



COLORADO

Colorado Water
Conservation Board

Department of Natural Resources

1313 Sherman Street
Denver, CO 80203

P (303) 866-3441

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John Hickenlooper, Governor

Mike King, DNR Executive Director

James Eklund, CWCB Director

TO: Colorado Water Conservation Board Members

FROM: Suzanne Sellers, Interstate, Federal & Water Information Section

DATE: May 20-21, 2015 Board Meeting

CONSENT AGENDA: 5a. Case No. 1-15CW3025: Application to Make Absolute and for a Finding of Reasonable Diligence by the City of Golden

Background:

This application (attached) seeks to make a portion of the City of Golden's Recreational In-Channel Diversion (RICD) water right absolute and also seeks a finding of reasonable diligence for a portion of the water right.

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.

Discussion:

The RICD was originally decreed in Case No. 1-98CW448 and is located on Clear Creek in downtown Golden, CO. The reach of the white water course is shown on the map attached to the application and currently includes 14 of the 17 decreed control structures. The following tables show the status of the RICD's decreed flow rates for daytime and nighttime hours:

Daytime Flow Rates (6 am - 6 pm)

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70
Total currently absolute (cfs) under 07CW137	70	61	70	190	671	1000	741	260	188	142	73	70
Additional claimed absolute (cfs)	0	0	0	65	329	0	259	299	63	1	30	0



	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Remaining conditional (cfs)	0	9	0	0	0	0	0	0	0	0	0	0

Nighttime Flow Rates (6 pm - 6 am)

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70
Total currently absolute (cfs) under 07CW137	0	0	55	101	1000	1000	741	260	188	91	0	0
Additional claimed absolute (cfs)	0	0	15	154	0	0	259	299	63	52	0	0
Remaining Conditional (cfs)	70	70	0	0	0	0	0	0	0	0	103	70

CWCB Appropriations:

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

Basis for Statement of Opposition:

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

Other Objectors:

The Cities of Black Hawk, Northglenn and Westminster are the only other objectors in this case.

Attachments: application and SOP

DISTRICT COURT, WATER DIVISION NO. 1, STATE OF COLORADO 901 9 th Avenue Greeley, CO 80631	▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY OF GOLDEN IN JEFFERSON COUNTY, COLORADO	
Porzak Browning & Bushong LLP Glenn E. Porzak (#2793) Steven J. Bushong (#21782) 2120 13 th Street Boulder, CO 80302 Tel: 303-443-6800 Fax: 303-443-6864 Email: gporzak@pbblaw.com; sjbushong@pbblaw.com	Case Number: 15CW_____ (98CW448) (07CW137) Water Division No.: 1
APPLICATION TO MAKE CONDITIONAL RIGHTS ABSOLUTE AND FOR FINDING OF REASONABLE DILIGENCE	

1. Name, address and telephone number of applicant:

City of Golden
 911 Tenth Street
 Golden, Colorado 80401
 Attention: Public Works Director
 (303) 384-8010

Direct all pleadings to:
 Glenn E. Porzak (#2793)
 Steven J. Bushong (#21782)
 Porzak Browning & Bushong LLP
 2120 13th Street
 Boulder, CO 80302

2. Name of Structures: City of Golden White Water Course and City of Golden White Water Course (Extension).

3. Description of Decreed Conditional and Absolute Water Rights

A. City of Golden White Water Course

i. Date of Original Decree: The City of Golden White Water Course (referred to herein as the "Course") was decreed on June 13, 2001, in Case No. 98CW448, by the District Court in and for Water Division 1. The decree was affirmed on appeal by operation of law. *State Engineer v. City of Golden*, 69 P.3d 1027 (Colo. 2003).

ii. Date of Previous Diligence Finding: February 6, 2009, in Case No. 07CW137, by the District Court in and for Water Division 1.

iii. Legal Description. The Course is located within the modified channel of Clear Creek in the NW1/4 of the NE1/4 of Section 33, T. 3 S., R. 70 W. of the 6th P.M., Jefferson County, Colorado. The Course begins at a rock deflector device followed by 7 dam structures of various types, each of which controls, concentrates and directs the stream flow for the beneficial uses described below. **See Exhibit A, attached.** The locations of the structures that constitute the Course are as follows:

a. Structure 1. A dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. 82°56'9" W., a distance of approximately 2790 feet.

