

Summary

This application (attached) seeks a finding of reasonable diligence for a Recreational In-Channel Diversion (RICD) on the Blue River to be located in Silverthorne, CO originally decreed in Case No. 5-04CW217.

Silverthorne's white water course is to be located on the Blue River between the Highway 70 bridge and the Highway 9 bridge in Silverthorne, Colorado. The reach of the proposed white water course is shown on the map attached and includes 3 decreed control structures. The RICD is decreed for the following flows:

TIME PERIOD	FLOW RATE (in cfs)
May 1- Sep. 30	100
Memorial Day	600
4 th of July	600
Labor Day	600

CWCB Appropriations

The CWCB holds the following instream flow (ISF) water rights that could be injured by this application:

CWCB Case No.	Stream/Lake	Amount (cfs)	Approp. Date	Watershed	Counties
5-87CW294	Blue River	50 cfs (10/1 - 4/30) 55 cfs (5/1 - 7/31) 52 cfs (8/1 - 9/30)	10/2/1987	Blue River	Summit

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

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 5 COLORADO 108 Eighth Street, Suite 104 Glenwood Springs, Colorado 81601	DATE FILED: October 17, 2013 2:01 PM FILING ID: 8CCC1D30E0011 CASE NUMBER: 2013CW3057 ▲ Court Use Only ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE TOWN OF SILVERTHORNE IN GRAND COUNTY	
Peter J. Ampe, #23452 Hill & Robbins, P.C. 1441 18th Street, Suite 100 Denver, CO 80202-1256 Phone: (303) 296-8100 Fax: (303) 296-2388 E-mail: peterampe@hillandrobbsins.com	Case No. 2013CW__ (2004CW217)
APPLICATION FOR FINDING OF REASONABLE DILIGENCE	

1. **Name, mailing address, and telephone number of Applicant:**

Town of Silverthorne
 c/o Town Manager
 P.O. Box 1309
 Silverthorne, Colorado 80498

2. **Name of Structures:** Blue River Whitewater Course.

3. **Describe conditional water right, as to each structure, giving the following from the Findings and Decree of the Water Court:**

A. Date of Original Decree: October 7, 2007.

Case No.: 2004CW217.

Court: District Court, Water Division 5.

B. Legal Description: See attachment A for a general location map.

1. Structure No. 1 will be located in the S1/2 of Section 12, T5S, R78W, 6th P.M. at a point 1050 feet from the south section line and 2380 feet from the east section line of said Section 12.
 2. Structure No. 2 will be located in the S1/2 of Section 12, T5S, R78W, 6th P.M. at a point 1250 feet from the south section line and 2520 feet from the east section line of said section 12.
 3. Structure No. 3 will be located in the S1/2 of Section 12, T5S, R78W, 6th P.M. at a point 1470 feet from the south section line and 2590 feet from the east section line of said Section 12.
- C. Source: Blue River, tributary to the Colorado River.
- D. Appropriation Date: December 31, 2004.
- E. Amount:

**Level One Flows, for passage of recreational watercraft,
and beginner kayaking**

Month	Flow (cfs)
May	100; Conditional
June	100; Conditional
July	100; Conditional
August	100; Conditional
September	100; Conditional

**Level Two Flows, for use of water features created by
the structures for intermediate to expert kayaking,
rafting, and related activities**

Holiday	Flow (cfs)
Memorial Day	600; Conditional
Independence Day or Fourth of July	600; Conditional
Labor Day	600; Conditional

- F. Use: The flows are claimed between the hours of 7:00 a.m. and 8:00 p.m. for both Level One and Level Two Flows. Level Two Flows are claimed for up to four days per weekend, depending on the national holiday. Specifically, the water right for the Memorial Day and Labor

Day Level Two Flows will be in effect only on Friday, Saturday, Sunday, and Monday. The water right for the Fourth of July Level Two Flows will be in effect as follows: 1) if the Fourth of July is on a Thursday, the water right will be in effect on Thursday, Friday, Saturday and Sunday; 2) if the Fourth of July is on a Friday, Saturday, Sunday or Monday, then the water right will be in effect on Friday, Saturday, Sunday and Monday; 3) if the Fourth of July is on a Tuesday, then the water right will be in effect on Saturday, Sunday, Monday and Tuesday; and, 4) if the Fourth of July is on a Wednesday, then the water right will be in effect only on Wednesday. The amounts decreed herein are for recreational in-channel diversion within each of the Course structures. The court finds that the amounts claimed are the minimum amounts necessary to provide a reasonable recreational experience during each of the above time periods.

