



Meeting Date: March 2, 2021

AGENDA MEMORANDUM

To: Honorable Mayor and Members of Town Council

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

Title: Resolution: Approving the Town of Castle Rock/H&H Farms Agricultural Water Lease Agreement

Executive Summary

Castle Rock Water is seeking Town Council approval of a resolution (***Attachment A***) for an agricultural water lease with H&H Farms. H&H Farms is a farmer located in Weld County adjacent to the Lost Creek Basin wells we purchased in 2017 as part of our Alternate Source of Supply Project. As part of their 2020 lease, the farmer used 198.7 AF of water from these wells in 2020 for irrigation and has paid the Town \$6,954.50. H&H Farms is interested in an additional one-year lease of our Lost Creek Basin water rights. The Town of Castle Rock does not plan to export these water rights in 2021 as the infrastructure needed to move the water is not designed or installed. H&H Farms wishes to lease up to 275 acre-feet (AF) at a rate of \$36.50 per AF, which could amount to \$10,037.50 in revenue. The price is reasonable for agricultural leased water of this type at this location based on available data regarding other leases in the area. The agreement terminates on November 15, 2021. This lease agreement is consistent with Castle Rock Water's strategic plan. A key tactic in that plan is to maximize leasing opportunities for idle water rights.

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

February 28, 2018, Castle Rock Water Commission unanimously recommended that Town Council approve the 2018 water lease agreement.

March 6, 2018, Town Council unanimously approved the 2018 water lease agreement.

January 23, 2019, Castle Rock Water Commission recommended that Town Council approve the 2019 water lease agreement.

February 5, 2019, Town Council unanimously approved the 2019 water lease agreement.

October 23, 2019, Castle Rock Water Commission recommended that Town Council approve the 2020 water lease agreement.

November 5, 2019, Town Council unanimously approved the 2020 water lease agreement.

February 24, 2021, Castle Rock Water Commission _____ that Town Council approve the 2021 water lease agreement.

Discussion

As part of the Town's hybrid renewable water solution, the Town purchased several Lost Creek Basin wells in 2017 and 2021. These wells came with approximately 1,492 AF (annually) of fully exportable water rights which could be used for municipal and other purposes. 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, leasing this water for other purposes helps to generate some revenue for Castle Rock Water. In 2020, H&H Farms used 198.7 AF of water and has paid the Town \$6,954.5. The farmers are also planning to use this water in 2021. The lease rate of \$36.50/AF was increased this year from \$35.00/AF as it has not been increased since first leasing these wells in March 2018. In order to determine the increase, the most recent consumer price index (CPI), 2020 CPI – Denver- Aurora Lakewood, 271.837, was compared to the 2018 CPI – Denver- Aurora-Lakewood, 261.958, which yielded a percent increase of 4%.

The key terms of the 2021 water lease agreement are summarized below:

- Agreement will terminate November 15, 2021.
- H&H Farms will lease up to 275 AF of water at a rate of \$36.50 per AF.

The following table outlines the wells that will be used and the amount of water we will be leasing to H&H Farms.

Well	Maximum Water to be Leased, AF	Annual Water Rights, AF
31640	275	297.2
Total	275	297.2

As noted in the Executive Summary, maximizing the leasing of idle water rights is part of Castle Rock Water's strategic plan. Revenues from this leasing help to offset the costs for purchasing and developing long term renewable water supplies. Total revenues from water leases over the last three years are shown in the table below.

Year	AF	\$/AF	Total Revenue
2018	183.55	\$ 35.00	\$ 6,424.25
2019	142.74	\$ 35.00	\$ 4,995.94
2020	198.68	\$ 35.00	\$ 6,953.84
Total			\$ 18,374.02

Budget Impact

If Council approves the agreement, Castle Rock Water would receive up to \$10,037.5 in revenue in 2021. The revenue will be deposited into Water Resources Fund Capital Leases account 211-4375-393.70-00 <WRAWL>.

