

# 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: January 18, 2013

SUBJECT: **Agenda Item 19, January 28-29, 2013 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 staff have negotiated 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. CWCB filed a Statement of Opposition in Denver Water's pending Case No. 1-05CW316 regarding this water right because of an apparent conflict between Applicant's claim and CWCB's exclusive authority to appropriate and adjudicate water rights 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** and the proposed Water Delivery Agreement is attached as **Exhibit B**. The Board received a copy of the Waterton Canyon Water Management Plan with 2004 Easement Amendment at the November Board meeting. The Plan will be available for review at the Board meeting if needed.

### Staff Recommendation

Staff recommends that the Board:

1. Accept the interest in water that would be provided by Denver Water under the Water Delivery Agreement;
2. Determine that the amounts set forth in the Water Delivery Agreement are appropriate to preserve the natural environment to a reasonable degree on the subject reach of the South Platte River in the time, amounts and locations provided by the Agreement;
3. Determine that the best use of the interest in water to be acquired is in the time, amounts and locations provided by the Water Delivery Agreement; and
4. Authorize the CWCB Director to finalize and sign the Water Delivery Agreement.

## **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 Water Delivery Agreement. 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 that use of Strontia Springs current water rights to maintain stream flows as required by the permit for the project is a beneficial municipal use, or in the alternative an 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 ("ISF") 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." The Water Delivery Agreement is proposed to resolve CWCB's opposition and reach settlement in the water court case.

Under the Water 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 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. 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 occurred at the November 2012 Board meeting, which initiated the 120-day time period for the Board to consider the terms and conditions of the proposed acquisition. 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 the Board's initial consideration. No such request was filed and the time for filing such request has expired. Staff will request the Board to take final action on the proposal at this January 2013 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 the natural environment. The Rules list several factors the Board may consider in its evaluation of the acquisitions. Several 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, those factors do not apply. This memo addresses the applicable factors.

Pursuant to statute, Staff has requested recommendations from Colorado Parks and Wildlife ("CPW"), 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 CPW pursuant to Rule 6f.(2). CPW's recommendation and discussion regarding this acquisition will be presented 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 the South Platte River through Waterton Canyon at the various rates identified in the WMP, varying from a 30 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 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 reach of the South Platte River through 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 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 has confirmed with the Water Commissioner 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 junior storage rights in Strontia Springs Reservoir. 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.

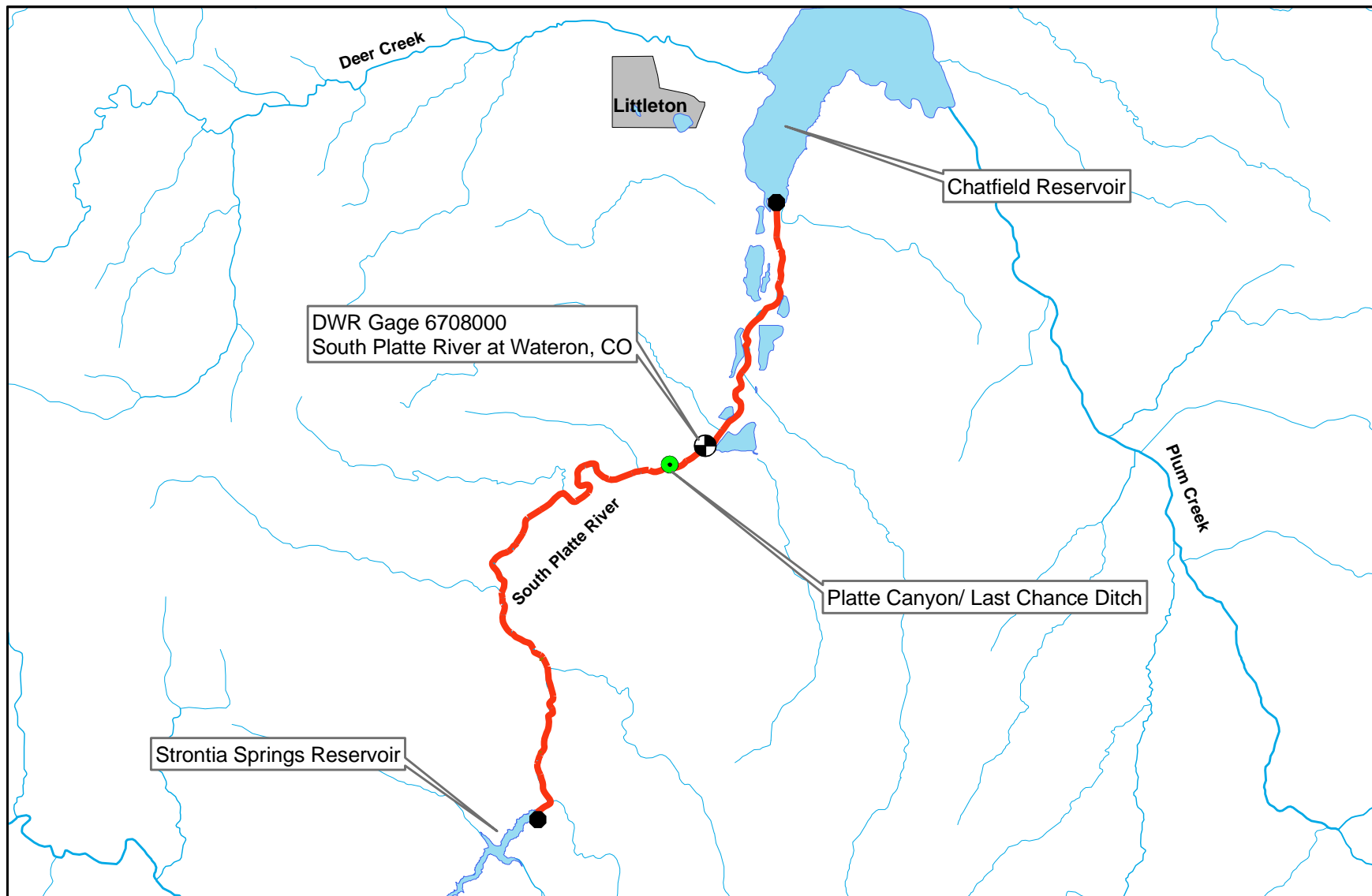
## **Effect of Proposed Acquisition on Any Relevant Interstate Compact Issue**