b. Structure 2. A deflector dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. 84°37'37" W., a distance of approximately 2843 feet.

c. Structure 3. A deflector dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. 85°38'33" W., a distance of approximately 2888 feet.

d. Structure 4. A deflector dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. 85°59'33" W., a distance of approximately 2954 feet.

e. Structure 5. A dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. 87°25'56" W., a distance of approximately 3000 feet.

f. Structure 6. A dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. 88°44'21" W., a distance of approximately 3245 feet.

g. Structure 7. A dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. 88°25'32" W., a distance of approximately 3546 feet.

iv. Source: Clear Creek, a tributary of the South Platte River.

v. Appropriation Date: December 30, 1998.

vi. Amounts decreed: The following tables display the monthly flow rates decreed for the structures that constitute the City of Golden White Water Course. The water right was originally decreed part absolute and part conditional for the time period of 6 a.m. – 6 p.m. and fully conditional for the time period of 6 p.m. – 6 a.m., as follows:

6 a.m. – 6 p.m.	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70
Decreed absolute (cfs)	43	42	45	166	325	840	562	157	129	85	62	49
Decreed conditional (cfs)	27	28	25	89	675	160	438	402	122	58	41	21

6 p.m. – 6 a.m.	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed conditional (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70

vii. Beneficial Use: recreational boating purposes

B. City of Golden White Water Course (Extension)

i. Date of Original Decree: The City of Golden White Water Course (Extension) (referred to herein as the “Course Extension”) was decreed on June 13, 2001, in Case No. 98CW448, by the District Court in and for Water Division 1. The decree was affirmed on appeal by operation of law. *State Engineer v. City of Golden*, 69 P.3d 1027 (Colo. 2003).

ii. Date of Previous Diligence Finding: February 6, 2009, in Case No. 07CW137, by the District Court in and for Water Division 1.

iii. Legal Description. The Course Extension was decreed for up to ten structures within the channel of Clear Creek in a reach beginning immediately below Structure 7 of the Course, as described above at paragraph 3(A)(iii), and extending approximately 2750 feet within the channel of Clear Creek, terminating at a point in the SW1/4 of the SW1/4 of Section 27, T. 3 S., R. 70 W., of the 6th P.M., approximately 1,300 feet North of the South section line and 800 feet East of the West section line, in Jefferson County. See **Exhibit A**, attached. The

City of Golden has constructed seven of the ten structures comprising the Course Extension. Those Course Extension structures are located in Sections 27, 28, and 33, T. 3 S., R. 70 W. of the 6th P.M., Jefferson County, Colorado, and when considering the North line of said Section 33 to bear South 89°40'13" West, the location of each existing Course Extension structure was more specifically described in the Case No. 07CW137 decree, as follows:

- a. Structure No. 8. A structure located in the NE1/4 of Section 33, at a point within the channel of Clear Creek which bears South 86°07'13" West, approximately 1620 feet from the NE corner of said Section 33 (the Section corner common to said Sections 27, 2, and 33).
 - b. Structure No. 9. A structure located in the NE1/4 of said Section 33, at a point within the channel of Clear Creek which bears South 86°22'24" West, approximately 1540 feet from the NE corner of said Section 33 (the Section corner common to said Sections 27, 28, and 33).
 - c. Structure No. 10. A structure located in the SE1/4 of said Section 28, at a point within the channel of Clear Creek which bears North 87°18'58" West, approximately 1260 feet from the SE corner of said Section 28 (the Section corner common to said Sections 27, 28, and 33).
 - d. Structure No. 11. A structure located in the SE1/4 of said Section 28, at a point within the channel of Clear Creek which bears North 73°50'51" West, approximately 1060 feet from the SE corner of said Section 28 (the Section corner common to said Sections 27, 28, and 33).
 - e. Structure No. 12. A structure located in the SE1/4 of said Section 28, at a point within the channel of Clear Creek which bears North 50°39'22" West, approximately 880 feet from the SE corner of said Section 28 (the Section corner common to said Sections 27, 28, and 33).
 - f. Structure No. 13. A structure located in the SE1/4 of said Section 28, at a point within the channel of Clear Creek which bears North 31°55'10" West, approximately 870 feet from the SE corner of said Section 28 (the Section corner common to said Sections 27, 28, and 33).
 - g. Structure No. 14. A structure located in the SW1/4 of said Section 27, at a point within the channel of Clear Creek which bears North 01°04'11" East, approximately 970 feet from the SW corner of said Section 27 (the Section corner common to said Sections 27, 28 and 33).
- iv. Source. Clear Creek, a tributary of the South Platte River.
 - v. Date of Appropriation: December 30, 1998.