Recommendations

Staff recommends approval of the 2021 agricultural water lease agreement with H&H Farms for 275 acre-feet of water which will generate a revenue of up to \$10,037.50.

Proposed Motion

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

Attachments

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

RESOLUTION NO. 2021-_____

**RESOLUTION APPROVING THE WATER RIGHTS LEASE BETWEEN
THE TOWN OF CASTLE ROCK AND H & H FARMS**

WHEREAS, the Town of Castle Rock (the “Town”), acting by and through its enterprise, Castle Rock Water, and H & H Farms (the “Lessee”) have agreed to the terms and conditions of the Water Rights Lease Agreement (the “Lease”) by which the Town will lease certain water rights to the Lessee for the 2021 harvesting season.

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

Section 1. Approval. The Water Rights Lease Agreement between the Town of Castle Rock and H & H Farms in the form attached as ***Exhibit 1*** is hereby approved. The Mayor and other proper Town Officials are hereby authorized to execute the Lease by and on behalf of the Town of Castle Rock, Colorado.

PASSED, APPROVED AND ADOPTED this 2nd day of March, 2021, by the Town Council of the Town of Castle Rock, Colorado, on first and final reading by a vote of _____ for and _____ against.

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Mark Marlowe, Director Castle Rock Water

WATER RIGHTS LEASE

THIS LEASE ("Lease") is made to be effective as of the ___ day of _____, 2021 between **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, acting by and through its Town of Castle Rock Water Enterprise ("Lessor"), 100 N. Wilcox Street, Castle Rock, Colorado and **H&H FARMS**, a Colorado general partner, 49001 E. 144th Avenue, Bennett, Colorado 80102 ("Lessee").

RECITALS:

A. Lessor is the owner of certain water rights described on *Exhibit A*, which exhibits includes the well permit information.

B. Lessee desires to lease from Lessor, and Lessor desires to lease to Lessee, the Water Rights and Equipment, as defined in Section 1, below, on the terms and conditions set forth herein.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT:

Section 1. Water Rights and Equipment Lease. Subject to the terms and conditions set forth herein, Lessor hereby leases to Lessee up to 275 acre feet ("Permitted Maximum") of the water rights associated with the well permit number 31640-FP ("Well Permit"). The water rights associated with the Well Permit shall be referred to collectively as the "Water Rights." The Water Rights together with the well, pumping equipment, electrical equipment and other equipment and facilities associated with the Water Rights (collectively referred to as the "Equipment") are described on the attached *Exhibit A*.

Except as otherwise limited herein, Lessee shall use the wells in accordance with the Well Permit and prevent degradation of the quality of the ground water. Lessee is required to use the well(s) and the well(s) shall not be used in excess of its Permitted Maximum. Lessee is prohibited by this Lease from pumping more than the Permitted Maximum from the well(s) associated with the Well Permit. Lessee also agrees that use of the Water Rights in excess of the Permitted Maximum shall be a default under Section 9 of this Lease, and (i) Lessee shall be liable for any and all damages caused to Lessor as a result of Lessee exceeding the Permitted Maximum; and (ii) Lessor, in its sole and absolute discretion, shall be entitled to immediately terminate this Lease. In the event that Lessee's use of the Water Rights associated with the Well Permit exceeds those quantities listed above, then Lessee shall pay to Lessor a \$60 per acre foot penalty.

Section 2. Rental Rate. The rental rate for the Water Rights and Equipment shall be Thirty-five Dollars (\$36.50) per acre foot (AF) of water (an acre foot being equal to 325,851 U.S. gallons)

pumped from the well associated with the Water Rights. As an upfront lease payment, Lessee shall pay to Lessor \$2,509.38, which represents 25% of the maximum total Rent due (\$36.50 x 275 AF) under this Water Lease Agreement ("Initial Rent Payment"). The Initial Rent Payment is due April 1, 2021. The second and final rent payment shall be due November 15, 2021, which shall be calculated at \$36.50 per AF for all Water Rights pumped, less the Initial Rent Payment. In the event any payment required hereunder is not made within thirty (30) days after the payment is due, a late charge in the amount of Ten Dollars (\$10) will be paid by Lessee. All payments shall be made to the address set forth above or such other address specified by Lessor.

