

### **Summary**

This application (attached) seeks a finding of reasonable diligence for a conditional Recreational In-Channel Diversion (RICD) on the St. Vrain River located in Boulder County, CO originally decreed in Case No. 1-01CW275.

The City of Longmont's proposed white water course will be located on the St. Vrain River in Dickens Park, within the St. Vrain River Greenway, which is owned by the City of Longmont. The reach of the RICD for the City of Longmont White Water Course is shown on the map attached and will include approximately 5 control structures. This RICD is decreed to operate as indicated below:

<b>Time Period</b>	<b>Amount (cfs)</b>	<b>Recreational Experience/Use</b>
March 1 - April 30	50	Boat passage
May 1 – 15	150	Intermediate kayaking
May 16 – June 15	350	Expert kayaking, rafting
June 16 – July 31	150	Intermediate kayaking
August 1 – September 30	100	Beginner kayaking
October 1 – 31	50	Boat passage

### **CWCB Appropriations**

The CWCB does not hold instream flow (ISF) water rights that could be injured by this RICD.

### **Basis for Statement of Opposition**

The CWCB is concerned whether the Applicant has properly performed its due diligence for its conditional RICD decreed in Case No. 1-01CW275. Improper due diligence performed on this RICD may affect Colorado's ability to promote maximum utilization of the waters of the State.

