



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

1313 Sherman Street, Room 718
Denver, CO 80203

P (303) 866-3441
F (303) 866-4474

Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Lauren Ris, CWCB Acting Director

TO: Colorado Water Conservation Board Members

FROM: Robert Viehl, Chief
Kaylea White, Senior Water Resources Specialist
Stream and Lake Protection Section

DATE: July 19, 2023

AGENDA ITEM: #10b City of Fort Collins Halligan Water Supply Project. Request to Inundate
CWCB ISF on North Fork Cache la Poudre River, Case No. 85CW0430
(Water Division 1)

Staff Recommendation

Staff recommends that the Board:

- Determine that the natural environment can continue to be preserved to a reasonable degree despite the inundation of a portion of the instream flow water right (“ISF”) decreed in Case No. 85CW430 on the North Fork Cache la Poudre River, so long as the conditions described in the mitigation and enhancement plan are followed; and
- Approve with conditions Fort Collins’ request to inundate pursuant to ISF Rule 7 for Inundation of ISF Rights.

Background

The City of Fort Collins (Fort Collins) proposes the Halligan Water Supply Project (Halligan Project) to meet its strategic objective of providing a reliable, high-quality municipal water supply. The project involves enlarging the existing Halligan Reservoir on the North Fork of the Cache la Poudre River, located approximately 25 miles northwest of Fort Collins. Fort Collins obtained a water court decree for a conditional water storage right in Case No. 13CW3185, Water Division 1. At the May 2015 CWCB Board meeting, this Board approved Fort Collins’ request to defer inundation as part of CWCB’s stipulation in the water court case. That stipulation requires Fort Collins to request inundation approval from CWCB before it diverts its enlargement water right, which this agenda item addresses.

The inundation request is evaluated pursuant to Rule 7 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 (“ISF Rule 7”). ISF Rule 7g. allows the Board several options regarding a request to inundate an ISF water right: to approve, approve with conditions, defer, or deny the request to inundate. On June 23, 2023 the



Colorado Parks and Wildlife Commission recommended the Final Halligan FWMEP prepared pursuant to Section 37-60-122.2, C.R.S., dated June 7, 2023, become the state's position on mitigation actions required of Fort Collins for the Halligan Project. CWCB will vote on whether to adopt the plan as the official state position at this July 2023 board meeting under agenda item 10a.

Case Background

The Halligan Project would enlarge the existing on-channel Halligan Reservoir by approximately 8,200 acre-feet, for a total reservoir volume of approximately 14,600 acre-feet, and would inundate the ISF water right by 0.75 mile. Enlarging the reservoir would increase the current surface area of Halligan Reservoir from 253 to 391 acres. While the water court decree allows for an even larger reservoir, up to a total reservoir capacity of 22,700 acre-feet, which would have inundated 2 miles of stream, this inundation request is for the 14,600 acre-foot design that was considered in the FWMEP. The enlargement water right is decreed with a December 10, 2013 appropriation date. The proposed dam, enlarged Halligan Reservoir, and inundated ISF segment are shown on the attached map, as **Exhibit A**.

Discussion

The decreed conditional water storage right is junior to the instream flow water rights ("ISF") on the North Fork of the Cache la Poudre River and would inundate approximately 0.75 mile of one ISF water right. Proposed uses of the stored water generally include all municipal and related beneficial uses within the City's service area and service to water users via contracts, contract exchanges, or water trades, with a right to use and reuse to extinction. CWCB was a party in the water court Case No. 13CW3185, which was decreed on April 4, 2016.

Pursuant to ISF Rule 7e., Applicant is required to provide information on the following factors:

[T]he location of the inundation, the size of the inundation, impact of the inundation on the natural environment, any unique or rare characteristics of the ISF water right to be inundated, any regulatory requirements or conditions imposed upon the applicant by federal, state and/or local governments, all terms and conditions included in applicant's water court decree, and any compensation or mitigation offered by the Person proposing the inundation.

