

Summary

This application (attached) seeks a conditional storage right and a conditional right of appropriated exchange.

The proposed reservoir is to be located in portions of Townships 8 & 9 North, Ranges 54-56 West of the 6th P.M., primarily in Logan County. A small portion of the reservoir would also extend into Weld County. The reservoir is proposed to be an on-channel reservoir with a volume of 386,850 acre-feet to be used for flood control, wildlife, recreational, piscatorial, augmentation, exchange and irrigation of 106,097 acres.

The proposed exchange is to be operated from the confluence of Pawnee Creek and the South Platte River up to the North Sterling Inlet Ditch at a flow rate of 361 cfs and a volume of 18,064 acre-feet for augmentation purposes and irrigation of 18,064 acres.

CWCB Appropriations

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

application

Impacted State Lands

A brief search of the Logan County Assessor's website (<http://www.logancountycoa.com/Main/Home.aspx>) reveals that the State of Colorado Board of Land Commissioners owns land (Sec 16, T8N, R54W) that would be inundated by or land (Sec 16, T8N, R55W) that is immediately adjacent to the proposed reservoir.

Basis for Statement of Opposition

The CWCB Staff and the Attorney General's Office filed the attached statement of opposition (SOP) to the subject application on February 24, 2012 in order to meet the February 29, 2012 court deadline. The following concerns were raised in the SOP:

1. The application in this case includes the use of State land, and consent must be given to use these lands in order to obtain a water right decree.
2. The applicant must demonstrate that the claimed uses for the stored water are defined and not speculative.
3. The applicant must be put on strict proof as to each allegation stated in the application and have met all burdens of proof and complied with all standards applicable to the water rights requested.
4. The applicant must establish that no injury will result from the claimed water rights.

Although not raised in the SOP, Staff also has concerns as to how the proposed reservoir would impact the operation of the Tamarac Recharge Project and the State's obligations under the Platte River Recovery Implementation Program.

Other Objectors

A list of other objectors that have filed SOPs to this case is attached.

Staff Recommendation

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

Attachments:

Application

SOP

List of Objectors

District Court, Water Division No. 1 State of Colorado P.O. Box 2038 Greeley, CO 80632-2038 (970) 351-7300	EFILED Document – District Court 2011cw274 CO Weld County District Court 19th JD Filing Date: Dec 28 2011 1:34PM MST Filing ID: 41596089 Court Use Only
CONCERNING THE APPLICATION OF LOGAN COUNTY WATER CONSERVANCY DISTRICT IN WELD, LOGAN AND MORGAN COUNTIES	
Jeffrey J. Kahn, No. 6894 Madoline Wallace-Gross, No. 32255 Lyons Gaddis Kahn & Hall, PC Attorneys for Logan County Water Conservancy District P.O. Box 978 Longmont, CO 80502-0978 Telephone: 303-776-9900 E-mail: jkahn@lgkhlaw.com ; mwallace-gross@lgkhlaw.com	Case No. 2011CW__ Water Division No. 1
APPLICATION FOR CONDITIONAL STORAGE WATER RIGHT AND CONDITIONAL RIGHT OF APPROPRIATIVE EXCHANGE	

1. **Applicant:**

Logan County Water Conservancy District
 c/o Shane Miller
 206 Main Street
 Sterling, CO 80751

CLAIM FOR CONDITIONAL WATER STORAGE RIGHT

2. **Name of reservoir:** Pawnee Creek Reservoir.

3. **Legal description of location of dam:** The right abutment (looking downstream) of the dam is located in the SW ¼ NE ¼ Section 25, Township 8 North, Range 55 West of the 6th P.M. at a point 2450 feet from the east section line and 2300 feet from the north section line, in Logan County, Colorado. A map depicting the location of the on-channel reservoir is attached as **Exhibit A**.

4. **Source:** Pawnee Creek, tributary to the South Platte River.

5. **Name of ditch used to fill reservoir and capacity in c.f.s.:** Not applicable.

6. **Amount claimed:** 386,850 a.f., conditional.

7. **Uses:** Flood control, wildlife, recreational, piscatorial, irrigation, augmentation and exchange.

a) **If irrigation, complete the following:**

i) **Number of acres historically irrigated:** Not applicable.

ii) **Total number of acres proposed to be irrigated:** 106,097 acres.

iii) **Legal description of acreage irrigated or to be irrigated:** All 106,097 acres of the potentially irrigated area are located in Logan County and are depicted on the map attached hereto as **Exhibit B** in pink and green.

