

# STATE OF COLORADO

## Colorado Water Conservation Board Department of Natural Resources

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TO: Colorado Water Conservation Board Members

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

John W. Hickenlooper  
Governor

Mike King  
DNR Executive Director

Jennifer L. Gimbel  
CWCB Director

DATE: May 3, 2013

SUBJECT: **Agenda Item 19, May 14-15, 2013 Board Meeting**  
**Stream and Lake Protection Section – Injury with Mitigation –**  
**Case No. 1-02CW292: Application of Eldorado Artesian Springs, Inc.**

### Introduction

This agenda item addresses a proposed pretrial resolution under ISF Rule 8i. (3) Injury Accepted with Mitigation (“IWM”). Rule 8i.(3) requires the Board to consider an injury with mitigation proposal using a two-meeting process. This is the first meeting of the process. This proposal is to mitigate depletions from twelve wells that cannot be replaced under Eldorado Artesian Springs, Inc.’s (Applicant”) augmentation plan in a location at or upstream of the depletions. The wells supply the town of Eldorado Springs and pump from the Lyons Sandstone Formation tributary to South Boulder Creek, tributary to the South Platte River.

The proposal would allow some injury to the South Boulder Creek instream flow (“ISF”) water right along an approximately ½ mile stretch of the ISF reach between the well depletion locations and the new waste water treatment plant (“WWTP”) outfall. The injury could occur year-round depending on whether the stream flow is sufficient to meet the ISF decreed amount. The mitigation proposal is to coordinate a stream restoration project to improve aquatic habitat, which is currently in poor condition during low-flow winter months. A map of the project area is attached as Exhibit 1. Applicant’s formal request to the Board for approval of this proposal is attached as Exhibit 2.

### Staff Recommendation

Staff recommends that the Board:

- 1) Consider whether the natural environment of South Boulder Creek could be preserved to a reasonable degree with the proposed injury if the Applicant provides the proposed mitigation, so long as a general subordination of the ISF water right would not occur, and
- 2) Provide comments to Staff on the proposal and identify any issues that the Applicant and Staff should address before bringing the proposal to the Board for final approval.

## Case Background

The Board ratified its statement of opposition in this case at its March 2003 meeting. The main objective in filing the statement of opposition in this case was to ensure that operation of the Applicant's proposed plan for augmentation would not injure the Board's ISF water right on South Boulder Creek, by not replacing out-of-priority depletions in proper time, place, or amount. This case was set for a 5-day trial beginning on Monday, April 15, 2013, for which the Board authorized staff to proceed. On April 12, 2013, CWCB, DWR, City of Boulder, other opposers, and Applicant reached agreement to settle the case. The negotiated settlement ensures that the CWCB's ISF water right will not be injured, unless the Applicant's injury with mitigation proposal is approved by the Board. Upon any such approval, the decree will be amended to incorporate the injury with mitigation plan. See stipulation attached as Exhibit 3.

The exercise of the proposed rights could adversely impact the Board's ISF water rights listed below:

Case Number	Stream	Amount (cfs)	Appropriation Date
80CW379	South Boulder Creek, Segment 2	2 cfs (Oct 1 - Apr 30) 15 cfs (May 1 - Sept 30)	12/2/1980

The South Boulder Creek ISF water right decreed in Case No. 80CW379 extends through Applicant's property, approximately 6 miles south of Boulder, Colorado. Depletions associated with the wells will occur within this South Boulder Creek ISF reach.

## Mitigation on South Boulder Creek

Under the mitigation proposal, attached as Exhibit 2, the Applicant would fund a stream restoration project with the objective of improving instream aquatic habitat. Applicant's proposal contains some further explanation and specifies that Applicant will provide more detail at the May Board meeting.

## Extent of proposed injury

Applicant has requested a plan for augmentation to augment, among other things, the out-of-priority depletions of 12 existing wells that will be used to supply a maximum build-out of 120 homes in Eldorado Springs. The wells are senior to the ISF, but will be operating under a junior exchange when out-of-priority, and so will be operated junior to the ISF. The CWCB has accepted a section 37-92-102(3)(b) exception (ISFs take subject to certain pre-existing uses) for the stream depletions occurring at the time of the ISF appropriation in 1980. However, the septic return flows that offset out-of-priority diversions have been moved downstream. Boulder County recently installed and is operating a new WWTP that discharges wastewater approximately ½ mile downstream of the previous discharge location. The ½ mile reach that had received the water is now nearly dry for much of the year, especially during the winter months. Total injury to a ½ mile segment of the ISF reach is expected to be up to 0.055 cfs year-round.

## Benefits of mitigation

At the Board meeting, Martin & Wood Water Consultants, Inc., Applicant's consulting water resources engineer, will provide comments on: (1) the potential injury to South Boulder Creek ISF water rights resulting from Applicant's plan for augmentation, and (2) benefits to the natural environment resulting from Applicant's proposal to restore sections of the creek.