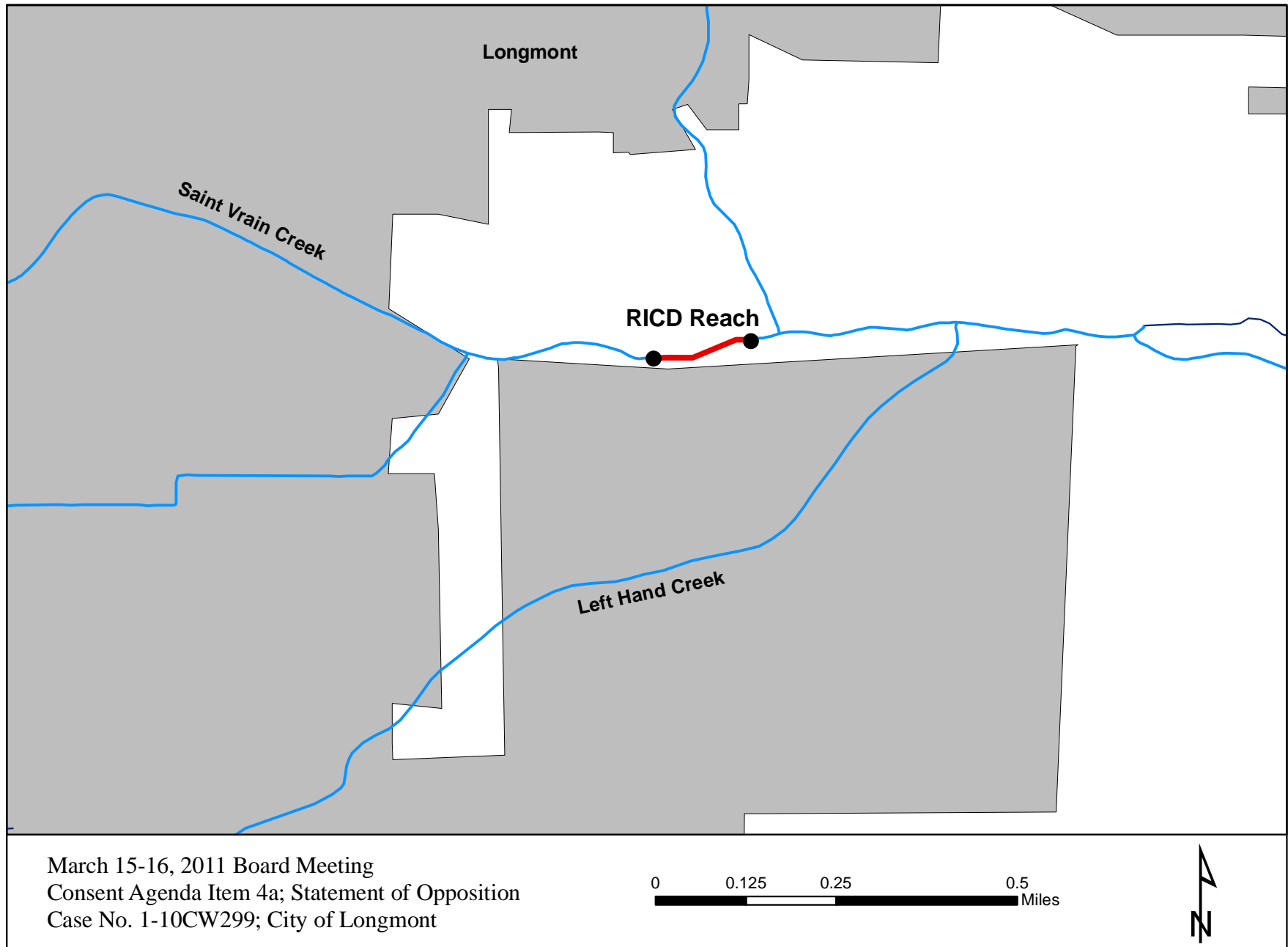
### **Other Objectors**

The Staff is not aware of other objectors in the case at this time.

### **Staff Recommendation**

The Staff requests that the Board ratify the Statement of Opposition (SOP) that was filed by Staff and the Attorney General's Office in this case.

Attachments:  
Application and Map



<b>District Court, Water Division 1, Colorado</b> 901 9th Avenue P.O. Box 2038 Greeley, CO 80632	<b>EFILED Document – District Court</b> <b>2010cw299</b> <b>CO Weld County District Court 19th JD</b> <b>Filing Date: Dec 27 2010 12:09PM MST</b> <b>Filing ID: 35057661</b>  <b>▲ COURT USE ONLY ▲</b>
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY OF LONGMONT,  IN BOULDER COUNTY, COLORADO	
Raymond L. Petros, Jr., No. 6763 David Hayes, No. 28661 Nicole L. Johnson, No. 40564 Petros & White, LLC 1999 Broadway, Suite 3200 Denver, Colorado 80202 Phone: (303) 825-1980 Fax: (303) 825-1983 E-Mail: <a href="mailto:dhayes@petros-white.com">dhayes@petros-white.com</a>	Case No.: 2010CW_____ (01CW275)
<b>APPLICATION FOR FINDING OF REASONABLE DILIGENCE</b>	

1. Name and address of Applicant:

City of Longmont ("Longmont" or "City")  
 c/o Public Works and Natural Resources Department  
 1100 South Sherman Street  
 Longmont, Colorado 80501  
 303-651-8376  
[water@ci.longmont.co.us](mailto:water@ci.longmont.co.us)

Copies of pleadings to:

Raymond L. Petros, Jr.  
 David S. Hayes  
 Nicole L. Johnson  
 Petros & White, LLC  
 1999 Broadway, Suite 3200  
 Denver, Colorado 80202  
 (303) 825-1980  
[dhayes@petros-white.com](mailto:dhayes@petros-white.com)

2. Name of structure(s):

City of Longmont White Water Course (also referred to herein as the "White Water

Course"). The White Water Course will be located in the proposed Dickens Park, within the St. Vrain River Greenway, which is owned by the City of Longmont. The White Water Course will consist of approximately five (5) individual physical control structures, each designed to divert, capture, and control water between specific points, for the beneficial use of a recreation experience in and on the water. The five structures are collectively referred to as the City of Longmont White Water Course or White Water Course.

3. Description of conditional water right:

A. Prior decree: The decree adjudicating the Longmont White Water Course was entered on December 7, 2004, in Case No. 01CW275, District Court, Water Division No. 1, Colorado.

B. Legal description: The exact location of the physical control structures will not be known until final design and construction is completed, but they will generally lie within the channel of St. Vrain Creek, over a reach extending approximately a quarter-mile, beginning at the Bonus Ditch Diversion Dam, located at point from where the Northeast corner of Section 10, Township 2 North, Range 69 West of the 6<sup>th</sup> P.M. bears North 23°30'4" West a distance of 2041.05 feet; and extending to a point on the East line of Section 10, Township 2 North, Range 69 West of the 6<sup>th</sup> P.M., Boulder County, Colorado. A map depicting the general location of the White Water Course is attached hereto as Exhibits A-1 & A-2.