(1) Of the total, 88,033 acres can take delivery by gravity. Those acres are depicted in pink on the map and are located in Townships 7 North through 12 North and Ranges 48 West through 54 West.

(2) Of the total, 18,064 acres can take delivery by exchange. Those acres are depicted in green on the map and are located in Townships 6 North through 7 North and Ranges 52 West through 54 West.

8. **Surface area of high water line:** 8101 acres.

a) **Vertical height of dam in feet:** 131 feet.

b) **Length of dam in feet:** 6800 feet.

9. **Total capacity of reservoir in acre feet:**

a) **Active capacity:** 386,850 af.

b) **Dead storage:** 0 af.

10. **Dates of appropriation:**

a) **May 26, 2011:** For flood control, wildlife, recreational, piscatorial and irrigation. The appropriation was initiated by: completing a Phase I Scoping Report for the Pawnee Creek Flood Control Project; holding a public meeting to discuss the proposed reservoir; posting signs at the location of the reservoir; publishing the notice of a special meeting in the newspaper; approving a resolution to appropriate the water right; and filing this application.

b) **December 12, 2011:** For augmentation and exchange. The appropriation was initiated by: completing a Phase I Scoping Report for the Pawnee Creek Flood Control Project; holding a public meeting to discuss the proposed reservoir; posting signs at the location of the reservoir; posting a notice of a regular meeting; approving a resolution to appropriate the water right; and filing this application.

c) **Date water applied to beneficial use:** Not applicable.

CLAIM FOR CONDITIONAL RIGHT OF APPROPRIATIVE EXCHANGE

11. **Name of exchange:** LCWCD - Pawnee Creek to North Sterling Exchange.

12. **Legal description of termini:**

a) **Upstream terminus:** North Sterling Inlet Ditch, the headgate of which is located at a point whence the corner common to Sections 28, 29, 32 and 33 in Township 5 North, Range 55 West, of the 6th PM bears north 4077 feet, in Morgan County, Colorado.

b) **Downstream terminus:** Confluence of Pawnee Creek and the South Platte River, which is located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 19, Township 7 North, Range 52 West of the 6th P.M., at a point 886 feet from the west section line and 874 feet from the north section line, in Logan County, Colorado.

c) **Remarks:** Applicant claims the right to exchange water to all surface diversions between the upstream and downstream termini.

13. **Sources of replacement water:** Water rights stored in the Pawnee Creek Reservoir.

14. **Date of appropriation:** December 12, 2011.

a) **How appropriation was initiated:** The appropriation was initiated by: completing a Phase I Scoping Report for the Pawnee Creek Flood Control Project; holding a public meeting to discuss the proposed reservoir; posting signs at the location of the termini; posting a notice of a regular meeting; approving a resolution to appropriate the water right; and filing this application.

b) **Date water applied to beneficial use:** Not applicable.

15. **Rate claimed:** 361 cfs, conditional.

16. **Volume claimed:** 18,064 af, conditional.

17. **Uses:** Irrigation and augmentation.

- a) **If irrigation, complete the following:**
- i) **Number of acres historically irrigated:** Not applicable.
 - ii) **Total number of acres proposed to be irrigated:** 18,064 acres.
 - iii) **Legal description of acreage irrigated or to be irrigated:** All 18,064 acres are depicted in green on the map attached as **Exhibit B** and are located in Townships 6 North through 7 North and Ranges 52 West through 54 West.

INFORMATION APPLICABLE TO ALL CLAIMS

18. **Remarks:** The Pawnee Creek Reservoir is a flood control measure for the Pawnee Creek Flood Control Project. The primary purpose of the Pawnee Creek Reservoir is to minimize personal injury and property damage as a result of flooding on Pawnee Creek. The secondary purpose is to store flood water in-priority for beneficial use by people within Applicant's service area boundaries, which coincides with the boundaries of Logan County.

19. **Names and addresses of owners 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.**

- a) **North Sterling Inlet Canal.** North Sterling Irrigation District, Box 103, Sterling, CO 80751.
- b) **Pawnee Creek Reservoir.**
 - i) Teresa M. Beintema, 17843 CR 5, Merino, CO 80741.
 - ii) Williams Family Bypass Trust, 812 Mindy Cir., Unit B, Sterling, CO 80751.
 - iii) David G. Donaldson and Bren Dee Rogers, 13125 N CR 9, Wellington, CO 80549.
 - iv) Wayne Kasper and Charlotte M. Kasper, 15178 CR 13, Merino, CO 80741.
 - v) Kasper Farms Incorporated, 15178 CR 13, Merino, CO 80741.
 - vi) Konig Investments LLC, 57851 WCR 81, Grover, CO 80729.
 - vii) Lynn A. Kerschner and M. Elena Kerschner, 1602 CR 34, Merino, CO 80741.

