



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

Title: **Resolution Approving the Infrastructure Development and Purchase Agreement and Water Lease Agreement between the Town of Castle Rock, acting by and through the Castle Rock Water Enterprise, and Tallgrass Colorado Municipal Water, LLC** [*Lost Creek area of Weld County, Colorado*]

Executive Summary

Castle Rock Water (CRW) staff request Town Council approval of a Resolution (see **Attachment A**) for the Infrastructure Development and Purchase Agreement and Water Lease Agreement between the Town of Castle Rock and Tallgrass Colorado Municipal Water, LLC (Tallgrass).

CRW owns the Box Elder property and recently adjudicated water rights on the property of 557 acre feet (AF) in Weld County along with eleven wells and associated water rights with a decreed volume of 1,492 AF in the Lost Creek Designated Basin. Furthermore, CRW owns 770 AF of water rights along the South Platte River as part of the Rothe Recharge project. Collectively, the property and water rights are the backbone of what will be the Town's Box Elder renewable water delivery project. The Box Elder project has been identified as a key piece of the Town's renewable water supply portfolio accounting for around 15% or more of our future water demands. The Town obtained the final Water Court decree for the Box Elder augmentation plan and water rights on April 18, 2024.

The overall concept is to gather raw water from the Lost Creek wells, deliver that water to the Box Elder property for augmentation of Box Elder alluvial well pumping and direct delivery to East Cherry Creek Valley's (ECCV) Water Treatment Plant. The Town plans to enter into subsequent agreements with ECCV for treatment and pumping of our water and delivery within existing pipeline infrastructure back to the Town.

The Town has identified an opportunity to work with a private entity (Tallgrass) to construct some of the key pieces of pipeline and pumping infrastructure to be able to spread out the large capital costs over time and to have the opportunity to purchase additional water rights (1,000 AF) that Tallgrass currently owns. This additional water will help the Town achieve its goal of 100% renewable water (in an average water year)

by 2065. Furthermore, leasing of our Lost Creek water to Tallgrass in the near term will allow the Town to realize some additional revenue helping to offset the overall cost of the Box Elder project with a positive benefit to our ratepayers.

The Infrastructure Development and Purchase Agreement will involve improvements to all eleven (11) wells that Castle Rock owns in the Lost Creek designated basin. These improvements will allow Tallgrass to pump, control and meter the wells as needed for their industrial (oil and gas development) operations in the near term. Tallgrass will construct approximately 9 miles of water transmission pipeline to tie the wells together and transmit the water to their water delivery system located north of our well field.

Within the 1-year term of this agreement, Castle Rock and Tallgrass will continue to negotiate on a larger infrastructure development project for a pipeline and pumping system from the Castle Rock wells back to the Box Elder property and further on to ECCV's treatment plant. If the two parties cannot come to agreement on the subsequent infrastructure phases, Castle Rock will purchase the improved wells and pipeline system from Tallgrass for \$15,000,000. If Tallgrass were to fail in constructing a complete water delivery system as part of Phase 1A, the Agreement has a 'Parental Guaranty' term where Tallgrass' parent company would need to provide adequate funding for Castle Rock to complete the water delivery system.

The Water Lease Agreement allows Tallgrass to lease Castle Rock's water rights at \$1,550 per acre-foot through December 31, 2027. This agreement would provide additional revenue to Castle Rock in the short term and help to offset some of the capital costs associated with the Box Elder project. There is a 257 AF take-or-pay provision over the three-year term of the Water Lease Agreement, so Castle Rock would receive a minimum of \$398,500 as part of this lease and could receive upwards of \$6,000,000 if Tallgrass elects to lease the majority of the water rights over this three-year period.

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

On July 24, 2024, Castle Rock Water staff presented this opportunity to the Castle Rock Water Commission who encouraged staff to continue to develop an Agreement with Tallgrass for Phase 1A.

Castle Rock Water staff presented this item to the Castle Rock Water Commission at their meeting held on September 25, 2024, and the Castle Rock Water Commission voted 5 to 0 to recommend Town Council approval of the Resolution as presented.

Discussion

As part of the Town's hybrid renewable water solution, the Town purchased the 850-acre Box Elder Farm and closed on the property on December 30, 2016. This farm is located approximately six miles east of Lochbuie, CO in southern Weld County as shown in **Attachment B**. The water rights associated with this property will serve as a source of supply, along with the Lost Creek Basin wells and Rothe Recharge water rights, for the increased water demands that the Town will face as population growth continues.

The Box Elder project has been envisioned as an approximately 2,500 AF yield water delivery project. The overall concept is to gather raw water from the Town's Lost Creek wells, deliver that water to the Box Elder property for augmentation of Box Elder alluvial well pumping and direct delivery to ECCV's Water Treatment Plant. The Town plans to enter into subsequent agreements with ECCV for treatment and pumping of our water and delivery within existing pipeline infrastructure back to the Town.

Because the infrastructure is not yet in place to transport this water to ECCV, the Town has been leasing the Lost Creek water to other entities for agricultural purposes, which has helped to generate approximately \$192,000 in revenue for Castle Rock Water since 2018.

