

### **Summary**

This application (attached) seeks a finding of reasonable diligence for a Recreational In-Channel Diversion (RICD) on the Animas River to be located in Durango, CO originally decreed in Case No. 7-06CW009.

Durango's white water course is to be located on the Animas River near the intersection of Santa Rita Drive and Highway 160 in Durango, Colorado. The reach of the proposed white water course is shown on the map attached and includes 4 decreed control structures. The RICD is decreed for the following flows:

<b>TIME PERIOD</b>	<b>FLOW RATE (in cfs)</b>
Jan. 1 – Mar. 14	185
Mar. 15 – Mar. 31	250
Apr. 1 – Apr. 14	400
Apr. 15 – Apr. 30	850
May 1 - May 31	1200
June 1 - June 14	1400
June 15 - June 30	1200
July 1 - July 14	850
July 15 - July 31	600
Aug. 1 – Aug. 14	400
Aug. 15 – Sept. 30	300
Oct. 1 – Dec. 31	185

### **CWCB Appropriations**

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

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

The CWCB would like to ensure that the Applicant has provided proper evidence to support its claim for a finding of reasonable diligence for the RICD water right. Improper diligence or perfection of this RICD may affect Colorado's ability to promote maximum utilization of the waters of the State.

### **Other Objectors**

At this time, there are no other opposers in this case.

**Staff Recommendation**

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

Attachments:

Application and Map

SOP

DISTRICT COURT, WATER DIVISION 7,  
COLORADO

1060 E. 2<sup>nd</sup> Avenue, Room 106  
Durango, Colorado 81301-5157  
970-247-2304

CONCERNING THE APPLICATION FOR WATER  
RIGHTS OF CITY OF DURANGO

IN LA PLATA COUNTY

Attorneys for Applicant, City of Durango:  
Veronica A. Sperling, #14310  
BUCHANAN AND SPERLING, P.C.  
7703 Ralston Road  
Arvada, Colorado 80002  
303-431-9141  
vsperling@tbvs.net

▲ COURT USE ONLY ▲

Case No. 13CW \_\_\_\_\_

**APPLICATION FOR FINDING OF REASONABLE DILIGENCE**

1. Name, address, e-mail address and telephone number of applicant:

City of Durango  
c/o Ron LeBlanc, City Manager  
949 E. 2nd Avenue  
Durango, Colorado 81301  
E-mail: Cathy.metz@durangogov.org  
970-375-7329

2. Name of structure: Durango Boating Park.

3. Describe conditional water right (as to each structure) including the following information from previous decree:

- A. Date of Original Decree: November 30, 2007; Case No. 2006CW9; Court: District Court, Water Division 7.
- B. List all subsequent decrees awarding findings of diligence: None.
- C. Legal description: The Durango Boating Park is located in the channel of the Animas River in the vicinity of Whitewater Park near the intersection of Santa Rita Drive and Highway 160 in Durango, Colorado, and is approximately 1183 feet in length along a centerline in the river from the invert of the most upstream control structure to the

exit of the most downstream control structure. Although the reach of the Durango Boating Park is approximately 1183 feet, the recreational in-channel diversion water rights decreed herein are located at the control structures described below (“Control Structures”) and do not encompass the entire reach of the Durango Boating Park. Each of the Control Structures is designed to perform at various rates of flow and will control the entire range of flows set forth in paragraph 3.F. below, for the beneficial uses described in paragraph 3.G. below. The reach of the Animas River which constitutes the Durango Boating Park includes the following Control Structures for which recreational in-channel diversion water rights are decreed:

- (1) Structure 5: Located in the SW 1/4 of the SW 1/4, Section 29, Township 35 North, Range 9 West, N.M.P.M., 700 feet east of the west section line and 360 feet north of the south section line of said section.
- (2) Structure 9: Located in the SW 1/4 of the SW 1/4, Section 29, Township 35 North, Range 9 West, N.M.P.M., 650 feet east of the west section line and 80 feet north of the south section line of said section.
- (3) Structure 11: Located in the NW 1/4 of the NW 1/4, Section 32, Township 35 North, Range 9 West, N.M.P.M., 950 feet east of the west section line and 250 feet south of the north section line of said section.
- (4) Structure 12: Located in the NW 1/4 of the NW 1/4, Section 32, Township 35 North, Range 9 West, N.M.P.M., 1180 feet east of the west section line and 460 feet south of the north section line of said section.