C. Source: St. Vrain Creek, tributary to the South Platte River.

D. Appropriation date: July 10, 2001.

E. Amount and use: The following amounts (expressed in cubic feet per second) are conditionally decreed for each of the structures collectively comprising the White Water Course, for each of the specified time periods, for the specified recreational in-channel boating use:

TIME PERIOD	AMOUNT	RECREATIONAL EXPERIENCE/USE
March 1 – April 30	50	Boat passage
May 1 – 15	150	Intermediate kayaking
May 16 – June 15	350	Expert kayaking, rafting
June 16 – July 31	150	Intermediate kayaking
August 1 – September 30	100	Beginner kayaking
October 1 – 31	50	Boat passage

4. Detailed outline of work done to complete project and apply water to beneficial use:

The conditional water rights decreed in Case No. 01CW275 for the White Water Course is an integral part of the City of Longmont's Saint Vrain Creek Greenway Improvement Project.

("Project"). Longmont is implementing the Project in phases. During the applicable Diligence Period (December 2004 to the present), Longmont has spent considerable time and money in the development of the Project and the White Water Course, and large expenditures of money will be required in the future to continue this development.

Longmont's efforts to develop Project, the White Water Course, and the conditional water rights that are the subject of this Application during the Diligence Period support a finding of reasonable diligence. These efforts include, without limitation, the work detailed in the affidavit of Ken S. Huson, Water Resources Administrator for Longmont, attached hereto as Exhibit B, and partially summarized as follows:

A. Construction of Takeout. The takeout point for the White Water Course is located just west of Boulder County Road #119, on the north bank of Saint Vrain Creek. This takeout point has been designed, bid, and is currently under construction. The total cost for this effort during the Diligence Period was \$617,436.00.

B. St. Vrain Greenway Trail. Construction of and improvements to various segments of the St. Vrain Creek Greenway trail, which provides access to the White Water Course, occurred during the Diligence Period. Total costs for these improvements during this Diligence Period exceeded \$1,000,000.00.

C. Martin Street Bridge. Design and installation of a new bridge within the St. Vrain Creek floodplain took into account the grade and clearance necessary for the White Water Course. Costs for these improvements during this Diligence Period exceeded \$3,000,000.00.

D. Saint Vrain Creek Riparian Protection Program. The Saint Vrain Creek Riparian Protection Program works to identify and improve conditions of the riparian zone along Saint Vrain Creek, both in-channel and in the riparian zone of the St. Vrain Creek, including in the reach of the White Water Course. During this Diligence Period Longmont made contributions to the Saint Vrain Creek Riparian Protection Program in excess of \$27,000.00.

5. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:

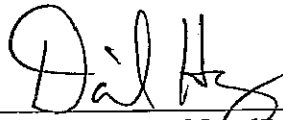
Longmont: City of Longmont  
c/o Public Works and Natural Resources Department  
1100 South Sherman Street  
Longmont, Colorado 80501

Bonus Ditch: Bonus Ditch Company  
% Tara Garcia, Secretary  
P.O. Box 771  
Longmont, Colorado 80502

WHEREFORE, Longmont respectfully requests that the Court enter a decree finding reasonable diligence for and continuing in full force and effect the subject conditional water rights described in Paragraph 3 above.

Respectfully submitted, this 27<sup>th</sup> day of December, 2010.

PETROS & WHITE LLC



Raymond L. Petros, No. 6763

David Hayes, No. 28661

Nicole L. Johnson, No. 40564

ATTORNEYS FOR THE CITY OF LONGMONT

**VERIFICATION**

STATE OF COLORADO     )  
                                      ) ss.  
COUNTY OF BOULDER    )

I, Ken S. Huson, Water Resources Administrator for the City of Longmont, being first duly sworn, hereby state that I have read this Application, that I have personal knowledge of the facts stated and verify its contents to the best of my knowledge, information, and belief.

