

**RESOLUTION NO. 2014-04**

**A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT  
FOR WATER SERVICE BETWEEN DOMINION WATER AND SANITATION  
DISTRICT, ACTING IN ITS CAPACITY AS A WATER ACTIVITY ENTERPRISE  
AND THE TOWN OF CASTLE ROCK ACTING THROUGH THE TOWN OF CASTLE  
ROCK WATER ENTERPRISES**

**WHEREAS**, Dominion is a quasi-municipal corporation and political subdivision of the State of Colorado formed and organized pursuant to Title 32 of the Colorado Revised Statutes, whose current service area is described in the attached *Exhibit 1*; and

**WHEREAS**, the Town is a home rule municipal corporation; and

**WHEREAS**, Dominion is authorized, pursuant to its service plan, to provide water services to customers located both within and outside of its boundaries for multiple uses, including for human consumption and household use, commercial, irrigation, industrial and other uses; and

**WHEREAS**, Dominion plans to provide wholesale water service to the proposed Sterling Ranch development northwest of the Town; and

**WHEREAS**, pursuant to its municipal charter, Title 31, C.R.S. and the Castle Rock Municipal Code the Town is authorized to provide water services to customers located both within and outside of its boundaries; and

**WHEREAS**, pursuant to the Colorado Constitution, Article XIV, Section 18(2)(a) and Section 29-1-203, local governments may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each; and

**WHEREAS**, the Town and Dominion support regional water supply projects, recognizing such projects benefit participants by reducing duplication of facilities and operations, thereby reducing the costs to the Town's citizens and Dominion's customers; and

**WHEREAS**, Dominion and the Town seek to identify infrastructure that they may use jointly or cooperatively to facilitate efficient and cost-effective delivery of water to their customers; and

**WHEREAS**, Dominion has an option to purchase water located south of the Town, which can be delivered into the Town's potable water system, and anticipates the need for delivery of such water to Dominion is likely to arise in approximately 2018, depending on the timing of development of the Sterling Ranch and availability of other water supplies; and

**WHEREAS**, both the Town and Dominion are members of the South Metro WISE Authority and participants in the WISE Project, a cooperative regional water supply project and this is the first phase of the WISE Project; and

**WHEREAS**, the Town and Dominion anticipate Dominion's WISE Project water will be delivered through the Town's system and other shared facilities, resulting in reduced capital for required infrastructure and lower operating costs to both parties; and

**WHEREAS**, the Town will maintain capacity in its water system sufficient to enable it to meet its commitment under this Agreement provided Dominion meets its financial commitments under this Agreement; and

**WHEREAS**, both Castle Rock and Dominion are committed to sustainable, reliable conjunctive use of water combining ground water with renewable supplies, supported by aggressive demand management, conservation and reuse; and

**WHEREAS**, both Parties are considering various options to acquire, build or expand water treatment capacity to serve their respective customers; and

**WHEREAS**, Dominion now has and plans to obtain other water supplies through or in cooperation with water providers other than the Town; and

**WHEREAS**, Dominion expects to reuse as much of its water supply as is legally and physically possible, and may do so in cooperation with Roxborough Metropolitan District and/or others; and

**WHEREAS**, this agreement authorizes Dominion to deliver treated water into the Town's potable water system at designated locations in exchange for delivery by the Town of treated water to Dominion at designated locations; and

**WHEREAS**, either by amendments to this Agreement or separate agreements the Parties may expand their cooperative water development to encompass WISE Project Local Infrastructure, Town treatment of Dominion's raw water, and other projects of mutual benefit the Parties identify in the future; and

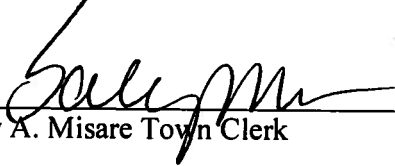
**WHEREAS**, the Parties' systems will be interconnected, giving them the ability by future agreement to provide each other emergency assistance utilizing COWARN or other procedures.

**NOW, THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK AS FOLLOWS:**

**Section 1. Approval.** The Town Council, on behalf of the Town of Castle Rock Water Enterprise, hereby approves the Intergovernmental Agreement for Water Service between Dominion Water and Sanitation District, Acting as a Water Activity Enterprise in the form attached as *Exhibit 1*.

**PASSED, APPROVED AND ADOPTED** this 7<sup>th</sup> day of January, 2014, by the Town Council of the Town of Castle Rock, Colorado, on first and final reading by a vote of 7 for and 0 against.

**ATTEST:**

  
Sally A. Misare Town Clerk

**TOWN OF CASTLE ROCK**

  
Paul Donahue, Mayor

**Approved as to form:**

  
Robert J. Slentz, Town Attorney

**Approved as to content:**

  
Mark Marlowe, Utilities Director

**INTERGOVERNMENTAL AGREEMENT FOR WATER SERVICE BETWEEN  
DOMINION WATER AND SANITATION DISTRICT, ACTING IN ITS CAPACITY AS  
A WATER ACTIVITY ENTERPRISE AND THE TOWN OF CASTLE ROCK ACTING  
THROUGH THE TOWN OF CASTLE ROCK WATER ENTERPRISE**

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is executed this 7th day of January, 2014, by and between Dominion Water and Sanitation District, acting in its capacity as a Water Activity Enterprise ("Dominion"), and the Town of Castle Rock, a Colorado home rule municipal corporation by and on behalf of the Town of Castle Rock Water Enterprise (the "Town") (jointly "Parties").