The required information is provided in Fort Collins' proposal to inundate, attached as Attachment C, and is discussed in this memo.

Factors to Consider

Rule 7g requires the Board to consider all relevant factors, including:

(1) the extent of inundation proposed; (2) the impact of the proposed inundation on the natural environment existing prior to the inundation; (3) the degree to which the beds and banks adjacent to the ISF right subject to the inundation are publicly or privately owned; (4) the economic benefits arising from the inundation; (5) the benefits to recreation and downstream ISF segments arising from the inundation; (6) the degree to which the proposed inundation will allow development of Colorado's allotment of interstate waters as determined by compact or adjudication; and, (7) any mitigation or compensation offered to offset adverse impacts on the ISF right.

(1) The extent of the inundation proposed. The CWCB holds the following ISF water rights that could have been inundated by the enlarged Halligan Reservoir:

CWCB Case No.	Stream/Lake	Amount (cfs)	Approp. Date	Watershed	County
1-85CW428	North Fork Cache la Poudre River	14	11/8/1985	Cache la Poudre	Larimer
1-85CW430	North Fork Cache la Poudre River	20	11/8/1985	Cache la Poudre	Larimer

Under the existing design, the lower 0.75 miles of the 1.8 mile North Fork Cache la Poudre River ISF water right decreed in Case No. 85CW430 may be inundated. The existing design would not inundate any part of the ISF water right decreed in Case No. 85CW428, although the decreed right could have inundated a portion of it. The ISF reach which could be partially inundated extends from the confluence with Dale Creek to the confluence with the existing Halligan Reservoir.

(2) Impact of the proposed inundation on the natural environment existing prior to the inundation. CPW reports that the portion of the North Fork Poudre River that will be inundated by the enlargement of Halligan Reservoir is currently considered a fully functional stream habitat for various life stages of native and desirable sport fish species. The primary impacts on aquatic life include sedimentation and loss of spawning habitat. These impacts are further discussed in CPW's letter, attached as **Exhibit B**.

(3) The degree to which the beds and banks adjacent to the ISF right subject to the inundation are publicly or privately owned. The beds and banks are currently privately owned, and Fort Collins intends to grant public access to some of the shoreline after the reservoir is enlarged.

(4) The economic benefits arising from the inundation. The enlarged reservoir will provide significant economic benefits to the Fort Collins community and the region, as further described in the Fort Collins letter.

(5) The benefits to recreation and downstream ISF segments arising from the inundation. While the inundation will cause interference with the existing ISF water right upstream of the reservoir, downstream of the reservoir, the mitigation will provide a more continuous stream flow at locations where the stream reach is not currently protected by an ISF water right.

(6) The degree to which the proposed inundation will allow development of Colorado's allotment of interstate waters as determined by compact or adjudication. Fort Collins is pursuing the Halligan Project to provide 7,900 acre-feet of additional firm yield for its present and future customers in its water service area, as well as for increased drought protection. The inundation will allow this water to be developed and used as planned for the Halligaon Project.

(7) Any mitigation or compensation offered to offset adverse impacts on the ISF right. Fort Collins had offered to provide flow-related measures and enhancement measures to occur below, within, and above the reservoir. As described in the FWMEP, Fort Collins will operate the reservoir to provide flow-related measures that will include (a) a Winter Release Plan to provide a continuous release of 3 cfs from October 1 through April 30 each year, and (b) a Summer Low-Flow Program to maintain a continuous flow of at least 5 cfs for a 22-mile reach downstream of the reservoir. Fort Collins has agreed to work towards protecting the Winter Releases by filing a water court application with CWCB as a co-applicant, pursuant to the Protected Mitigation Release statute (CRS Section 37-92-102[8]). Besides these flow-related measures, aquatic resource enhancements such as fish passage structures and channel improvements will be designed and maintained as described in Fort Collins' Request to Inundated letter, and in Section 5 of the FWMEP document (The FWMEP document is provided to the Board as an attachment to the related agenda item, 10a).

