

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
Fax: (303) 866-4474
www.cwcb.state.co.us



TO: Colorado Water Conservation Board Members

FROM: Linda J. Bassi, Chief
Kaylea White
Stream and Lake Protection Section

DATE: November 5, 2012

SUBJECT: **Agenda Item 27, November 13-14, 2012 Board Meeting**
Stream and Lake Protection Section – Proposed Acquisition
of a Contractual Interest in Water on the South Platte River

John W. Hickenlooper
Governor

Mike King
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Introduction

Denver Water and CWCB are working toward a water delivery agreement for instream flow use on the South Platte River. The new instream flow reach is in Waterton Canyon between Strontia Springs Dam and Chatfield Reservoir, a distance of approximately seven miles. The water right to be used is pending in Denver Water's water court Case No. 1-05CW316. CWCB filed a Statement of Opposition in the case because of an apparent conflict between Applicant's claim and CWCB's exclusive authority to appropriate instream flow and adjudicate a right for water for instream flows in a stream channel between specific points. This water delivery agreement is proposed to resolve CWCB's opposition in the water court case and to achieve cooperation between CWCB and Denver Water in maintaining the flows required by Denver's Waterton Canyon Water Management Plan in the Waterton Canyon Reach of the South Platte River.

A general map of the area is attached as **Exhibit A**; a draft of the Water Delivery Agreement is attached as **Exhibit B**, and a copy of the Waterton Canyon Water Management Plan with 2004 Easement Amendment is attached as **Exhibit C**.

Staff Recommendation

Pursuant to ISF Rule 6b, the Board's consideration of this proposal at this meeting will initiate the 120-day period for Board review. **No formal action is required at this time.** Staff believes that the proposed Acquisition will benefit the ISF Program. The initial presentation of this proposal provides an opportunity to the Board and the public to identify questions or concerns that Staff or Denver Water will address at this or a subsequent meeting.

Background

Denver Water completed construction of Strontia Springs Intake and Reservoir in 1982. As part of the right of way approval and easement issued on August 16, 1978 for Denver Water's

construction of Strontia Springs Intake and Reservoir, the United States Bureau of Land Management and Forest Service required Denver Water to prepare and operate a Water Management Plan. The plan document, submitted on May 1, 1979 is titled, "Water Management Plan for the South Platte River Canyon below Strontia Springs Dam, and is abbreviated "WMP."

Flow rates required in the WMP vary from 60 cfs in the summer months and 30 cfs in the winter months with provisions for various stages of drought scenarios to reduce the flows down to an absolute minimum of 15 cfs. The details of the operation and drought exceptions are included in the attached WMP. See Exhibit C. Denver Water maintains the required flow rates by bypassing native flow and when necessary, releasing previously stored senior water, and recapturing the released water to the extent possible in its contract pool in Chatfield Reservoir.

In pending water court Case No 1-05CW316, Denver Water is seeking confirmation and adjudication of a junior storage right in the amount of 7,864 acre feet with a right to refill for the beneficial use of fulfilling permit conditions. The January, 2011 proposed decree in that case states that "since 1982, 7,864 acre-feet has been captured, possessed and controlled for the purpose of maintaining the stream flow conditions of the 1978 right of way and permit." Applicant claims that "municipal use," as that term is used in Case No 80CW406 and 87CW116 "includes the right to store and release water diverted and stored under those priorities to fulfill permit conditions of the Strontia Springs Diversion Project."

Case No 80CW406 adjudicated a water storage right for Strontia Springs Reservoir in the amount of 7,700 af, with an appropriation date of March 21, 1962 for "all municipal purposes" including several specific uses articulated in the decree. Source of water is the South Platte River and tributary drainage originating above Strontia Springs Diversion Dam. Case No 87CW116 adjudicated a refill storage right for Strontia Springs Reservoir in the amount of 7,864 af, with an appropriation date of March 21, 1962 for the same beneficial uses and from the same sources.

CWCB's Role and the Water Right

Denver Water's Case No 1-05CW316 is set for a 5-day trial to begin on April 22, 2013. CWCB filed a Statement of Opposition in this case because Applicant's claimed use of the requested water right to "provide average daily flows of 60 cfs from May 15 to September 15 and average daily flows of 30 cfs from September 16 to May 14 from Strontia Springs Dam to Chatfield Reservoir" may conflict with the CWCB's exclusive authority to appropriate instream flow and natural lake level water rights. Section 37-92-102(3) C.R.S. provides: "...no other person or entity (other than the CWCB) shall be granted a decree adjudicating a right to water or interests in water for instream flows in a stream channel between specific points, ..., for any purpose whatsoever." This water delivery agreement is proposed in part to resolve CWCB's opposition and to reach settlement in the water court case and to achieve cooperation between CWCB and Denver Water in maintaining the flows required by the WMP in the Waterton Canyon Reach of the South Platte River.