**RECITALS**

WHEREAS, Dominion is a quasi-municipal corporation and political subdivision of the State of Colorado formed and organized pursuant to Title 32 of the Colorado Revised Statutes, whose current service area is described in the attached *Exhibit 1*; and

WHEREAS, the Town is a home rule municipal corporation; and

WHEREAS, Dominion is authorized, pursuant to its service plan, to provide water services to customers located both within and outside of its boundaries for multiple uses, including for human consumption and household use, commercial, irrigation, industrial and other uses; and

WHEREAS, Dominion plans to provide wholesale water service to the proposed Sterling Ranch development northwest of the Town; and

WHEREAS, pursuant to its municipal charter, Title 31, C.R.S. and the Castle Rock Municipal Code the Town is authorized to provide water services to customers located both within and outside of its boundaries; and

WHEREAS, pursuant to the Colorado Constitution, Article XIV, Section 18(2)(a) and Section 29-1-203, local governments may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the Town and Dominion support regional water supply projects, recognizing such projects benefit participants by reducing duplication of facilities and operations, thereby reducing the costs to the Town's citizens and Dominion's customers; and

WHEREAS, Dominion and the Town seek to identify infrastructure that they may use jointly or cooperatively to facilitate efficient and cost-effective delivery of water to their customers; and

WHEREAS, Dominion has an option to purchase water located south of the Town, which can be delivered into the Town's potable water system, and anticipates the need for delivery of

such water to Dominion is likely to arise in approximately 2018, depending on the timing of development of the Sterling Ranch and availability of other water supplies; and

WHEREAS, both the Town and Dominion are members of the South Metro WISE Authority and participants in the WISE Project, a cooperative regional water supply project and this is the first phase of the WISE Project; and

WHEREAS, the Town and Dominion anticipate Dominion's WISE Project water will be delivered through the Town's system and other shared facilities, resulting in reduced capital for required infrastructure and lower operating costs to both parties; and

WHEREAS, the Town will maintain capacity in its water system sufficient to enable it to meet its commitment under this Agreement provided Dominion meets its financial commitments under this Agreement; and

WHEREAS, both Castle Rock and Dominion are committed to sustainable, reliable conjunctive use of water combining ground water with renewable supplies, supported by aggressive demand management, conservation and reuse; and

WHEREAS, both Parties are considering various options to acquire, build or expand water treatment capacity to serve their respective customers; and

WHEREAS, Dominion now has and plans to obtain other water supplies through or in cooperation with water providers other than the Town; and

WHEREAS, Dominion expects to reuse as much of its water supply as is legally and physically possible, and may do so in cooperation with Roxborough Metropolitan District and/or others; and

WHEREAS, this agreement authorizes Dominion to deliver treated water into the Town's potable water system at designated locations in exchange for delivery by the Town of treated water to Dominion at designated locations; and

WHEREAS, either by amendments to this Agreement or separate agreements the Parties may expand their cooperative water development to encompass WISE Project Local Infrastructure, Town treatment of Dominion's raw water, and other projects of mutual benefit the Parties identify in the future; and

WHEREAS, the Parties' systems will be interconnected, giving them the ability by future agreement to provide each other emergency assistance utilizing Colorado's Water/Wastewater Agency Response Network (COWARN) or other procedures.

## AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and benefits described herein, the adequacy and sufficiency of which are hereby acknowledged, Dominion and the Town hereby agree as follows:

1. **Service Commitment.** The Town shall provide to Dominion the water service prescribed in this Agreement, at Dominion's expense, on the terms and conditions provided in this Agreement (the "Service Commitment"). The Town will meet the Service Commitment by using the Town's proprietary water storage and distribution system, facilities, and technical and administrative support as necessary (the "Town System"). The Service Commitment permits Dominion to deliver water into the Town's system and to take delivery of a like amount of potable water (as defined in Section 3), less system loss at a daily rate of not more than 4 million gallons per day (4 MGD) but further limited to an annual volume of not more than 4500 acre-feet per "Water Year." A Water Year commences each June 1<sup>st</sup> and ends on May 31<sup>st</sup> of the following calendar year.

2. **System Obligations.** Dominion shall have the responsibility, at its sole expense, to (i) develop or acquire necessary and sufficient water supplies to support the Service Commitment ("Dominion Water"), (ii) construct, operate and maintain the infrastructure necessary to treat and deliver the Dominion Water to the Town System at the Inflow Point(s) (as defined below), and (iii) acquire or construct, operate, and maintain all rights and facilities to deliver and transport potable water received at the Delivery Point(s) (as defined below) to its customers. The facilities and infrastructure utilized by Dominion to input potable water into the Town System (excluding the Inflow Points) and to withdraw potable water from the Town System (excluding the Delivery Points) are referred to as the "Dominion System." Town shall have the exclusive right and obligation to operate and maintain the Town System and Dominion shall have the exclusive right and obligation to operate and maintain the Dominion System. This Agreement does not grant Dominion any ownership interest in the Town System. Dominion cannot encumber any part of the Town System.

3. **Water Quality.** The water quality of the Dominion Water delivered at the Inflow Points must meet water quality standards the Town maintains for treated water introduced into the Town System from the Town's water supplies. Such water quality standards may vary depending on the water source (e.g. Denver Basin groundwater as opposed to WISE water) and may be more stringent than state or federal water quality standards. Dominion acknowledges that water quality standards the Town imposes may change during the term of this Agreement based on state or federal mandates or as self-imposed by the Town. Provided however, in no event shall Dominion be required to treat the Dominion Water to a higher standard than the Town introduces into the Town System for an equivalent water source. Town shall deliver water to Dominion Water at the Delivery Points of the same water quality as Town delivers to its retail customers. The use of the term "potable water" in this Agreement means water either introduced into or delivered out of the Town System of a quality prescribed in this Section 3.

4. **Water Sources.** The initial sources of Dominion Water are identified in *Exhibits 2 and 3*. *Exhibit 5* shows setback areas where parts of the land underlain by the Dominion

Water in *Exhibit 5* is adjacent to lands underlain by the Town's ground water. Neither party shall drill wells in the setback areas absent written agreement from the other party. From time to time Dominion may develop or acquire other or additional water sources to support the Service Commitment, subject to acceptance by the Town which acceptance shall not be unreasonably withheld. The Town shall accept such additional sources if such water is delivered to the Inflow Point as potable water and Dominion commits to bear the fair and equitable costs the Town will incur in incorporating the water resource into the Service Commitment. The incorporation of such additional water sources into this Agreement shall be formalized through an amendment to this Agreement.