A. In order to calculate the total of rental payments, during the term of this Lease, Lessee shall report to Lessor the flowmeter readings or electric meter readings for the meter associated with the pump for the Well Permit on the reporting form attached as **Exhibit B**. Reporting shall occur (i) at the commencement of this Lease with the initial meter reading, (ii) on the first of each month (usage from the previous month), and (iii) upon Lease termination on November 15, 2021. Lessee shall record the meter readings for each Well Permit number and shall report the readings to Lessor by emailing the completed reporting form to Lessor within ten (10) days of the reading to the email address listed in Section 11, below. Lessee also agrees that failure to report use as outlined in this Section is a default under Section 9 of this Lease and Lessor, in its sole and absolute discretion, may immediately terminate this Lease for such Default.

B. Lease payments shall be made to Lessor at the address set forth in Section 11, below. Final payment is due no later than 30 days from termination of this Lease. In the event of termination of this Lease for any reason, any unpaid rent shall be paid no later than ten days from the date of termination. Any rent due for the volume of water used, but unpaid shall be calculated using the monthly flowmeter readings.

Section 3. Term. This Lease will be for a term commencing on _____, 2021 and terminate on November 15, 2021 ("Term"), unless terminated sooner pursuant to this Lease. The term of the Lease can only be extended or renewed in writing signed by both parties, and there can be no implied renewal of this Lease.

Section 4. Use of Water Rights. Lessee shall use the Water Rights only for the irrigation of agriculture crops as historically done by Lessee in the **NE1/4 of Section 34, T1N, R63W of the 6th P.M.** (the "Property"). Lessee shall not exceed the Permitted Maximum of water allowed under the Well Permits or use of the Water Rights to irrigate any other real property than the Property.

Section 5. United States Department of Agriculture. Lessee shall deliver to Lessor copies of the 2021 Farm Service Agency crop reports, any 2021 aerial photos on record with the Farm Service Agency and/or any other governmental farm records by August 1, 2021 by Lessee, and Lessee shall also deliver to Lessor any additional Farm Service Agency crop records received by Lessee before expiration of this Lease.

Section 6. Maintenance of Equipment. Upon the effective date of this Lease, Lessee shall be solely responsible for the costs of operation, maintenance and repair of the Equipment and all other equipment necessary for the irrigation of the Property, which shall include the costs of all maintenance and repairs to the pumps and existing wells used for the Water Rights. During the term of this Lease, only the Lessee and/or their agents shall use the Equipment and only use it on the Property. In the event crops irrigated by the Water Rights are damaged because of Lessee's activities and/or failure to operate, maintain or repair the Equipment or any other equipment necessary for irrigation of the Property, Lessor shall have no liability for such damages to the crops or loss of crop revenue and Lessee shall have no recourse against Lessor for such damages. Upon discovery of an issue with the Equipment, Lessee shall notify Lessor immediately about the issue and what Lessee intends to do to maintain or repair the Equipment. In the event Lessee installs a part or other equipment that cost \$100 or more, Lessee may remove that part or equipment and take it with Lessee when the Lease terminates. However, before Lessee removes such part or equipment, Lessee shall provide Lessor with written notice of its intent to remove such part and/or equipment and Lessor shall have ten (10) days from the date of such notice to purchase said part or equipment at the amount Lessee paid for the part and its installation (Lessee shall provide Lessor the receipt for the part and installation cost). If the Equipment, for any reason, fails to deliver the water from the well, and Lessee does not repair it and provides Lessor notice of intent to not repair, Lessor or Lessee may terminate this Lease upon thirty (30) days written notice to the other party, and Lessor shall have no liability for damages to the crops or loss of crop revenue. In the event of termination, rent shall be paid at the time of termination, If the rent due is for acre-feet used, such amount shall be calculated using both the monthly flow meter readings and the KWh/AF conversion in Section 8, below.