vi. Amounts decreed: The following tables display the monthly flow rate decreed for the structures that constitute the Course Extension. Both the time periods of 6 a.m. – 6 p.m. and 6 p.m. – 6 a.m. were originally decreed fully conditional, as follows:

6 am – 6 pm	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed conditional (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70

6 pm – 6 am	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed conditional (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70

vii. Beneficial Use: Recreational boating purposes.

4. Additional amounts Made Absolute in Case No. 07CW137. In Case No. 07CW137, this Court found that additional portions of the water rights decreed to the Course and Course Extension had become absolute. As a result of the decree in Case No. 07CW137, the monthly absolute flow rates for the Course and the Course Extension are now identical. The following tables display the total monthly flow rate that has been made absolute and the monthly flow rate that remains conditional for both the Course and Course Extension for the time periods of 6 a.m. – 6 p.m., and 6 p.m. – 6 a.m.

6 a.m. – 6 p.m.	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70
Total absolute (cfs)	70	61	70	190	671	1000	741	260	188	142	73	70
Remaining conditional (cfs)	0	9	0	65	329	0	259	299	63	1	30	0

6 p.m. – 6 a.m.	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70
Total absolute (cfs)	0	0	55	101	1000	1000	741	260	188	91	0	0
Remaining conditional (cfs)	70	70	15	154	0	0	259	299	63	52	103	70

5. Claim to Make Additional Water Rights Absolute for the City of Golden White Water Course and White Water Course (Extension). All of the fourteen existing structures comprising the Course and Course Extension have been placed to beneficial use during the six years since the decree in Case No. 07CW137 was entered by the Water Court. Applicant is entitled to make absolute those flow rates put to beneficial use in any given month at the structures within the Course and Course Extension. Documented beneficial use during the diligence period when flows met or exceeded the decreed water rights, or when flows exceeded the amounts previously found to be absolute, included competitions, expert showcase demonstrations, kayaking and swiftwater rescue lessons, club excursions, day camp outings, and drop-in use by Golden residents and visitors. Based upon such use, the City of Golden claims additional amounts of the Course and Course Extension water rights absolute as summarized in the tables below. The amounts not yet made absolute are noted as remaining conditional. The City of Golden reserves the right to make additional portions of the water rights absolute based upon flows and use that occur while this application is pending.

6 am – 6 pm	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70
Total currently absolute (cfs) under 07CW137	70	61	70	190	671	1000	741	260	188	142	73	70
Additional claimed absolute (cfs)	0	0	0	65	329	0	259	299	63	1	30	0
Remaining conditional (cfs)	0	9	0	0	0	0	0	0	0	0	0	0

6 pm – 6 am	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70
Total currently absolute (cfs) under 07CW137	0	0	55	101	1000	1000	741	260	188	91	0	0
Additional claimed absolute (cfs)	0	0	15	154	0	0	259	299	63	52	0	0
Remaining Conditional (cfs)	70	70	0	0	0	0	0	0	0	0	103	70

6. Outline of work done to complete project and apply water to beneficial use. With respect to any portion of the conditional water rights decreed to the Course and/or Course Extension that are not made absolute in this matter, the City of Golden seeks to retain the conditional status thereof by demonstrating its reasonable diligence. Within the past 6 years, the City of Golden has been diligent in the continued use and development of its conditional water rights. Activities include beneficial use of the amounts claimed herein; work done to help stabilize the river bank along the Course and Course Extension; maintenance and repair of the Course and Course Extension structures; improvements to access for the structures; widening of the Clear Creek trail alongside the structures; improvements to other amenities associated with the Course and Course Extension; hosting of local, national and international boating events on the Course and Course Extension; hiring summer crews of park rangers to monitor and enforce park regulations and use at the Course and Course Extension; public meeting to discuss use of the Course and Course Extension; defense of the City of Golden's water rights including the Course and Course Extension rights; research on designs to be used for the remaining three structures that are planned for the Course Extension; and other actions that demonstrate reasonable diligence with respect to the subject conditional water rights.