Under this delivery agreement, Denver Water will deliver to CWCB the amount of water need to bring flows in the Waterton Canyon reach up to the flow rates required in the WMP. CWCB will protect the flows down to the inlet of Chatfield Reservoir or to Old Last Chance Ditch to preserve or improve the natural environment to a reasonable degree. Use of the delivered water will be authorized by the water court decree in Case No 1-05CW316. Upon CWCB's final action on this proposal, Denver Water will add appropriate terms and conditions to the proposed decree.

The Board's Water Acquisition Procedures

Rule 6 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF Rules") sets forth the Board's procedures for acquiring water for ISF use. Section 37-92-102(3), C.R.S. provides 120 days for the Board to determine what terms and conditions it will accept in an acquisition agreement for water, water rights, or interests in water to preserve or improve the natural environment. ISF Rule 6 requires a minimum of two Board meetings to allow for public input prior to taking final action on a proposed acquisition. The Board's initial consideration of this proposal at this Board meeting initiates the 120-day time period for the Board to consider the terms and conditions of the proposed acquisition. Final action on the proposal could occur at the January 2013 Board meeting. ISF Rule 6m (4) provides that any person may request the Board to hold a hearing on the proposed acquisition, and that such a request must be filed within twenty days of this Board meeting.

ISF Rules 6e and 6f require the Board to evaluate the appropriateness of the acquisition and determine how best to utilize the acquired water rights to preserve or improve the natural environment. The Rules list several factors the Board may consider in its evaluation of the acquisitions. Several of the factors address water rights that need to be changed from irrigation or other uses to instream flow uses. Because this Acquisition involves a new adjudication, several of the factors do not apply. This memo addresses the applicable factors.

Pursuant to statute, Staff has requested recommendations from Colorado Parks and Wildlife, the U.S. Department of Agriculture and the U.S. Department of Interior. Pursuant to ISF Rule 6m(1), Staff has provided notice of the proposed Acquisition to all persons included on the appropriate ISF Subscription Mailing Lists and provided notice to the State Engineer's Substitute Supply Plan Notification List. Staff has requested a biological analysis from Colorado Parks and Wildlife ("CPW") pursuant to Rule 6f(2). CPW will address the Board regarding this acquisition at the Board meeting.

Summary of Proposed Acquisition

Under the Water Delivery Agreement, Denver Water will release water from Strontia Springs Reservoir at a rate to maintain stream flow in Water Canyon at the various rates identified in the WMP, varying from a daily minimum during a drought of 15 cfs to a maximum daily average of 60 cfs. Denver Water may store up to an annual volume of 7,864 af under the WMP water right. The ISF use will consist of preserving or improving the natural environment to a reasonable degree by maintaining flows at the rates specified in the WMP.

Existing Instream Flow Water Rights

CWCB does not currently hold a water right in this reach of the South Platte River, or downstream of this reach on the South Platte River.

Existing Natural Environment

The South Platte River's Waterton Canyon supports cold water fisheries. Flows in this reach are mainly controlled by reservoir operations.

Proposed Use and Potential Benefits of the Delivered Water

The Board could use the delivered water to preserve and improve the natural environment to a reasonable degree in the South Platte River between Strontia Springs and Chatfield Reservoirs, a

distance of approximately seven miles. The reservoir releases would be used to maintain instream flows up to the amounts specified in the WMP. CWCB would protect the releases from diversion by other water users from the Strontia Springs dam to the inlet of Chatfield Reservoir. Downstream of the inlet the water would revert back to waters of the State of Colorado and would be available for diversion for any legal beneficial use.

Other Water Rights in Proposed Reach and Potential Injury to Existing Rights

Because the additional ISF protection under this proposal will be achieved with new junior water rights or with existing senior water rights, other water rights in the subject reaches will not be injured by the proposed ISF uses. Also, the water court decree implementing the Delivery Agreement will contain terms and conditions to assure that no vested water rights on any of the reaches will be injured as a result of the ISF use.

Administrability

Staff will confirm with the Division Engineer that the CWCB's proposed uses of the delivered water will be administrable.

Effect of Proposed Acquisition on Maximum Utilization of the Waters of the State; and Availability of the Delivered Water for Subsequent Use Downstream

The Denver Water rights stem from new junior storage rights in Strontia Springs and Chatfield Reservoirs. The released water will be beneficially used for ISF purposes in accordance with the Delivery Agreement down to the inlet of Chatfield Reservoir. Downstream of the lower terminus, the water reverts back to waters of the State of Colorado and is available for diversion for any legal beneficial use.

Effect of Proposed Acquisition on Any Relevant Interstate Compact Issue

It is anticipated that this water will be diverted and used directly or by exchange by other water users downstream once it has satisfied its intended beneficial use in Waterton Canyon. Consequently, it does not appear that this acquisition will raise any compact issues.

Costs to complete the transaction, or other associated costs

Denver Water is not requesting the Board to pay for the delivered water or to participate as a co-applicant in the water court proceeding. Denver Water has offered to perform all record keeping, accounting and reporting. Because CWCB is already a party in the water court case, little extra expense is expected as a result of this acquisition.