Section 7. Utilities. Lessee shall pay any and all power and other utility costs associated with Lessee's use of the Water Rights. Lessee shall be responsible for all arrangements required for billing of the utilities directly to Lessee. Electrical charges not associated with Lessee's usage and billed for the period after the term of this Lease shall be the responsibility of Lessor.

Section 8. Power Records. Upon execution of this Lease and prior to use of the Water Rights and Equipment, Lessee shall execute the form of letter attached hereto as ***Exhibit C*** to request that Morgan County Rural Electric Association send a "duplicate" bill to Lessor each month during the term of the Lease. Lessee hereby grants permission to Morgan County Electric Association to release to Lessor and/or its agents power records associated with the wells located in the **NE1/4 of Section 34, T1N, R63W, of the 6th P.M.** with the power meter number _____.

Section 9. Default and Termination. In addition to the other grounds for termination herein, Lessor may, at its option, elect to terminate this Lease upon the occurrence of an event of default by Lessee in the performance of their obligations hereunder. An event of default shall be deemed to occur if:

A. Lessee fails to pay any rental payments within thirty (30) days of the due date. Lessor shall have no obligation to provide Lessee with notice of nonpayment or an opportunity to cure;

B. Lessee uses the Water Rights in a manner other than as permitted pursuant to this Lease or the well permit(s), and fails to cease such prohibited use within five (5) days of receipt of notice of such default by Lessor;

C. Lessee fails to report meter readings within 10 days from the required date for readings.

D. Lessee assigns this Lease to a third party in violation of Section 10, below; or

E. Lessee commits a material breach of any provision of this Lease.

In the event Lessee defaults or otherwise commits a breach of this Lease, or any provision of this Lease, in addition to terminating the Lease, Lessor shall have the right to pursue (i) the remedies set forth herein, and (ii) any and all other remedies and damages, permitted in law or equity, caused by or arising from Lessee's default or breach. In the event of termination as a result of any default, rent shall be brought current by Lessee and any rent due for acre feet used but unpaid shall be paid at the time of termination, as calculated using the flow meter readings.

Section 10. Assignment and Assumption. Lessee may not assign its rights hereunder without the prior written consent of Lessor, which may be withheld in Lessor's sole discretion. In the event that Lessor consents to an assignment of Lessee's rights hereunder, the assignee shall execute an assumption agreement pursuant to which it shall assume Lessee's obligations hereunder. The terms of such assumption agreement must be approved by Lessor.

Section 11. Notices. All notices shall be in writing, and shall be delivered by hand deliver or U.S. mail, postage prepaid, to the parties at the addresses set forth above. Notices shall be deemed received on the date hand delivered, or if mailed, three (3) days after deposit in the U.S. mail, postage prepaid.

If to Lessor:	Town of Castle Rock Attn: Matt Benak, Water Resources Manager Castle Rock Water 175 Kellogg Court Castle Rock, Colorado 80109 Phone: 720-733-6037 (direct) Email: mbenak@crgov.com
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If to Lessee: H&H Farms
 49001 E. 144th Avenue
 Bennett, CO 80102
 Phone: 970-381-2051 (mobile)
 Fax: 303-644-5909
 Email: khelzer@aol.com