(8) Additional factor to consider. Fort Collins previously held a larger water storage right for the enlarged Halligan Reservoir, decreed in Case No. 85CW435, with an appropriation date of August 1, 1979, that was senior to the Subject ISF water right, and would not have been subject to the ISF Rule 7 inundation rule. However, that storage right was canceled for failure to file a diligence application, such that a new appropriation was necessary. The storage right was re-filed and decreed in Case No. 13CW3185, resulting in a new water storage right which is junior to the ISF.

Colorado Parks and Wildlife Evaluation of Proposal

Colorado Parks and Wildlife ("CPW") staff members have been working with Fort Collins' representatives on the FWMEP over the last few years. CPW, CWCB, and Fort Collins have been discussing the inundation request over the last couple of years. CPW's recommendation, as further detailed in the CPW letter, is that CWCB should proceed with an approval of this request to inundate in light of the flow-related operational measures and mitigation package in Fort Collins' FWMEP.

Conclusion

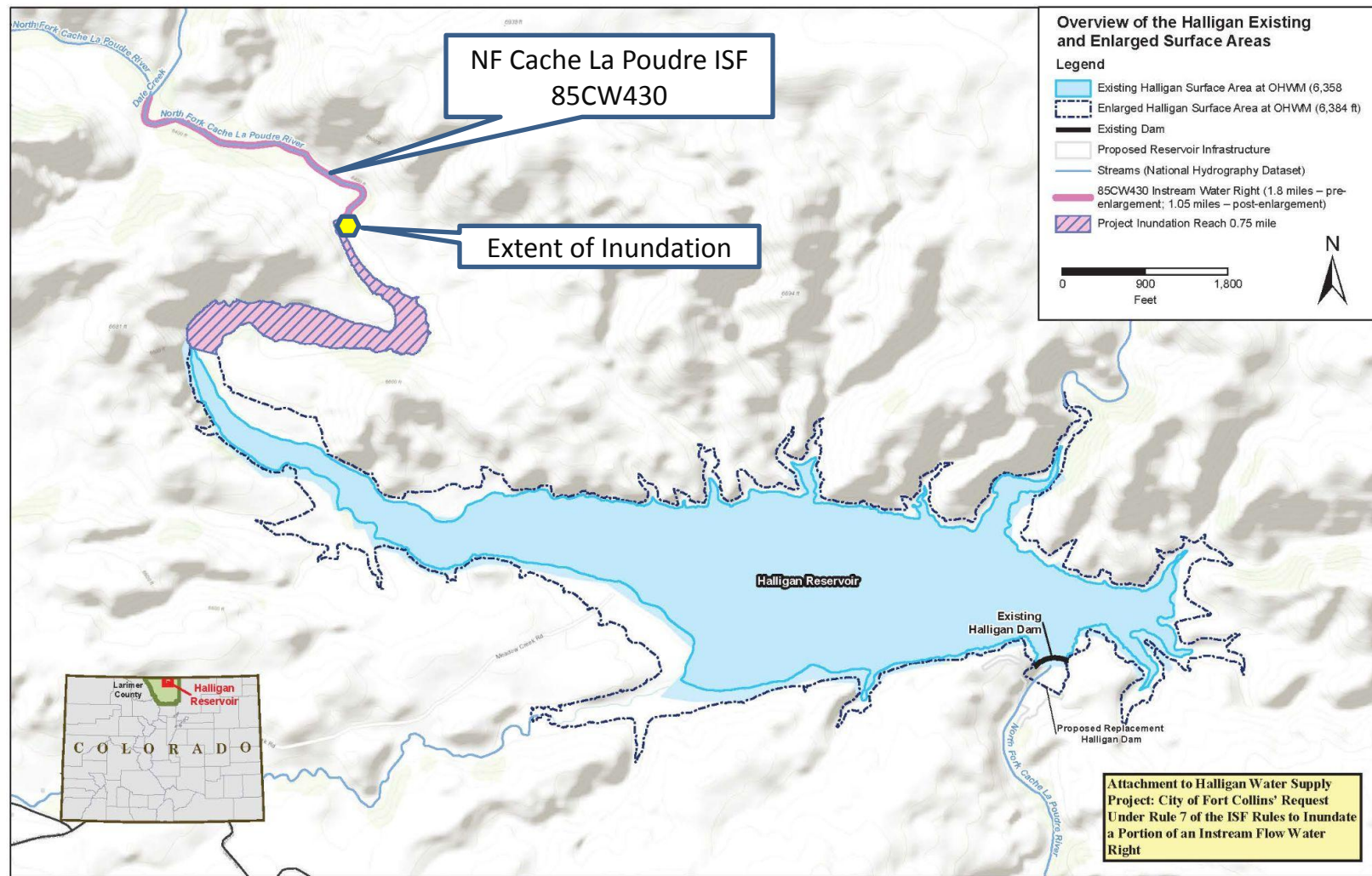
Based upon a review of Fort Collins' inundation request, upon staff's and CPW's discussions with Fort Collins' representatives, and documentation of mitigation measures in the FWMEP, it appears that the Fort Collins' request to inundate the North Fork Cache la Poudre River can be conditionally approved because, the natural environment can continue to be preserved to a reasonable degree despite the inundation of a portion of the instream flow water right decreed in Case No. 85CW430 on the North Fork Cache la Poudre River, so long as the conditions described in the mitigation and enhancement plan are followed.