Attachments

- Exhibit A: General Map
- Exhibit B: Water Delivery Agreement
- Exhibit C: Waterton Canyon Water Management Plan

EXHIBIT A

Map

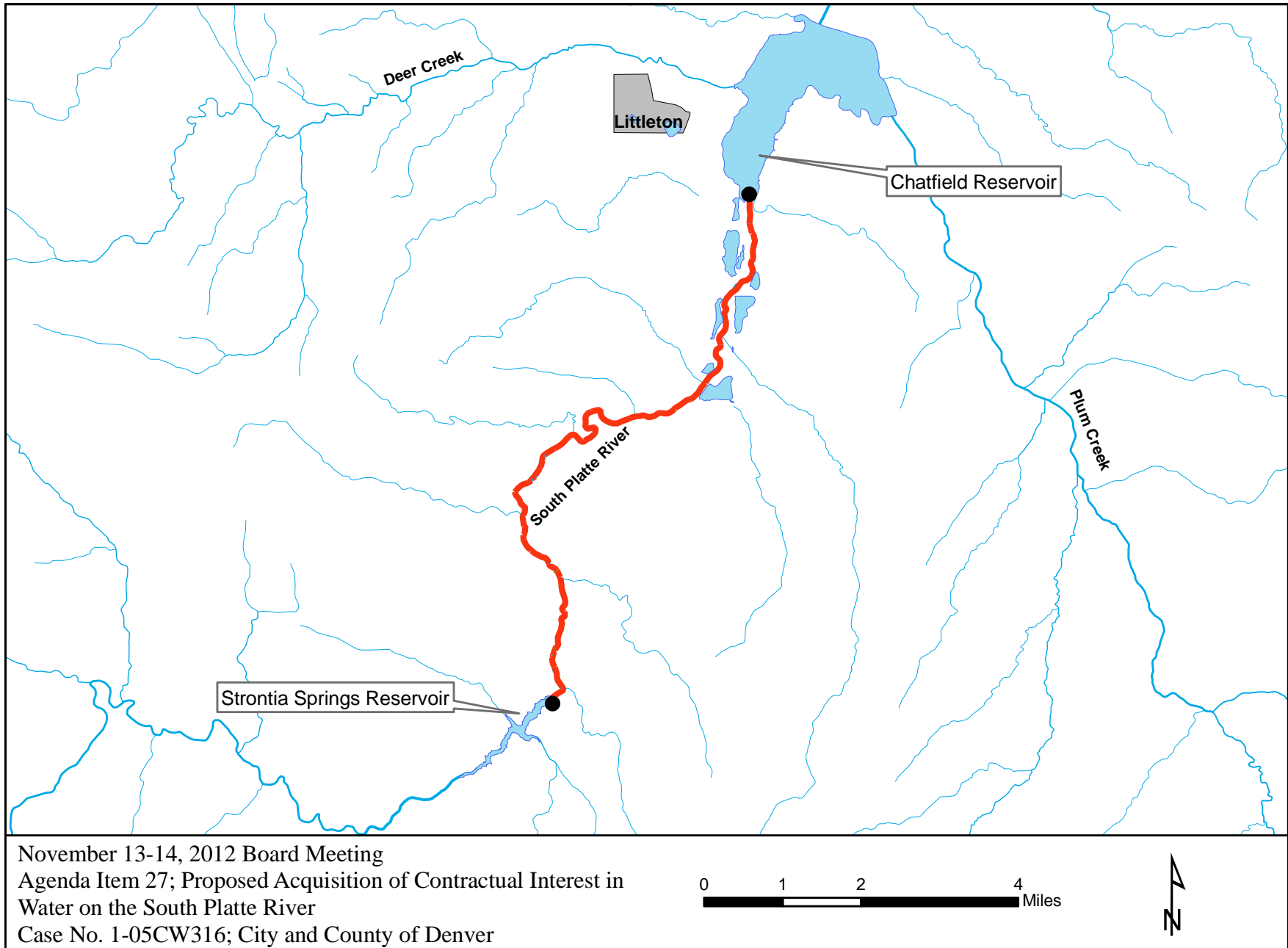


EXHIBIT B

Draft Agreement

DRAFT 11-5-2012

DELIVERY AGREEMENT

The Colorado Water Conservation Board (“CWCB”), an agency of the State of Colorado, and the City and County of Denver, acting by and through its Board of Water Commissioners (“Denver Water”), a Colorado home rule municipal corporation of the State of Colorado, in consideration of the mutual promises contained herein, agree as follows:

RECITALS

- A. Denver Water is a home rule municipal corporation created and existing under the Charter of the City and County of Denver and other applicable Colorado law. Denver Water is responsible to maintain a water works system necessary to supply the needs of the City and County of Denver and numerous suburban contract distributors with water for all uses and purposes.
- B. Colorado Water Conservation Board is an agency of the State of Colorado created to aid in the protection and development of the waters of the state for the benefit of the present and future inhabitants of the state. In 1973, the General Assembly vested the CWCB with the exclusive authority to appropriate waters of natural streams for minimum stream flows to preserve the natural environment to a reasonable degree for instream flow purposes between specific points.
- C. In 1982, Denver Water completed the construction of Strontia Springs Intake and Reservoir on the South Platte River in Waterton Canyon. As part of the necessary permitting for the project, the United States Bureau of Land Management and Forest Service required Denver Water to prepare and operate a water management plan for flows in Waterton Canyon between Strontia Springs Dam and Chatfield Reservoir measured at the USGS South Platte at Waterton Canyon gage (“Water Management Plan”).
- D. Pursuant to the Water Management Plan required by its federal right-of- way with the United States Bureau of Land Management (USBLM) (C-099597) and easement issued on August 16, 1978 by the United States Forest Service for the Foothills Project, except in the case of drought, Denver Water must manage water flows in the South Platte River from Strontia Springs Dam to Chatfield Reservoir (“Waterton Reach”) as to provide average daily flows of 60 cubic feet per second (cfs) from May 15 to September 15 of each year, and 30 cfs from September 16 to May 14 of the next year thereafter. However, Denver Water may divert from those flows at the point of diversion of the Platte Canyon/Last Chance Ditch, approximately 3,000 feet upstream from the United States Geological Survey's

Waterton gaging station, no more than 15 cfs, of the total of 30 cfs average daily flows required to be provided, during the period from September 16 of each year to May 14 of the next year thereafter.

- E. In 2004, the USFS amended the Water Management Plan to provide “[Denver Water] will so manage water flows in the South Platte River from Strontia Springs Dam to Chatfield Reservoir as to provide average daily flows of 60 cubic feet per second (“cfs”) from May 15th to September 15th (“Summer Period”) of each year and average daily flows of 30 cfs from September 16th to May 14th (“Winter Period”) of the next year thereafter, except that [Denver Water] may divert and recover 15 cfs of the 30 cfs winter flows at the Old Last Chance Ditch diversion during the Winter Period to keep the water level in Chatfield between 5,427 feet (the summer recreation level) and 5,423 feet (the non-recreation level) such that storage capacity in Chatfield Reservoir is available when needed. The flows between Strontia Springs Dam and the old Last Chance Ditch diversion shall not go below 60 cfs during the Summer Period or 30 cfs during the Winter Period.”

Section II, ¶2. was also amended to provide “In the event of severe drought conditions [Denver Water] may reduce water flows between the Old Last Chance Ditch diversion and Chatfield Reservoir during the Summer Period. Diversion and recovery of these flows will be in proportion to the level of drought response declared by [Denver Water] when imposing water restrictions on its customers

- During Stage 1 drought response, as defined by voluntary water restrictions, [Denver Water] may divert and recover 15 cfs of the 60 cfs at the Old Last Chance Ditch diversion. Leaving 45 cfs in the stream channel.
- During Stage 2 drought response, defined by mandatory watering restrictions, [Denver Water] may divert and recover 30 cfs of the 60 cfs at Old Last Chance Ditch diversion, leaving 30 cfs in the stream channel.
- During Stage 3 response, as defined by the total constraint of outdoor lawn watering, [Denver Water] may recover 45 cfs of the 60 cfs at the Old Last Chance Ditch diversion, leaving 15 cfs in the stream channel.

The flows between the Old Last Chance Ditch diversion and Chatfield shall not go below 15 cfs during the Summer Period.”

- F. When natural flow and river administration would otherwise cause flow to drop below the flow thresholds described in paragraphs D. and E. above, Denver Water supplements the flow by releasing water stored under their existing water rights in Strontia Springs Reservoir. Denver Water then recaptures water from these releases in Chatfield Reservoir and other downstream storage facilities as part of

their normal operations. Under these operations, Denver is able to protect the minimum flows required by the Water Management Plan. However, when these conditions are not in effect, a junior storage water right is needed to release and protect the minimum flows required through the reach under the Water Management Plan.

- G. In Case No. 2005CW316, Water Division No. 1 Denver Water filed for a determination of water right for water rights adjudicated in Case Nos. 80CW406 and 87CW116 and a junior storage water right application to satisfy and fulfill the requirements of the Water Management Plan, including storage and piscatorial uses, to provide average daily flows of 60 cfs from May 15 to September 15 and average daily flows of 30 cfs from September 16 to May 14 from Strontia Springs Dam to Chatfield Reservoir. This agreement only applies to the junior storage water right.
- H. The CWCB opposed Denver Water's water right application in Case No. 2005CW316.
- I. The CWCB and Denver Water wish to cooperate in maintaining the flows required by the Water Management Plan in the Waterton Reach of the South Platte River from Strontia Springs Dam to Chatfield Reservoir as described previously.
- J. Pursuant to section 37-92-102(3), C.R.S. (2012), the CWCB may acquire by contractual agreement with any governmental entity such water, water rights or interests in water that are not on the Division Engineer's abandonment list in such amount as the CWCB determines is appropriate for stream flows to preserve or improve the natural environment to a reasonable degree. Pursuant to Rule 6 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2, on [DATE], the CWCB found that Denver Water's deliveries of water under this Agreement of up to 60 cubic feet per second (cfs) from May 15 to September 15 of each year and up to 30 cfs from September 16 to May 14 of the next year, except as otherwise provided under the Water Management Plan and 2004 amendment, are appropriate for stream flows to preserve or improve the natural environment in these stream reaches to a reasonable degree.