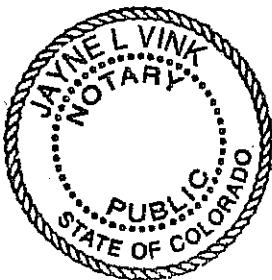
Ken S. Huson  
Ken S. Huson

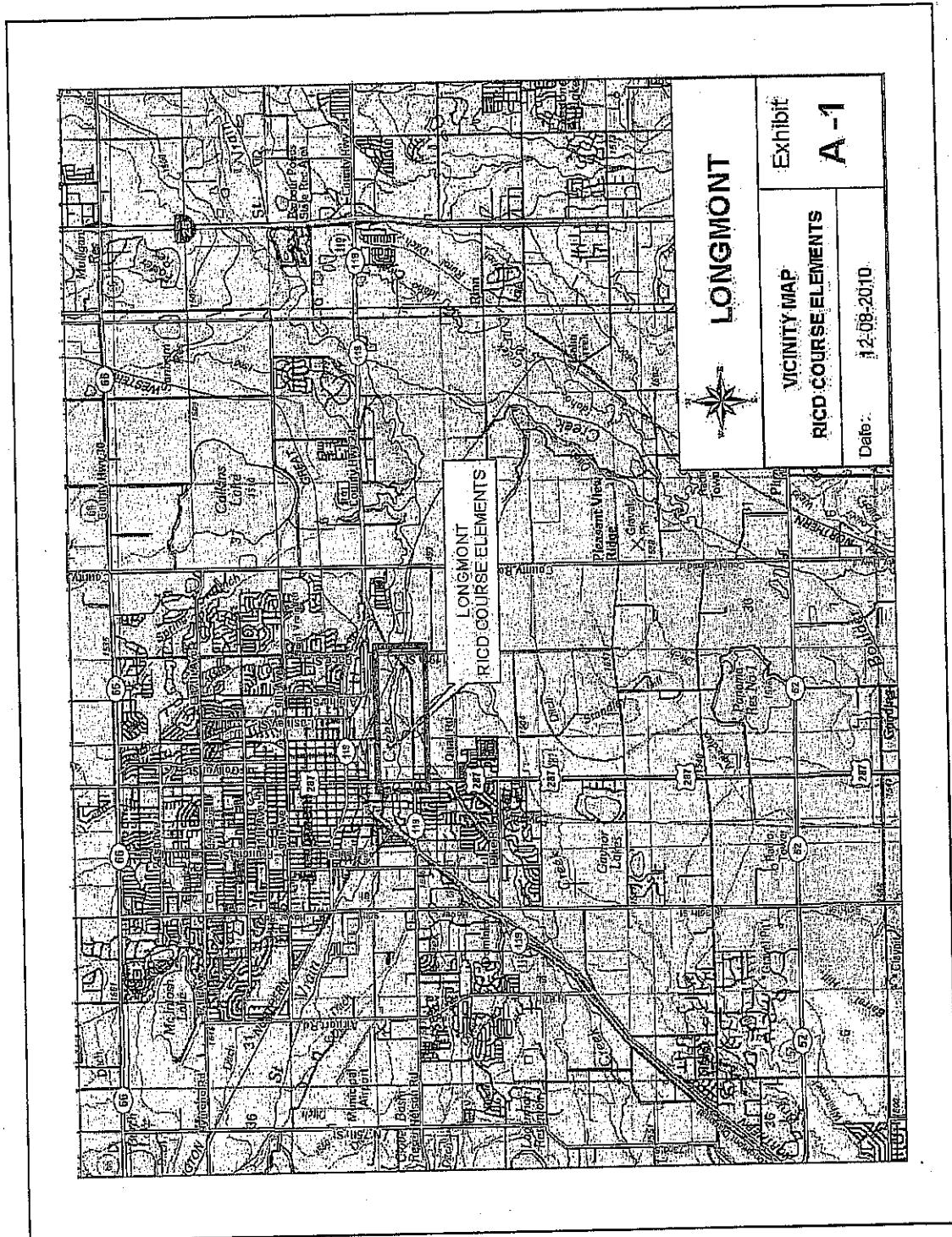
The foregoing Application was acknowledged before me this 27<sup>th</sup> day of December, 2010, by Ken S. Huson as Water Resources Administrator for the City of Longmont.