Attachments

Exhibit A: Map

Exhibit B: CPW Recommendation Letter

Exhibit C: Fort Collins' Request to Inundate





COLORADO

Parks and Wildlife

Department of Natural Resources

Water Resources Unit – Aquatic,
Terrestrial, Natural Resources Branch

July 7, 2023

Mr. Rob Viehl and Ms. Kaylea White
Colorado Water Conservation Board
Stream and Lake Protection Section
1313 Sherman Street, 7th Floor
Denver, CO 80203

Re: Request to Inundate - North Fork Cache la Poudre River above Halligan Reservoir
(Water Division 1, Case Numbers 85CW430 & 2013CW3185)

Dear Rob and Kaylea,

The purpose of this letter is to transmit Colorado Parks and Wildlife's (CPW) recommendation regarding the City of Fort Collins' (Fort Collins) request to inundate a portion of the instream flow right on the North Fork Cache la Poudre River (North Fork Poudre River) held by the Colorado Water Conservation Board (CWCB or Board). The inundation is a result of the City of Fort Collins' municipal water supply project that would expand the existing footprint of Halligan Reservoir. Halligan Reservoir is created by an on-channel dam on the North Fork Poudre River, 25 miles northwest of Fort Collins. Fort Collins requests approval to inundate a portion of the North Fork Poudre River instream flow (ISF) water right under the CWCB's Rule 7 procedures. Where the Board determines that a proposed inundation would interfere with an ISF right, the Board may approve, approve with conditions, defer, or deny the request to inundate (Rule 7g). In making this determination, the CWCB must consider factors including the extent of the proposed inundation, impacts on the natural environment, unique or rare characteristics of the ISF water right, any regulatory requirements or conditions imposed on the applicants, land ownership, economic benefits, and mitigation or compensation offered to offset adverse impacts on the ISF right. CWCB staff may seek recommendations from other agencies, including CPW (Rule 7d).