**5. Deliveries and Accounting.** The Town shall deliver potable water to Dominion at the Delivery Point(s) at rates and in volumes equal to the rate and volume at which Dominion Water is delivered to the Town, less an imputed 5% system loss. Dominion Water inflows and deliveries to and from the Town System shall be accounted for and reconciled on a 24-hour basis. At the sole discretion and option of the Town, Town may accept and deliver to Dominion flows in excess of 4 MGD, if so requested by Dominion. Absent such approval by Town, Town is not obligated to deliver to Dominion its daily inflows in excess of 4 MGD, which excess may be utilized by the Town for its proprietary purposes. The Parties anticipate that once deliveries commence and there is some operational experience with daily deliveries, it will be mutually beneficial to establish operational procedures to assure compliance with and optimize the benefits of this Agreement. Such operational protocol may be formalized as a supplemental exhibit to this Agreement.

Dominion is not obligated to input into the Town System Dominion Water of any minimum quantity or any particular frequency. If Dominion should fail to take annual deliveries of 4500 acre-feet, there is no carryover of the Service Commitment not utilized in that Water Year into a subsequent Water Year. The Town shall read the meters described in Section 6 once each month and shall bill Dominion for the cost of treated water delivered by the Town (computed in accordance with Section 8 measured at the Delivery Point(s) during the preceding month at the applicable rate provided in Section 8. Dominion shall pay to Town the amount of such statement within thirty (30) days after receipt.

**6. Delivery Infrastructure.** The planned Inflow Points are identified in *Exhibits 2 and 3*. The Delivery Point will be determined by the Town based on available infrastructure capacity and operational requirements, and shall be located near the intersection of Atrium Way and State Highway 85. Additional Inflow Points or Delivery Points may be identified by mutual agreement by revising or supplementing the exhibits to this Agreement. The Parties shall determine in each case which Party will contract to design and construct each Inflow and Delivery Point infrastructure ("System Connection"). All connections, meters and related facilities of the System Connection shall be constructed to Town specifications, including connection to the Town's SCADA system. The Town shall operate and maintain each Inflow Point, starting at the meter, and each Delivery Point, ending at the meter. The meters shall be calibrated annually. Dominion shall have access to the meters and SCADA readouts.

If the Town is to design and construct a System Connection, then prior to any notice to proceed for construction, Dominion shall pay the Town's design costs and shall deposit with the

Town the construction contract price plus 10%. The Town shall account to Dominion for all funds expended in construction, and refund any remaining balance within 30 days of final payment. If the System Connection cost exceeds the deposit, the Town shall bill Dominion, and Dominion shall pay the balance due within 30 days. If Dominion is to design and construct a System Connection it shall bear all design and construction costs without financial participation by the Town. Town will expeditiously process and review applications submitted by Dominion to Town for required construction permits for the System Connections, and shall issue necessary permits upon compliance with applicable Town regulations. The Town shall grant to Dominion such licenses or easements as may be necessary or desirable to allow construction of the System Connection by Dominion and its contractors. If easements are required from third parties, such easements shall be obtained at Dominion's expense. The WISE Project Inflow Point (see *Exhibit 3*) shall be constructed when required by the Town or Dominion, whichever is earlier. The Ground Water Supply Inflow Point (see *Exhibit 2*) and the initial Delivery Point shall be constructed when requested by Dominion.

The Parties anticipate they will share capacity in the WISE Project Inflow Point (see *Exhibit 3*), and potentially in other future Inflow Points. In that case, the Parties' respective shares of capacity and costs will be determined in a separate agreement based upon relative use and benefit of such Inflow Point.

7. **Capacity Reservation.** The date deliveries commence under the Service Commitment shall be determined by Dominion, provided Dominion shall give Town notice of the date it will begin to take deliveries, which notice shall make allowance for the time needed by the Parties to complete necessary System Connections as provided in Section 6. Until deliveries actually commence, Dominion shall pay to Town an annual fee for standby capacity the Town must maintain in the Town System, pending the commencement of deliveries by Dominion ("Standby Fee"). Dominion's prospective obligation to pay Standby Fees shall terminate when it first takes deliveries. The Standby Fee for each calendar year (or partial year for the year deliveries commence) shall be payable on January 31<sup>st</sup>, provided the Standby Fee for 2014 shall be due 30 days after the mutual execution of this Agreement. The annual Standby Fee is paid in advance, not in arrears. Accordingly, the Standby Fee due and paid in the calendar year in which deliveries commence shall be retroactively *prorated* through the date of commencement. To illustrate, if deliveries commence on May 1, 2017, the 2017 adjusted Standby Fee will be \$33,333. The amount of the Standby Fee is as follows:

2014	\$ 50,000
2015	\$ 50,000
2016	\$ 50,000
2017	\$100,000
2018	\$125,000
2019 and thereafter	\$150,000

Standby Fees paid to Town in excess of \$50,000 per year shall be credited toward the connection fee to be paid pursuant to Section 9, but such aggregate credit shall not exceed \$180,000. The Standby Fee is non-refundable, provided that the excess of the Standby Fee over the adjusted



Standby Fee in the year deliveries commence shall be recovered by Dominion through a credit against payments due under Section 8, dollar for dollar.

8. **Rates for Service Commitment.** Dominion shall pay for all water delivered at the Delivery Point(s) at the rates in effect for that Water Year as prescribed in this Section ("Water Rate" expressed per 1000 gallons). Rates may be adjusted no more often than annually effective January 1<sup>st</sup>, except in the event of an emergency in the Town System. The Water Rate in effect in any Water Year shall be based on the Town's cost incurred in meeting the Service Commitment for each distinct source of the Dominion Water, utilizing the same cost of service model that the Town relies upon in establishing its rates for its retail customers. The current rate making methodology is attached as ***Exhibit 4***. The Parties acknowledge that the methodology may be revised and refined by Town from time to time based on changes to the Town's rate making policies and cost of service model. Exhibit 4 is provided as an example of the current rate making methodology for the sources identified in Exhibits 2 and 3.

Town shall notify Dominion of the Water Rate for the upcoming Water Year by December 31st of each year together with an explanation of the basis for the adjustment in the Water Rate. If requested by Dominion, Town shall make accommodation for public comment by Dominion representatives and ratepayers on the Water Rate at a designated Town Council meeting.