## **Alternatives**

Applicant has explored the following alternatives to the injury with mitigation proposal described herein:

1. Applicant considered making full replacement at the augmentation stations in town; however, that would require making double replacements because the WWTP effluent accrues to the stream at the ½ mile point. Further, full replacement would not be feasible because securing an additional augmentation supply on this section of South Boulder Creek is quite difficult.
2. Applicant considered the feasibility of installing a pipeline and pump station to move the indoor return flow back upstream to the point where it used to discharge. Applicant does not own the land between the wells and the Creek, and would need to obtain an easement across the property to place the facilities. Due to that complication, this alternative may not be economically feasible.

Because Applicant believes that none of these alternatives is practical, Applicant has submitted this injury with mitigation proposal.

## **Colorado Division of Wildlife Evaluation of Proposal**

Colorado Parks and Wildlife (“CPW”) preliminary analysis and recommendation will be presented at the Board meeting.

## **Terms and Conditions**

Terms and conditions are yet to be negotiated, but injury with mitigation terms and conditions in the final decree should include the following, as required by CWCB’s ISF Rule 8i.(3):

1. A provision that the proponent will not divert water or take any other action that would reduce flows in the affected stream or levels in the affected lake below the decreed ISF amount until the agreed-upon mitigation measures are in place and fully operational;
2. A requirement that the structural components of the mitigation be maintained permanently;
3. A provision allowing CWCB or CPW staff access to the property on which structural components of the mitigation are located to inspect the structures at certain time intervals, and, if necessary, to perform biological stream or lake monitoring. This provision shall clearly define the reasonable nature, extent and timing of such access (i.e, advance notice, dates, times or season of access, coordination with proponent, and location and routes of access);
4. A term providing that if the proponent ceases to provide the agreed upon mitigation (such as removing structural components or failing to maintain them to a specified level or ceasing to implement non-structural components), that the proponent will not divert water or take any other action that would reduce flows in the affected stream below the decreed ISF amount because the Board will no longer accept the injury based upon the mitigation no longer being in effect -- in such case, if the Board places a call for the affected ISF water right, the Board will notify the Division Engineer that this provision of the decree now is in effect and that the Board is not accepting the injury;
5. A requirement that the proponent install and pay operation and maintenance costs of any measuring devices deemed necessary by the Division Engineer to administer the terms of the stipulation and decree implementing the Injury with Mitigation pretrial resolution; and

6. A term providing that the water court will retain jurisdiction to enforce the terms and conditions set forth above in subsections (i) - (vi), and any other terms and conditions specific to the Injury with Mitigation pretrial resolution, as a water matter.

Staff anticipates that the parties will work to refine the above-listed terms and conditions and incorporate them into a stipulation and the resulting water court decree.

Due to the minimal information received on the proposed mitigation to date, Staff has been unable to conclude whether Applicant's mitigation proposal on South Boulder Creek supports the conclusion that the natural environment of South Boulder Creek can continue to be preserved to a reasonable degree under the conditions described herein as a result of the mitigation provided by the Applicant. Staff and the Attorney General's Office are in the process of consulting with the Division Engineer on the administration of this IWM proposal, and any potential selective and general subordination issues.

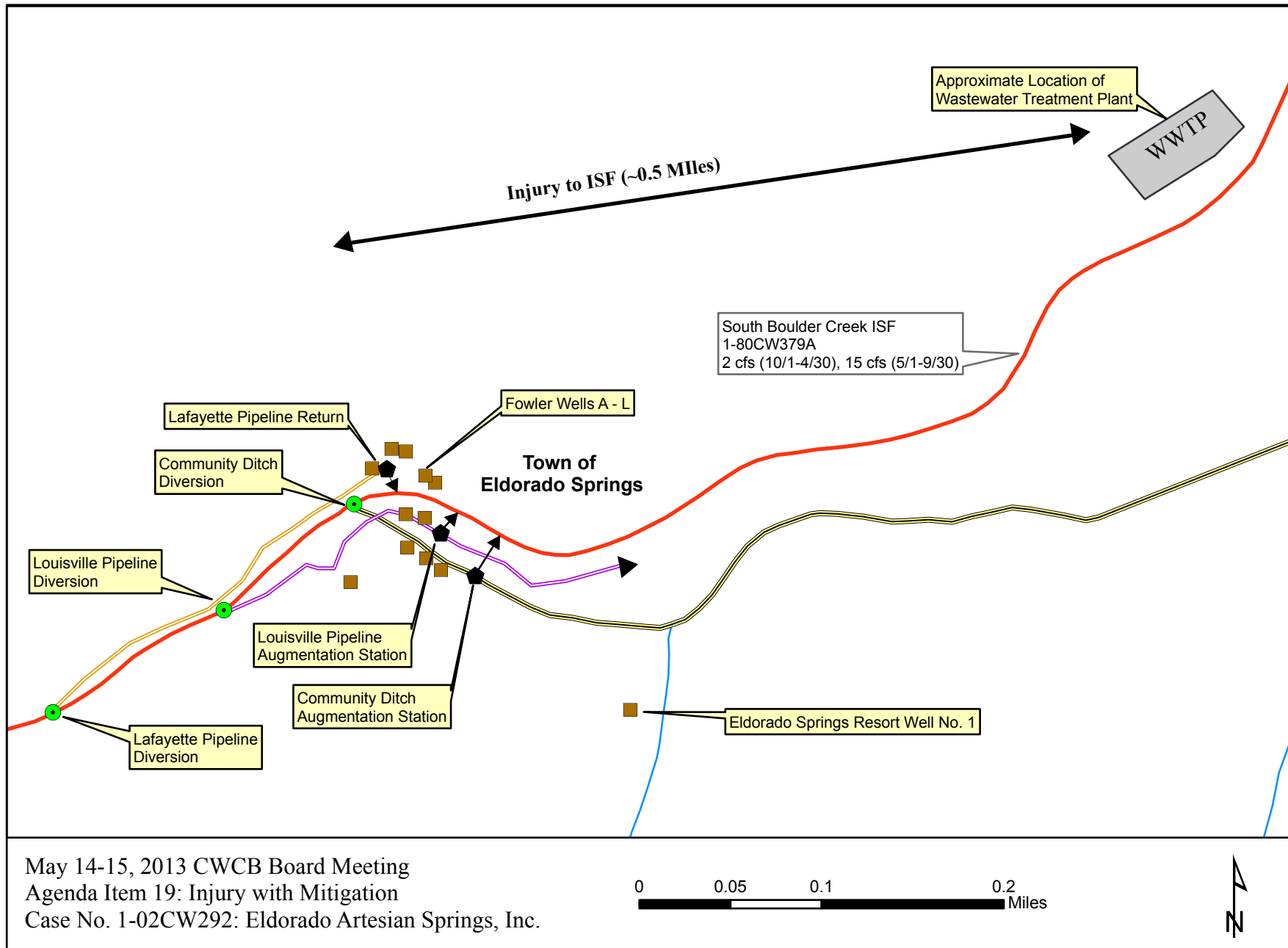
Attachments:

Exhibit 1 – Map

Exhibit 2 – Applicant's IWM proposal

Exhibit 3 – CWCB and Applicant's Stipulation in Case No. 02CW292

# Exhibit 1



# Exhibit 2

**HILL & ROBBINS, P.C.**

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April 23, 2013

**BY E-MAIL AND U.S. MAIL**

Linda Bassi  
Kaylea White  
Stream & Lake Protection  
Colorado Water Conservation Board  
Department of Natural Resources  
1313 Sherman Street, Room 721  
Denver, CO 80203

Re: Proposal for Injury with Mitigation, Eldorado Artesian Springs, Inc., Case No. 02CW292

Dear Linda and Kaylea:

Pursuant to Rule 8i.(3) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, and the stipulation in Case No. 02CW292, Water Division No. 1, between Eldorado Artesian Springs, Inc., and the Colorado Water Conservation Board dated April 12, 2013, Eldorado Artesian Springs, Inc. ("EAS") submits its proposal to allow injury with mitigation in a one half mile reach of South Boulder Creek potentially impacted by EAS's recently decreed augmentation plan.

In Case No. 02CW292, the CWCB recognized that EAS's wells have been providing water to residences in Eldorado Springs since long before the CWCB appropriated its instream flow right in 1980, in Case No. 80CW379 (the "ISF water right"), and agreed to language in the decree acknowledging that a certain amount of depletion from EAS's withdrawals does not injure the ISF water right pursuant to § 37-92-102(3)(b). However, CWCB staff and EAS were not able to reach a pretrial resolution regarding whether the actions of Boulder County, which required moving the discharge of in-house use from individual septic systems to a newly-constructed wastewater treatment facility approximately one-half mile downstream from the town, would cause legal injury to the ISF water right. In the spirit of cooperation with the



CWCB's efforts to preserve or improve the natural environment in and around South Boulder Creek, EAS agreed to submit a proposal for injury with mitigation rather than litigate the legal issue. By submitting this proposal, EAS does not admit that its operations cause legal injury to the CWCB's ISF water right. If the proposal is approved, the decree permits EAS to seek an amendment conforming the decree to the CWCB's approval. If this proposal is denied, the decree permits EAS to request a legal determination of injury from the Water Court under the decree's provision for continuing jurisdiction.

### **Location of Potential Injury**

The potential for injury to the ISF water right occurs from the point of depletion of the twelve Eldorado Wells included in Case No. 02CW292, with dates of appropriation dating from 1901 to 1962, downstream to the wastewater treatment plant discharge. Diversions from the Eldorado Wells are considered to be 100% depletive to the stream beginning at the point of well depletions, which is located near the west edge of Eldorado Springs in the southeast quarter of Section 25, Township 1 South, Range 71 West, 6<sup>th</sup> P.M. The depletions continue to the wastewater treatment plant discharge in the southwest quarter of Section 30, Township 1 South, Range 70 West, 6<sup>th</sup> P.M. The reach between the upstream most depletion and the wastewater treatment plant discharge is approximately 0.5 miles along South Boulder Creek. The locations of the Eldorado Wells and the wastewater treatment plant discharge, in relation to the ISF water right, are shown on Figure 1. A copy of the decree is also attached to this proposal.