7. Names and addresses of owners of land on which structures are or will be located, or upon which water is or will be placed to beneficial use:

In addition to lands owned by the City of Golden, owners of other lands on which Course and Course Extension structures are located and/or upon which the water is placed to beneficial use are the following:

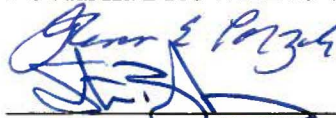
Tebo-Golden, LLC (dba Golden Hotel Corp.)
800 11th Street
Golden, CO 80401

Colorado School of Mines
1500 Illinois Street
Golden, CO 80401

WHEREFORE, Applicant seeks a decree of the Court ruling that the conditional water rights described at paragraphs 3 and 4, above, have been made absolute for recreational boating purposes in the amounts identified in paragraph 5, above; that Golden has demonstrated reasonable diligence with respect to any remaining portions of said conditional water rights not made absolute by this Application, thus retaining the conditional status thereof; and such other and further relief as this Court deems just and proper.

Dated this 27th day of February 2015.

PORZAK BROWNING & BUSHONG LLP



Glenn E. Porzak (#2793)

Steven J. Bushong (#21782)

Attorneys for City of Golden

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

I, Gary Thompson, Water Resources Engineer for the City of Golden, state that I have read the foregoing Application to make Conditional Rights Absolute and for Finding of Reasonable Diligence, and that the contents thereof are true to the best of my knowledge and belief.

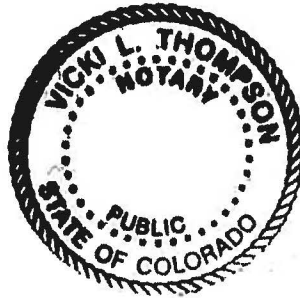


Gary Thompson

Subscribed and sworn to before me this 27TH day of February, 2015, by Gary Thompson.

My commission expires March 27, 2015.

[SEAL]