9. **Connection Fee.** Within 30 days after Dominion first takes deliveries of water at the Delivery Point, Dominion shall pay the Town a one-time system development fee of \$180,000, less any Standby Fee credits as specified in Section 7.

10. **Term.** The term of the Service Commitment and this Agreement shall be perpetual unless the Parties mutually agree to terminate the same by written instrument.

11. **Proprietary Water Resources.** The Parties acknowledge that Dominion Water will be commingled with the Town's water resources in the Town System.

11.1. Dominion Water delivered to the Delivery Points shall not be deemed to be derived from the Town's water resources. Potable water delivered to Dominion at the Delivery Point shall be deemed to be derived entirely from Dominion Water and shall retain all legal characteristics of Dominion Water. "Legal characteristics" include, but are not limited to, any rights of, or limitations upon, use, reuse, successive use and disposition, and any return flow or relinquishment obligations. Dominion shall be solely responsible for obtaining any and all necessary State Engineer and/or Water Court approvals associated with the Dominion Water and complying with the terms and conditions of such approvals. Except as described in Section 5, Dominion retains sole and exclusive ownership of, dominion and control over and responsibility for Dominion Water.

11.2 The Town retains sole and exclusive ownership of, dominion and control over and responsibility for its water resources, including the sewer, septic and lawn irrigation return flows that are derived from the Town's water resources.

12. **Amendment.** Except as otherwise provided herein, this IGA may be modified, amended, changed, or terminated, in whole or in part, only by an agreement in writing duly authorized and executed by both parties.

13. **Enforcement-Generally.** Subject to the provisions of Section 14, this IGA may be enforced in law or equity, damages, or such other legal and equitable relief as may be available to a Party. Except as otherwise provided herein, each party waives any right to special, indirect, consequential and punitive damages, including lost revenue. Prior to commencing such legal action, the non-defaulting party shall give notice to the defaulting party. The defaulting party shall have 30 days to cure such default.

14. **Remedies for Monetary Defaults.** If Dominion does not timely satisfy any of its payment obligations under this IGA, Town may give Dominion a notice of default. If Dominion does not cure the default by making full payment within 60 days from receipt of the default notice, Town, in addition to pursuing any other remedies available to it at law or in equity, may suspend deliveries to Dominion.

15. **Notice.** For purposes of notice pursuant to this IGA, the Parties' representatives shall be:

For the Town:           Town of Castle Rock  
                                  Utilities Department  
                                  Attn: Utilities Director  
                                  175 Kellogg Court  
                                  Castle Rock, CO 80109

With a copy to:       Town Attorney  
                                  Town of Castle Rock  
                                  100 Wilcox Street  
                                  Castle Rock, CO 80104

For Dominion:         Dominion Water & Sanitation Dist.  
                                  Clifton Larson Allen, LLP  
                                  8390 E. Crescent Parkway, Suite 500  
                                  Greenwood Village, CO 80111

With a copy to:       Dominion Water & Sanitation District  
                                  Attn: Secretary  
                                  1805 Shea Center Drive, Suite 210  
                                  Highlands Ranch, CO 80129

Any notices required or permitted to be given hereunder shall be in writing and shall be deemed given when given personally or sent by certified or registered mail, return receipt requested, postage prepaid. Either party hereto may designate a new address by giving written notice thereof to the other party as provided herein. Notice shall be effective upon receipt.

16. **Assignment.** This IGA shall be assignable by Dominion to another governmental entity providing water service to the Dominion service area, provided that such assignment shall first be approved in writing by the Town, such approval not to be unreasonably withheld. Due to the unique nature of the services provided under this IGA, Town's rights or obligations may be assigned by Town only together with ownership and control of the Town's water system. Any assignment not in compliance with the terms hereof shall be void and of no force or effect.

17. **Successors and Assigns.** The terms, conditions, and provisions of this IGA shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

18. **Governing Law.** The terms, conditions, and provisions of this IGA shall be governed by and construed in accordance with the laws of the State of Colorado.

19. **Failure to Perform Due to Force Majeure.** Subject to the terms and conditions of this paragraph, no party to this IGA shall be liable for any delay or failure to perform under this IGA due solely to conditions or events of force majeure, as that term is specifically defined herein; provided that: (i) the non-performing party gives the other party prompt written notice describing the particulars of the occurrence of the force majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the force majeure event or condition; and (iii) the non-performing party proceeds with all necessary diligence to remedy its inability to perform. As used herein, force majeure shall mean any delay or failure of a party to perform its obligations under this IGA caused by events beyond the party's reasonable control and without the fault or negligence of the party, including, without limitation, (a) acts of God, (b) sudden actions of the elements such as floods, earthquakes, rock slides, avalanches, or tornadoes, (c) sabotage, (d) vandalism beyond that which can be reasonably prevented by the party, (e) terrorism, (f) war, (g) riots, (h) fire, (i) explosion, (j) severe and unusually cold or hot weather, (k) extreme snow, (l) blockades, (m) insurrection, (n) strike, slowdown or other labor disruptions.

20. **Defense against Third Parties.** In the event of litigation by any third party concerning this IGA, and to the extent permitted by law, the Parties agree to jointly defend any such third party action.

21. **No Third Party Beneficiaries.** Except as otherwise explicitly provided for herein, there are no third party beneficiaries of this IGA. No third party has any right to enforce this IGA.

22. **Sole Obligation of Water Activity Enterprise.**

22.1 This IGA shall never constitute a general obligation or other indebtedness of the Town or Dominion, or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the Town or Dominion within the meaning of the Constitution and laws of the State of Colorado or of the service plan, rules or regulations of the Town or Dominion.

22.2 In the event of a default by either party of any of its obligations under this IGA, the non-defaulting party shall have no recourse for any amounts owed to it against any funds or revenues of the defaulting party except for those revenues derived from rates, fees or charges for the services furnished by, or the direct or indirect use of each party's water system and deposited in the respective party's Water Activity Enterprise Fund. Notwithstanding any language herein to the contrary, nothing in this IGA shall be construed as creating a lien upon any revenues of the Town or the Dominion Water Activity Enterprise.

