



Town of Castle Rock

Agenda Memorandum

Agenda Date: 2/5/2019

Item #: **File #:** TMP 2019-065

To: Honorable Mayor and Members of Town Council

From: Mark Marlowe, Director of Castle Rock Water
Matt Benak, Water Resources Program Manager
Lauren Moore, Water Resources Program Analyst

Resolution Approving the First Amendment to Water Rights Brokerage Agreement with Stillwater Resources & Investments, Inc.

Executive Summary

The purpose of this memorandum is to request Town Council approval of a resolution (see **Attachment A**) approving the First Amendment to the 2017 Water Rights Brokerage Agreement with Stillwater Resources & Investments, Inc. (Stillwater).

Through various public meetings in 2012, Town Council considered the risks, benefits, and costs of proposals submitted to help the Town import renewable water, including a hybrid option that coupled the WISE project with the Box Elder project. In October 2012, Town Council directed staff to further pursue this hybrid alternate water supply solution for between 3,000 acre-feet and 4,000 acre-feet by negotiating proposed agreements with WISE and Stillwater. On February 19, 2013, the Town passed a resolution to enter into a two-year brokerage agreement with Stillwater to help the Town implement the Box Elder Creek proposal.

Stillwater has been the Town's water broker since that time. Since 2013, Stillwater has helped the Town purchase 1,805 acre-feet of water. All of the water has been purchased within the planned budget. Total brokerage fees to date have been approximately \$800,000 and total investments in water rights associated with the Box Elder project have been approximately \$15.3 million. The Town is still seeking at least another 700 acre-feet of water rights for the Box Elder project, and potentially more, depending on the Town's rate of growth. As such, we still have the need for Stillwater's services. Stillwater is a qualified water rights broker experienced in the acquisition of water rights for municipal entities. Stillwater has been developing similar scale water supplies for clients since 1987.

This First Amendment to the 2017 Water Rights Brokerage Agreement (**Exhibit 1**) with Stillwater simply extends the 2017 agreement for two more years. There is no budget impact by approving the amendment to this Agreement. Staff recommends that Town Council approve the First Amendment to the Water Rights Brokerage Agreement with Stillwater Resources and Investments, Inc. to allow Stillwater to continue to act as the Town's agent for the purposes of identifying and recommending water rights essential for the hybrid solution to the Town's Alternative Source of Water Supply Project.

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

On January 25, 2017, the Castle Rock Water Commission voted unanimously to recommend approval of the Water Rights Brokerage Agreement to Town Council.

On March 7, 2017, Town Council voted unanimously to approve the Water Rights Brokerage Agreement.

On January 23, 2019, Castle Rock Water Commission voted _____ to _____ of the First Amendment to the 2017 Water Rights Brokerage Agreement.

Discussion

After an extensive Request for Proposal (RFP) process, the Town selected the proposal advanced by Stillwater and Box Elder Creek Properties, LLC (Box Elder) including potential water rights and property acquisition on the Box Elder Farm for further evaluation and implementation. As part of this project, Town staff entered into a two-year agreement with Stillwater in February 2013, which was amended in February 2015 and again in 2017 in order to extend the agreement for two additional years. Stillwater has been providing assistance to Town staff, professional consultants, and outside and in-house Counsel in the identification of targeted water rights purchases for the Box Elder project. To date, the Town has acquired 770 acre-feet of renewable water rights with the purchase of the Rothe property under the agreement and closed on an additional 1,035 acre-feet of water rights in the Lost Creek Basin in March 2017.

The term of the First Amendment to the Agreement is for two years unless otherwise extended by mutual agreement. The Town shall have the right to terminate this Agreement at any time for any reason with 60 days' prior written notice to Stillwater. Stillwater shall be entitled to Brokerage Fees on any of the Town's water acquisitions provided:

- The Town placed the water acquisition under contract during the term of this Agreement; or
- Within 180 days after this Agreement expires or is terminated for any reason other than default of Stillwater, the water acquisition is one on which Stillwater submitted a Term Sheet or a written description of the prospective water supply during the term of this Agreement, and such prospective water supply was approved by the Town in writing.

Budget Impact

The 2019 Alternative Source of Supply budget has \$800,000. If a reasonable block of water rights is identified for purchase, a budget amendment may be necessary for the water and the brokerage fee.

Staff Recommendation

Staff recommends that Town Council approve the First Amendment to the 2017 Water Rights Brokerage Agreement with Stillwater to allow Stillwater to continue to act as the Town's agent for the

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purposes of identifying and recommending water rights essential for the hybrid solution to the Town's Alternative Source of Water Supply Project.

Proposed Motion

"I move to approve the resolution as introduced by title."

Attachments

Attachment A:	Resolution
Exhibit 1:	Amendment