The approximate locations of the Durango Boating Park and the Control Structures are depicted on the map attached to the application as Exhibit A. The precise locations of the Control Structures may be somewhat different from the locations described above. Provided that the locations of all the Control Structures remain within the stream reach described above, any variation in structure locations from the locations described herein will be described in subsequent applications for diligence or applications to make absolute the water rights decreed herein.

- D. Source of water: Animas River.
- E. Appropriation date: February 23, 2006.

- F. Amounts: The following amounts, in cubic feet per second (“cfs”), are decreed for each of the Control Structures, to be operated and administered as described in the text below the table:

TIME PERIOD	FLOW RATE (in cfs)
January 1 through March 14	185
March 15 through March 31	250
April 1 through April 14	400
April 15 through April 30	850
May 1 through May 31	1200
June 1 through June 14	1400
June 15 through June 30	1200
July 1 through July 14	850
July 15 through July 31	600
August 1 through August 14	400
August 15 through September 30	300
October 1 through December 31	185

From April 16 through September 29 of each year, use of the Durango Boating Park recreational in-channel diversion water rights shall be limited each day to the period between 8:00 a.m. and 8:00 p.m., except during competitive events when the hours shall extend from 6:00 a.m. until midnight. From September 30 of each year until April 15 of the following year, use of the Durango Boating Park recreational in-channel diversion water rights shall be limited each day to the period between 10:00 a.m. and 6:00 p.m., except during competitive events when the hours shall extend from 6:00 a.m. until midnight. Competitive events during which the hours shall extend from 6:00 a.m. until midnight will be limited to no more than 8 events per calendar year, each event not to exceed 4 days in length, and Durango will provide at least 30 days advance written notice to the Division Engineer of such competitive events. Durango may place a call under the Durango Boating Park recreational in-channel diversion water rights outside of the hours described herein to ensure the availability of water at the Control Structures during the hours described herein.

Each flow rate is a minimum stream flow for a particular recreational experience or set of particular recreational experiences. Thus, each flow rate also includes the right to call for any other lower flow rate specified above, even if the lower flow rate is specified for a different time period. By way of example, if during the period of June 1-14, Durango desires to call for 1200 cfs (or any lower flow rate specified above)

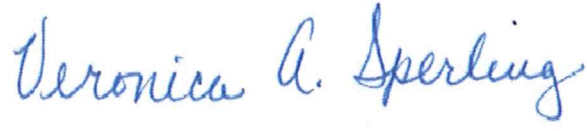
instead of 1400 cfs, it can do so to obtain 1200 cfs (or any lower flow rate specified above) for a different recreational experience or set of recreational experiences. In addition, if a call for a given flow rate would not produce at least 90% of that flow rate at the Control Structures, Durango may call for the next highest flow rate (or any lower flow rate specified above). By way of example, if a call for 1400 cfs placed by Durango on June 2 will only produce a flow of 1255 cfs, then Durango may call for 1200 cfs (or any lower flow rate specified above), provided that such a call would produce at least 90% of that flow rate at the Control Structures, except that Durango may place a call during the period from October 1 of any year through March 14 of the following year if the call will produce at least 90 cfs at the Control Structures.

- G. Use or proposed use: Boating, kayaking, rafting and canoeing.
4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the diligence period: During the diligence period, in furtherance of the completion of the appropriation and application of water to the decreed beneficial uses, the City applied for various grants and conducted community fundraising to assist with funding for the project, obtained a Section 404 permit from the U.S. Army Corps of Engineers for construction of the project, obtained a Section 401 Certification from the State of Colorado for the project, obtained a City Flood Plain Permit for the project, purchased land on which portions of the project will be constructed, made a survey of the bed of the Animas River in and in the vicinity of the reach of the boating park, completed the final design and construction documents for the project, entered into a contract for construction of the project, and initiated construction of the project, at a total cost of approximately \$178,608. The estimated cost of construction of the project is \$847,517.50 and construction is expected to be completed in 2014.
5. If claim to make absolute in whole or in part: Not applicable.
6. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: City of Durango.

WHEREFORE, Applicant, City of Durango, requests the Court to enter a decree finding that the City has exercised reasonable diligence in the development of the conditional water rights for the Durango Boating Park and continuing those conditional water rights in full force and effect for an additional diligence period.

Respectfully submitted this 20th day of November, 2013.

BUCHANAN AND SPERLING, P.C.

