

Summary of Water Court Application

This application (attached) seeks a finding of reasonable diligence for a Recreational In-Channel Diversion (RICD) on the St. Vrain Creek located in Longmont, CO originally decreed in Case No. 2001CW275.

Longmont's white water course has been recently constructed, but it is not yet open for use. It is located on St. Vrain Creek downstream of Main Street in Longmont. The reach of the proposed white water course is shown on the attached map and includes several control structures. The RICD is conditionally decreed for the following flows:

TIME PERIOD	FLOW RATE (in cfs)
March 1 - April 30	50
May 1 - 15	150
May 16 - June 15	350
June 16 - July 31	150
August 1 - September 30	100
October 1 - 31	50

Staff Recommendation

Staff recommends that the Board ratify the filing of the Statement of Opposition (SOP) in this case. The attached SOP was filed on behalf of the Board in October 2017.

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.

The CWCB is unable to determine from the application whether additional grounds for opposition exist, and therefore reserves the right to assert other grounds for opposition as they become known.

Other Objectors

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

Attorney Representing CWCB

Jennifer L. Mele, First Assistant Attorney General, is assigned to this case and can be contacted at jennifer.mele@coag.gov or 720-508-6282.

Attachments:

- Application and Map
- SOP

River Greenway, which is owned by the City of Longmont (“Longmont”). The White Water Course includes several individual physical control structures, each designed to divert, capture, and control water between specific points, for the beneficial use of a recreation experience in and on the water.

3. Description of conditional water right:

A. Prior decrees: A decree adjudicating the Longmont White Water Course was entered on December 7, 2004, in Case No. 01CW275, District Court, Water Division No. 1, Colorado. A subsequent decree, entered on August 17, 2011, in Case No. 10CW299, District Court, Water Division No. 1, Colorado, continued the conditional water rights for the Longmont White Water Course.

B. Legal description: The individual physical control structures comprising the White Water Course lie within the channel of St. Vrain Creek, with a reach extending both upstream and downstream of the former location of the Bonus Ditch Diversion Dam, which was, before the 2013 flood, located at a point from where the Northeast corner of Section 10, Township 2 North, Range 69 West, 6th P.M., bears North 23°30’4” West a distance of 2041.05 feet. Said reach extends downstream to a point on the East line of Section 10, Township 2 North, Range 69 West of the 6th P.M., Boulder County, Colorado. A map depicting the general location of the White Water Course is attached hereto as Exhibit A.

C. Source: St. Vrain Creek, tributary to the South Platte River.

D. Appropriation date: July 10, 2001.

E. Amount and use: The following amounts (expressed in cubic feet per second) are conditionally decreed for each of the structures collectively comprising the White Water Course, for each of the specified time periods, for the specified recreational in-channel boating use:

TIME PERIOD	AMOUNT	RECREATIONAL EXPERIENCE/USE
March 1 – April 30	50	Boat passage
May 1 – 15	150	Intermediate kayaking
May 16 – June 15	350	Expert kayaking, rafting
June 16 – July 31	150	Intermediate kayaking
August 1 – September 30	100	Beginner kayaking
October 1 – 31	50	Boat passage

4. Detailed outline of work done to complete project and apply water to beneficial use:

The conditional water rights originally decreed in Case No. 01CW275 for the White Water Course are an integral component of Longmont's Saint Vrain Creek Greenway Improvement Project, which has been incorporated into Longmont's post-flood recovery efforts. During the applicable Diligence Period (August 2011 to the present), Longmont has spent considerable time and money to develop the White Water Course. Longmont's efforts to develop the White Water Course and the conditional water rights that are the subject of this Application during the Diligence Period support a finding of reasonable diligence. These efforts include, without limitation, the work summarized as follows:

A. Flood recovery and planning. The September 2013 flood event on St. Vrain Creek had devastating impacts in Longmont, including to the St. Vrain River Greenway and the area of the White Water Course. The Bonus Ditch diversion dam, originally planned as the starting point of the White Water Course, was destroyed by the flood, and the local stream channel morphology was significantly altered. In the aftermath of the flood, Longmont initiated a major improvement project on the Saint Vrain Creek, known as the Resilient Saint Vrain Project ("RSVP"), to protect City infrastructure, improve the flood conveyance capacity and the overall resiliency of the St. Vrain Creek, and restore the Greenway. Following design, construction of Phase I of the RSVP began in 2016. During the Diligence Period Longmont spent **\$6,611,634.00** for the RSVP within Reach #1 (Main Street to Martin Street) of the St. Vrain.

B. Construction of the White Water Course. The RSVP efforts within Reach #1 included construction of the various control structures comprising the White Water Course. Construction of the control structures was completed in July of 2017; however, for safety reasons, the Course will not be opened for public access until construction is completed on other facets of the RSVP. Costs specifically attributable to design and construction of the White Water Course structures totaled **\$1,873,496.00** during the Diligence Period.