Section 12. Termination Upon Sale, Transfer, Exchange or Export. In the event the Water Rights are sold, transferred, or exchanged or exported by Lessor or its assigns, then Lessor may terminate this Lease, in whole or in part, upon 30 days' prior written notice. In the event of such termination by Lessor, and Lessee has planted crop, Lessee shall attempt to procure substitute water supplies to avoid crop loss. If Lessee is unable to utilize a substitute water supply and the crops are damaged, wholly or in part, as a result of Lessor's termination pursuant to this Section 12, Lessor shall compensate Lessee for crop loss caused by Lessor's termination under this Section 12, if any, from crops planted on the Property and for which the water from the Water Rights had been used (the value of crop loss shall be based upon crop insurance records). This reimbursement provision applies only to actual crop loss caused by a termination of this Lease by Lessor under this Section 12. If the crops have not yet been planted (either wholly or partially) on the Property associated with the Water Rights, Lessor shall pay Lessee for expenses for work completed in preparation for planting, if any (Lessee shall provide Lessor with receipts for any such expenses). In the event of termination by Lessor under this Section 12, rent shall be brought current by Lessee and any rent due for acre feet used but unpaid shall be paid at the time of termination, as calculated using the monthly flowmeter readings.

Lessee shall not be entitled to compensation or reimbursement under this Section 12 or otherwise for crop damage or loss in the event of termination due to any default by Lessee or for any other reason under this Lease.

In the event of termination under this Section 12, if Lessor and Lessee are unable to agree as to the value of any such crops, tillage work, labor and material and supplies, then each parties agrees to name an arbitrator and the value arrived at by the arbitrators shall be controlling on both parties. In the event the two arbitrators cannot agree, they shall appoint a third arbitrator and the value arrived at by the majority of the arbitrators shall be controlling on both the parties. The parties shall share equally in the cost of such arbitration.

Section 13. Binding Effect. This Lease constitutes the full agreement of the parties and may not be modified except in writing signed by both parties. This Lease shall be binding on the parties and their respective successors and assigns.

Section 14 Loss, Destruction or Damage to the Water Rights and Equipment. Lessor leases the Water Rights and Equipment to Lessee in an "as is" condition, and Lessor expressly does not agree to any modification or change of the Water Rights, other than a change

of use of the Water Rights pursuant to any application filed by Lessor for the export and change or use of the Water Rights.

Section 15. Attorney's Fees. In the event of any dispute arising under the terms of this Lease (except for the arbitration procedure described in Section 12, above), or in the event of non-payment of any sums arising under this Lease and in the event the matter is turned over to an attorney, the party prevailing in such dispute is entitled, in addition to other damages or costs, to receive reasonable attorney's fees from the non-prevailing party.

Section 16. Complete Agreement. This Lease Agreement supersedes any and all prior agreements, written and oral, between the parties and constitutes the complete and entire agreement of the parties.

Section 17. Headings for Convenience Only. The paragraph headings are for convenience only and the substantive portions hereof control without regard to the headings.

Section 18. Modification. This Lease Agreement shall be modified in writing only, which writing must be executed by the parties in order to be effective.

Section 19. Controlling Law. This Lease Agreement shall be governed under, and construed pursuant to the laws of the State of Colorado.

(Signature page to follow)

LESSOR:

ATTEST:

TOWN OF CASTLE ROCK, acting by and
through the Town of Castle Rock Water
Enterprise

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Mark Marlowe, Director Castle Rock Water

LESSEE:

