

WATER DELIVERY AGREEMENT

The Colorado Water Conservation Board (“CWCB”), an agency of the State of Colorado, and the County of Boulder, a political subdivision of the State of Colorado (“Boulder County”), in consideration of the mutual promises contained in this document, agree as follows:

RECITALS

- A. Boulder County and the St. Vrain and Left Hand Water Conservancy District (“SVLHWCD”) each own a 50% undivided interest in Western Mobile Lake No. 4 (“Lake 4”), which has a decree for the diversion and storage of water from St. Vrain Creek obtained in Case No.2001CW262, Water Division No. 1 (the “Original Decree”).
- B. Boulder County and SVLHWCD have filed for a diligence decree for the Lake 4 water right in Case No. 2012CW091 (“Diligence Case”) to which CWCB is an opposing party.
- C. Paragraph 5(f) of the Original Decree provides, *inter alia*, that, subsequent to storage within Lake 4, the water right may be used for “... maintenance of minimum stream flows for fish, recreation and wildlife[ ] .... Paragraph 5(f) of the Original Decree additionally provides that: “Applicants may maintain minimum flows in St. Vrain Creek between Lake No. 4 and the outflow of the Longmont wastewater treatment plant located in the SW ¼ of the NE ¼ of Section 11, Township 2 North, Range 69 West of the 6<sup>th</sup> P.M. in the amount of 5 cfs from November 1 through March 31 and June 1 through September 30, and 100 cfs for a two or three day period in May or June to provide flushing flows to maintain fish habitat.”
- D. The CWCB does not have an existing decree for an appropriated instream flow (“ISF”) water right to preserve the natural environment to a reasonable degree in this reach of St. Vrain Creek.
- E. Boulder County and the CWCB desire to work cooperatively on water matters in the St. Vrain Creek Basin. Boulder County may elect in its sole discretion to release from Lake 4 water to maintain minimum stream flows for fish, recreation and wildlife in accordance with the terms and conditions of the Original Decree, at times to be determined at the sole discretion of Boulder County, at rates of flow up to those provided in paragraphs 5(f) of the Original Decree (the “Piscatorial Release”). The CWCB has agreed to use the Piscatorial Release under the Original Decree as confirmed by the Diligence Case Decree to preserve and improve the natural environment to a reasonable degree in the stream reach decreed for instream flow water right(s) on St. Vrain Creek, subject to the terms and conditions outlined in this Agreement and a final decree in the Diligence Case, Case No.2012CW091. The

Piscatorial Release water shall not include water stored in or released from Lake 4 for any other purposes authorized by the Decree.

- F. SVLHWCD is not a party to this agreement because its share of the stored water is not and will not be used for Piscatorial Release.
- G. Pursuant to section 37-92-102(3), C.R.S. (2014), the CWCB may acquire by contractual agreement with any person, including 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. This Agreement provides for the CWCB's contractual acquisition of water or an interest in water to preserve and improve the natural environment to a reasonable degree in St. Vrain Creek between Lake No. 4 and the outflow of the Longmont wastewater treatment plant located in the SW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 11, Township 2 North, Range 69 West of the 6<sup>th</sup> P.M. in the amount of 5 cfs from November 1 through March 31 and June 1 through September 30, and 100 cfs for a two or three day period in May or June.
- H. Pursuant to section 29-1-203, C.R.S. (2014), the CWCB and Boulder County may cooperate or contract with one another with respect to the exercise of their governmental functions.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, Boulder County and the CWCB agree as follows:

1. The Piscatorial Release, up to the amounts specified in the water court decree for the Diligence Case No. 2012CW091, shall be made available to and protected for instream flow use exclusively by the CWCB. Such CWCB use will be made in St. Vrain Creek between Lake No. 4 and the outflow of the Longmont wastewater treatment plant, up to the amount of 5 cfs from November 1 through March 31 and June 1 through September 30, and 100 cfs for a two or three day period in May or June to preserve and improve the environment to a reasonable degree, pursuant to the decrees and this Agreement.
2. The CWCB shall seek to protect the Piscatorial Release in the instream flow reach consistent with the policies and procedures contained in the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, subject to the availability of funds. The parties shall cooperate in the administration, measurement, and monitoring of the Piscatorial Releases and their intended beneficial uses under this Agreement.
3. Nothing in this Agreement shall require Boulder County to allocate any Lake 4 water for release to be used for non-consumptive maintenance of minimum stream flows for fish, recreation and wildlife or limit the ability of Boulder County, in its sole discretion, to allocate Lake 4 water for use for any of its decreed purposes.

4. Nothing in this agreement shall require either party to install gages to measure the Piscatorial Release. If necessary, the CWCB will contact the Division No. 1 Engineer and seek administration to ensure the full amount of Piscatorial Release is protected through the instream flow reach. Boulder County 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 No.1 Engineer for administration of the Piscatorial Release. Boulder County shall provide annual accounting of any Piscatorial Release made at the outlet of Lake 4 to the CWCB and the Division No.1 Engineer. Boulder County shall not be responsible for providing any accounting of the Piscatorial Release beyond the Lake 4 outlet.
5. The CWCB will give due consideration, consistent with its generally applicable financial policies, to applications by Boulder County for loans and grants to assist in funding the development, construction, operation, maintenance, and repair of Lake 4.
6. Any rights created by this Agreement are contractual rights. This Agreement does not create and shall not be construed to create or convey any property interest, including any covenant, easement or servitude, in the real property or water rights of any party.
7. Pursuant to section 37-92-102(3), C.R.S. (2014), the terms of this Agreement shall be enforceable by each party as a water matter in the District Court, Water Division No. 1. Before commencing any action for enforcement of this Agreement, however, the party alleging a breach shall notify the other party in writing of the alleged breach and the parties shall make a good-faith effort to resolve their differences through informal consultation. All rights of enforcement shall be strictly reserved to the parties, and no third party shall have any right to enforce this Agreement. Specific performance of this Agreement shall be the exclusive remedy for failure of any party to comply with any provision of this Agreement. This Agreement shall be construed in accordance with the laws of the State of Colorado and shall be interpreted broadly to effect its purpose.
8. Any failure or delay by a party in exercising any of its rights, powers and remedies hereunder or in accordance with laws shall not lead to a waiver of such rights, and the waiver of any single or partial exercise of a party's rights shall not preclude such party from exercising such rights in any other way and exercising the remaining part of the party's rights.
9. Each provision contained herein shall be severable and independent from each of the other provisions such that if at any time any one or more provisions herein are found to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions herein shall not be affected as a result thereof.
10. The effective date of this Agreement shall be the last date shown on the signature page of this Agreement, which may be executed in counterparts.

11. The term of this Agreement is perpetual unless terminated under the provisions of this paragraph. This Agreement shall not be assignable by any party without the written consent of the other party. This Agreement may only be amended or terminated by the written agreement of the parties, and any such termination or amendment shall take effect only when properly signed by both parties to this Agreement.
12. Any notice required or permitted to be given under this Agreement will be in writing and considered effective when delivered by fax, email, hand delivery, Express Mail, Federal Express, or similar service, or on the third mail-delivery day after being deposited in the United States mail, postage prepaid, addressed to the parties as follows:

Boulder County:  
Director, Parks and Open Space Department  
5201 Saint Vrain Road  
Longmont, CO 80503

CWCB:  
Colorado Water Conservation Board  
Stream and Lake Protection Section  
1313 Sherman Street, Room 718  
Denver, CO 80203

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**COLORADO WATER CONSERVATION BOARD**

\_\_\_\_\_  
By: James Eklund, Director

Date: \_\_\_\_\_

**BOULDER COUNTY**

\_\_\_\_\_  
By: Cindy Domenico, Chair  
Board of Boulder County Commissioners

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Clerk to the Board