- viii) Logan County Water Conservancy District, P.O. Box 1483, Sterling, CO 80751.
- ix) Kevin L. Stump and Debbie Stump, 500 CR 36, Merino, CO 80741.
- x) Betty Jo Sessions, P.O. Box 182, Merino, CO 80741.
- xi) Richard E. Hessler Revocable Trust, P.O. Box 1337, Sterling, CO 80751.
- xii) Dan Jack Cady, 7055 S. Andres Circle, Centennial, CO 80016.
- xiii) Brian L. Sessions Beneficiary Estate, Ann R. Sessions Beneficiary Estate, 16982 CR 7, Merino, CO 80741.
- xiv) Paul H. Kerschner and Carolyn R. Kerschner, 15648 CR 11.2, Merino, CO 80741.
- xv) Budin Ranch Limited LLP, P.O. Box 27, Sterling, CO 80751.
- xvi) Rudolph I. Budin and Dianne R. Budin, 4631 CR 38, Sterling, CO 80751.
- xvii) OK Bar Farms LLC, 5724 Long Branch Court, Loveland, CO 80537.
- xviii) David Irelan, P.O. Box 60, Stoneham, CO 80754.
- xix) State of Colorado, c/o Office of the Attorney General, 1525 Sherman St., 7th floor, Denver, CO 80203.

WHEREFORE, Applicant respectfully requests the Court enter a decree finding that Applicant is entitled to the conditional water storage right and the conditional right of appropriative exchange described herein.

Dated: December 28, 2011

LYONS GADDIS KAHN & HALL, PC

By: 

Madoline Wallace-Gross

**ATTORNEYS FOR APPLICANT
LOGAN COUNTY WATER CONSERVANCY DISTRICT**

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)


I, Stephen Jamieson, state under oath that I have read this application and verify its content.