Extent of the Proposed Inundation

The CWCB holds the following ISF water right that would be affected by the proposed inundation:

Case Number	Stream Name	Upper Terminus	Lower Terminus	Flow Rate (cfs)	Priority Date
85CW430	North Fork Cache la Poudre River	Dale Creek confluence 13S 468599.27 4527279.57	Halligan Reservoir 13S 468913.27 4526540.05	20 cfs 1/1-12/31	11/08/1985

Fort Collins' proposed project would replace the existing Halligan dam with a newly constructed dam approximately 200 feet downstream of the current dam. The replacement dam would raise the reservoir elevation by approximately 25 feet to increase the total storage capacity by approximately 8,200 acre-feet. The total enlarged reservoir volume would be approximately 14,600 acre-feet. The Halligan Reservoir enlargement would inundate approximately 0.75 miles of the North Fork Poudre River (North Fork) upstream of the existing Halligan Reservoir and approximately 200 feet downstream of the existing Halligan Reservoir. Operations of the reservoir would result in fluctuating water level elevations,



transitioning the upstream 0.75-mile reach from lotic habitat to an intermittently ponded, lentic inlet channel. The CWCB's ISF reach extends from the confluence with Dale Creek to the current inlet of Halligan Reservoir, a distance of approximately 1.8 miles. The enlargement of Halligan Reservoir would inundate approximately 42% of the total ISF reach. Land ownership of the ISF reach is a combination of private lands, lands owned by Fort Collins, and lands historically thought to be held by CPW as part of the Cherokee State Wildlife Area (SWA) Middle Unit. Detailed title research conducted by Fort Collins for their project diligence uncovered that properties within the project inundation area that were thought to be held in fee title by CPW were actually privately owned or owned by Fort Collins. While the portion of the ISF reach that would be inundated is on private lands, it is surrounded by the Cherokee SWA to the west and has been used by the public for fishing for over 50 years.

Background

As part of the water court case decreeing Fort Collins' conditional storage right for the enlargement of Halligan Reservoir (Case Number 13CW3185), Fort Collins and CWCB resolved CWCB's statement of opposition through a stipulated agreement. In the stipulated agreement, both parties agreed to defer the request to inundate in order to consider the cumulative effects of project mitigation in determination of the mitigation or compensation required for the inundation for a portion of their ISF right on the North Fork. Since this time, Fort Collins has worked extensively with CPW staff to develop a Fish and Wildlife Mitigation and Enhancement Plan (FWMEP) for the Halligan Reservoir enlargement project, as required by section 37-60-122.2 C.R.S. At their June 22-23, 2023 meeting, the Colorado Parks and Wildlife Commission recommended the Final Halligan FWMEP¹ become the state's position on mitigation actions required of Fort Collins for the project. CPW staff believes the mitigation package offered by Fort Collins in the Final Halligan FWMEP is adequate and *maintains a balance between development of the state's water resources and the protection of the state's fish and wildlife resources* (CRS 37-60-122.2[1]a).

Discussion

The portion of the North Fork that would be inundated by the enlargement of Halligan Reservoir is currently considered fully functional stream habitat for various life stages of native and desirable sport fish species. CPW staff determined the primary impacts on aquatic life include sedimentation and loss of free-flowing lotic habitat used for spawning. While there are resident trout in the North Fork, there are also large-bodied brown and rainbow trout from Halligan Reservoir that use the North Fork upstream of Halligan Reservoir for their spawning runs. In the late summer through winter, the enlargement of the reservoir would result in significant deposition of fine sediments which would eliminate pool habitat and reduce cobbles and gravels used for spawning. This is considered a permanent direct impact of the enlargement of Halligan Reservoir that would eliminate 0.75-miles of aquatic habitat consisting of riffle-pool complexes upstream of the reservoir. Recreationally-important brown trout and rainbow trout may still be able to use the lentic habitat, but stream functions, such as use for spawning, would be eliminated after the inundation. Other species, such as native longnose dace and many macroinvertebrates, prefer lotic habitat and would no longer use this section of the North Fork (FWMEP, 3-14). This reach of the North Fork historically provided a public recreational fishery, and it is CPW staff's opinion that unique and high quality stream angling opportunities would be impacted. Under Fort Collins' proposed project, stream shoreline would be reduced and replaced with reservoir shoreline, impacting the attributes of

¹ Halligan Water Supply Project Final Fish and Wildlife Mitigation and Enhancement Plan, Prepared by the City of Fort Collins & Jacobs Engineering, 6/7/2023.

the CWCB's ISF water right. It is CPW's opinion that intermittent inundation and permanent sedimentation of 0.75-miles of natural free-flowing stream reach would result in a significant impact to the natural environment that would interfere with the Board's ISF water right.