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



January 28-29, 2013 Board Meeting  
Agenda Item 19; Proposed Acquisition of Contractual Interest in  
Water on the South Platte River  
Case No. 1-05CW316; City and County of Denver

0 1 2 4 Miles



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 15<sup>th</sup> to September 15<sup>th</sup> (“Summer Period”) of each year and average daily flows of 30 cfs from September 16<sup>th</sup> to May 14<sup>th</sup> (“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](mailto: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: \_\_\_\_\_



## COLORADO PARKS & WILDLIFE

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6060 Broadway • Denver, Colorado 80216  
Phone (303) 297-1192 • FAX (303) 291-7109  
wildlife.state.co.us • parks.state.co.us

18 January 2013

Ms Linda Bassi  
Colorado Water Conservation Board  
Stream and Lake Protection Section  
1313 Sherman Street, Room 723  
Denver, CO 80203

**SUBJ: Proposed Acquisition of a Contractual Interest in Water – Denver  
Water Department Case No. 1-05CW316; South Platte River –  
Waterton Canyon**

Dear Linda:

Colorado Parks and Wildlife appreciates to opportunity to assist the Colorado Water Conservation Board to resolve the issues relating to the Board's exclusive authority to appropriate and adjudicate instream flow water rights in the above referenced case. CPW has worked closely with CWCB staff on this issue and we are very excited that the water acquisition process is coming to a close at the January, 2013 CWCB meeting in Denver.

At the November, 2012 CWCB meeting, CPW personnel testified as to the environmental and recreational value of the South Platte River in Waterton Canyon. Just to summarize that testimony here in writing, Waterton Canyon is a unique environmental and recreation resource located less than a one hour drive from almost anywhere in the Denver Metropolitan Area. It is also located minutes away from two other heavily used recreational resources – Chatfield State Park and Roxborough State Park. But Waterton is unique in that one can walk, jog or cycle on a level improved path along the South Platte River to fish, view bighorn sheep and other wildlife, and/or enjoy nature in a place that, once you arrive, one would never guess that just minutes away is a major metropolitan city. Due to its proximity to Denver, it's easy parking, and its user friendliness, Waterton Canyon is, as you might guess, a heavily used front range treasure. A key component of Waterton Canyon is, of course, the flowing South Platte River just a stone's throw (literally) from the path/road – it is an important part of the experience and environment of the canyon no matter what activity you are engaged in. Angling is a major activity in Waterton Canyon and the fishery benefits from special fishing regulations (flies and lures only, 2 fish limit), habitat improvement structures, and the steady regulated flows from Strontia Springs Reservoir. It is the steady, regulated flow regime that the proposal before the CWCB seeks to use the State's Instream Flow Program to legally protect from future diversion.

#### STATE OF COLORADO

John W. Hickenlooper, Governor • Mike King, Executive Director, Department of Natural Resources  
Rick D. Cables, Director, Colorado Parks and Wildlife  
Parks and Wildlife Commission: Robert W. Bray • Chris Castilian • Jeanne Horne  
Bill Kane, Vice-Chair • Gaspar Perricone • James Pribyl • John Singletary, Chair  
Mark Smith, Secretary • James Vigil • Dean Wingfield • Michelle Zimmerman  
Ex Officio Members: Mike King and John Salazar

CPW's understanding of the proposal is that CWCB would get a contractual interest in the water that Denver Water releases from Strontia Springs Reservoir more fully described in the Water Delivery Agreement. That this water, when flowing down through Waterton Canyon (from Strontia Springs to Chatfield Reservoir), would be utilized by the CWCB to preserve the natural environment to a reasonable degree in the following amounts:

- 60 cfs from May 15<sup>th</sup> through September 15<sup>th</sup>, and
- 30 cfs from September 16<sup>th</sup> through May 14<sup>th</sup>.

The scientific and biological basis for these flow amounts dates back to the original construction of the Strontia Springs Reservoir and the Foothills Water Treatment Plant. Historic files suggest that the Colorado Division of Wildlife was quite heavily involved in the negotiated settlement and eventual permitting of these two major facilities for the Denver Water Department. A key component of the federal permits for these facilities was a 1979 Water Management Plan where the above referenced flow amounts were identified initially and our records reflect that DOW personnel were involved in the development of these flow recommendations and that it is safe to assume that the basis of these flow recommendations was protection of the fishery of the South Platte River in Waterton Canyon. The 1979 WMP includes a number of drought related provisions and the WDA currently before the Board for their approval includes the same drought provisions; if CDOW was comfortable with these exceptions and provisions in 1979, we agree with them in the present day as well.

Therefore, Colorado Parks and Wildlife recommends that:

- the CWCB accept the contractual interest in water from Denver Water,
- that there is a water dependant natural environment in the subject stream reach, and
- that the amounts are both appropriate and necessary to preserve the natural environment of the South Platte River to a reasonable degree.

CPW personnel will be present at the January, 2013 CWCB meeting to provide testimony and/or to answer any questions that the Board might have relating to this issue.

Sincerely,



Jay W. Skinner  
Colorado Parks and Wildlife