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 conditional decreed, including expenditures:

During the diligence period, among other actions, Applicant acquired lands to provide needed river and continuous shoreline access within the RICD, completed improvements to Salt Lick Gulch to move a mid-RICD culvert and discharge to above the start of the RICD, requested and received a Conditional Letter of Map Revision from the Federal Emergency Management Agency, with other parties Applicant completed the construction of Old Dillon Reservoir that can release water for this RICD, Applicant requested and received a review of the hydrologic characteristics of the planned RICD to determine if any modifications need to be made based on knowledge and experience gained on RICD construction during the diligence period, requested and received an engineering summary letter and updated estimate of probable cost from a whitewater design engineer and Applicant's Capital Fund has a preliminary budget of \$500,000 for construction of the RICD to begin in 2016. Finally, Applicant is a beneficiary of the completed Colorado River Cooperative Agreement and will receive funds that can also be used for construction of the RICD. Applicant's total expenditures during the diligence period were in excess of \$50,000.00 including actual payments and in-kind staff time, but not including the costs of the land acquisition and value of the land.

5. Names(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: Applicant owns or controls the land or right-of-way on which all structures described in this application are located.

6. Request for finding of reasonable diligence: Applicant hereby requests the Court to enter a finding that Applicant is proceeding in a reasonably diligent manner and that the waters claimed by Applicant can and will be diverted, or otherwise captured, possessed and controlled and will be beneficially used and the project can and will be completed with diligence and within a reasonable time.

Dated: October 17 2013.

s/ Peter J. Ampe
Peter J. Ampe

VERIFICATION

STATE OF COLORADO)
)
) ss.
COUNTY OF SUMMIT)

I, William D. Linfield, P.E., as Public Works Director for the Town of Silverthorne, state under oath on this 17 day of October 2013 that I have read this statement of opposition and verify its content.

Mr. J. L. O.

William D. Linfield, P.E.

Witness my hand and seal.