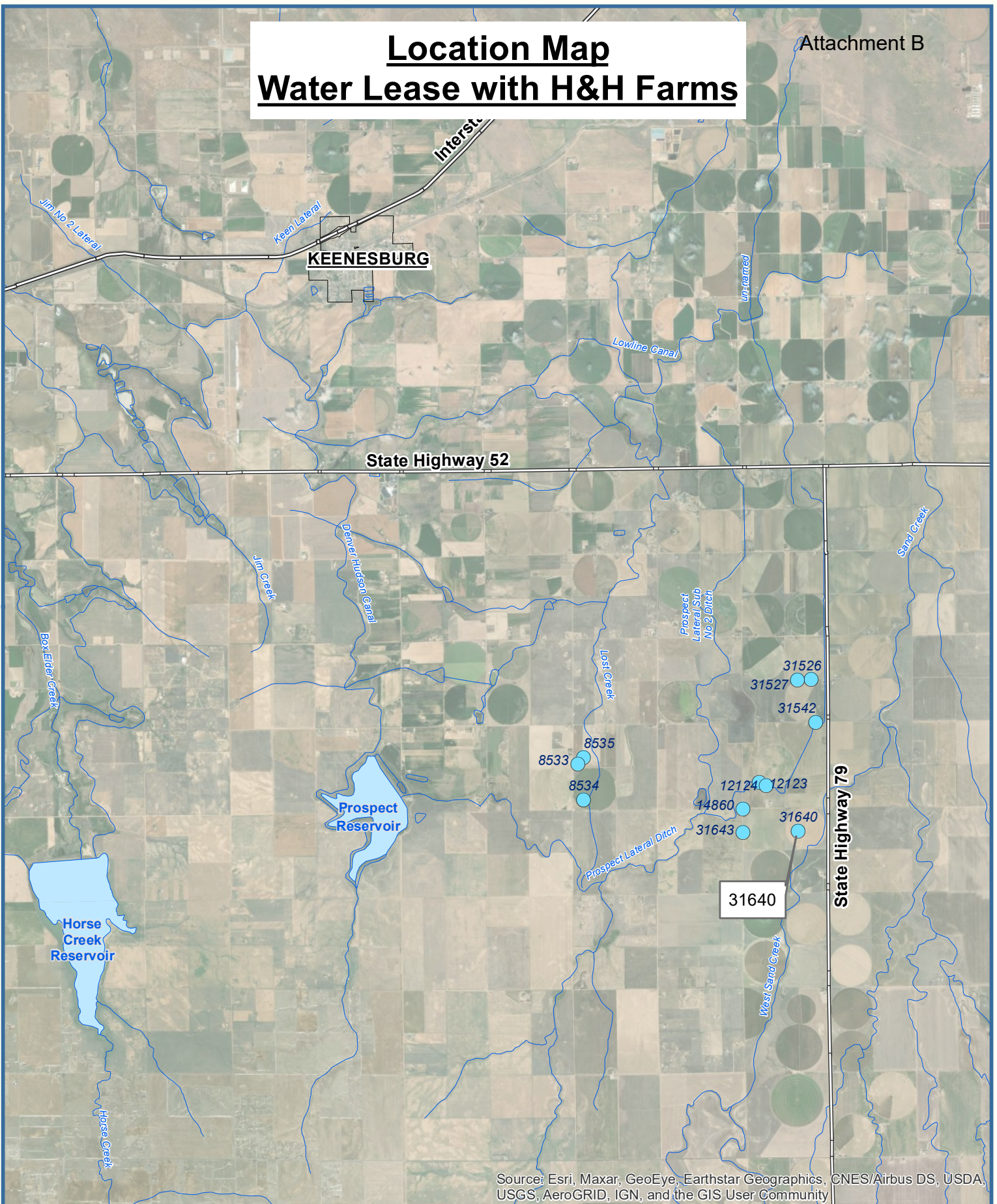
H&H Farms, a Colorado general partner

By: _____

Its: Partner

Location Map Water Lease with H&H Farms

Attachment B



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



0 3,950 7,900 15,800 Feet

Date: 2/10/2021

1 inch = 7,750 feet



Disclaimer: The data presented has been compiled from various sources, each of which introduces varying degrees of inaccuracies or inconsistencies. Such discrepancies in data are inherent in and in supplying this product the Town of Castle Rock assumes no liability for its use or accuracy. Questions or comments regarding the cartographic composition of this map including, but not limited to, errors, omissions, corrections, and/or updates, should be directed to the Utilities Department, Town of Castle Rock, (720) 733-6087. Copyright 2017, Town of Castle Rock Utilities Mapping.

**CASTLE ROCK
UTILITIES MAP
(INTERNAL USE ONLY)**