u>. <u>United's</u> obligations under this Agreement are limited to making the payments as described in paragraph 3 above.
- 7. <u>Notice</u>. All notices which may be required to be given by either Party to the other shall be made in writing and either hand delivered or sent by first class United States mail, postage prepaid, addressed as follows, or by facsimile, or via electronic means:

If to Town:	Town of Castle Rock (Castle Rock Water) Attn: Water Resources Manager (Matt Benak) 175 Kellogg Court Castle Rock, CO 80109
with copy to:	Town of Castle Rock Attn: Town Attorney (Mike Hyman) 100 N. Wilcox Street Castle Rock, CO 80104
If to United:	United Water and Sanitation District Attn:

- 8. <u>Assignment</u>. Lessee may not assign its rights hereunder without the prior written consent of Lessor, which may be withheld in Lessor's sole discretion. In the event that Lessor consents to an assignment of Lessee's rights hereunder, the assignee shall execute an assumption agreement pursuant to which it shall assume Lessee's obligations hereunder. The terms of such assumption agreement must be approved by Lessor.
- 9. <u>Entire Agreement</u>. This Agreement represents the entire Agreement between the Parties on the matters set forth herein and supersedes all prior negotiations, representations or agreements respecting said matters whether written or oral.
- 10. <u>Binding Effect</u>. The execution of the Agreement by the Town as lessor and the Botanic Gardens as lessee constitutes the execution of a binding lease agreement by the Parties on the terms and conditions contained herein and may not be modified except in writing signed by both Parties. This Lease shall be binding on the Parties' respective successors and assigns.
- 11. <u>Controlling Law</u>. This Lease Agreement shall be governed under, and construed pursuant to the laws of the State of Colorado.

(signature page to follow)

LESSOR:		
ATTEST:	TOWN OF CASTLE ROCK	
Lisa Anderson, Town Clerk	Jason Gray, Mayor	
Approved as to form:	Approved as to content:	
Michael J. Hyman, Town Attorney	Mark Marlowe, Dir. of Castle Rock Water	
STATE OF COLORADO)) ss. COUNTY OF DOUGLAS)		
The foregoing instrument as acknow 2021 by Lisa Anderson as Town Clerk and Colorado.	Vledged before me this day of, Jason Gray as Mayor of the Town of Castle Rock,	
Witness my official hand and seal. My commission expires:		
	Notary Public	
LESSEE:		
United Water and Sanitation District		
By: Xxxx, TITLE		
STATE OF COLORADO)		
COUNTY OF) ss.		
The foregoing instrument as acknow 2021 by as	vledged before me this day of, of the United Water and Sanitation District	
Witness my official hand and seal. My commission expires:		
	Notary Public	