Mitigation and Enhancement Measures

To mitigate aquatic impacts to the North Fork associated with the enlargement of Halligan Reservoir, Fort Collins has offered flow-related operational measures to the North Fork below Halligan Reservoir. This includes summer and winter release programs which would eliminate almost all zero-flow days and frequent dry-up points below the reservoir. Fort Collins has also incorporated ramping rates, a peak flow bypass program, and end of summer flushing event into their project operations (FWMEP, Section 4.2.1).

Under the Winter Release Plan, Fort Collins would release a continuous 3 cfs from the enlarged Halligan Reservoir from October 1 through April 30. This operation satisfies Fort Collins' winter return flow obligations and would to be maintained (less transit loss) throughout the 22-mile reach between Halligan dam and Seaman Reservoir. Under the Summer Low-Flow Plan, Fort Collins would adjust their reservoir operations to maintain a minimum of 5 cfs between May 1 and September 30 in the North Fork between Halligan dam and Seaman Reservoir, as measured at three key stream gage locations between the reservoirs. As stated in the FWMEP, Fort Collins has agreed to undertake a good faith effort to protect the Winter Release Plan and Summer Low-Flow Plan by working with the CWCB to use the Protected Mitigation Release (PMR) statute (CRS 37-92-102[8]). Although Fort Collins cannot guarantee the success of acquiring a decree in water court under the PMR statute, they believe diversion of the releases is unlikely. In addition, Fort Collins has committed to working with any future diverters to ensure the Summer Low-Flow Program remains intact down to Seaman Reservoir (FWMEP, 4-10). Fort Collins' summer and winter release programs would eliminate almost all zero-flow days below Halligan Reservoir. Primary benefits include additional wetted area, more habitat availability for small-bodied native fish and macroinvertebrates, and more longitudinally-connected aquatic habitat compared to existing zero-flow conditions.

Fort Collins has also made commitments to enhance aquatic habitat along the North Fork by incorporating fish passage features that support small-bodied native fish and trout downstream of Halligan Reservoir. Specifically, they would modify the North Poudre Canal diversion structure with fish passage and bypass improvements and would pursue similar improvements at the Calloway diversion structure to support fish migration and connectivity (FWMEP, 5-3). Fort Collins would also provide \$200,000 toward stream restoration projects (FWMEP, 5-5). CPW staff has determined that these mitigation and enhancement measures are adequate mitigation for impacts to the North Fork.

CPW Recommendation

CPW staff is of the opinion that the impacts of the proposed inundation would be offset by downstream benefits provided to small-bodied native fish through reintroduction of perennial flow. While the inundation caused by Halligan Reservoir enlargement results in significant interference with the Board's ISF water right, Fort Collins has proposed adequate mitigation of this impact. Specifically through their flow-related operational measures on the North Fork that would minimize zero-flow days downstream of the reservoir, along with enhancement measures that would provide fish passage and channel improvements.

In CPW staff's opinion, the Board should proceed with approval of this request to inundate, so long as the mitigation measures and procedures described in the FWMEP are followed. CPW looks forward to further coordination with Fort Collins and CWCB staff as they pursue legal protections afforded through the Protected Mitigation Releases statute. CPW staff will be available at the July 2023 CWCB meeting to answer any questions that the Board might have relating to the inundation or Halligan FWMEP.

Thank you for the opportunity to review this proposal.