Witness my hand and official seal.

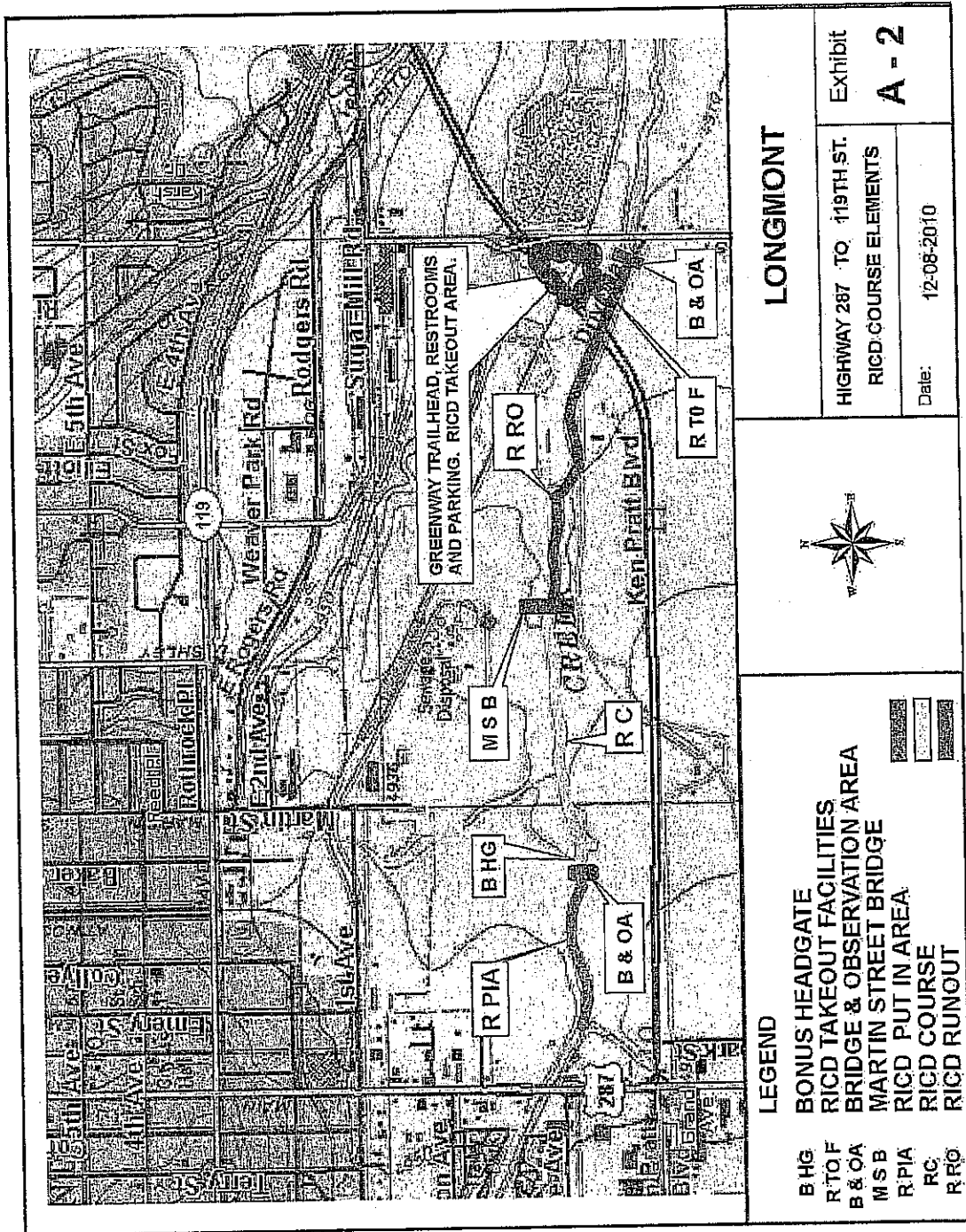
My commission expires: 4-8-14

Jayne L. Vink  
Notary Public









District Court, Water Division 1, Colorado 901 9th Avenue P.O. Box 2038 Greeley, CO 80632	December 27, 2010
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY OF LONGMONT,  IN BOULDER COUNTY, COLORADO	▲ COURT USE ONLY ▲
Raymond L. Petros, Jr., No. 6763 David Hayes, No. 28661 Nicole L. Johnson, No. 40564 Petros & White, LLC 1999 Broadway, Suite 3200 Denver, Colorado 80202 Phone: (303) 825-1980 Fax: (303) 825-1983 E-Mail: <a href="mailto:dhayes@petros-white.com">dhayes@petros-white.com</a>	Case No.: 2010CW____ (01CW275)
<b>AFFIDAVIT OF KEN S. HUSON</b>  <b>(EXHIBIT B TO DILIGENCE APPLICATION – RICD)</b>	

I, Ken S. Huson, affiant herein, being first duly sworn on oath, depose and say that:

1. I am a Water Resources Administrator in the Public Works and Natural Resources Department of the City of Longmont ("Longmont" or "City"). I have worked in this Department since November 12, 1985.

2. I am familiar with the conditional water right decreed by the District Court, Water Division No. 1 in Case No. 2001CW275 for the City of Longmont White Water Course (also referred to herein as the "White Water Course" or the "Subject Right"). I also have personal knowledge of the work performed by Longmont during the Diligence Period (December 2004 through present) toward development of the Subject Right.

The conditional water rights decreed in Case No. 01CW275 for the White Water Course are an integral part of the City of Longmont's Saint Vrain Creek Greenway Improvement Project ("Project"). Longmont is implementing the Project in phases. During the Diligence Period, Longmont has spent considerable time and money in the development of the Project and the White Water Course, and large expenditures of money will be required in the future to continue

this development. The White Water Course will be located in the proposed Dickens Park, within the St. Vrain River Greenway, which is owned by the City of Longmont. The White Water Course will consist of approximately five (5) individual physical control structures, each designed to divert, capture, and control water between specific points, for the beneficial use of a recreation experience in and on the water.