NOW THEREFORE, the CWCB and Denver Water agree as follows:

DELIVERY

1. Subject to the terms of this agreement, Denver Water will release and deliver water stored under its junior water storage right associated with its Water Court

application in Case No. 05CW316, in Water Division No. 1 (“Strontia WMP Storage Right”) for exclusive use by the CWCB to maintain instream flows to preserve or improve the natural environment in the Waterton Reach of the South Platte River between Strontia Springs Dam and the inlet of Chatfield Reservoir or Platte Canyon/Last Chance Ditch, as generally depicted on the map attached hereto as Exhibit A, when such releases are required to meet the minimum flows set forth in the Water Management Plan and any amendments to that plan.

2. The water stored and released under the Strontia WMP Storage Right will be decreed for the fulfillment of the Water Management Plan including storage and piscatorial uses, and for instream flow use exclusively by the CWCB in the Waterton Reach as described above.

3. CWCB shall protect the delivered water through the Waterton Reach and will request administration to prevent diversion of the water by other water users.

CONDITIONS OF THE CWCB’S USE OF THE STRONTIA STORAGE RIGHTS

4. The release and delivery of water from the Strontia WMP Storage Right in no way provides the CWCB operating interest or ownership in Denver Water’s facilities or other water rights as they exist now, or may exist in the future.

5. The CWCB shall use the Strontia WMP Storage Right solely to maintain the flow in the Waterton Reach of the South Platte River between Strontia Springs Dam and the inlet of Chatfield Reservoir or the Platte Canyon/Last Chance Ditch to preserve or improve the natural environment. The flows will be maintained consistent with Denver Water’s Water Management Plan. If the plan is amended in the future, CWCB will have an option to participate in the amendment discussions and an option whether to terminate this delivery agreement.

6. The CWCB’s exclusive rights in the Waterton Reach under this agreement are terminated at the downstream terminus of the Waterton Reach as defined in Paragraph D.

7. The CWCB shall not attempt to alter or amend any provision in the Water Management Plan or any amendments thereto.

USE OF THE SUBJECT WATER RIGHT BELOW THE SPECIFIED REACH

8. Below the downstream terminus of the Waterton Reach, the water associated with the Strontia WMP Storage Right reverts back to waters of the State of Colorado and is available for diversion for any legal beneficial use including storage at Chatfield Reservoir either under its own water right or by exchange.

WATER COURT PROCEEDINGS

9. The CWCB will stipulate to a proposed decree containing terms and conditions that such water will be used for instream flow purposes exclusively by the CWCB in accordance with the decree and this agreement, so long as CWCB's other instream flow water rights are fully protected by the stipulation and decree.

CALL FOR ADMINISTRATION

10. Denver Water shall be responsible for maintaining all records necessary for the implementation of this Agreement, using forms mutually agreeable to the parties, and all records required by the division engineer for administration of instream flows in the reach of the South Platte River between Strontia Springs Dam and the inlet of Chatfield Reservoir.

11. Denver Water will provide annual accounting related to the operation of this Agreement to the CWCB and the division engineer. Upon request, Denver Water will also provide monthly accounting to CWCB. Such request should be made electronically to Denver Water's Raw Water Supply section by email to rw1@denverwater.org or by mail to

Raw Water Operations, MC: 411
1600 West 12th Avenue
Denver, Colorado, 80204

Denver Water will notify the CWCB if the requests should be directed to a different email address.

MISCELLANEOUS PROVISIONS

12. This Agreement shall not be otherwise assignable by either party without written consent of the other.

13. Pursuant to section 37-92-102(3), C.R.S. (2011), the terms of this Agreement shall be enforceable by each party as a water matter in the District Court for Water Division No. 1; provided, however, that before commencing any action for enforcement of this Agreement, the party alleging violation shall notify the other party in writing of the alleged violation and the parties shall make a good faith effort to resolve their differences through informal consultation.

14. Specific performance of this Agreement shall be the exclusive remedy for failure of either party to comply with any provision of this Agreement.

15. This Agreement shall be construed in accordance with the laws of the State of Colorado and shall be interpreted broadly to affect its purposes.

DRAFT

16. Should any conflict appear to exist between this Agreement and the Water Management Plan, the Agreement should be construed in a manner consistent with the Water Management Plan or any amendments thereto.

IN WITNESS WHEREOF, the CWCB and Denver Water have executed this Agreement as of ____ day of _____, 2012.