The Town now has an opportunity to lease our Lost Creek water to Tallgrass at a much higher lease rate than what the Town has been leasing for agricultural purposes. Additionally, Tallgrass is agreeable to constructing what we refer to as Phase 1A of the Box Elder infrastructure project. This will consist of approximately 9 miles of a high-density polyethylene (HDPE) pipeline gathering system that ties all eleven (11) of Castle Rock's Lost Creek wells together to give the ability to tie that water into Tallgrass' adjacent water gathering system located just to the north of Castle Rock's wells (see **Attachment C**). Additionally, Tallgrass will be improving (redrilling and equipping) the Lost Creek wells since these wells are currently agricultural wells and in need of improvement for industrial and municipal production purposes.

Importantly, this well gathering system is infrastructure that will be needed by Castle Rock in the future when water must be delivered to the Box Elder property and subsequently to ECCV for treatment and delivery to the Town to meet its customer's demands. Tallgrass will operate the improved wells and own the pipeline gathering system initially. The Town will take ownership of this system at such time that the larger infrastructure system is in place and ready to delivery water to ECCV, or, if an agreement cannot be reached with Tallgrass on a larger infrastructure deal, by October 2025.

The Town and Tallgrass would like to enter into an agreement where Tallgrass constructs the pipeline gathering system; improves all eleven wells; develops a telemetry system and ties the wells into Tallgrass' system for lease of the water. The agreement states that the two parties will continue to negotiate towards a larger deal where Tallgrass will construct the other necessary infrastructure in phases and the Town pays down the construction and financing costs over time. Other infrastructure that is needed includes a booster pump station out of Lost Creek, a raw water pipeline to Box Elder, new wells on the Box Elder property; a pipeline manifold system on the Box Elder property; infiltration/percolation beds on Box Elder; a pump station at Box Elder to pump water to ECCV and treatment and pumping capacity additions to ECCV's system. This entire infrastructure is anticipated to cost \$80 to \$100 million to implement over the next ten years.

If a larger deal can be struck with Tallgrass, they have an additional 1,000 AF of water they are willing to sell to Castle Rock at an approximate price of \$39,000 per AF (this includes the water sale and a transmission fee). This water would represent approximately 5% of the Town's future water demands and would bolster our goal of being 100% renewable by 2065. This water would also tie in readily to the overall Box Elder project since Tallgrass's and Castle Rock's Lost Creek supplies would be tied

together.

If Tallgrass and the Town cannot come to an agreement on the large project, the Town agrees to buy the newly constructed Lost Creek gathering system for \$15 million.

Key Terms of the Infrastructure Development and Purchase Agreement:

- Tallgrass to manage, design, permit, & construct well gathering system (47,150 feet of pipe and appurtenances and 11 new wells, pumps, controls and appurtenances);
- Term – 1 year from execution;
- Construction completion within 6 months;
- Phase 1B and 2 negotiated or if no agreement \$15,000,000 purchase
- Concurrent water lease agreement;
- Partial assignment of Castle Rock easements valued at \$775,000;
- Castle Rock Water maintains ownership of wells throughout;
- Operation and maintenance costs include primarily *Ad Valorem* taxes and insurance \$100k;
- Parental guaranty;
- Warranty of 1 year from acceptance by Castle Rock Water.

Key terms of the Water Lease Agreement

- Lease up to 4,476 AF – potential value of \$6,944,961;
- Term is a little more than 3 years through 12/31/27;
- Price is \$1,551.60/AF vs. \$44/AF for agricultural leases;
- Firm take or pay of 257 AF or \$398,750;
- Right of first refusal if we want to lease to others;
- As is / where is lease;
- Metering and calibration of meters to be done by Tallgrass;
- Monthly billing.

Castle Rock Water brought in Burns and McDonnell Engineering to review the infrastructure being provided by Tallgrass in Phase 1A and provide an engineering estimate on the capital costs of this infrastructure. Burns and McDonnell Engineering estimated the total cost to permit, purchase easements, manage, design, and construct Phase 1A at \$24.16 million. This is over \$9 million more than the Tallgrass capital cost proposal. This work was done to ensure that Castle Rock Water is getting a good deal on the constructed infrastructure from a cost standpoint.

Castle Rock Water also hired legal counsel to review the private / public partnership agreements to ensure that these agreements met the Town's needs and worked within the Town's required contracting framework.

Budget Impact

If the Town and Tallgrass cannot come to agreement to continue to negotiate a deal, the Town will owe \$15 million by October 2025 (one year following the execution of the Infrastructure Development and Purchase Agreement). Per the Water Lease Agreement, the Town expects a minimum of \$398,750 of revenue from water leases to Tallgrass over the three-year lease term and potentially up to \$6 million if Tallgrass takes full advantage of our water right volumes for their oil and gas development

operations. While Tallgrass owns the gathering system, Castle Rock will be responsible for operations and maintenance costs which primarily include *Ad Valorem* taxes and insurance at a cost of approximately \$100,000 per year. Once Castle Rock owns the system the tax component of approximately \$90,000 per year could potentially go away based on our tax-exempt status.

Staff Recommendation

Staff and Castle Rock Water Commission recommend that Town Council approve the Infrastructure Development and Purchase Option Agreement between the Town of Castle Rock and Tallgrass Colorado Water, LLC.

Proposed Motion

“I move to approve the Resolution as introduced by title.”

Alternative Motions

“I move to approve the resolution 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: Resolution
Exhibit 1: Agreement
Attachment B: Location Map
Attachment C: Lost Creek Wells Location Map