



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 Program Analyst

Title: **Ordinance Amending Various Provisions within Chapter 4.04 of the Castle Rock Municipal Code Regarding the Dedication of Water Rights as a Condition of Annexation to the Town (1st Reading) [Castle Rock Water Service Area]**

Executive Summary

The purpose of this memorandum is to seek Town Council approval of an ordinance (see **Attachment A**) adopting changes to the Town of Castle Rock Municipal Code (Code) Section 4.04 – Water Dedication Code – First Reading. The Town is the exclusive provider of water service within its municipal boundaries. In alignment with the philosophy that growth pays for growth, prior to or at the time of development proprietary water resources must be obtained to provide water service to developing areas in and around the Town. In accordance with existing code, new connections to the municipal water system must be supported by a sufficient dedication of Denver Basin groundwater and by the payment of System Development Fees to fund the acquisition and development of renewable water supplies. Further, the Code has established requirements for annexation properties both within and outside of our service area. For properties outside of our established service area, additional renewable water supply (wet water) requirements apply (see **Attachment B**).

For those annexation properties considered to be infill on **Attachment B**, it is desirable to accommodate annexation where possible. Revisions to Section 4.04 of the Code are necessary to reflect current business practices of Castle Rock Water that align with the above objective, other goals of the Town and also to make some administrative revisions.

Revisions were made to: 1) allow the Director of Castle Rock Water to waive the requirement that groundwater be adjudicated prior to dedication; 2) allow Town Council or the Director to waive the requirement of a title opinion for the dedication of water; 3) remove development credit for not-nontributary groundwater so a dedicator does not need to adjudicate a plan for

augmentation prior to dedication; and 4) require dedication of any tributary water associated with a property. Also, administrative revisions were made to clarify and correct some inaccuracies.

Notification and Outreach Efforts

Castle Rock Water presented the proposed revisions to Code Section 4.04 at the January 2024 Economic Development Council Water Sub-Committee meeting for information and feedback.

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

Town Council last adopted an ordinance revising Section 4.04 of the Code on May 3, 2022.

The requested changes to Section 4.04 – Water Dedication Code was presented to the Castle Rock Water Commission on January 24, 2024 and they voted unanimously 7 to 0 to recommend that Town Council approve the changes to Town Code.

Discussion

The requested changes are summarized below by each sub-section of the Code and the specific edits are included in ***Attachment A***.

4.04.030 - Definitions. The definition of groundwater rights was revised to explicitly identify nontributary and not-nontributary groundwater and to include adjudicated and unadjudicated groundwater. The definition of tributary water rights was also revised to require that the water rights be adjudicated. The definition of water rights was added, to mean both groundwater rights and tributary rights.

4.04.050 - Required dedication of water rights with land use approval. It will be required that all water rights associated with a property be conveyed to the Town. A new Section D was added, which removes credit for any not-nontributary groundwater, even if the dedicator has an augmentation plan. It was also clarified that a dedicator would not get credit for any nontributary groundwater identified as an augmentation source for a not-nontributary augmentation plan. This broadened the scope of the current limitation in Section E related only to not giving credit for groundwater in the Laramie-Fox Hills aquifer that is an augmentation source.

4.04.060 - Manner of conveyance. Section B was revised to allow the dedicator to: 1) provide a title opinion on which the Town may explicitly rely for any water rights; 2) reimburse the Town for a title opinion completed by the Town's water rights counsel; or 3) prosecute a quiet title action. For 1) it allows the Town's water rights counsel to confirm that it is reasonable for the Town to rely upon the dedicator's opinion at the dedicator's expense. It also allows Town Council or the Director to waive the title opinion requirement in unique circumstances.

4.04.070 - Required adjudications. Section A was revised to allow the Director to waive the requirement that groundwater be adjudicated prior to dedication in special circumstances. It allows the Town to withhold some or all of the development credit associated with the groundwater pending the Town's adjudication. Section B, which required the dedicator to adjudicate an augmentation plan was revised, since the Town is not going to provide credit for

not-nontributary groundwater. Section B was changed to allow the Town to decide whether to participate as a co-applicant in any Water Court applications, since the adjudications and augmentation plans are no longer mandatory.

4.04.080 - Manner of compliance. It was clarified that groundwater from other properties must be nontributary to get development credit for Sections 2A and B. In addition, the Town will not accept not-nontributary groundwater, even with an existing augmentation plan in Section 3. It was clarified that the dedication requirement is a number of acre-feet (AF) of groundwater rights for each AF of water demand. The specific costs for cash in lieu were removed and it was specified that the Town will maintain a schedule of the then-current costs per AF of demand.

4.04.100 – Tributary Water Rights and Augmentation Plans. The provision regarding not-nontributary groundwater augmentation plans was removed. It was clarified that, while all tributary water rights must be conveyed to the Town, the Town has the discretion whether to grant water credit for tributary water rights and tributary augmentation plans as outlined in a dedication agreement.

Various Places. A change was made from reference of “water rights” to “groundwater rights” in all appropriate locations. The change was necessary to distinguish between all water rights, groundwater rights and tributary water rights.

Budget Impact

Adopting these code changes will provide for more flexibility in negotiating the most accurate and current costs for obtaining applicable water rights and water resources at the time of entitlement of new development and/or service agreement.

Staff Recommendation

Staff recommends approval of an ordinance adopting the recommended changes to the Town Municipal Code as presented.

Proposed Motion

“I move to approve the Ordinance as introduced by title on first reading.”

Alternative Motions

“I move to approve the Ordinance as introduced by title, with the following conditions: (list conditions).”

“I move to continue this item to the Town Council meeting on _____ date to allow additional time to (list information needed).”

Attachments

Attachment A: Ordinance

Attachment B: Inclusion Map