ATTEST:

THE CITY AND COUNTY OF DENVER,
acting by and through its BOARD OF
WATER COMMISSIONERS

SECRETARY

BY: _____
PRESIDENT

DATE: _____

APPROVED:

BY: _____

APPROVED AS TO FORM:

BY: _____

COLORADO WATER CONSERVATION
BOARD

BY: _____
Director

DATE: _____

EXHIBIT C

Waterton Canyon Management Plan

and

2004 Amendment

FILE NO. 425 D.S. 118

WATER MANAGEMENT PLAN FOR THE SOUTH PLATTE
RIVER CANYON BELOW STRONTIA SPRINGS DAM

Submitted to the Bureau of Land
Management, Department of the
Interior, and to the Forest Service,
Department of Agriculture, by the
Board of Water Commissioners of the
City and County of Denver (herein
referred to as "Denver") May 1, 1979
(Revised May 10, 1979).

I. BASIC WATER MANAGEMENT PLAN

The plan which follows has been developed in response to stipulations contained in the easements for Strontia Springs Dam for the Department of Interior and the Department of Agriculture, provisions of the Consent Decree in the case of Denver v. Andrus in the United States District Court at Denver, Colorado, Civil Action No. 77-W-306, signed February 22, 1979, and the contract negotiated between the State of Colorado, Department of Natural Resources and Denver relating to Denver's use of storage capacity in Chatfield Reservoir for the storage of its water.

Denver will so manage water flows in the South Platte River from Strontia Springs Dam to Chatfield Reservoir as to provide average daily flows of 60 cfs (cubic feet per second) from May 15 to September 15 of each year and average daily flows of 30 cfs from September 16 to May 14 of the next year thereafter, except that Denver may also divert from those flows at the old point of diversion of the Platte Canyon - Last Chance Ditch approximately 3,000 feet upstream from the United States Geological Survey's Waterton gauging station, no more than 15 cfs (of the total of 30 cfs average daily flows required to be provided) during the period from September 16 of each year to May 14 of the next year thereafter to the extent that management of the available Chatfield storage capacity requires such diversions. Flows delivered past the old Platte Canyon - Last Chance Ditch Point of Diversion shall be measured at the existing USGS Waterton gauge located near the Kasler Treatment Plant. Denver will operate Strontia Springs Dam as nearly as practicable to minimize fluctuations from the daily average flows provided herein to reduce risk of loss of both fish life and fish habitat from stream flow fluctuations. Denver shall supply, upon the request of the federal agencies, such reports and data as will enable the federal agencies to verify compliance with the minimum stream flow requirements set forth herein.

This plan utilizes Chatfield Reservoir for storage of water bypassed by Denver.

III. CHANGES IN WATER RIGHTS REQUIRED

1. The direct flow and storage water rights for which changes will be required are Denver's direct flow and storage water rights for which diversion is now authorized at Denver's present points of diversion and storage on the South Platte River. The changes required are to add as alternate points of diversion and storage for said waters at the option of Denver from time to time the following:

- a. The intake facilities to be constructed at Strontia Springs Dam.
- b. The old point of diversion of Platte Canyon - Last Chance Ditch approximately 3,000 feet upstream from the U. S. Geological Survey's Waterton gauging station.
- c. Chatfield Reservoir.
- d. Diversion facilities at or immediately below Chatfield Reservoir.

2. Denver reserves the right to dismiss any of said change proceedings if the change is authorized upon conditions which Denver deems unfavorable to Denver, provided that Denver does not thereby prevent the attainment of the minimum stream flows specified in this plan.

IV. DENVER'S RIGHTS RETAINED

In subscribing to this Management Plan, Denver retains all rights and benefits it may have under Colorado law, including, but not limited to, the making of water exchanges, calls upon junior water rights to pass water for Denver's senior rights, application to the Water Court for change of water rights, and the completion of the appropriations for the right to store in Chatfield Reservoir.

I. BASIC WATER MANAGEMENT PLAN

The plan which follows has been developed in response to stipulations contained in the easements for Strontia Springs Dam for the Department of Interior and the Department of Agriculture, provisions of the Consent Decree in the case of Denver v. Andrus in the United States District Court at Denver, Colorado, Civil Action No. 77-W-306, signed February 22, 1979, and the contract negotiated between the State of Colorado, Department of Natural Resources and Denver relating to Denver's use of storage capacity in Chatfield Reservoir for the storage of its water.

Denver will so manage water flows in the South Platte River from Strontia Springs Dam to Chatfield Reservoir as to provide average daily flows of 60 cfs (cubic feet per second) from May 15 to September 15 of each year and average daily flows of 30 cfs from September 16 to May 14 of the next year thereafter, except that Denver may also divert from those flows at the old point of diversion of the Platte Canyon - Last Chance Ditch approximately 3,000 feet upstream from the United States Geological Survey's Waterton gauging station, no more than 15 cfs (of the total of 30 cfs average daily flows required to be provided) during the period from September 16 of each year to May 14 of the next year thereafter to the extent that management of the available Chatfield storage capacity requires such diversions. Flows delivered past the old Platte Canyon - Last Chance Ditch Point of Diversion shall be measured at the existing USGS Waterton gauge located near the Kasler Treatment Plant. Denver will operate Strontia Springs Dam as nearly as practicable to minimize fluctuations from the daily average flows provided herein to reduce risk of loss of both fish life and fish habitat from stream flow fluctuations. Denver shall supply, upon the request of the federal agencies, such reports and data as will enable the federal agencies to verify compliance with the minimum stream flow requirements set forth herein.