### **Quantification of Potential Injury**

The Eldorado Wells provide water for indoor use for approximately 70 residential taps and for the Eldorado Springs facility (e.g., offices, locker room, snack bar) (the "Eldorado Springs Facility") within the Town of Eldorado Springs, as well as up to 1 acre of irrigation within the Town. At full build out, the wells may serve approximately 120 taps and the Eldorado Springs Facility. Most of the domestic water use that currently exists has been in place since the mid-20<sup>th</sup> Century.

#### *Maximum Amount and Timing*

The potential injury to the ISF water right occurs because the diversions of groundwater from the Eldorado Wells impact South Boulder Creek. A portion of the diverted groundwater is consumed inside the homes (estimated to be 5% of the well pumping) and the remainder of the groundwater is returned to South Boulder Creek after treatment at the wastewater treatment plant (estimated to be 95% of the well pumping).

Theoretically, at the time the ISF water right was appropriated, depletions were largely offset by septic system returns accruing to South Boulder Creek in the reach through Eldorado Springs. Currently, the wastewater is treated by a central wastewater treatment plant completed in 2011 by a Local Improvement District formed by Boulder County, which provides return flows to South Boulder Creek on the east side of Eldorado Springs. The return flows are approximately 95% of the water produced for indoor uses.

Depletions from each of the Eldorado Wells are determined based on the measured amount of groundwater produced by each well, as required in the decree in Case No. 02CW292. The impact on the stream between the well depletions and the wastewater treatment plant discharge is the amount of well pumping for indoor use less the amounts by which the CWCB agreed were preexisting uses. The estimated well pumping for indoor use is steady throughout the year, and although the impact to South Boulder Creek is delayed due to the hydrogeology, the depletions at build-out will have reached an essentially steady-state condition due to unchanging demand and the use of the same wells to provide the water. With this knowledge, EAS's engineers, Martin and Wood Water Consultants, Inc. ("Martin and Wood") lagged the estimated water usage under the future number of residential taps served by the Eldorado domestic water system.

The estimated steady-state lagged depletions from indoor use to South Boulder Creek at build-out, as estimated by Martin and Wood for the recently decreed augmentation plan case, are approximately 0.055 cfs year-round. Mr. Doug Larson of EAS estimates the current indoor usage, in the winter, is 0.02 cfs. The current usage is less than build-out because the town is only serving approximately 70 homes, not 120 homes, and the homes may be using less than the estimated 90 gallons per person per day and 3.5 people per home assumed by Martin and Wood. The estimated usage at build-out is the maximum potential injury to the ISF and is offset by the augmentation of the indoor consumptive use which will be returned to the creek in Eldorado, as required by the decree in Case No. 02CW292. Case No. 02CW292 excludes a portion of the impact to the ISF as pre-existing due to the consumption associated with in-home use prior to the adjudication of the ISF. This exclusion is for 2.57 acre-feet per year or 0.0035 cfs.

At and downstream of the wastewater treatment plant, the net depletion to the stream would be the consumptive use. However, the recently decreed plan for augmentation in Case No. 02CW292 requires replacing the consumptive use near the point of well depletions (when the wells are out-of-priority), so there will be no injury to the ISF at or below the wastewater treatment plant discharge.

#### *Estimated Frequency of Injury*

To determine when the subject ISF water right may be injured, Martin and Wood evaluated records of streamflow at the gage on South Boulder Creek upstream of Eldorado Springs (South Boulder Creek near Eldorado Springs, CO, Gage 06729500) and then adjusted the gage record by diversion and releases from the following structures from/to South Boulder Creek.

- Lafayette Pipeline (Structure ID 597)
- Louisville Pipeline (Structure ID 598)
- Community Ditch (Structure ID 564)
- Lafayette Pipeline Return to South Boulder Creek (Structure ID 2902 beginning in 2011 and returns from Structure ID 598 from 1997 through 2010)

Streamflow and diversion records were obtained on April 18 and April 22, 2013 from the Colorado Decision Support System website maintained by the Colorado Division of Water Resources. The calculated streamflow at the point of depletions of the Eldorado Wells was then compared to the ISF water right at 2 cfs from October 1 through April 30 and 15 cfs from May 1 through September 30. Using the calculated streamflow from 1980 through 2011, the subject ISF water right is unsatisfied primarily during the winter months as shown in the below Table 1.

**Table 1**  
**Historical Percentage that Calculated Flow is**  
**Insufficient to Meet the Subject ISF Water Right**

<b>Month</b>	<b>Percent of Time ISF Unsatisfied</b>
January	43.9%
February	48.1%
March	40.6%
April	13.4%
May	0.6%
June	0.0%
July	0.5%
August	13.3%
September	39.7%
October	5.4%
November	35.1%
December	44.9%

The ISF water right is only injured when it is unsatisfied. Martin and Wood found that the right is nearly always satisfied in May, June, July, and October. There are, on average, 86 days per year when the ISF water right is unsatisfied. This is approximately 24% of the year. The impact on the ISF water right is therefore approximately 0.055 cfs per day for 86 days, or 9.55 acre-feet per year on average.

