



# Town of Castle Rock

## Agenda Memorandum

**Agenda Date: 8/16/2016**

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**Item #: 17. File #: TMP 2016-1269**

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**To:** Honorable Mayor and Members of Town Council

**From:** Mark Marlowe, Utilities Director  
Matt Benak, Water Resources Manager

### **Resolution Approving the Contract for Purchase and Sale of PV, LLC Water Rights**

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#### **Executive Summary**

The purpose of this memorandum is to request Town Council approval in the form of a resolution to enter into a contract for purchase and sale (Agreement) of the PV, LLC water rights (see **Attachment A**). The agreement for purchase of these water rights is contingent on the Town also purchasing the Keenesburg pipeline (see **Attachment B**) for the draft of the pipeline purchase agreement). These water rights could be used as an augmentation water source in conjunction with the Box Elder Creek well field for the Alternate Source of Water Supply Project hybrid solution. The Keenesburg pipeline makes use of this water for augmentation much easier as this pipeline goes from the water rights almost to Box Elder Creek. The nature of these water rights would even allow that they could be used as direct flow water supply given the fact that they have already been legally changed for municipal use and are exportable from the Lost Creek Basin.

On April 1, 2014, the Town entered into an option agreement to purchase the Box Elder Well Field property that has the potential to be the diversion point for approximately 2,500 acre-feet of renewable water supply annually. Water pumped from the property may have to be augmented with water at locations downstream along Box Elder Creek or the South Platte River. We have included a map (see **Attachment D**) showing the general location of these water rights which are in close proximity to the Box Elder property. These water rights could account for 1000± acre-feet of this renewable water supply. The water rights are associated with shallow alluvial wells and the final volume of water is dependent on the wells selected. Staff will work with seller to select wells based on their proximity to our planned infrastructure and average total dissolved solids concentration (water quality) in the water produced.

The current purchase price in the agreement is \$9,750 per acre-foot equating to a total purchase price of approximately \$9,750,000 for 1,000 acre-feet of renewable water which includes the well permits, easements for the wells, and existing infrastructure as well as easements for collection pipelines. The final purchase price will be dependent on the final acre-feet purchased which will be determined based on the wells selected. Staff estimates the total will not exceed 1,100 acre-feet or \$10,725,000. While this is higher than what we paid for the Rothe Water Rights, these water rights

are already approved for municipal use and do not need to go to Water Court for the Town to use them. The Town would also need to pay a brokerage fee of 5% or approximately \$487,500 to \$536,250 to Stillwater in accordance with our brokerage agreement dated February 19, 2013 and amended on February 17, 2015, again depending on the final amount. As noted above, the purchase of these water rights is contingent on the simultaneous purchase of the Keenesburg pipeline for approximately \$2.23 million with annual payments of \$63,098.

Within the Agreement, the Town has 90 days to complete due diligence activities and will provide earnest money in the amount of \$220,000. If the Town elects to terminate the Agreement within 60 days, the entire earnest money deposit will be returned. If we terminate between 60 and 90 days, only \$170,000 of the earnest money will be returned.

Utilities Commission and staff recommend that Town Council elect to enter into the Agreement. This recommendation is further strengthened as the 1041 Permit process that was being considered by Weld County has been discontinued. Weld County has completed and implemented a Use by Special Review process for pipelines in the County that move water out of the County that is much more reasonable in scope.

Together with the Rothe Water Rights purchased in 2015, this would give the Town approximately 1,770 acre-feet of water in the area. Having this amount of water in the area provides a strong argument for proceeding with the purchase of the Box Elder Well Field. Closing on the well field this year saves \$1.1 million (as compared to the 2017 budgeted base cost) for the well field.

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

In 2011, staff was directed by Town Council to evaluate other potential water supply projects (Alternative Source of Water Supply Projects) to ensure that Castle Rock fully understood the options available in addition to WISE. The Town developed a Request for Proposals (RFP) process that could accomplish that in a public, transparent process.

Through various public meetings in 2012, Town Council considered the risks, benefits, and costs of all of the proposals submitted including a hybrid option that couples the WISE project with one of the other proposals. As a result of these meetings, Town Council directed staff to focus efforts on a scaled back (hybrid) renewable water project (2,000 - 4,000 acre-foot solution) and explore in more detail, the hybrid option. Staff has been providing Town Council regular updates to the progress of the hybrid water supply option.

On April 1, 2014, Town Council approved the 5-1/2 year option agreement for the Box Elder Creek Well Field and Farm. The Town has paid \$350,000 to date to extend the option to October 1, 2016.