This plan utilizes Chatfield Reservoir for storage of water bypassed by Denver.

FILE NO. 425 DOC. NO. 118

II. PLAN OF OPERATION

1. The waters bypassed at Strontia Springs Dam will include the natural flow of the South Platte River, waters of other appropriators, and, to the extent necessary, will be supplemented by Denver's appropriated waters.
2. In the event of severe drought conditions or operational emergency, Denver may reduce bypasses at its Strontia Springs Dam point of diversion below the amounts described in paragraph I above upon approval of the Bureau of Land Management and the Forest Service.
3. The required stream flows will be provided immediately prior to Denver's use of the Strontia Springs Dam and Foothills Tunnel for water diversion purposes.
4. Denver will use and manage its water storage rights in Chatfield Reservoir in accordance with that certain contract between the State of Colorado and Denver dated April 3, 1979, a copy of which is hereto attached as Exhibit "A."

III. CHANGES IN WATER RIGHTS REQUIRED

1. The direct flow and storage water rights for which changes will be required are Denver's direct flow and storage water rights for which diversion is now authorized at Denver's present points of diversion and storage on the South Platte River. The changes required are to add as alternate points of diversion and storage for said waters at the option of Denver from time to time the following:

- a. The intake facilities to be constructed at Strontia Springs Dam.
- b. The old point of diversion of Platte Canyon - Last Chance Ditch approximately 3,000 feet upstream from the U. S. Geological Survey's Waterton gauging station.
- c. Chatfield Reservoir.
- d. Diversion facilities at or immediately below Chatfield Reservoir.

2. Denver reserves the right to dismiss any of said change proceedings if the change is authorized upon conditions which Denver deems unfavorable to Denver, provided that Denver does not thereby prevent the attainment of the minimum stream flows specified in this plan.

IV. DENVER'S RIGHTS RETAINED

In subscribing to this Management Plan, Denver retains all rights and benefits it may have under Colorado law, including, but not limited to, the making of water exchanges, calls upon junior water rights to pass water for Denver's senior rights, application to the Water Court for change of water rights, and the completion of the appropriations for the right to store in Chatfield Reservoir.

EASEMENT AMENDMENT NO. 4 (Dam etc.)

THIS EASEMENT AMENDMENT, dated this 15th day of April, 2004 from the UNITED STATES OF AMERICA, acting by and through the Regional Forester for the Secretary of Agriculture, hereinafter called "Grantor" to the City and County of Denver, a municipal corporation of the State of Colorado, acting by and through its Board of Water Commissioners, hereinafter called "Grantee."

WHEREAS, the Grantee has applied for an amendment to the grant of an easement issued August 16, 1978 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) for a Reservoir, Dam, Conduit, Tunnel and related structures (Strontia Springs) necessary for the diversion and storage of water over certain lands owned by the United States in the Counties of Jefferson and Douglas, State of Colorado and administered by the Forest Service, Department of Agriculture.

WHEREAS, the Grantee has furnished satisfactory evidence to the Grantor that it has notified all potentially concerned parties and provided them with the opportunity to object to all proposed changes to flows contained in the "Water Management Plan For The South Platte River Canyon Below Strontia Springs Dam" approved May 16, 1979, which by condition number (24) of the easement and stipulation number (8) of the attached stipulations became a part of the August 16, 1978 easement grant when approved.

NOW THEREFORE, the Regional Forester, on behalf of the United States, pursuant to the authority delegated to him by the Secretary of Agriculture, does hereby amend items Clause (2) of the Original Easement, and I. (Para.2) and II.(2.) of the approved 1979 Water Management Plan and stipulation number (8) of the attached stipulations as follows:

Clause (2) in compliance with direction found in the original easement concerning fees for the use authorized by this document, a fee based on the fair market value of the land, shall be applied based on current regulations and policy. Grantee shall pay annually in advance a sum determined by the Forest Service to be the fair market value of the use authorized by this easement. The initial payment is set at \$7,435.26 for the remainder of the calendar year. Payments for each subsequent calendar year shall be the amount of \$7,435.26 adjusted using the Implicit Price Deflator-Gross National Product index (IPD-GNP), or other factor selected by the Forest Service, to reflect more nearly the current fair-market value of the use. The fee shall then be reviewed as a minimum every 5 years and adjusted as necessary to assure that it is commensurate with the value of the rights and privileges authorized. Failure of the holder to pay the annual payment, late charges, or other fees or charges shall cause the easement to terminate.