Notary Public

EXHIBIT A

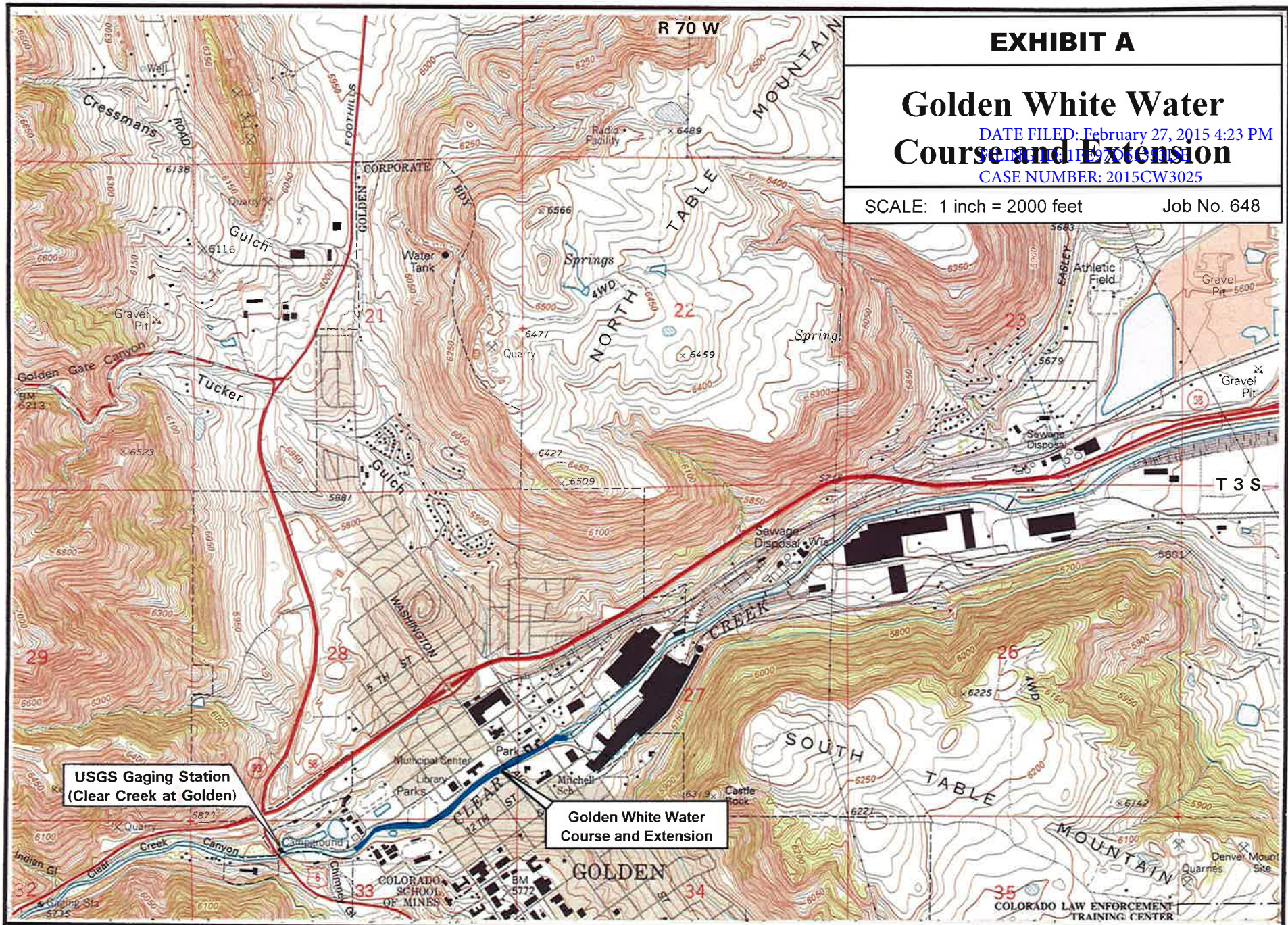
Golden White Water Course and Extension

DATE FILED: February 27, 2015 4:23 PM

CASE NUMBER: 2015CW3025

SCALE: 1 inch = 2000 feet

Job No. 648



DISTRICT COURT, WATER DIVISION 1 WELD COUNTY, COLORADO 901 9 th Avenue Greeley, CO 80631	DATE FILED: April 24, 2015 4:53 PM FILING ID: 2580AE3FE892A CASE NUMBER: 2015CW3025
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: CITY OF GOLDEN IN JEFFERSON COUNTY, COLORADO	▲ COURT USE ONLY ▲ Case No. 2015CW3025 Water Division 1
STATEMENT OF OPPOSITION OF THE COLORADO WATER CONSERVATION BOARD	

1. Name of objector: Colorado Water Conservation Board (“CWCB”)

Mailing address: 1313 Sherman Street, Room 718, 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 application alone does not present sufficient information to support its claim for a finding of reasonable diligence. The Applicant must provide

- proper evidence to support its claim to make absolute a water right for its recreational in-channel diversion (“RICD”) and for a finding of reasonable diligence in this case.
- b. Improper diligence or perfection of this RICD water right may affect Colorado’s ability to promote maximum utilization of the waters of the State, and may affect 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 24th day of April, 2015.

CYNTHIA H. COFFMAN

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

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2015, 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 Golden	Applicant	Glenn Edward Porzak & Steven J Bushong	Porzak Browning & Bushong LLP
Division 1 Engineer	Division Engineer	Division 1 Water Engineer	State of Colorado DWR Division 1
State Engineer	State Engineer	Colorado Division Of Water Resources	State of Colorado - Division of Water Resources

*E-filed pursuant to C.R.C.P. 121. Duly signed original
on file at the Office of the Attorney General.*

/s/ Constance L. Rust