On May 25, 2016, the Utilities Commission unanimously recommended that Town Council enter into a Purchase and Sale Agreement with PV, LLC.

On July 27, 2016, the Utilities Commission unanimously recommended that Council enter into a Purchase and Sale Agreement with PV, LLC and Pioneer Metropolitan District No. 3/Town of Keenesburg for the purchase of water rights and pipeline capacity as both agreements are

contractually connected.

### Discussion

The first piece of the puzzle for the alternate northern water supply is the diversion system for future renewable water supply rights that the Town may obtain in the South Platte River basin or in a nearby designated groundwater basin. The Box Elder Well Field was put forward as just such a diversion. This well field is located approximately six miles east of Lochbuie, CO in southern Weld County as shown on **Attachment D**. The well field contains eleven existing permitted alluvial wells, 850 acres of property, approximately 300 acre feet of consumptive use Henrylyn Irrigation District (HID) water rights, and 300 acre feet per year of Ground Water Management Subdistrict of the Central Colorado Water Conservancy District (Central GMS) irrigation water rights.

On April 1, 2014 Town Council approved a resolution for the Town to enter into a 5-1/2 year option agreement on the well field with the Box Elder owners. The Town made its first option payment of \$50,000 in April 2014 which extended the option agreement for 6 months. The Town made its second option payment of \$100,000 on October 1, 2014 which extended the option agreement for one year until October 1, 2015. The third option agreement payment of \$200,000 was due on October 1, 2015 and was paid by the Town. Terms of the option agreement are summarized below:

- A 5-1/2 year option with annual payments as follows:
  - \$50,000 (during the first six months - paid Apr. 2014)
  - \$100,000 at the end of year 1 - paid Oct. 2014
  - \$200,000 at the end of year 2 - paid Oct. 2015
  - \$300,000 at the end of year 3
  - \$300,000 at the end of subsequent years
  - Each payment is non-refundable but accrues towards the final purchase price
- A base purchase price of \$9.407 million for the well field, 850 acres of land, non-renewable water rights, 300 acre-feet (AF) of consumptive use Henrylyn Irrigation District (HID) water rights, and 5 shares of FRICO-Barr water rights.

The Box Elder owners proposed to offer the Town an incentive to close on the Box Elder Well Field early. The following list shows a schedule of timing of closing and the cost to the Town:

<u>Close in Year</u>	<u>Total Cost</u>	
2014	\$6,044,659	
2015	\$7,178,032	
2016	\$8,311,406	
2017	\$9,407,000	Primary Base Cost
2018	\$10,535,840	
2019	\$11,664,680	

The 2016 price is currently valid through October 1, 2016. Staff has negotiated a 60-day extension through December 1, 2016 to hold the current \$8.3 million price. The benefits of the current option include:

- The cost is less than the amount budgeted for the project;
- The amount of water that can be diverted in a sustainable manner under both a constant pumping and municipal curve is approximately 2,500 acre feet and within the constraints established for the hybrid approach;
- This option provides the lowest near term cost and allows us to continue our due diligence for up to 5-1/2 years before making a final commitment;
- This option provides the most time to secure renewable water rights prior to investing in the well field;
- With the HID water, the Town would have the ability to engage on how the District operates.

Initially, there were few drawbacks to the current option. The primary risk was the securing of appropriate water rights and the water court requirements to put these rights to municipal use. The staff has been working very hard to secure water rights in a timely manner so that we can close early and save our customers a very significant sum of money. The Agreement for 1,000 AF of water rights proposed in this memo supports closing early on the well field as it gets us close to the 2,500 AF we were seeking. This savings would have the impact of reducing the amount of future projected needed rate increases.

Town staff has performed due diligence on the Box Elder Well Field including a property value assessment and a Phase I Environmental Site Assessment. Both assessments were completed in June 2014 and showed no negative issues. Additionally, the Town is developing a plan to engage the local community, doing further testing of the hydrogeology of the aquifer, quarterly stream flow monitoring of Box Elder Creek, and is preparing a groundwater modeling plan with our consultants to gather key data in preparation for Water Court.

There was a new drawback to the project that occurred late last year. Weld County announced it was interested in moving forward with a 1041 Permitting Process. House Bill 74-1041, allows local governments to regulate a variety of development activities with guidance from the State. The 1041 process allows local governments to identify, designate, and regulate areas and activities of state interest at a local level. Exporting water from the county as part of our plans for this project would have been considered an activity of interest that could have been regulated by Weld County under a 1041 process. Ultimately, Weld County shifted from a 1041 Permit process to a Use by Special Review process, which has a lower level of risk. The final Use by Special Review process implemented by Weld County is included as **Attachment C**. Pipelines smaller than 16-inches in diameter are exempt, and this means Castle Rock would likely be exempt.