My commission expires: Oct. 15, 2016

Arson Schürs Schuller

Notary Public

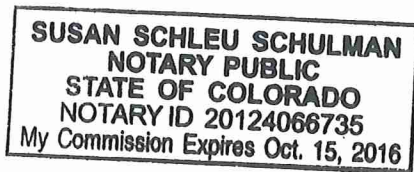
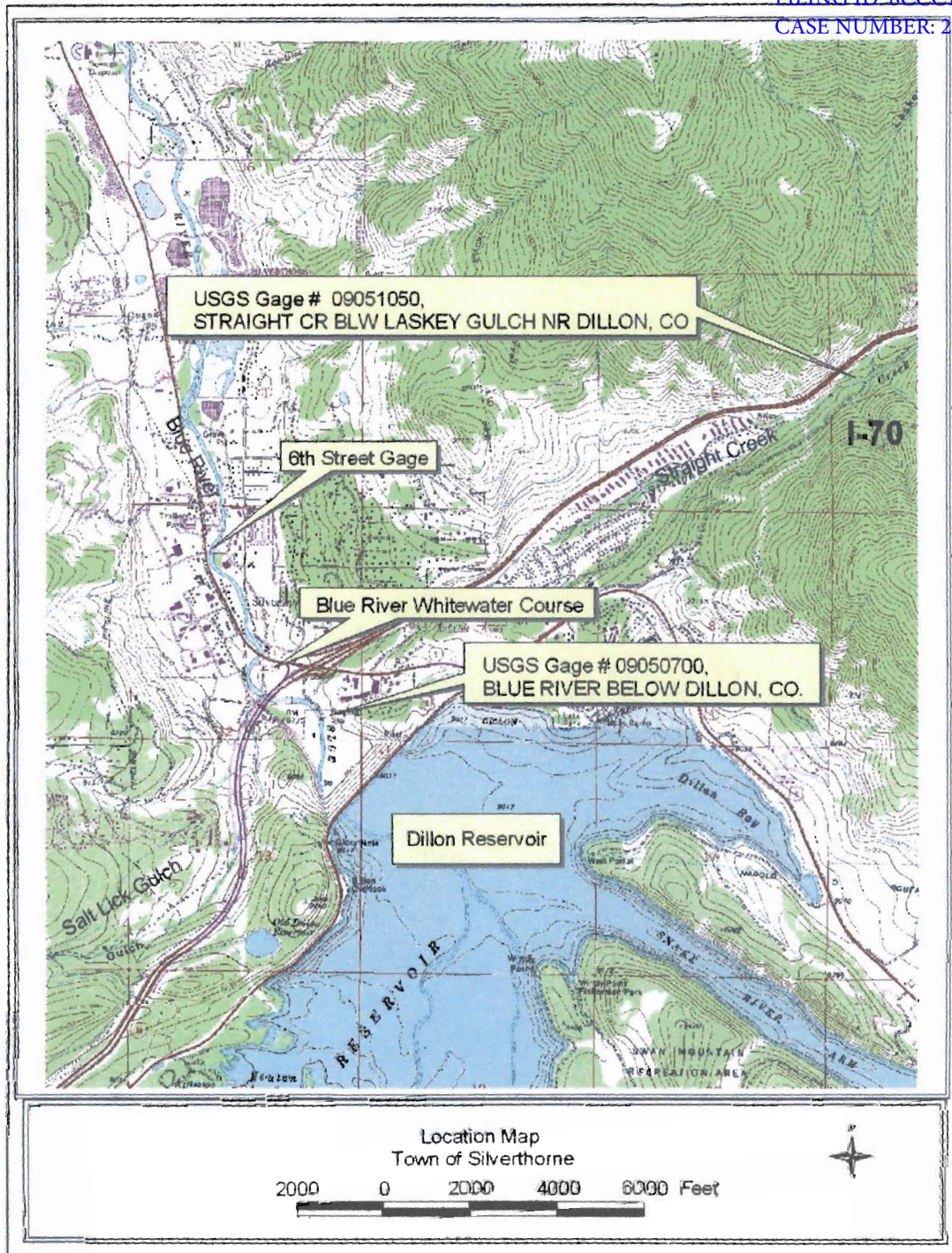