By   
Veronica A. Sperling, #14310

ATTORNEYS FOR APPLICANT, CITY OF  
DURANGO

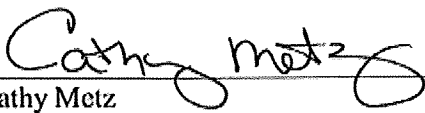
*E-FILED PURSUANT TO C.R.C.P. 121*

*Duly signed original on file at the law offices of Buchanan and Sperling, P.C.*

VERIFICATION

STATE OF COLORADO           )  
  ) ss  
COUNTY OF LA PLATA        )

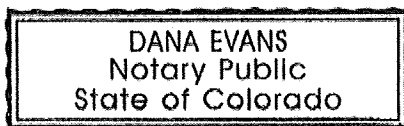
Cathy Metz, being first duly sworn upon her oath, deposes and states that she is Director of Parks and Recreation for applicant, City of Durango, that she has read the foregoing Application for Finding of Reasonable Diligence, knows the contents thereof, and that the same are true and correct to the best of her knowledge and belief.


  
Cathy Metz

STATE OF COLORADO           )  
  ) ss.  
COUNTY OF LA PLATA        )

Subscribed and sworn to before me this 20<sup>th</sup> day of November, 2013. Witness my hand and official seal.

My commission expires: 4/19/2014.