22.3 The Town represents that this IGA has been duly authorized, executed and delivered by the Town and constitutes a valid and legally binding obligation of the Town, enforceable against the Town in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

22.4 Dominion represents that this IGA has been duly authorized, executed and delivered by Dominion and constitutes a valid and legally binding obligation of Dominion, enforceable against Dominion in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

23. **Entire Agreement.** This IGA represents the entire agreement of the parties and neither party has relied upon any fact or representation not expressly set forth herein.

24. **Counterparts.** This IGA may be executed in any number of counterparts, each of which shall be deemed original, but all of which constitute one and the same agreement.

25. **Non-severability and Effect of Invalidity.** Each provision of this IGA is integral to the others and is not severable from the others. If any portion of this IGA is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either party or as to both parties, the parties will immediately attempt to negotiate either valid alternative portions that as near as possible give effect to any stricken portions or a valid replacement agreement.

26. **No Attorney's Fees and Costs.** In the event of any litigation arising out of this IGA, the parties agree that each will be responsible for their own attorney's fees and costs associated with any such legal action.

27. **Joint Draft.** The parties agree they drafted this IGA jointly with each having the advice of legal counsel and an equal opportunity to contribute to its content. Therefore, this IGA shall not be construed for or against a party on the basis of authorship.

28. **Intent of IGA.** This IGA is intended to describe the rights and responsibilities of and between the parties and is not intended to and shall not be deemed to confer rights upon any persons or entities not signatories hereto nor to limit, impair, or enlarge in any way the powers,

regulatory authority and responsibilities of either party or any other governmental entity not a party hereto.

**29. Non-Business Days.** If any date for any action under this IGA falls on a Saturday, Sunday or Holiday, as such term is defined in Rule 6 of the Colorado Rules of Civil Procedure, then the relevant date shall be extended automatically until the next business day.

**30. Termination.** The Douglas County Board of County Commissioners approved rezoning of the proposed Sterling Ranch PD and associated Water Supply Standards Appeal by resolutions dated July 30, 2013 ("County Approval"). The County Approval was appealed; the appeal remains pending in Douglas County District Court as of the date of this Agreement. If the County Approval is reversed or modified on appeal, or otherwise fails to become final, not subject to further appeal or review, Dominion shall have the option on or before December 31, 2017; to terminate this agreement and the parties shall have no further obligation to each other. The Town may retain all sums paid prior to such termination.

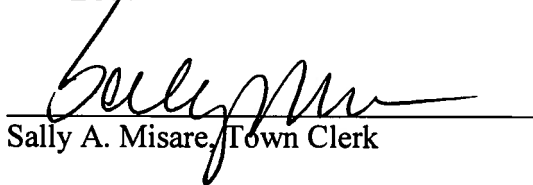
IN WITNESS WHEREOF, the parties hereby executed this Agreement on the date first written above.

**TOWN OF CASTLE ROCK**

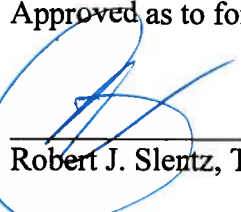


Paul Donahue, Mayor

ATTEST:

  
Sally A. Misare, Town Clerk

Approved as to form:

  
Robert J. Slentz, Town Attorney

Approved as to content:

  
Mark Marlowe, Director of Utilities

**DOMINION WATER & SANITATION  
DISTRICT**



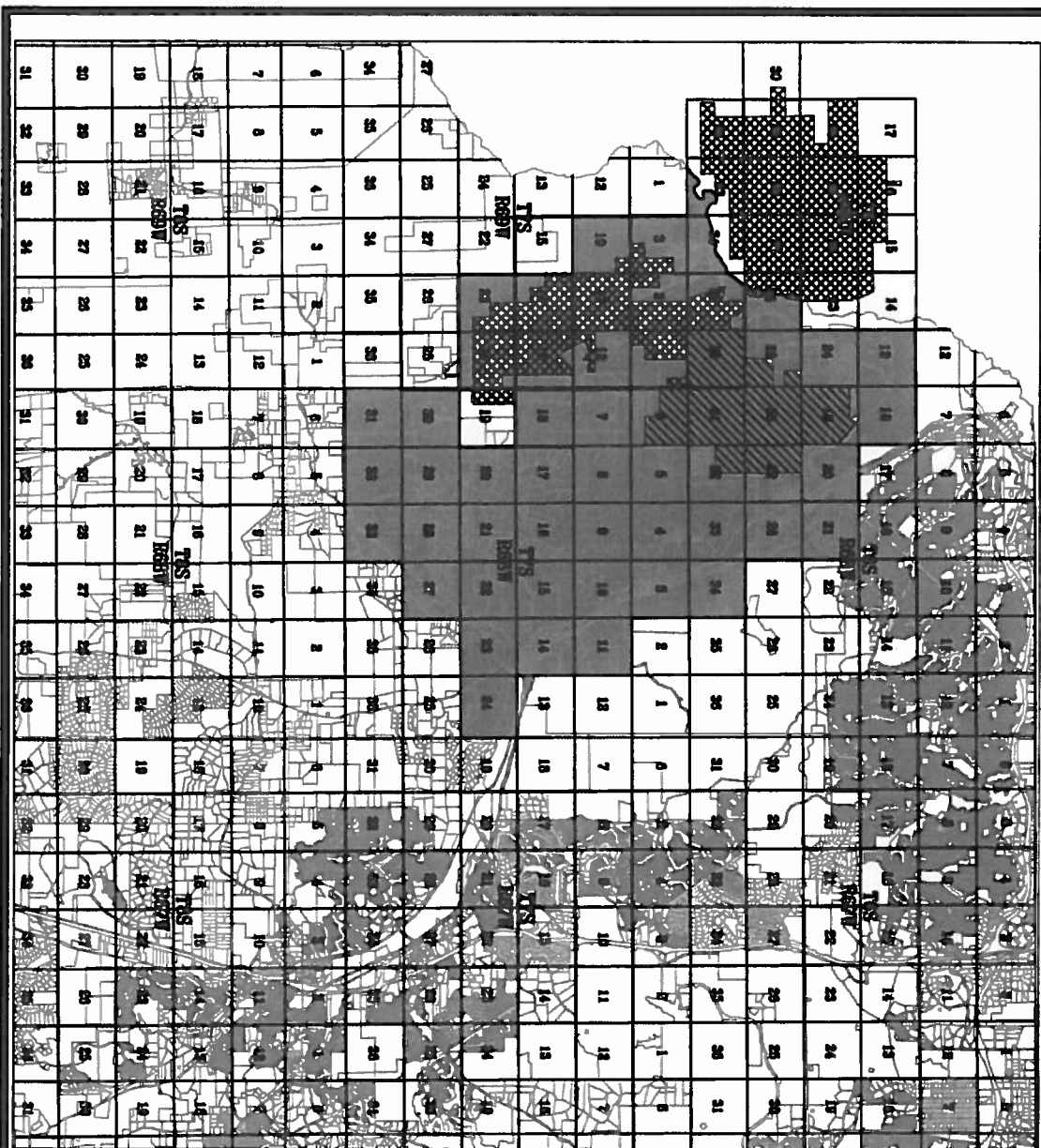
Harold Smethills, President

**ATTEST:**



David Peak, Secretary

**EXHIBIT 1**  
**LOCATION AND BOUNDARIES**  
**OF DOMINION WATER & SANITATION DISTRICT SERVICE AREA**



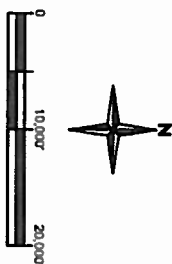
# SERVICE AREA BOUNDARY

- SECTIONS 13, 24, 25, 26 AND 33-36, TOWNSHIP 6 SOUTH, RANGE 69 WEST; SECTIONS 1-3, 10-14, 23 AND 24, TOWNSHIP 7 SOUTH, RANGE 69 WEST; SECTIONS 18-21 AND 28-34, TOWNSHIP 6 SOUTH, RANGE 68 WEST; AND SECTIONS 3-11, 14-18, 20-24 AND 27-33, TOWNSHIP 7 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN.
- ARAPAHOE, JEFFERSON AND ADAMS COUNTIES
- AND THE CITY & COUNTY OF DENVER.
- DOUGLAS COUNTY PRIMARY URBAN AREA, INCLUDING THE CITY OF LOVE TREE AND THE TOWN OF PARKER.

DOMINION WATER AND SANITATION SERVICE AREA BOUNDARY.

STERLING RANCH BOUNDARY.  
NOTE: EXCEPTIONS TO BOUNDARY NOT SHOWN DUE TO SCALE.

APPROXIMATE BOXBOROUGH WATER & SANITATION DISTRICT BOUNDARY  
EXCEPTIONS:  
1) COUNTY ROAD 5, (RAMPART ROAD) RECORDED IN BOOK 418 PAGE 318 DOUGLAS COUNTY CLERK AND RECORDER.  
2) LEHOW CEMETARY, RECORDED IN BOOK 389 PAGE 284 AND RECEPTION NUMBER 92033440 JEFFERSON COUNTY CLERK AND RECORDER.



## SERVICE AREA DOMINION WATER & SANITATION DISTRICT

DATE	03.04.13
DRAWN	BCH
CHECKED	BCH
APPROVED	BCH
PROJECT NO.	11016





**EXHIBIT 2**  
**GROUND WATER SUPPLY**

Description of Ground Water Supply: Nontributary Denver Basin ground water rights decreed in Case No. 03CW116 underlying the “Hier Ranch”

Town Inflow Point: **Tank 6** or as otherwise mutually specified

- 1) Water Quality - treated water to Town Standards
- 2) Rate: \$0.42/kgal (2013 rate per paragraph 9; calculated per the example in Exhibit 4.  
Subsequent years’ rates will be determined as provided in paragraph 9)
- 3) Delivery Cap: 4500 acre feet per year, 4.2 mgd maximum

Future Potential Inflow Points (with terms above to be determined for each connection point):

- Future water treatment plant site, location TBD by Castle Rock (raw water)
- Castle Rock Plum Creek Diversion at Wolfensberger Road (raw water)

### EXHIBIT 3 WISE PROJECT WATER

Description of Supply: Dominion, as a member of the South Metro WISE Authority, has subscribed for 1325 acre feet per year of WISE Project water, under and subject to the terms of the "WISE Partnership – Water Delivery Agreement between Denver Water, the City of Aurora, acting by and through its Utility Enterprise, and the South Metro WISE Authority" ("WISE Project WDA"). The WISE Project WDA is recorded at Reception No. \_\_\_\_, Douglas County Clerk & Recorder. Dominion's rights to WISE Project water will become part of the Town Water. Deliveries of WISE Project water may vary as provided in WISE Project WDA. WISE Project water will be accepted as "potable water," as defined in paragraph 1.4. The parties shall share the costs of shared infrastructure to deliver WISE Project water to the Town, sized to deliver both the Town's and Dominion's subscriptions, pursuant to a separate agreement or agreements regarding shared facilities and costs. Dominion remains responsible for all its financial and other obligations to the South Metro WISE Authority and under the WISE Project WDA.

Town Inflow Point: **WISE Connection** as specified by Town with Dominion's concurrence

- 1) Water Quality – as delivered per WISE agreements
- 2) Rate: \$0.42/kgal (2013 rate per paragraph 9; calculated per the example in Exhibit 4.  
Subsequent years' rates will be determined as provided in paragraph 9)
- 3) Delivery Cap: 4500 acre feet per year, 4.2 mgd maximum

**EXHIBIT 4**  
**RATEMAKING METHODOLOGY FOR SOURCES IN EXHIBITS 2 AND 3**

**To:** Mark Marlowe, Utilities Director**Date:** November 8, 2013**From:** Carol Malesky  
Isalah Rounds**Re:** Wheeling Rate and Capacity Reservation Fee Methodology

The Town of Castle Rock Utilities Department (Town) authorized Red Oak Consulting (Red Oak) to conduct a wheeling rate analysis. Wheeling rates are assessed for the conveyance of water not owned by a utility through its system for delivery to another entity. In addition, the Town requested a methodology description for an interim fee that is defensible for reserving capacity in the Town's system for a future customer desiring convey water through the Town's system. This technical memorandum summarizes the methodology and results of both the wheeling rate and capacity reservation calculation for 2014.