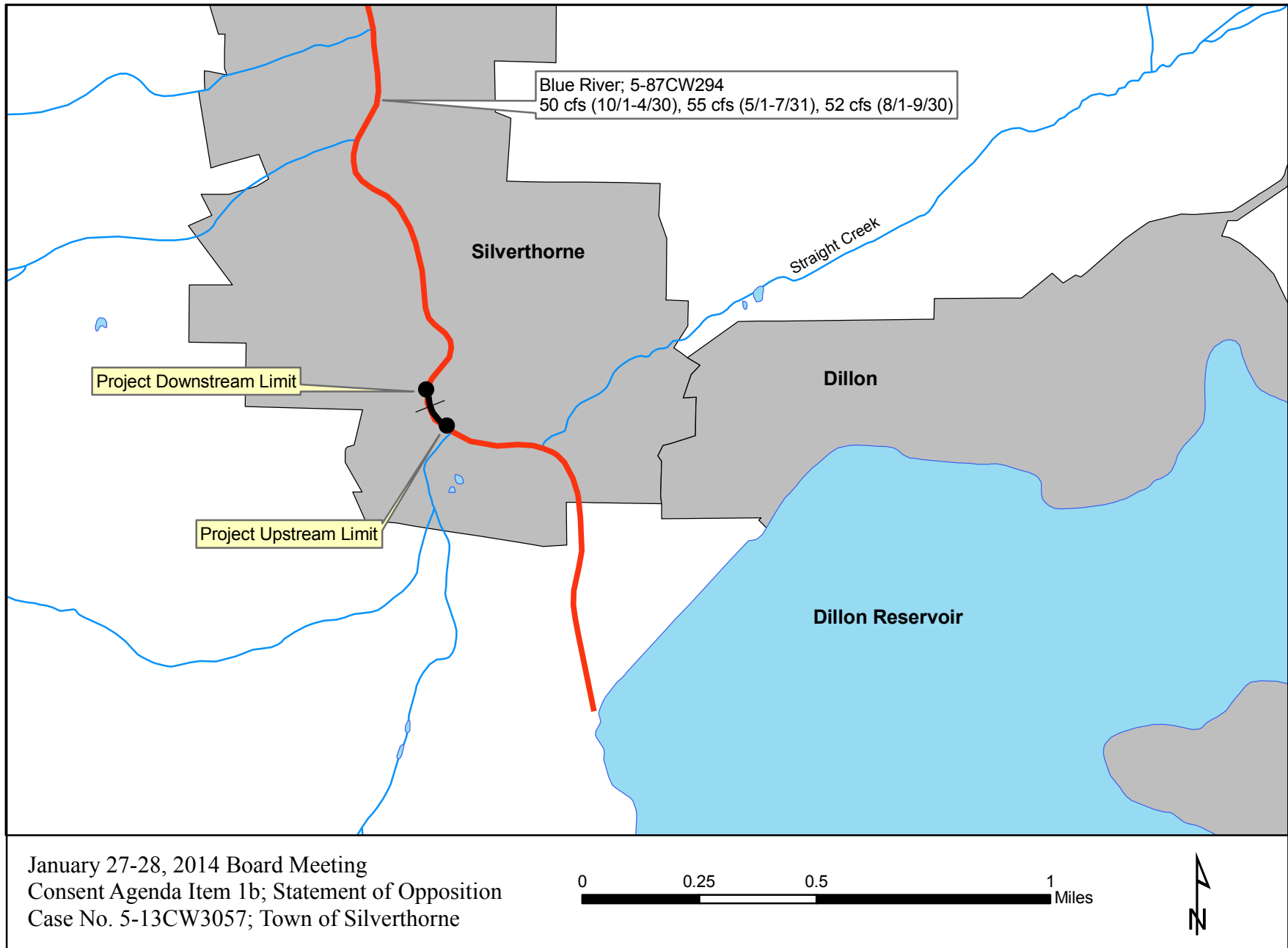
EXHIBIT A: REGIONAL MAP

DATE FILED: October 17, 2013 2:01 PM

FILED ID: 8CCC1D30E0011

CASE NUMBER: 2013CW3057





DISTRICT COURT, WATER DIVISION 5 GARFIELD COUNTY, COLORADO 109 Eighth Street, Suite 104 Glenwood Springs, CO 81601 Concerning the Application for Water Rights of: TOWN OF SILVERTHORNE IN SUMMIT COUNTY, COLORADO	 ▲ COURT USE ONLY ▲
Attorneys for the Colorado Water Conservation Board: 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 th Floor Denver, CO 80203 Telephone: (720) 508-6311 Email: susan.schneider@state.co.us *Counsel of Record	Case No. 2013CW3057 Water Division 5
<p style="text-align: center;">STATEMENT OF OPPOSITION OF THE COLORADO WATER CONSERVATION BOARD</p>	

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 provides proper evidence to support its claim for a finding of reasonable diligence in Case No. 13CW3057-5.
 - 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.

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

Dated this 11th 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


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

VERIFICATION

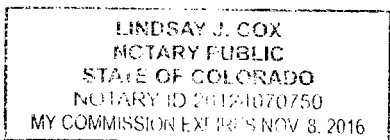
STATE OF COLORADO)
) ss
CITY AND COUNTY OF DENVER)

I, James Eklund, Director, Colorado Water Conservation Board, being duly sworn, hereby state that I have read the foregoing *Statement of Opposition* and that the contents are true to the best of my knowledge and belief.

*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 19 day of DECEMBER 2013.



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

[SEAL]

My Commission expires:

NOVEMBER 8, 2016

/s/ 
NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on the 11th 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
Division 5 Engineer	Division Engineer	Division 5 Water Engineer	State of Colorado DWR Division 5
Silverthorne, Town Of	Applicant	Peter J Ampe	Hill & Robbins, P.C.
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

Constance L. Rust