The ISF water right was satisfied for 208 days in 1988; this is the lowest satisfaction of all years in the study period. In this year, the ISF water right was satisfied 57% of the time. In 1988, the impact to the ISF would have been approximately 0.055 cfs for 157 days or approximately 17.12 acre-feet (assuming full build-out of Eldorado Springs). Using the lower usage numbers provided by EAS, the impact to the ISF would have been approximately 0.02 cfs per day or approximately 6.23 acre-feet.

The ISF water right was calculated to be satisfied for 313 days in 1987 and satisfied more than 340 days per year earlier in the 1980s, although the diversion records for the Community Ditch available from CDSS do not appear to be complete prior to 1986. In 1987, the calculated injury to the ISF water right would have been approximately 0.055 cfs for 52 days or approximately 5.67 acre-feet (assuming full build-out of Eldorado Springs).

## **Type of Water Use Causing Injury**

The water use from the Eldorado Wells which has the potential to injure the subject ISF water right is indoor use of water associated with the homes in Eldorado Springs and the Eldorado Springs Facility. These uses impact the stream because the pumping of water to supply these needs depletes South Boulder Creek upstream of the wastewater treatment plant discharge, which returns an estimated 95% of indoor demand. As noted above, these uses have been occurring for many decades, but Boulder County's recent construction of a centralized wastewater treatment plant for the town resulted in moving the discharge of wastewater from this use to a single discharge point downstream of the town. The other uses of water by Eldorado are replaced in town and do not injure the ISF water right.

## **Protection Analysis**

Full protection of the ISF water right is not possible in this reach for multiple reasons. First, approximately 95% of the water produced for indoor demands is returned to South Boulder Creek at the wastewater treatment plant approximately 0.5 miles downstream of the depletions. Full protection of the ISF water right would therefore result in double replacement of this water (i.e., replacement of the pumping in town and then again at the wastewater treatment plant discharge point). Second, EAS has tried for many years to obtain an adequate and reliable augmentation supply of sufficient quantity, with little success. Beginning in early 2000, the following augmentation options were pursued by EAS:

- Farmers Reservoir and Irrigation Company (FRICO) Marshall Lake Division
- FRICO Standley Lake Division
- Howard Ditch
- Leases of water from the cities of Louisville, Westminster, and Broomfield
- Storage options in Divide Reservoir
- Storage options in Gross Reservoir
- Purchase or lease of Colorado-Big Thompson water
- Purchase and lease of nontributary groundwater which can be trucked to Eldorado Springs.

EAS has used at least two water brokers to identify and in some cases to facilitate the purchase of water, has paid Martin and Wood to identify and evaluate augmentation and replacement supplies, has pursued leases of water from multiple cities to meet augmentation needs or return flow obligations, has leased nontributary water which had to be trucked from near the stockyards in Denver back up to Eldorado Springs, and continues to seek additional water to add to its portfolio for augmentation needs and return flow obligations, particularly in dry years. Obtaining reliable augmentation supplies is expensive and difficult along South

Boulder Creek. There are also a limited number of ditches and options to allow for the augmentation water to be returned to the creek upstream of Eldorado Springs.

EAS's augmentation requirements under the recently-decreed augmentation plan in Case No. 02CW292 are estimated to be 31.10 acre-feet annually at build-out of the town. If the full replacement of diversions for indoor use is required, EAS's replacement obligation at full build-out would be estimated at 53.71 acre-feet annually. This represents a potential 72% increase in the replacement obligation to South Boulder Creek.

### **Description of the Proposed Mitigation**

EAS proposes to fund a stream restoration project to be coordinated by the Boulder Flycasters chapter of Trout Unlimited. Existing fish habitat is in poor condition and does not provide adequate cover, especially during the low-flow winter months. Although the details are still under development, Boulder Flycasters has expressed interest in expanding upon three related stream restoration projects completed on other portions of South Boulder Creek in conjunction with the Colorado Division of Wildlife, the City of Boulder Open Space and Mountain Parks Department, and other stakeholders in South Boulder Creek, with funding from the CWCB. The objective of the project will be to improve instream aquatic habitat for native and non-native fish. Improvements may include:

- Narrowing overwidth stream segments to establish a stream channel geometry in balance with current flows.
- Constructing natural instream habitat features that provide for the habitat needs of native and sport fish species.
- Stabilizing eroding banks.
- Planting native riparian vegetation to provide shade and overhead cover.

If Boulder Flycasters is unable to take on the project, EAS will obtain expertise from the Division of Parks and Wildlife, the Colorado Water Trust or a similar organization to provide the expertise to plan and construct the necessary restoration features to accomplish the agreed upon mitigation. Because of scheduling deadlines to prepare and submit this proposal, EAS anticipates providing both testimony and graphics to the CWCB at the May board meeting to further demonstrate the nature and location of the stream restoration project.