### **Wheeling Rate Methodology**

Red Oak applied cost-of-service (COS) principles and the analysis completed in the 2013 Utilities Rates and Fees Study Update as the basis for wheeling rate design. When developing cost-based wheeling charges, only the costs necessary to provide the service were included. Water utility functions used to provide wheeling service were discussed with Town Staff and determined to be Transmission, Meters and Services, and Customer and Accounts. Please see Volume 1 of 2 of the 2013 Utilities Rates and Fees Study Update, October 2013 for definition of water utility functions used in the COS analysis.

Red Oak first identified transmission-related operation and maintenance (O&M) and capital costs for fiscal year (FY) 2014. O&M costs include engineering, field services, facility maintenance, and other expenses. Capital costs include debt service and cash-funded capital improvements. Total transmission O&M and capital costs were then divided by the Town's total projected FY2014 water sales. The result is the cost of transmission line O&M and capital per 1,000 gallons (kgal) of water sold. Table 1 shows a summary of the calculation with the proposed rate in FY2014 of \$0.42 per kgal.

**Table 1**  
**Transmission Costs and Proposed Wheeling Rate per Kgal in FY2014**

<b>Description</b>	<b>O&amp;M</b>	<b>Capital</b>	<b>Total</b>	<b>Units</b>
Transmission costs	\$513,247	\$455,337	\$968,584	
Total water sold			2,287,416	kgals
<b>Proposed Rate FY2014</b>			<b>\$ 0.42</b>	<b>Per kgal</b>

A portion of Meters & Services and Customer & Accounts fixed costs were also allocated to the total wheeling cost. Costs for customer service, billing, and maintaining and reading the metered connection for a customer conveying water through the Town's system should be recovered in the wheeling charges. These costs were based on the cost-of-service calculated monthly fixed charge for a 6-inch meter in FY2014. The meter size was selected to approximate the size of a metered connection to the Town's water system given an annual estimated use of four million gallons per day (4 MGD). According to the Town's water meter hydraulic equivalency schedule, a 6-inch meter has a maximum flow rate between 2,000 and 2,500 gallons per minute (gpm) which is approximately the capacity needed for 4 MGD water conveyed.

The monthly Meters & Services and Customer & Accounts charge for FY2014 for a 6-inch meter was multiplied by 12 months for an annual cost. To convert the annual fixed charge to a per kgal basis, the annual fixed charge was divided by the approximate annual usage of 1,460,000 thousand gallons (4 MGD). These fixed charges are \$0.001210 per kgal and can be added to the transmission rate or recovered on a monthly or annual fixed charge basis. The calculation is shown in Table 2.

**Table 2**  
**Meters & Services / Customer & Accounts**  
**Proposed Rate per Kgal in FY2014**

Description	Total	Units
COS 6-inch meter monthly fixed charge	\$147.26	
Number of months in a year	12	Months
Annual Meters & Services / Customer & Accounts costs	\$1,767	
4 MGD annualized (4 MGD x 365 days)	1,460,000	kgals
Fixed charge for 4 MGD	\$ 0.001210	Per kgal

Red Oak recommends that the Town follow this methodology when implementing a wheeling rate. This rate is not specific to any one customer, but applicable to all customers needing wheeling service from the Town. The wheeling rate should be updated as part of the Town's annual rate and fee update.

### **Capacity Reservation Fee Methodology**

Red Oak recommends applying COS principles when determining the fee to charge for reserving capacity in its system for a future wheeling customer. A capacity reservation charge is similar to an availability charge in that the costs of investment in facilities required to serve customers not yet using the Town's wheeling service must be recovered. The American Water Works Association (AWWA) Manual of Water Supply

---

Practices M1, Principles of Water Rates, Fees, and Charges, presents the rationale behind such charges.<sup>1</sup>

The COS analysis documented in the Town's 2013 Utilities Rates and Fees Study Update is used to develop the capacity reservation fee methodology. Similar to the wheeling rate calculation, the O&M and capital costs incurred by the Town to operate and maintain capacity in its transmission system form the basis for the costs to be recovered. The capital costs represent the investment in the transmission system to provide capacity for water conveyance, and O&M costs represent the annual cost of maintaining that capacity. The proportionate capacity required by a wheeling customer outside of the Town is used to calculate the costs to be recovered from an annual capacity reservation fee.

An important consideration when developing a capacity reservation fee methodology is the Town's policy of assessing a system development fee (SDF) for new connections to the water system. The SDF recovers a portion of the costs of capacity invested in the water system, both existing and future capacity. To avoid double recovery of the costs of capacity, the Town may choose to apply a portion of the capacity reservation fees collected towards the SDF when the customer connects to the Town's system. The capital component of the capacity reservation fee is directly related to capacity-related costs and therefore is a rational component to apply to the SDF.

Table 3 presents the O&M and capital costs for FY2014 for the Town's water transmission system. Proportionate capacity required by a wheeling customer is determined based on estimated annual capacity of 4 MGD and the total existing capacity in the Town's transmission system of 37.41 MGD.<sup>2</sup> Given the AWWA methodology and the COS study results, the Town could defensibly charge a capacity reservation fee up to \$103,000 per year for the wheeling customer.

Recognizing that there are other objectives the Town may have in serving wheeling customers, charging only the capital component calculated under this methodology or the capital component and a portion of the O&M component are also defensible approaches.

Red Oak recommends that the Town follow this methodology when calculating a capacity reservation fee and consider alternative approaches to implementing the fee that meet the Town's objectives. This fee should be updated depending on the customer requesting reserved capacity from the Town. The fee should be updated as part of the Town's annual rate and fee update.