3. The following activities were undertaken by Longmont to develop the Subject Right during the Diligence Period:

A. Boating Takeout Point and Trailhead Construction. The takeout point for the White Water Course is located just west of Boulder County Road #119, on the north bank of Saint Vrain Creek. This takeout point has been designed, bid and currently is under construction. The total cost for this effort during the Diligence Period was \$617,436.00.

B. Phase VII Greenway Trail improvements. Construction of the St. Vrain Creek Greenway trail, from Left Hand Creek to approximately the location of the takeout point and trailhead shelter for the White Water Course (including construction of the trailhead shelter), was completed during the Diligence Period. This trail provides access, among other locations, to the White Water Course. Total costs for these improvements during the Diligence Period were \$1,069,334.00.

C. Phase VII-B Greenway Trail Improvements. This phase of the Saint Vrain Creek Greenway trail system continues the trail from the White Water Course trailhead downstream to the City of Longmont's Sandstone Ranch complex. This phase is a continuation of the overall Greenway project and provides access to additional boating takeout points along the Saint Vrain Creek, including a pedestrian and small equipment bridge crossing of the St. Vrain Creek at Sandstone Ranch. Costs for these facilities are included in other items listed in this Paragraph 3.

D. Phase IX Greenway Trail Improvements. This phase of the Saint Vrain Creek Greenway trail system involves trail improvements along the length of the greenway, including construction of various trailheads. These improvements continue the overall master plan for the greenway. Total costs for these improvements during this Diligence Period were \$1,501,639.00, including the \$617,436.00 included in item Paragraph 3.A., above.