### **The Proposed Mitigation Will Enable the CWCB to Preserve the Natural Environment**

EAS believes that the proposed stream restoration project will enable the CWCB to fulfill its mission to preserve the natural environment to a reasonable degree. The primary concerns in the affected stretch of the South Boulder Creek are preserving wildlife habitat and maintaining water quality. The stream restoration project will add this reach to the three other restoration projects completed on South Boulder Creek and will result in enhancement to the natural fish habitat more than would be achieved by simply replacing EAS's depletions. Because the amounts of the historic depletions that were moved from septic returns to the wastewater

discharge are relatively minor, the amount of replacement would not create sufficient additional habitat in many months when this reach of Boulder Creek is affected by significant upstream senior diversions. By providing additional pools and refuge areas for fish the overall quality of the natural environment will be improved and the opportunities for holding a population of fish throughout the year will be advanced. The project will also benefit the public by increasing recreational fishing opportunities for anglers in Boulder County and the greater Denver Metropolitan area. Aesthetically speaking, the appearance of the creek will also improve.

In addition, EAS asks the CWCB to consider the overall improvement to water quality in the stream inherent in the switch from individual septic systems allowing wastewater to reach the stream at various unknown points with virtually no treatment, to a centralized wastewater treatment plant with a single discharge subject to a Colorado Discharge Permit System permit. The water quality improvements were constructed by a separate entity under the direction of Boulder County. When coupled with the stream restoration project, EAS believes that this stretch of South Boulder Creek will be dramatically improved from a wildlife habitat and water quality perspective from what it has been in the past.

### **Identification and Analysis of Feasibility**

EAS has considered other options for replacing depletions from indoor use above the wastewater treatment plant, but none are feasible. The most obvious solution would be to simply make full replacement at the augmentation stations in Eldorado Springs contemplated in the decree. However, as discussed above, replacing the entire potential injury to the ISF water right upstream of the wastewater treatment plant would require double replacement of water (i.e., replacement of the pumping in town and then again at the wastewater treatment plant discharge point), and securing an augmentation supply on this section of South Boulder Creek is incredibly difficult. Although EAS continues to work on building its water portfolio, it is unlikely to be able to obtain the additional water needed to fully replace well depletions from indoor uses within the town in order to prevent injury to the ISF water right. Further, in order to fully protect the ISF water right, EAS would have to obtain a supply to prevent injury on a year-round basis in a dry year, under the worst case scenario, requiring a substantial excess augmentation supply in most years. Finally, the use of non-tributary water that may be obtained for augmentation supply would also require trucking from the groundwater well into Eldorado Springs, creating another set of environmental impacts.

Given these difficulties, EAS has considered building a pipeline from the wastewater treatment plant to pump the wastewater effluent from the plant back into town to a point near the well depletions. However, this option presents its own set of problems, most notably that EAS does not operate or control the wastewater treatment plant. The facility was a project initiated by Boulder County through creation of a local improvement district. This local improvement district constructed and operates the wastewater treatment plant, and construction of a pipeline and an alternate discharge point may present issues for the district. In addition, this option would be very costly. The work necessary to install a pipeline would also be disruptive to the community of Eldorado Springs and visitors to Eldorado State Park. Further, the operation and maintenance costs of the sewer lift station, which would be needed to pump the wastewater effluent back into town, would be considerable.

## **Conclusion**

EAS requests that the CWCB approve this proposal to allow injury with mitigation. The proposed stream restoration project is consistent with the CWCB's mission to preserve and restore the natural environment. Moreover, the CWCB should recognize that the very mechanism by which the ISF water right may be injured also results in improvements to the water quality in the stream by removing the discharges from individual septic systems.

Please do not hesitate to contact me with any questions or concerns about this proposal or to schedule a site visit. In addition, we will have representatives available at the May meeting to answer any questions from individual board members.


