



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
Lisa Bright-Unger, Water Resources Project 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 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 seven active cases where we are the applicant. Three of the cases are part of our long-term renewable water plan. One of the cases is for a change in the point of quantification and one case is to change tributary (renewable) underground water rights. For the two new cases, one is for absolute water rights and the other case is for exchanges of water rights. There is one active case in which the Town is an intervenor and another that we are a plaintiff. There are nine cases that the Town is or was opposing that could injure our water rights. These cases are summarized in **Attachment A** with additional details in the following discussion.

To date in 2023, Castle Rock Water has spent \$524,885 of our budgeted \$530,000 on this work. In 2024, Castle Rock Water has budgeted \$450,000 for legal and water resources consulting fees.

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

ADD Castle Rock Water Commission update. Staff presents an update to Castle Rock Water Commission on water court cases on an annual basis.

On December 6, 2022 an update on the water court cases was presented to Town Council. Staff presents an update to Town Council on water court cases on an annual basis.

Discussion

The Town has seven 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 Court Judge. There are four opposers remaining in the case and seventeen opposers have stipulated. The remaining four opposers are close to stipulating. The status conference was held on September 6, 2023. Trial is scheduled for March 24, 2025 to April 11, 2025. If successful, this augmentation plan would allow for an additional 2,500 acre feet (AF) of supply to the Town on an annual basis from our Box Elder Creek property.

To date, the Town has spent \$1,568,274 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 \$40,000 of work in 2024.

2. 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 case is before the Water Court Judge. A status conference is scheduled for December 14, 2023. There are two opposers remaining in the case and eight opposers have stipulated. The trial has been rescheduled for March 3, 2025 to March 7, 2025.

To date the Town has spent \$52,923.80 on this case between legal and water resources consulting fees.

3. 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 Referee and will be re-referred to the Water Court Judge on October 31, 2023. 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 for delivery to Parker and the Town. There are 35 opposers to the case and one opposer has stipulated.

To date the Town has spent \$25,225.49 on this case between legal and water resources consulting fees.

4. 22CW3150 – This case was filed on October 26, 2022. The Town seeks to move the High Line Water Rights point of quantification on East Plum Creek to a new location. The change is necessary because beaver dams have made the existing location unsuitable for river administration. No other changes to the decreed water rights were requested. This case is before the Water Referee. It has been fully stipulated. The motion for entry of the decree is pending with Court.

To date the Town has spent \$17,550.52 on this case between legal and water resources consulting fees.

5. 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 October 26, 2023 and Castle Rock's responses to opposer's comments are also due that day. There are two opposers remaining and two who have stipulated. On December 29, 2023 the case will be re-referred to the Water Court Judge.

To date the Town has spent \$8,913.56 on this case between legal and water resources consulting fees.

6. 23CW3002 – This case was filed on January 20, 2023. The Town seeks absolute water rights in the Chatfield Reservoir. The case is before the Water Referee. One opposer is remaining and the status conference has not been scheduled yet.

To date the Town has spent \$5,891.38 on this case between legal and water resources consulting fees.

7. 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 eight opposers remaining and the initial status conference is scheduled for September 27, 2023.

To date the Town has spent \$16,905.02 on this case between legal and water resources consulting fees.

The Town has one pending case in which we are an intervenor.

1. The case is known as Parker v. Rein Case No. 21CW3046 (23SA141). 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. This case is being appealed at the Supreme Court. The opening brief is due November 3, 2023 and the Defendant/Appellees' answer brief is due on December 8, 2023. And the reply brief is due back on December 29, 2023.

To date the Town has spent \$110,584.49 on this case and previous work opposing the proposed nontributary rules leading up to this case for legal fees.

The Town has one case in which we are the plaintiff.

1. 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 the Town has spent \$6,535.00 on this case.

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

Costs for opposition to date in 2023 have been \$70,397. Costs are typically on the order of \$55,000 annually.

These cases are summarized below:

1. 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. The case is before the Water Court Judge. Trial has been vacated.
2. 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 Judge. 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. 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. Castle Rock has stipulated. The trial is scheduled for August 11, 2025 to August 29, 2025.
3. 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. The trial is set for July 22, 2024. The Applicant's expert disclosures are due on October 16, 2023 and Castle Rocks' expert disclosures are due on February 12, 2024. The Town is opposing this case because it may cause injury to the Town's water rights on Box Elder Creek in Case No. 19CW3231.

4. 21CW3022 – The Town is currently an opposer in the Llyod Land application for change of water rights and approval of an augmentation plan. This case is before the Water Court Judge. Lloyd Land's expert disclosures are due on November 28, 2023 and Castle Rock's expert disclosures are due on March 26, 2024. The Town is opposing this case due to potential injury to the Town's water rights on Box Elder Creek in Case No. 19CW3231.
5. 21CW3193 – The Town is currently an opposer in the Central Colorado Water Conservancy District's application for appropriative rights of exchange and approval of augmentation plan including exchanges. The case is before the Water Referee, but will be re-referred to the Water Court Judge. Central was required to respond to comments by September 29, 2023. The Town is opposing this case due to potential injury to Castle Rock's water rights on Box Elder Creek in Case No. 19CW3231.
6. 22CW3032 - The Town is currently an opposer to the Dakan Ranch II application for conditional water storage right. The case is currently before the Water Referee. Castle Rock has stipulated. There was a potential for injury to Castle Rock's senior water rights on West Plum Creek, but this was addressed in the stipulation.
7. 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 was scheduled for September 6, 2023. The Town is opposing this case due to potential injury to the Town's water rights on West Plum Creek.
8. 22CW3111 – The Town is currently an opposer to the Castle Pines Metropolitan District's (CPMD) application for changes of nontributary groundwater rights. The case is before the Water Referee. The status conference was scheduled for October 4, 2023. The Town is 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.
9. 22CW3011 – The Town is currently an opposer to Greatrock Water and Sanitation District's application for new conditional and absolute water rights and amendments to plans for augmentation. The case is before the Water Referee. The Town's comments were due September 29, 2023. The status conference was scheduled for October 10, 2023. The Town is opposing this case due to potential injury to the Town's water rights on Box Elder Creek 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 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. In total, the Town budgeted \$530,000 for Water Court cases in 2023. The Town has spent a total of \$524,885 on legal services and water resources consulting services in 2023, of which \$250,887 was spent on our Box Elder case. In 2022, a total of \$662,001.41 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 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