E. Martin Street Bridge and Street Extension Project. The design of the Martin Street Bridge and Street Extension Project was initiated in June 2009 with construction completion in July 2010. This project extended Martin Street from 1st Avenue southward to US Hwy. 119, crossing the St. Vrain Creek at the White Water Course location. Work consisted of the construction of a new three lane bridge over the St. Vrain River, a new roadway connecting US Hwy 119 to the existing Martin Street at 1st Avenue, a new box culvert on Spring Gulch drainage way, and signalization of the intersection of 3rd Avenue and Martin. A hydraulic

design was prepared for this new bridge installation within the St. Vrain Creek floodplain that established the clearance elevations for the new bridge, taking into account and setting grade for the proposed construction of the White Water Course at this crossing location. Total costs for these improvements during this Diligence Period were \$3,496,329.

F. Saint Vrain Creek Corridor Committee. The Saint Vrain Creek Corridor Committee includes several stakeholders interested in enhancing stream flows in the Saint Vrain Creek watershed. The Subject Rights may enhance the Committee's objectives, as stored water can be delivered to the Saint Vrain Creek above Longmont to meet Longmont's delivery obligations below Longmont. This method of operation would result in stream flow enhancements through the main stem of the Saint Vrain Creek. During the Diligence Period, Longmont made contributions to the Saint Vrain Corridor Committee effort. Total expenses during the Diligence Period were \$15,326.00.

G. Saint Vrain Creek Riparian Protection Program. The Saint Vrain Creek Riparian Protection Program works to identify and improve conditions of the riparian zone along Saint Vrain Creek. This program works in concert with the Saint Vrain Creek Corridor effort, mentioned above, and includes work both in-channel and in the riparian zone of the St. Vrain Creek in the immediate vicinity of the White Water Course. During the Diligence Period Longmont made contributions to the Saint Vrain Creek Riparian Protection Program in the amount of \$27,916.00.

H. Saint Vrain Creek Greenway Improvement Project Budget. The calendar year Saint Vrain Creek Greenway Improvement Project budget appropriated expenditures during the Diligence Period were as follows:

2005	\$1,387,200.00
2006	\$709,000.00
2007	\$710,000.00
2008	\$702,900.00
2009	\$870,000.00
2010	\$0.00

Total during the Diligence Period: \$4,379,100.00

I. Parks Division Budget. The calendar year Parks Division budget appropriated expenditures during the Diligence Period (including Saint Vrain Creek Greenway Improvement Project ) were as follows:

2005	\$4,074,002.00
2006	\$4,186,082.00

2007	\$4,280,307.00
2008	\$4,311,335.00
2009	\$4,579,029.00
2010	\$4,419,745.00

Total during the Diligence Period: \$25,850,500.00

J. Water Department Budget. The calendar year Water Department budget actual expenditures during the Diligence Period were as follows:

2005	\$ 16,190,449.00
2006	\$ 13,590,782.00
2007	\$ 14,673,703.00
2008	\$ 15,460,430.00
2009	\$ 16,650,466.00
2010	\$ 19,418,858.00

Total during the Diligence Period: \$ 95,984,688.00

K. Wastewater Department Budget. The calendar year Wastewater Department budget actual expenditures during the Diligence Period were as follows:

2005	\$ 8,987,535.00
2006	\$ 8,063,155.00
2007	\$ 8,626,904.00
2008	\$ 7,526,275.00
2009	\$ 7,508,340.00
2010	\$ 7,915,031.00

Total during the Diligence Period: \$ 48,627,240.00

4. I hereby certify that the facts set forth above are true and correct to the best of my information and belief.

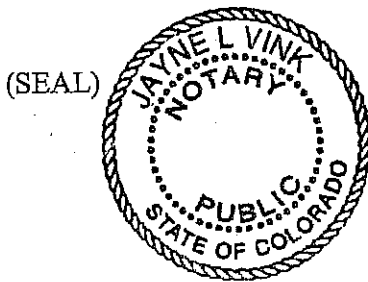
Dated this 27<sup>th</sup> day of December, 2010.

Ken S. Huson  
Ken S. Huson

The foregoing Affidavit was signed and acknowledged before me this 27<sup>th</sup> day of December, 2010, by Ken S. Huson as Water Resources Administrator for the City of Longmont.