  
Notary Public



DATE FILED: November 20, 2013 10:32 AM  
 FILING ID: 9D1A2780B0244  
 CASE NUMBER: 2013CW3028



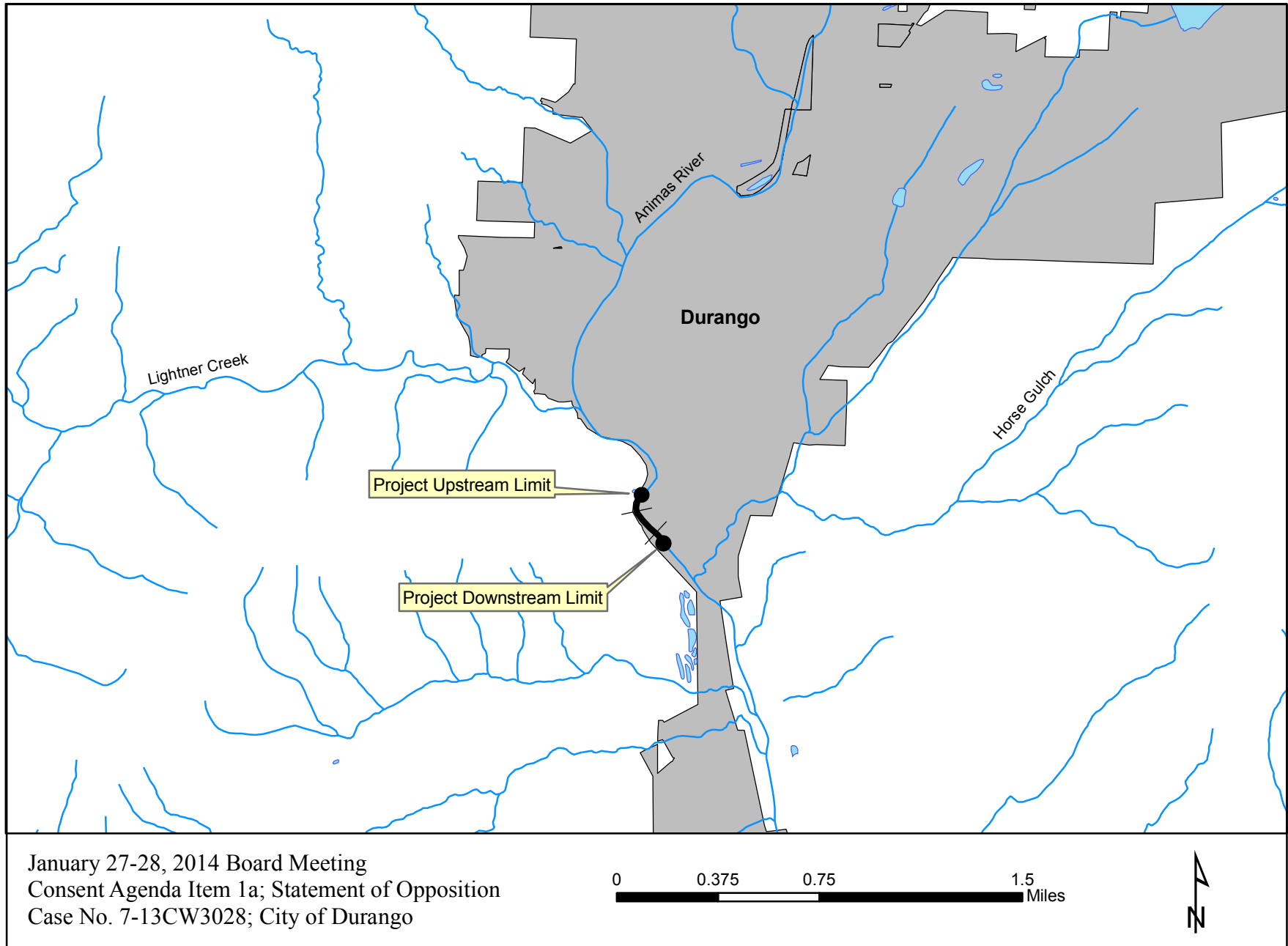
# THE DURANGO BOATING PARK SMELTER WHITEWATER PARK PRELIMINARY DESIGN

Revisions:  
 11-22-2005  
 12-20-2005  
 2-28-2006

Recreation Engineering and Planning  
 485 Arapahoe Ave.  
 Boulder, CO 80302

Gary M. Lacy, P.E.  
 Scott Shipley, M.S.M.E.





DISTRICT COURT, WATER DIVISION 7 LA PLATA COUNTY, COLORADO 1060 E. 2 <sup>nd</sup> Avenue, Room 106 Durango, CO 81301-5157	DATE FILED: December 9, 2013 4:30 PM FILING ID: A48E41D199D27 CASE NUMBER: 2013CW3028
<b>Concerning the Application for Water Rights of:</b>  CITY OF DURANGO  IN LA PLATA COUNTY, COLORADO	<b>▲ COURT USE ONLY ▲</b>
<b>Attorneys for the Colorado Water Conservation Board:</b> JOHN W. SUTHERS, Attorney General SUSAN SCHNEIDER, First Assistant Attorney General, Attorney Reg. No. 19961* Natural Resources & Environment Section Office of the Colorado Attorney General 1300 Broadway, 7 <sup>th</sup> Floor Denver, CO 80203 Telephone: (720) 508-6311 Email: <a href="mailto:susan.schneider@state.co.us">susan.schneider@state.co.us</a> *Counsel of Record	Case No. 2013CW3028  Water Division 7
<b>STATEMENT OF OPPOSITION OF THE COLORADO WATER CONSERVATION BOARD</b>	

1. Name of objector: Colorado Water Conservation Board ("CWCB")  
  
 Mailing address: 1313 Sherman Street, Room 721, Denver, CO 80203
2. Name of ditch or structure: As more fully described in the application.
3. State facts why this application for water rights should not be granted or why it should be granted only on certain conditions:
  - a. The CWCB would like to ensure that the Applicant has provided proper evidence to support its claim for a finding of reasonable diligence in Case No. 13CW3028-7.

b. Improper diligence or perfection of this Recreational In-Channel Diversion ("RICD") may affect Colorado's ability to promote maximum utilization of the waters of the State.

c. The application alone does not present sufficient information to support its claim for a finding of reasonable diligence and the effect on Colorado's ability to promote maximum utilization of the waters of the State.

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

Dated this 9<sup>th</sup> day of December, 2013.

JOHN W. SUTHERS  
Attorney General


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

*/s/ Susan J. Schneider*

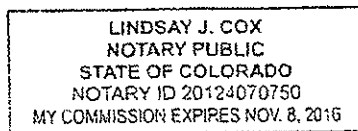
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SUSAN J. SCHNEIDER, #19961\*  
First Assistant Attorney General  
Natural Resources and Environment Section  
Attorneys for the Colorado Water  
Conservation Board  
\*Counsel of Record

*Signed original on file with the Office of the  
Attorney General for the State of Colorado.*

  
James Eklund  
Director  
Colorado Water Conservation Board

Subscribed and sworn to before me in the City and County of Denver, State of Colorado,  
this 5 day of DECEMBER 2013.



*Signed original on file with the Office of the  
Attorney General for the State of Colorado.*

[SEAL]

My Commission expires:

Nov 8, 2016

/s/   
NOTARY PUBLIC

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of December, 2013, I caused the foregoing **STATEMENT OF OPPOSITION OF THE COLORADO WATER CONSERVATION BOARD** to be served by ICCES File & Serve or by first-class U.S. mail to each of the following:

Name	Type	Attorney	Organization
City Of Durango	Applicant	Veronica A Sperling	Buchanan and Sperling, P.C.
Division 7 Engineer	Division Engineer	Division 7 Water Engineer	State of Colorado DWR Division 7
State Engineer	State Engineer	Colorado Division Of Water Resources	State of Colorado - Division of Water Resources

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

*/s/Constance L. Rust*

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Constance L. Rust