5. Name(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:

The White Water Course and its control structures are all located on property owned by Longmont.

WHEREFORE, Longmont respectfully requests that the Court enter a decree finding reasonable diligence for and continuing in full force and effect the subject conditional water rights described in Paragraph 3 above.

Respectfully submitted, this 15th day of August, 2017.

PETROS & WHITE LLC

/s/ *David S. Hayes*

David S. Hayes, No. 28661

ATTORNEYS FOR THE CITY OF LONGMONT

E-filed pursuant to C.R.C.P. 121, §1-26. A printed or printable copy of this document bearing the original, electronic, or scanned signatures is on file in the offices of Petros & White, LLC

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

I, Ken S. Huson, Water Resources Manager for the City of Longmont, being first duly sworn, hereby state that I have read this Application, that I have personal knowledge of the facts stated and verify its contents to the best of my knowledge, information, and belief.

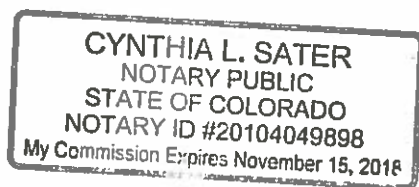


Ken S. Huson

The foregoing Application was acknowledged before me this 14th day of August, 2017, by Ken S. Huson as Water Resources Manager for the City of Longmont.

Witness my hand and official seal.

My commission expires: 11-15-18





Notary Public

DISTRICT COURT, WATER DIVISION 1 WELD COUNTY COURT HOUSE 901 9TH AVENUE P.O. BOX 2038 GREELEY, CO 80632	
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: THE CITY OF LONGMONT, IN BOULDER COUNTY, COLORADO	▲ COURT USE ONLY ▲
Attorneys for the Colorado Water Conservation Board: CYNTHIA H. COFFMAN, Attorney General JENNIFER MELE First Assistant Attorney General Attorney Reg. #30720* Natural Resources & Environment Section Office of the Colorado Attorney General 1300 Broadway, 7th Floor Denver, CO 80203 Telephone: (720) 508-6282 Email: jennifer.mele@coag.gov FAX Number: (720) 508-6039 *Counsel of Record	Case No. 2017CW3111 Water Div. 1
STATEMENT OF OPPOSITION OF THE COLORADO WATER CONSERVATION BOARD	

1. Name, mailing address, email address and telephone number of Opposer:

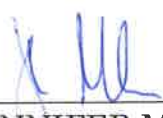
Colorado Water Conservation Board ("CWCB")
1313 Sherman Street, Room 718
Denver, CO 80203
Telephone: (303) 866-3441

2. State facts as to why this application should not be granted or why it should be granted only in part or on certain conditions:
 - a. The CWCB plays a significant role in the adjudication of recreational in-channel diversion water rights in that, pursuant to §37-92-102(6)(b) C.R.S., it must make certain written findings. Section 37-92-102(6)(c) C.R.S. allows the board to fully participate in water court proceedings related to recreational in-channel diversion water rights.
 - b. The Applicant must provide proper evidence to support its claim for a finding of reasonable diligence in Case No. 17CW3111. Diligence actions on this recreational in-channel diversion right may affect Colorado's ability to promote maximum utilization of the waters of the state.
 - c. Terms and conditions should be included in the decree to address the measurement, recording, accounting and operations by Applicant in order for proper administration and compliance with all the terms and conditions of any decree entered in this matter.
 - d. The application does not present sufficient information to fully evaluate the claims in the application.
 - e. The CWCB is unable to determine from the application whether additional grounds for opposition exist, and therefore reserves the right to assert other grounds for opposition as they become known.
3. This Statement of Opposition is continuing in nature and shall apply to any and all future amendments to the original application.

Dated this 27th day of October, 2017.

CYNTHIA H. COFFMAN
Attorney General

E-filed pursuant to C.R.C.P. 121.




JENNIFER MELE, #30720*
First Assistant Attorney General
Natural Resources and Environment Section
Attorney for the Colorado Water
Conservation Board
*Counsel of Record

VERIFICATION

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

I, Rebecca Mitchell, 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.


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


Linda Bassi
Acting Deputy Director
Colorado Water Conservation Board

Subscribed and sworn to before me this 27 day of October, 2017 in the City and County of Denver, State of Colorado.

ANDREW ALLEN RICKERT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20174005027
MY COMMISSION EXPIRES FEB. 1, 2021

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



NOTARY PUBLIC

My Commission expires:

02/01/2021

CERTIFICATE OF SERVICE

This is to certify that on this 27th day of October, 2017, I caused a true and correct copy of the foregoing **STATEMENT OF OPPOSITION OF THE COLORADO WATER CONSERVATION BOARD** to be served electronically via Courts E-Filing (CCE), addressed to each of the following:

Party Name	Party Type	Attorney Name
City of Longmont	Applicant	David S. Hayes Raymond Louis Petros (Petros and White LLC)
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/ Margaret L. Popick

Margaret L. Popick