



# Town of Castle Rock

## Agenda Memorandum

**Agenda Date:** 2/4/2020

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**Item #:** 10. **File #:** RES 2020-014

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

**From:** Mark Marlow, P.E., Director of Castle Rock Water

### **Resolution Approving the Contract for Purchase and Sale of Water Assets and Water Line Capacity**

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#### **Executive Summary**

Castle Rock Water is seeking Town Council approval of the attached resolution (***Attachment A***) to purchase 455.7 acre-feet (AF) of additional renewable water in the Lost Creek Basin from PV, LLC, which would increase the Town's Lost Creek water to approximately 1,490 AF. This would bring the total water purchased for the Box Elder Creek project to 2,260 AF of the targeted 2,500 AF. Total expenditures to date on this project are \$27.88M out of a current projected long term planned amount of \$79.4M. The current schedule for full development of water is 2033. A major milestone was achieved in December of 2019 with filing of a water court application for the project. This additional water can still be added into the water court application. In addition to the purchase of the water, this purchase agreement (***Exhibit 1***) would sell 800 gallons per minute (gpm) of Town owned capacity in the Keenesburg pipeline, to PV, LLC. Relinquishing this capacity would ultimately result in a cost savings to the Town by releasing the Town of annual debt obligation payments to the Town of Keenesburg through 2032, and the purchase of this additional renewable water would firm up the Town's ability to convey our Box Elder Project water.

#### **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 paid \$350,000 to date to extend the option to October 1, 2016.

On August 19, 2014, Town Council approved the Rothe Water Rights Purchase for up to 770 AF of water rights to be used as augmentation water for the Box Elder Creek Well Field. This purchase closed on September 17, 2014 for a total cost of \$5,460,000.

On October 1, 2014, the Town paid its second option payment for the Box Elder Well Field of \$100,000. This payment extended the due diligence period to October 1, 2015.

On October 22, 2014, staff provided the Utilities Commission with an update of the Alternate Source of Supply Projects.

On December 16, 2014, staff provided an update to Town Council on the Alternate Source of Water Supply Projects.

On April 21, 2015, staff provided an update to Town Council on the Alternate Source of Water Supply Projects.

On June 24, 2015, staff provided the Utilities Commission with the details of the surface use lease agreement for the Rothe Property. Utilities Commission recommended moving forward and finalizing the lease agreement with the adjacent landowner, Sublette, Inc.

On August 18, 2015, Town Council approved a Surface Use Agreement with Sublette, Inc. to use the Rothe Property for recreation activities, while managing the property on the Town's behalf.

On December 9, 2015, staff updated the Utilities Commission on the status of the WISE and Box Elder projects, including the 1041 Permit process being considered by Weld County and associated with the Box Elder project.

On January 5, 2016, staff provided an update to Town Council on the Alternate Source of Supply Projects.

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 were contractually connected.

On August 16, 2016, Town Council approved the Purchase and Sale Agreement with PV, LLC for the purchase of up to 1,100 AF of Lost Creek water and also approved the Contract for Purchase and Sale of Water Line Capacity in the Keenesburg Well Water Transmission Line.

On September 6, 2016, Town Council approved an amendment to the Box Elder Option Agreement extending the closing option date from October 1 to December 1.

On October 18, 2016 Town Council approved the \$300,000 payment, the next installment of the option on the Box Elder well field.

On October 26, 2016 the Utilities Commission recommended Town Council approve the closing on the Box Elder well field prior to December 1, 2016.

On November 15, 2016 Town Council approved the closing on the Box Elder well field property. On March 31, 2017, the Town closed on 1,035.8 AF of Lost Creek water from PV, LLC.

Castle Rock Water staff presented this agreement to the Castle Rock Water Commission at their meeting held on January 22, 2020, and the Castle Rock Water Commission voted unanimously to recommend approval of the resolution by Town Council.

### **Discussion**

An important part of our Alternative Source of Water Supply project (ASOS), also referred to as the Box Elder Project, is the ability to provide water for augmentation purposes in the proper time and place, so as not to injure other, more senior water rights holders. In the future, when the Town pumps the wells located on the Box Elder property, most of the time, we will need to put water back into the surface stream.