---

<sup>1</sup> American Water Works Association, AWWA Manual M1, Sixth Edition, 2012, Chapter VI.3, Availability Charges, pages 281-282.

<sup>2</sup> Total water transmission capacity based on Utilities Engineering Manager calculation July 2013.

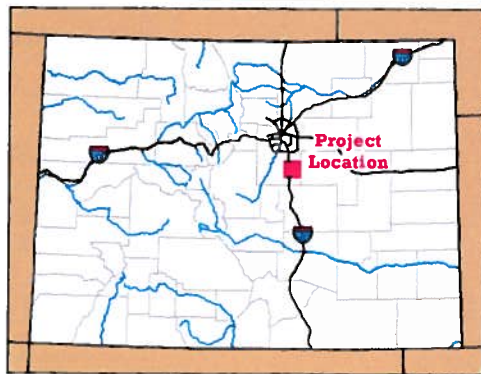
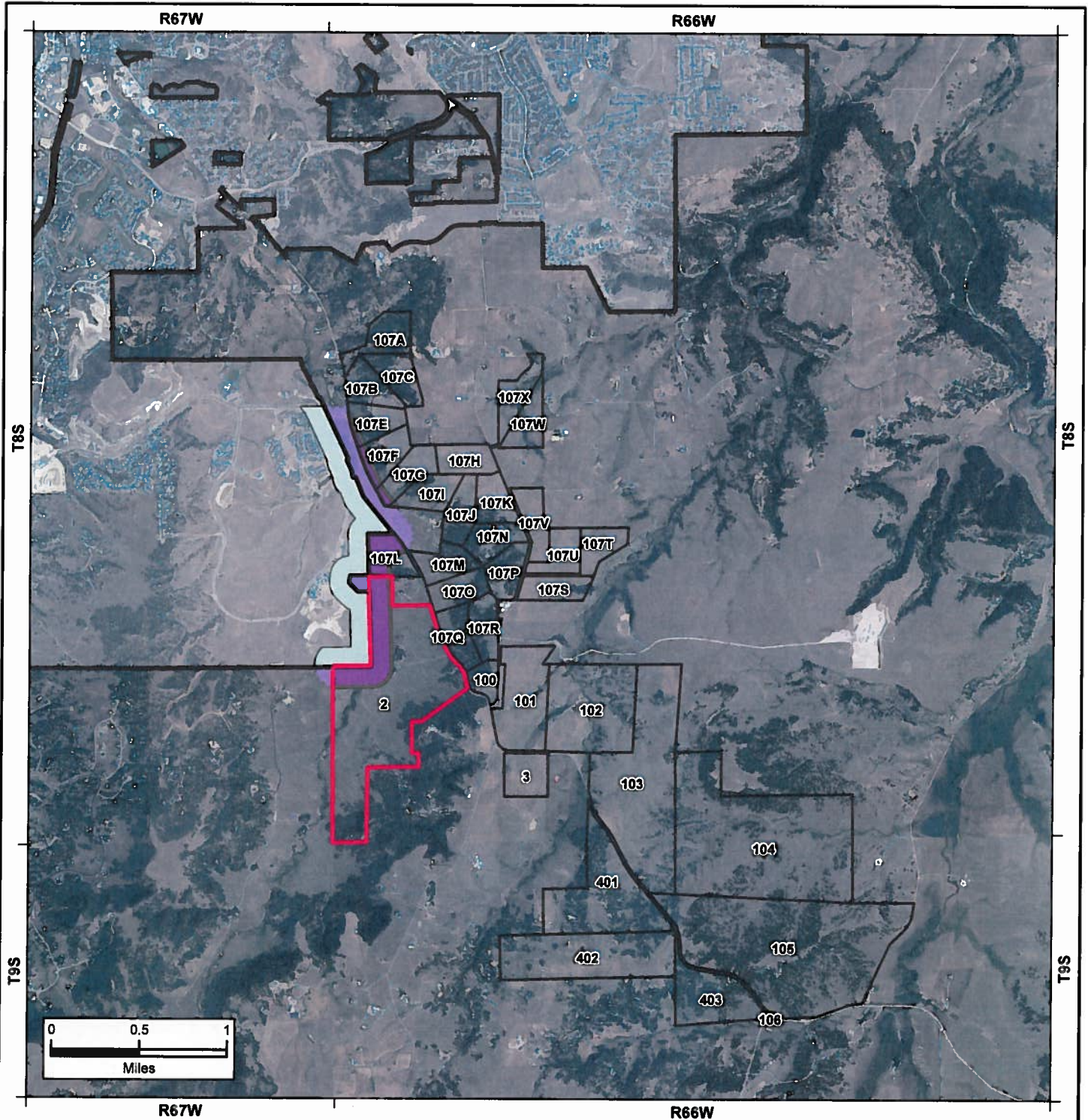
---

**Table 3**  
**Transmission Costs and Proposed Capacity Reservation Fee in FY2014**

<b>Description</b>	<b>O&amp;M</b>	<b>Capital</b>	<b>Total</b>	<b>Units</b>
Transmission costs	\$513,247	\$455,337	\$968,584	
Transmission system capacity			37.41	MGD
Wheeling customer capacity reserved			4	MGD
Proportion of capacity			10.7%	
<b>Proposed Fee FY2014</b>	<b>\$54,918</b>	<b>\$48,721</b>	<b>\$103,639</b>	<b>Per year</b>

**EXHIBIT 5**  
**MAP OF SETBACK AREAS**





- Phase 1 Parcel
- All Hier Parcels
- Castle Rock 600 ft. Inside Buffer
- Castle Rock 600 ft. Outside Buffer

This product is for reference purposes only and is not to be construed as a legal document or survey instrument.



DRAFT

FIGURE 1

**HIER PARCELS AND  
CASTLE ROCK  
600 FOOT BUFFER**



**LeonardRice**  
ENGINEERS, INC.

2000 Clay Street, Suite 300 | Denver, CO 80211  
303-455-9589 | 800-453-9589 | Fax: 303-455-0115  
www.LREwater.com

**DRAFT**

**1207DOM01-52  
JUNE 2013**