I. (Para.2) The Grantee will so manage water flows in the South Platte River from Strontia Springs Dam to Chatfield Reservoir as to provide average daily flows of 60 cubic feet per second ("cfs") from May 15th to September 15th ("Summer Period") of each year and average daily flows of 30 cfs from September 16th to May 14th ("Winter Period") of the next year thereafter, except that the Grantee may divert and recover 15 cfs of the 30 cfs winter flows at the Old Last Chance Ditch diversion during the Winter Period to keep the water level in Chatfield between 5427 feet (the summer recreation level) and 5423 feet (the non-recreation level) such that storage capacity in Chatfield Reservoir is available when needed. The flows between Strontia Springs Dam and the Old Last Chance Ditch diversion shall not go below 60 cfs during the Summer Period or 30 cfs during the Winter Period.

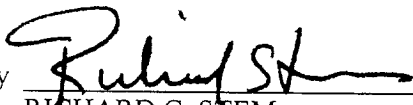
II. (2.) In the event of severe drought conditions the Grantee may reduce water flows between the Old Last Chance Ditch diversion and Chatfield Reservoir during the Summer Period. Diversion and recovery of these flows will be in proportion to the level of drought response declared by the Grantee when imposing water restrictions on its customers

- During Stage 1 drought response, as defined by voluntary water restrictions, the Grantee may divert and recover 15 cfs of the 60 cfs at the Old Last Chance Ditch diversion, leaving 45 cfs in the stream channel.
- During Stage 2 drought response, defined by mandatory watering restrictions, the Grantee may divert and recover 30 cfs of the 60 cfs at Old Last Chance Ditch diversion, leaving 30 cfs in the stream channel.
- During Stage 3 response, as defined by the total constraint of outdoor lawn watering, the Grantee may recover 45 cfs of the 60 cfs at the Old Last Chance Ditch diversion, leaving 15 cfs in the stream channel.

The flows between the Old Last Chance Ditch diversion and Chatfield shall not go below 15 cfs during the Summer Period.

IN WITNESS WHEREOF, the Regional Forester, Rocky Mountain Region, has executed this easement amendment for the Secretary, United States Department of Agriculture, in behalf of the United States pursuant to the authority delegated to him by the Secretary, by his letter dated April 18, 1978.

UNITED STATES OF AMERICA

By 
RICHARD C. STEM
Deputy Regional Forester
Rocky Mountain Region
Forest Service,
U.S. Department of Agriculture

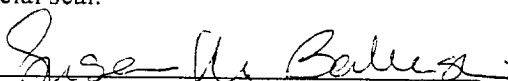
ACKNOWLEDGMENT

STATE OF COLORADO) ss:

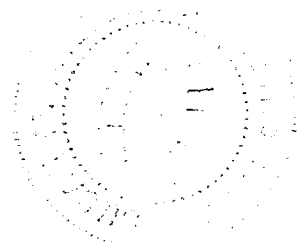
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 15th day of April, 2004, by Richard C. Stem

WITNESS my hand and official seal.


Notary Public

My commission expires: 12/10/2006



Denver Dept.
Rec'd. 5/17/79

100	W H M	5/17
500	W H M	5/21
600		
550	J E C	5/21

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

COLORADO STATE OFFICE
ROOM 700, COLORADO STATE BANK BUILDING
1600 BROADWAY
DENVER, COLORADO 80202

CO-946(RR)

C-099597-RW(163)

MAY 16 1979

copies distributed to EAC 5/4

Board of Water Commissioners
Denver Water Department
1600 West 12th Avenue
Denver, CO 80254

FILE NO. 425 - 118

Gentlemen:

The Water Management Plan for the South Platte River below Strontia Springs Dam, as submitted May 15, 1979, is approved.

As the result of a meeting on May 10, 1979, between personnel from the Denver Water Board, the Bureau of Land Management and the Forest Service, and an examination of your written plan, we find that the requirement that you submit a water management plan (Special Stipulation Number 14 of the grant for Right-of-Way C-099597 and item Number 7 of the Consent Decree filed in Civil Action No. 77-W-306, Federal District Court for the State of Colorado), has been addressed and met.

It was agreed at the May 10, 1979, meeting mentioned above that additional water flow data will be provided for the development of the fishery enhancement plan which will include projections of future high flows and management of minimum flows. Current flow data will also be made available by the Water Board upon request by the grantors.

Reference is made to my letters dated September 14, 1978, March 19, 1979, and April 23, 1979, wherein you were notified that construction of the facilities authorized under right-of-way C-099597 could not commence prior to resolution of the complaint filed in Civil Action No. 77-W-306 in the District Court for the District of Colorado. I have been advised as of this date the litigation has been dismissed.

You are therefore authorized to commence construction of the Strontia Springs Diversion Reservoir, Dam, Conduit, and Tunnel; pursuant to the



Save Energy and You Serve America!

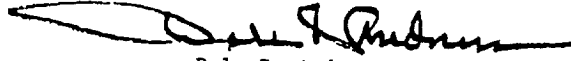
19

2.

terms, conditions and stipulations of the right-of-way granted August 16,
1978, under serial number C-099597.

Sincerely yours,

FILE NO. 425 EDD. NO. 118



Dale R. Andrus
State Director

cc: Harris Sherman, Colo. Dept. of Natural Resources
Corps of Engineers
Fish and Wildlife
Regional Forester