Sincerely,

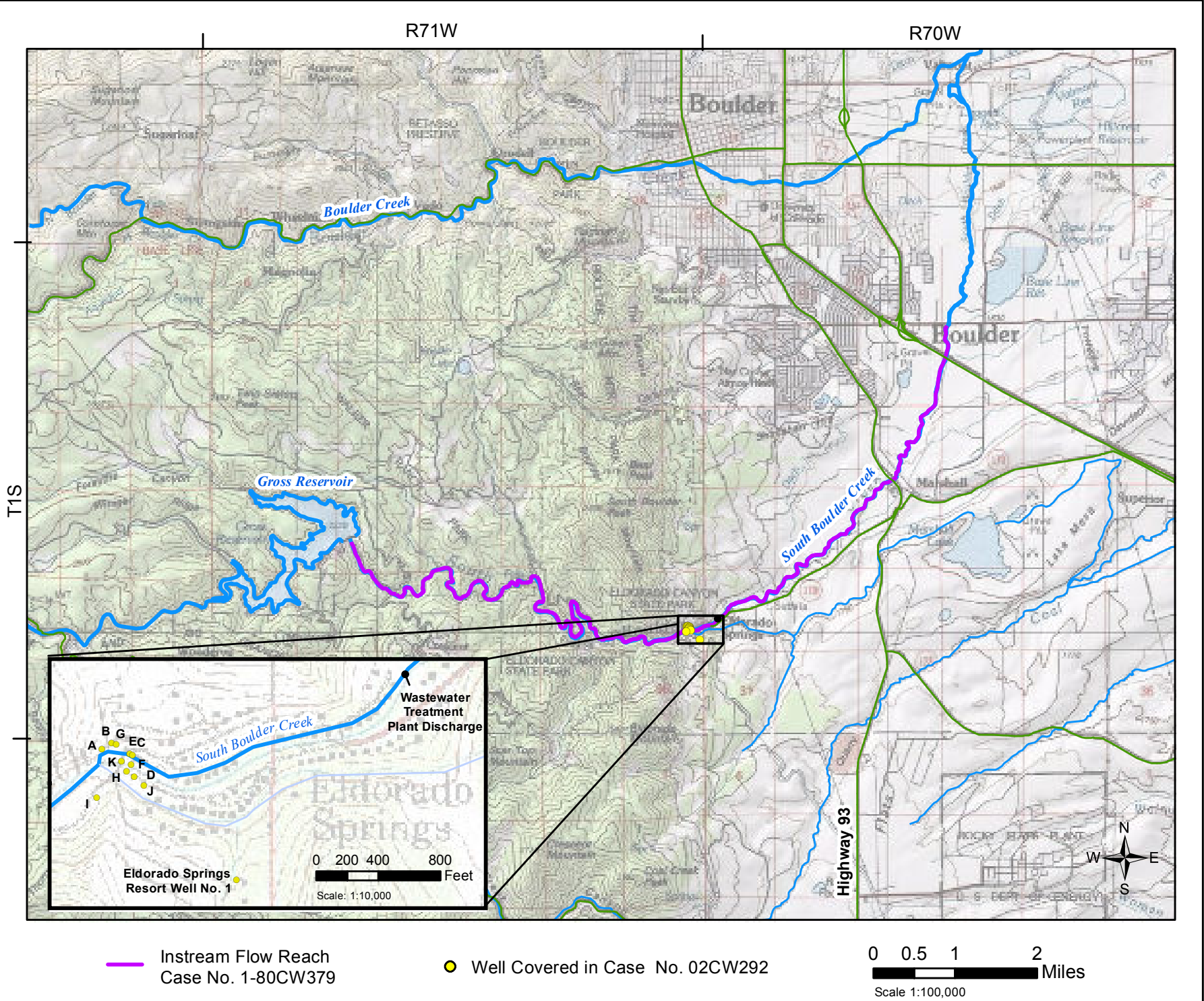
Jennifer H. Hunt  
*Attorney for Eldorado Artesian Springs, Inc.*

Encl.

cc: Doug Larson, President of EAS  
Cristy Radabaugh, P.E., Martin and Wood Water Consultants  
Susan Schneider, Office of the Attorney General



Job No.:	313.1	Eldorado Artesian Springs, Inc. Injury with Mitigation Proposal	Overview Map Figure 1	 <b>MARTIN AND WOOD</b> WATER CONSULTANTS, INC.	538 Commons Drive Golden, CO 80401 Phone: (303) 526-2600 Fax: (303) 526-2624 www.martinandwood.com
Date:	4/17/13				
Drawn:	CRR				
Checked:	CML				





# Exhibit 3

<p>DISTRICT COURT, WATER DIVISION 1 COLORADO</p> <p>901 9th Avenue P.O. Box 2038 Greeley, CO. 80632</p>	
<p><b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF ELDORADO ARTESIAN SPRINGS, INC. IN BOULDER, DENVER, JEFFERSON, WELD, AND ADAMS COUNTIES</b></p>	
<p>David W. Robbins, #6112 Jennifer H. Hunt, # 29964 Hill &amp; Robbins, P.C. 1441 18th Street, Suite 100 Denver, CO 80202-1256 Phone: (303) 296-8100 Fax: (303) 296-2388 E-mail: davidrobbins@hillandrobbins.com; jhunt@hillandrobbins.com <i>Attorneys for Applicant Eldorado Artesian Springs, Inc.</i></p> <p>John W. Suthers, Attorney General Peter C. Johnson, #41670 Assistant Attorney General* 1300 Broadway, 7th Floor Denver, CO 80203 Telephone: 720-508-6288 E-Mail: peter.johnson@state.co.us <i>Attorneys for the Colorado Water Conservation Board</i></p>	<p>▲ Court Use Only ▲</p> <p>Case No. 02CW292 Courtroom 5</p>
<p><b>STIPULATION BETWEEN APPLICANT, ELDORADO ARTESIAN SPRINGS, INC., AND OBJECTOR, COLORADO WATER CONSERVATION BOARD</b></p>	

Applicant, Eldorado Artesian Springs, Inc. ("Applicant"), by its attorneys, Hill & Robbins, P.C., and Objector the Colorado Water Conservation Board ("Objector"), by their undersigned attorneys, stipulate and agree as follows:

1. Objector has reviewed the proposed decree of the water court dated April 11, 2013, attached hereto as Attachment 1. Objector hereby stipulates and consents to the entry of a decree in this case so long as it is no less restrictive on Applicant than Attachment 1.