In 2017, the Town closed on the purchase of seven wells in the Lost Creek Basin which came with 1,035.8 AF annually of fully exportable water rights without any restriction on use. Additionally, these well permits include a three-year modified water banking provision whereby water that is not pumped from a specific well in a calendar year can be carryover to the next year, up to a limit of three times its permitted annual volume. The nature of these water rights would even allow that they could be used as a direct flow water supply given the fact that they have already been legally changed for municipal use and are fully exportable from the Lost Creek Basin for any use in any place in Colorado.

Eventually, the Town intends to use these water rights directly or as an augmentation source. However, until infrastructure is built to transport this water to a treatment plant or place of augmentation, the Town is currently leasing this water to other users for agricultural purposes, which helps to generate revenue for Castle Rock Water.

In addition to the purchase of the Lost Creek wells, in 2017 the Town purchased capacity in an existing water pipeline owned by Pioneer Metropolitan District No. 3 (an entity associated with PV, LLC) and the Town of Keenesburg, Colorado, with the intent of utilizing the pipeline to convey the Lost Creek water into Box Elder Creek at a location downstream of the Box Elder property. Castle Rock purchased a 67-percent stake in this pipeline (800 gallons per minute [gpm] capacity out of 1,200 gpm) for \$2.23 million plus annual payments of \$63,098 to the Town of Keenesburg starting in 2017 and continuing through 2032.

In late 2019, PV, LLC approached Castle Rock Water with the opportunity to purchase from them an additional 455.7 AF of Lost Creek Basin water, which would bring the Town's ownership of fully

exportable Lost Creek water to approximately 1,490 AF annually. The four wells from which this water will be pumped are:

Well Permit #	Permitted Annual Pumping (AF/yr.)
8533-FP	84
8534-FP	81.5
8535-FP	96.9
31542-FP	193.3
<b>TOTAL</b>	<b>455.7</b>

A map showing all of our current assets and these new assets in Box Elder and Lost Cree is provided in **Attachment B**. To purchase this water, the Town would pay \$3,750,000 to PV, LLC and, in addition, they would assume the Town's 67% capacity ownership in the Keenesburg pipeline, including the annual payment of \$63,098 beginning in 2021 through 2032.

Within the Agreement, the Town has 90 days to complete due diligence activities and will provide earnest money in the amount of \$200,000 within five calendar days of the effective date of the Agreement. If the Town elects to terminate the Agreement within the 90 day due diligence period, the entire earnest money deposit plus interest will be refunded to the Town.

The current purchase price in the agreement is \$3,750,000 for 455.7 AF of renewable, fully exportable water which includes the well permits, easements for the wells, and existing infrastructure, as well as easements for collection pipelines. By including an assumed value of \$2,000,000 for the Keenesburg pipeline capacity as part of the purchase, and a relief on our future debt obligations of \$757,183, the unit cost for this water is \$10,956 per AF. This unit cost is less than the \$11,903 per AF we paid in 2017, as that sale included the purchase of the Keenesburg pipeline capacity as part of the overall water sale.

Together with the Rothe Water Rights purchased in 2015 (770 AF) and the previous purchase of Lost Creek water from PV, LLC in 2017, this purchase would secure approximately 2,261 AF of renewable water in the area for the Town that can be used for augmentation of the Box Elder well field.

### **Budget Impact**

If approved the Town would pay \$3,750,000 for the purchase of 455.7 AF of PV, LLC. This would be paid from the Alternative Source of Supply account 211-4375-443.77-30 <WRPVWR>, which currently has a balance of \$5,800,000.

Contingent on the execution of the Bill of Sale, the Town would make one last payment of \$63,098 in May of 2020 for Keenesburg pipeline capacity from the Other Professional Services account 211-4340-443.30-70 <WRKP>. After this payment, PV, LLC would assume all remaining payments including the final payment in 2032.

Additionally, upon closing, the Town must pay our water broker (Stillwater Resources) a brokerage fee of \$187,500 in accordance with our Water Brokerage Agreement.

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### **Staff Recommendation**

Staff recommends that Town Council approve the Contract for Purchase and Sale of Water Assets and Water Line Capacity.

### **Proposed Motion**

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

### **Attachments**

Attachment A:	Resolution
Exhibit 1:	Agreement
Attachment B:	Location Map

# Overview of Existing & Proposed Lost Creek Wells