As part of the PV LLC water rights purchase, the Town is considering purchasing seven out of a portfolio of 27 wells from PV, LLC in the Lost Creek Basin. The water quality from each well has been tested. The final selection criteria for the wells is to achieve a blended water quality that is economically feasible to treat to drinking water standards. Additionally, a pipeline (Keenesburg well water transmission line) exists that could be utilized to convey the water from the PV wells to existing canals and reservoirs near the Box Elder Creek Well Field. This pipeline would be part of an easy

way for the water to be used as an augmentation source for Box Elder Creek.

A separate agreement is being developed that would allow Castle Rock to purchase from Pioneer Metropolitan District No. 3 a 67 percent stake in this waterline for approximately \$2.23 million plus annual payments of \$63,098.58 for the next 16 years. This agreement will be brought to Town Council concurrently as a complement to the purchase of the PV LLC water rights, assuming that purchase proceeds.

Castle Rock has been in discussions with East Cherry Creek Valley (ECCV) regarding the potential to purchase treatment capacity in their existing water treatment facility located along I-76 in Brighton (see **Attachment D**). This treatment plant feeds the North South Pipeline in which Castle Rock already owns capacity. This treatment plant is a reverse osmosis plant and could treat the water from the PV wells with no issue. Costs for capacity are being discussed with ECCV. Very preliminary cost estimates show capacity costs of approximately \$6 million per million gallons per day of treated capacity (i.e. at 2,500 acre-feet, the reserved treatment capacity would be approximately \$13.4 million).

The benefits to the Town of Castle Rock for the purchase of the PV, LLC water rights include:

- Obtain approximately 1,000 acre-feet of water rights, which will bring the total augmentation water for the Box Elder project to 71%.
- The water has already been changed from agricultural use to municipal use, thus no additional water court costs would be needed for this water.
- The water could be used for direct pumping and export, if the Town decided not to proceed with the Box Elder property acquisition.
- The water is within the amounts planned and budgeted for from a per acre cost standpoint.

The disadvantages include:

- The price for these water rights is on the high side of what Castle Rock would like to pay.

### **Budget Impact**

The final budget impact will depend on the final number of acre-feet purchased. The target is 1,000 acre-feet but for purposes of potential budget impact, we have used 1,100 acre-feet as the final volume will be decided by the wells we select.

- At \$9,750 per acre-foot, the purchase of the wells, easements and water rights will be approximately \$9,750,000 for 1,000 acre-feet. Castle Rock Water has been using \$10,000 per acre-foot as a budget estimate for the water rights in the area.
- The brokerage fee is 5% of the closing cost, or between \$487,500 to \$536,250.
- Due diligence costs are anticipated to be approximately \$100,000.
- The Town budgeted \$4 million for water rights acquisition as part of the Alternative Source of

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Supply Project in 2016. A 2016 third quarter budget amendment of \$7,361,250 million would be required to complete the purchase of the PV LLC water rights. Funds are available in the Water Resources capital reserves. The breakdown showing the maximum expenditures proposed is shown below:

Purchase Price	Up to \$10,725,000
5% Brokerage Fee	Up to \$536,250
Due Diligence	\$100,000
Total Budget Required	Up to \$11,361,250
2016 Budget Appropriation	\$4,000,000
Proposed Budget Amendment	Up to \$7,361,250

- The table below identifies the appropriation account to be used to fund the purchase of these water rights.

Fund	Amount
211-4375-443.77-30 Alternative Source of Supply Project Code WRPVWR	Up to \$11,361,250

Again, it is important to note that the closing on these water rights is contingent on the concurrent purchase of the Keenesburg pipeline. The cost for this pipeline is \$2.23 million and there are adequate capital reserves to complete this purchase in the Water Resources fund.

**Staff Recommendation**

Staff recommends Town Council approve the Contract for Purchase and Sale of the PV, LLC water rights.

**Proposed Motion**

*"I move to approve the Resolution as introduced by title."*

**Attachments**

Attachment A: Resolution  
Exhibit 1: Agreement  
Attachment B: Draft Keenesburg pipeline contract  
Attachment C: Weld County UBSR process  
Attachment D: Well Location Map