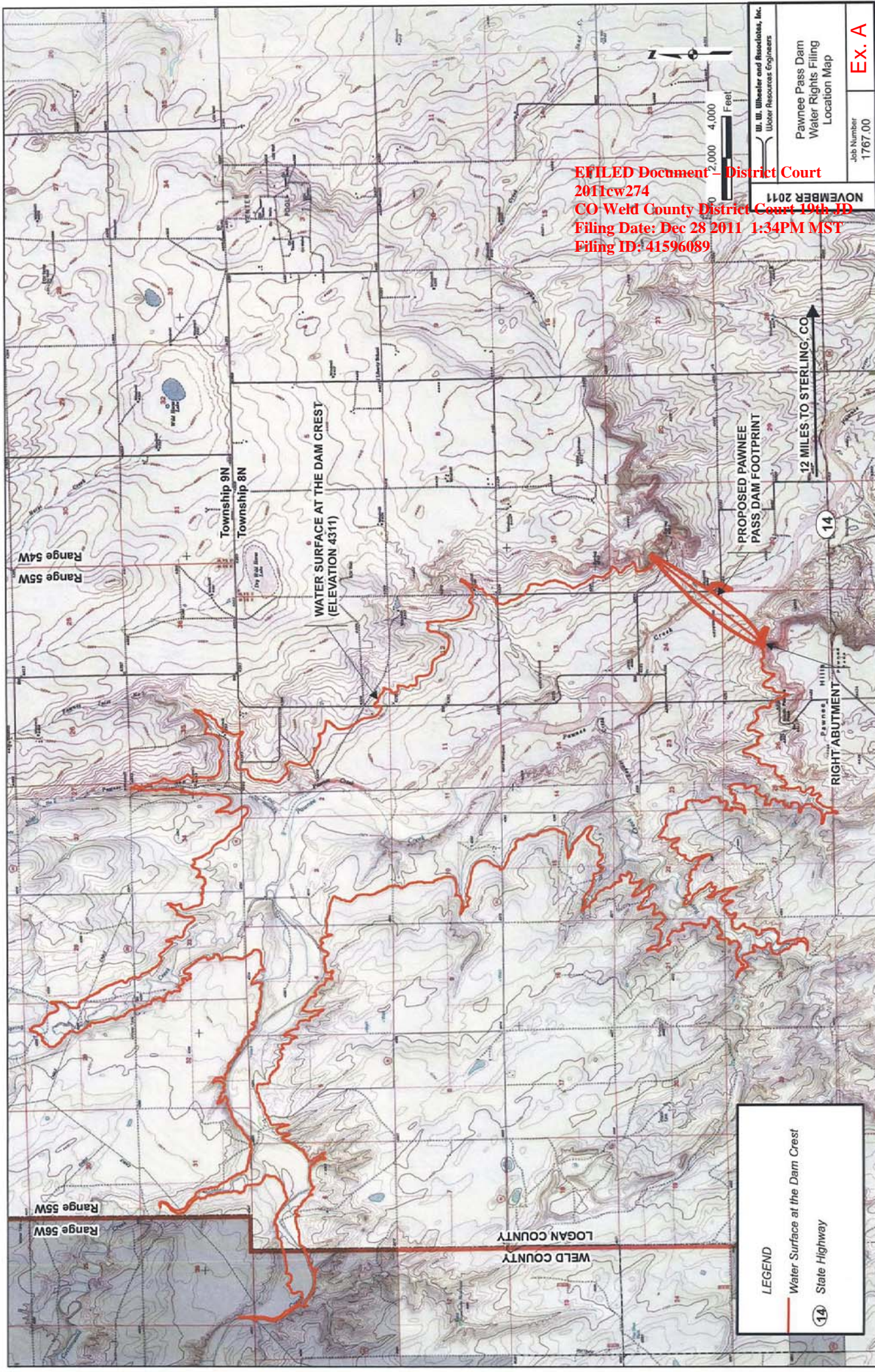

Stephen Jamieson, P.E.

Subscribed and affirmed, or sworn to before me this 29th day of December, 2011,
by Stephen Jamieson.

My commission expires: 2/13/2013




Notary Public



FILED Document - District Court
2011cw274
CO Weld County District Court 19th JD
Filing Date: Dec 28 2011 1:34PM MST
Filing ID: 41596089

NOVEMBER 2011

W. W. Wheeler and Associates, Inc.
Water Resources Engineers

Pawnee Pass Dam
Water Rights Filing
Location Map

Job Number
1767.00

Ex. A

LEGEND

Water Surface at the Dam Crest

State Highway 14

DISTRICT COURT, WATER DIVISION 1 WELD COUNTY, COLORADO P.O. Box 2038 901 Ninth Avenue, Rm. 418 Greeley, CO 80632/80631 <hr/> Concerning the Application for Water Rights of: LOGAN COUNTY WATER CONSERVANCY DISTRICT IN WELD, LOGAN AND MORGAN COUNTIES, COLORADO	<div style="text-align: center;"> ▲ COURT USE ONLY ▲ </div>
Attorneys for the Colorado Water Conservation Board: JOHN W. SUTHERS, Attorney General JENNIFER MELE, Assistant Attorney General* Attorney Reg. No. 30720 1525 Sherman Street, 7 th Floor Denver, CO 80203 Telephone: (303) 866-5033 Email: jennifer.mele@state.co.us *Counsel of Record	Case No. 11CW274 Water Division 1
<div style="text-align: center;"> STATEMENT OF OPPOSITION OF THE COLORADO WATER CONSERVATION BOARD </div>	

1. Name of objector: Colorado Water Conservation Board (“CWCB”)

Mailing address: 1313 Sherman Street, Room 721
Denver, CO 80203
2. Name of ditch or structure: As more fully described in the application.
3. State facts why application for water rights should not be granted or why it should be granted only in part or on certain conditions:
 - a. The application in this case includes the use of State land, and consent must be given to use these lands in order to obtain a water right decree.
 - b. The applicant must demonstrate that the claimed uses for the stored water are defined and not speculative.
 - c. The applicant must be put on strict proof as to each allegation stated in the application and have met all burdens of proof and complied with all standards applicable to the water rights requested.

d. The applicant must establish that no injury will result from the claimed water rights.

e. The CWCB is unable to determine from the application whether additional grounds for opposition exist, and therefore reserves the right to assert other grounds for opposition as they become known.

4. This statement of opposition is continuing in nature and is intended to apply to any and all future amendments to the original application.

Dated this 24th day of February, 2012.