Sincerely,

**Katie
Birch**  Digitally signed
by Katie Birch
Date: 2023.07.07
11:07:56 -06'00'

Katie Birch
Instream Flow Program Specialist

cc: Armstrong, Harris, Battige, Surface



City Attorney
 300 LaPorte Avenue
 PO Box 580
 Fort Collins, CO 80522
970.221.6520
 970.221.6327 - fax
fcgov.com

June 30, 2023

Colorado Water Conservation Board
 c/o Robert Viehl, Section Chief
 Stream and Lake Protection Section
 Colorado Water Conservation Board
 Department of Natural Resources
 1313 Sherman Street, Room 721
 Denver, CO 80203
 Via email: rob.viehl@state.co.us

Re: Halligan Water Supply Project: City of Fort Collins' Request Under Rule 7 of the ISF Rules to Inundate a Portion of an Instream Flow Water Right

Dear Colorado Water Conservation Board ("CWCB") Board Members and Staff:

I am writing on behalf of the City of Fort Collins, acting through its Fort Collins Utilities ("Fort Collins"), pursuant to Rule 7 of the ISF Rules¹, to request approval to inundate a portion of an instream flow water right resulting from the proposed enlargement of the existing Halligan Reservoir under the Halligan Water Supply Project ("Halligan Project").

Thank you for your time and consideration in this matter. Representatives of Fort Collins will be at the relevant portions of CWCB's board meeting on July 19-20, 2023 to address any questions you have.

EXECUTIVE SUMMARY

Fort Collins is pursuing the Halligan Project to provide 7,900 acre-feet of additional firm yield for present and future customers in its water service area, as well as for providing a storage reserve for emergency water supply, increasing drought security, and improving water system reliability and flexibility. The Halligan Project primarily involves the proposed enlargement of Halligan Reservoir, an existing on-stream reservoir on the North Fork of the Cache la Poudre River ("North Fork"), from its current and historical capacity of approximately 6,400 acre-feet to approximately 14,600 acre-feet. To fill its portion of the enlarged reservoir, Fort Collins would primarily use changed water rights that were historically used on lands Fort Collins has grown into and have been developed.

The proposed enlargement of the reservoir would inundate an approximately 0.75-mile reach of the North Fork upstream of the existing reservoir. This 0.75-mile reach overlaps part of a 1.8-

¹ "ISF Rules" are *Rules Concerning the Colorado Instream Flow and Natural Lake Level Program*, 2 CCR 408-2.



mile instream flow water right on the North Fork (“Proposed Inundation,” “Subject ISF Water Right,” and “Proposed Inundation Reach”).

Fort Collins received approval from the Colorado Parks and Wildlife Commission (“CPW Commission”) for its proposed *Halligan Water Supply Project Fish and Wildlife Mitigation and Enhancement Plan* (“FWMEP”) on June 23, 2023. The FWMEP will also be before the CWCB at its July 19-20, 2023 board meeting for its consideration and potential approval. A copy of the FWMEP should thus be in your meeting materials.²

The FWMEP includes numerous measures by which Fort Collins will avoid, minimize, and compensate for impacts from the Halligan Project, in addition to various enhancements. Relevant to the Proposed Inundation, these include:

- Flow-related operational measures, including the following:
 - Winter Release Plan to provide continuous releases of 3 cubic feet per second (cfs) from the enlarged reservoir to the North Fork from October 1 through April 30 each year;
 - Summer Low-Flow Program to maintain a continuous flow of at least 5 cfs in the approximately 22 miles of the North Fork between Halligan Dam and Seaman Reservoir from May 1 to September 30 each year;
 - Ramping rate limitations on Fort Collins’ operations to gradually change flow rates associated with diversions and releases from its portion of the enlarged reservoir; and
 - Peak Flow Bypass Program to maintain historical peak flushing flows for at least 3 days.
- Fort Collins will attempt to protect the winter releases from Halligan Dam to Seaman Reservoir using the “Protected Mitigation Release” statute, which will be the subject of subsequent discussions with the CWCB, following approval of the FWMEP and approval to inundate a portion of the Subject ISF Water Right.³
- Operational measures for sediment management, such as construction-related sediment controls and the Peak Flow Bypass Program.
- Design and construction of features to improve fish passage around the Fort Collins Intake on the main stem of the Cache la Poudre River (“Mainstem”).
- Create a temporary environmental pool within Halligan Reservoir.
- Provide fish passage around the North Poudre Canal Diversion.
- Improve the North Fork channel at the Calloway Diversion and remove some or all elements of the diversion structure to support flow, sediment transport, and fish movement.

