

DELIVERY AGREEMENT

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

RECITALS

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

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

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

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

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

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

- F. When natural flow and river administration would otherwise cause flow to drop below these flow thresholds, Denver Water supplements the flow by releasing water held in Strontia Springs Reservoir from various sources. Denver Water then recaptures water from these releases in Chatfield Reservoir and other downstream storage facilities. At times, available downstream storage capacity is insufficient

to recapture releases from Strontia Springs Reservoir. Denver requires a junior water right in such circumstances in order to protect the water released to meet the flow thresholds 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 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 January 28, 2013, 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 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 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, if necessary, 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 the natural environment, consistent with Denver Water's Water Management Plan, as it is currently or as it may be amended in the future.

6. The CWCB's exclusive rights in the Waterton Reach under this agreement extend to and terminate at the downstream terminus of the Waterton Reach as defined in the Water Management Plan and 2004 Amendment.

7. The CWCB shall not alter or amend any provision in the Water Management Plan or any amendments thereto. Further, the CWCB shall not support the efforts of other persons or entities that attempt to amend the Water Management Plan.

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.

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.

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 accounting related to the operation of this Agreement to the CWCB upon request. Such request should be made electronically to Denver Water's Raw Water Supply section by email to [RawWater Supply@denverwater.org](mailto:RawWaterSupply@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.

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 the last date of execution.

ATTEST:

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

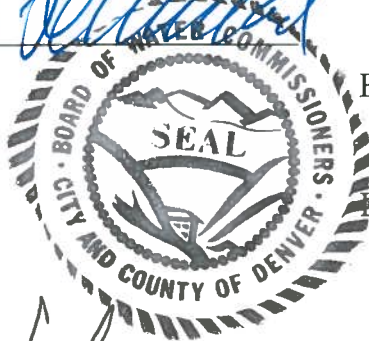
BY: 

SECRETARY

BY: 

PRESIDENT

DATE: 2/13/13



APPROVED: 

BY: 

DIRECTOR OF PLANNING

APPROVED AS TO FORM:

BY: 

LEGAL DIVISION

REGISTERED AND COUNTERSIGNED:

Auditor

CITY AND COUNTY OF DENVER

By 

Deputy Auditor

COLORADO WATER CONSERVATION
BOARD

BY: 

DIRECTOR

DATE: 2/15/13