JOHN W. SUTHERS
Attorney General

*Filed pursuant to C.R.C.P. Rule 121 § 1-26. A duly signed original
is on file with the Office of the Attorney General for the State of Colorado.
/s/Jennifer Mele*

JENNIFER MELE, #30720*
Assistant Attorney General
Natural Resources and Environment Section
Attorneys for the Colorado Water Conservation
Board
*Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February 2012, I caused a true and complete copy of the foregoing **STATEMENT OF OPPOSITION OF THE COLORADO WATER CONSERVATION BOARD** to be served electronically via LexisNexis File & Serve to each of the following:

 <u>Party</u>	<u>Party Type</u>	<u>Attorney</u>	<u>Firm</u>	<u>Method</u>
CENTRAL COLORADO WATER CONSERVANCY DISTR	Opposer	Lawrence, Kim R	Lawrence Jones Custer & Grasmick LLP	E-Service
DIVISION ENGINEER	Division Engineer	Water Engineer, Division 1	Water Engineer, Division 1	E-Service
LOGAN COUNTY WATER CONSERVANCY DISTRICT	Applicant	Kahn, Jeffrey J	Lyons Gaddis Kahn & Hall PC	E-Service
LOGAN COUNTY WATER CONSERVANCY DISTRICT	Applicant	Wallace-Gross, Madoline	Lyons Gaddis Kahn & Hall PC	E-Service
LSP	Opposer	Lawrence, Kim R	Lawrence Jones Custer & Grasmick LLP	E-Service
STATE ENGINEER	State Engineer	State Water Engineer, Colorado	State Engineers Office	E-Service

Filed pursuant to C.R.C.P. Rule 121 § 1-26.

A duly signed original is on file with the Office of the Attorney General for the State of Colorado.

/s/ Dawn M. Heher

STATE OF COLORADO

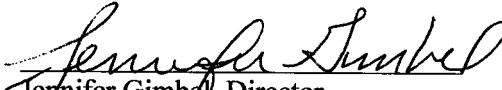
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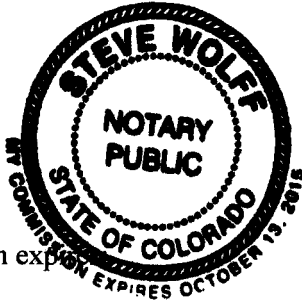
CITY AND COUNTY OF DENVER

)

I, Jennifer Gimbel, Director of the Colorado Water Conservation Board, being duly sworn, hereby state that I have read the foregoing statement of opposition, and that the contents are true to the best of my knowledge.


Jennifer Gimbel, Director
Colorado Water Conservation Board

Subscribed and sworn to before me in the City and County of Denver, State of Colorado, this 24th
day of February 2012.



My commission expires

10/13/2015


NOTARY PUBLIC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **CERTIFICATE OF PROOF OF PUBLICATION** was served via Lexis -Nexis File & Serve, this 2nd day of February, 2012, as follows:

Party Name	Party Type	Attorney	Firm
BEINTEMA, TERESA	Opposer	Grasmick Esq, Bradley	Lawrence Jones Custer & Grasmick LLP
CENTRAL COLORADO WATER CONSERVANCY DISTR	Opposer	Lawrence Esq, Kim R	Lawrence Jones Custer & Grasmick LLP
CITY OF STERLING	Pending Approval	Curtis, Alan E	White & Jankowski LLP
COLORADO WATER CONSERVATION BOARD	Opposer	Mele, Jennifer	CO Attorney General
DIVISION ENGINEER	Division Engineer	Mele, Jennifer	CO Attorney General
DIVISION OF PARKS AND WILDLIFE	Pending Approval	Van Vurst, Beth	CO Attorney General
HESSLER FAMILY LIMITED PARTNERSHIP	Opposer	Poznanovic, Matthew S	Petrock & Fendel PC
KONIG INVESTMENTS LLC	Pending Approval	Jones Esq, P Andrew	Lawrence Jones Custer & Grasmick LLP
LSP	Opposer	Lawrence Esq, Kim R	Lawrence Jones Custer & Grasmick LLP
NORTH STERLING IRRIGATION DISTRICT	Opposer	Buchanan, Timothy	Buchanan & Sperling PC
NORTH STERLING IRRIGATION DISTRICT	Opposer	Sperling, Veronica A	Buchanan & Sperling PC
PAWNEE WELL USERS INC	Pending Approval	Sperling, Veronica A	Buchanan & Sperling PC
STATE BOARD OF LAND COMMISSIONERS	Pending Approval	Warren, Heather	CO Attorney General
STATE ENGINEER	State Engineer	Mele, Jennifer	CO Attorney General
THE HARMONY DITCH COMPANY	Pending Approval	Justus, John P	Buchanan & Sperling PC

/s/ Beverly A. Schrenk