2. The Colorado Water Conservation Board ("CWCB") further stipulates that it will consider an injury with mitigation proposal pursuant to Rule 8.i.(3) of the Colorado Water Conservation Board Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("IWM Proposal") to address the stream depletions due to Applicant's diversions for indoor domestic use and the resulting required replacement of 100% of diversions for indoor use in the ½ mile reach between the point of depletions of wells and the WWTP outfall ("the ½ mile reach issue"). Immediately upon CWCB approval of an IWM Proposal submitted by the Applicant in which the Board determines that the proposed mitigation allows CWCB to preserve the natural environment to a reasonable degree in spite of the injury, the Board will honor the terms of an IWM agreement, without regard to whether the IWM agreement has been incorporated into the decree. Applicant stipulates that it will promptly seek modification of the decree to incorporate any approved injury with mitigation agreement. Applicant further agrees that the presentation of Applicant's IWM proposal to the CWCB will not involve the legal issue of whether depletions must be replaced in the ½ mile reach, and that CWCB does not have legal authority to determine that issue.

3. CWCB holds the following ISF water right that was decreed before this application in 02CW292 was filed.

Case Number	Stream	Amount (cfs)	Appropriation Date
80CW379	South Boulder Creek	2 cfs, Oct 1 through Apr 30	12/2/1980
80CW379	South Boulder Creek	15 cfs, May 1 through Sept 30	12/2/1980

Pursuant to section 37-92-102(3)(b), C.R.S. (2012), CWCB and Applicant recognize that Applicant's consumptive use for irrigation use (up to 2.53 acre-feet per year during the irrigation season), recreational use in the swimming pool (up to 1.24 acre-feet per year during the season in which the pool is open), and domestic indoor use (up to 2.57 acre-feet per year of consumptive use year-round) of water from the Eldorado Wells, was being made pursuant to appropriations or practices in existence at the time of the CWCB's appropriation of the instream flow right on South Boulder Creek in Case No. 80CW379, Water Division 1, Colorado.

4. An inter-ditch exchange may only be approved if it does not injure other water rights by expansion of use. To address the expansion of use concern, CWCB and applicant have evaluated the water rights and structures to be used. The Community Ditch use will not be expanded because the Community Ditch currently maximizes its diversions whenever it is in priority, thus making expansion impossible. The Louisville pipeline will not be expanded.

because the decree prevents the expansion of Louisville's water rights due to the operation of the intraditch exchange described in paragraph 19(D)(2) of the attached decree.

5. This stipulation is entered into by way of compromise and settlement of this litigation. Any agreement or terms and conditions herein are due solely to the unique circumstances of this case and the resulting Stipulation. This Stipulation shall not establish any precedent and shall not be construed as a commitment to include any specific findings of fact, conclusions of law, or specific engineering methodologies or administrative practices in future stipulations or decrees. Nothing contained in the attached proposed decree or this Stipulation shall be binding on CWCB other than in the current proceeding.

6. This stipulation shall be binding on the Applicant and the Objectors, their successors and assigns, and shall be enforceable as an agreement between them and as an order of the Court, and shall be filed with the court with a motion that it be approved by order of the court.

7. Each party shall bear its own attorney fees and costs concerning this case.

DATED this 12<sup>th</sup> day of April, 2013.

HILL AND ROBBINS, P.C.

By: 

Jennifer H. Hunt, #29964

*Attorney for Eldorado Artesian Springs, Inc.*

JOHN W. SUTHERS, ATTORNEY  
GENERAL

By: 

Peter C. Johnson, #41670

*Attorneys for the Colorado Water  
Conservation Board*

### CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of April, 2013, a true and correct copy of the foregoing stipulation was served via ICCES on the following parties:

Party Name	Party Type	Attorney	Firm
DIVISION ENGINEERS	Division Engineer	Division 1 Water Engineer	Division 1 Engineer
COLORADO WATER CONSERVATION BOARD	Opposer	Pro Se	Pro Se-
WATERS USERS ASSOCIATION OF DISTRICT NO	Opposer	Kahn, Jeffrey J	Lyons Gaddis Kahn & Hall PC
CCWCD	Opposer	Lawrence Esq, Kim R	Lawrence Jones Custer & Grasmick LLP
BOULDER, CITY OF	Opposer	Sperling, Veronica A	Buchanan & Sperling PC
LAFAYETTE, CITY OF	Opposer	Lindholm, David C	Lindholm, David C
WATERS USERS ASSOCIATION OF DISTRICT NO	Opposer	Holwick, Scott E	Lyons Gaddis Kahn & Hall PC
BROOMFIELD CITY & COUNTY OF	Opposer	Kueter, David Lawrence	Curtis, Harvey W & Associates
BROOMFIELD CITY & COUNTY OF	Opposer	Curtis, Harvey William	Curtis, Harvey W & Associates
WESTMINSTER CITY OF	Opposer	Johnson, Lee H	Carlson Hammond & Paddock LLC
CITY OF LOUISVILLE	Opposer	Hill, Alan G	Tienken & Hill LLP
STATE ENGINEER	Opposer	Johnson, Peter	CO Attorney General
DIVISION ENGINEER	Opposer	Johnson, Peter	CO Attorney General
COLORADO WATER CONSERVATION BOARD	Pending Approval	Johnson, Peter	CO Attorney General
STATE AND DIVISION ENGINEER	Pending Approval	Johnson, Peter	CO Attorney General
STATE ENGINEERS	State Engineer	State Water Engineer, Colorado	State Engineers Office

s/ Rae Macias  
Rae Macias