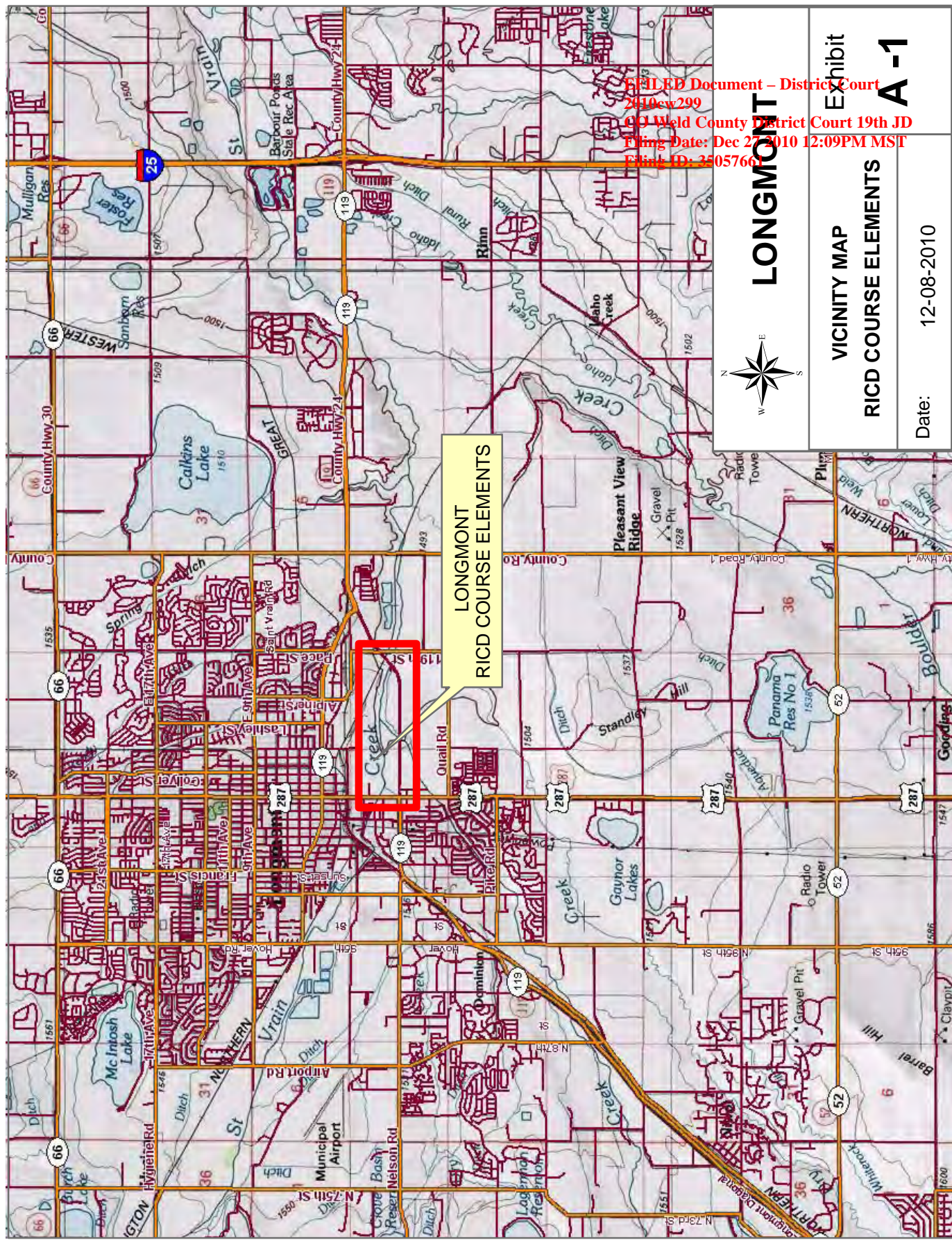
WITNESS my hand and official seal.

My Commission expires: 4-8-14



Jayne L. Vink  
Notary Public





LONGMONT  
RICD COURSE ELEMENTS



# LONGMONT

FILED Document – District Court  
2010cw299  
CO Weld County District Court 19th JD  
Filing Date: Dec 27 2010 12:09PM MST  
Filing ID: 2505766

Exhibit  
**A-1**

VICINITY MAP  
RICD COURSE ELEMENTS

Date: 12-08-2010