Fort Collins believes that these FWMEP mitigation and enhancements are more than sufficient to justify the CWCB’s approval of the Proposed Inundation under ISF Rule 7. Fort Collins thus respectfully requests CWCB approval of the Proposed Inundation under ISF Rule 7.h.

² See C.R.S. § 37-60-122.2(1)(c).

³ See C.R.S. § 37-92-102(8).



DISCUSSION

1. Halligan Project Background.

1.1. Overview of the Halligan Project.

Fort Collins is pursuing the Halligan Project to provide 7,900 acre-feet of additional firm yield for its present and future customers in its water service area, as well as for increased drought protection. Additional details on the Halligan Project are set forth in the U.S. Army Corps of Engineers' ("Corps") Draft Environmental Impact Statement, dated November 2019 ("Draft EIS").⁴

The Halligan Project primarily involves the proposed enlargement of Halligan Reservoir, an existing on-stream reservoir on the North Fork, from its current and historical capacity of approximately 6,400 acre-feet to approximately 14,600 acre-feet. This includes the replacement of the original 114-year-old dam (approximately 70 feet tall) with a new dam (approximately 95 feet tall). Fort Collins acquired the reservoir and certain adjacent lands in 2004 from the North Poudre Irrigation Company, which will continue to own and use the historical approximately 6,400 acre-feet storage capacity of the enlarged reservoir.

To fill Fort Collins' approximately 8,200 acre-feet portion of the enlarged reservoir, Fort Collins would primarily use changed water rights that were historically used on lands Fort Collins grew into and have been developed.⁵ Fort Collins will release its water from the enlarged reservoir to the North Fork just below Halligan Dam, where the water will be conveyed about 22 miles in the North Fork to its confluence with the mainstem of the Cache la Poudre River ("Mainstem"). Fort Collins will then normally re-divert its water, typically by exchange at two diversions located on the Mainstem shortly upstream of the confluence.

1.2. Status of Halligan Project.

Fort Collins has contemplated enlarging Halligan Reservoir since at least the 1980s. Fort Collins formally began the federal permitting process with the Corps in 2006. The Corps released the Draft EIS in November 2019. The Final EIS is scheduled for release later this year.

Fort Collins also received approval from the CPW Commission for its proposed FWMEP on June 23, 2023. The FWMEP will also be before the CWCB at its July 19-20, 2023 board

⁴ The Halligan Project's Draft EIS and related documents are available online: <https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Colorado/EIS-Halligan/>. After the Draft EIS was released, Fort Collins completed a 30% design of the enlarged reservoir dam and determined there were several advantages to building a new dam approximately 200 feet downstream of the existing dam. The new dam alignment also results in a slightly greater storage capacity which changed from 8,125 acre-feet to approximately 8,200 acre-feet. More detail on this change will be provided in the Final EIS that is anticipated to be released to the public in late 2023.

⁵ Modeling for the Halligan Project indicates that these changed water rights will account for over 80% of water stored in the enlarged reservoir.



meeting for its consideration and potential approval. A copy of the FMWEP should thus be in your meeting materials.⁶ Fort Collins also continues to pursue other necessary permits and approvals.

1.3. Inundation of a Portion of the Subject ISF Water Right on the North Fork Above the Reservoir.

The CWCB holds the Subject ISF Water Right on the North Fork, which was decreed in Case No. 1985CW430, District Court, Water Division 1.⁷ The Subject ISF Water Right is for 20 cubic feet per second, with an appropriation date of November 8, 1985, between North Fork's confluence with Dale Creek to the existing reservoir, being approximately 1.8 miles. The Proposed Inundation Reach is thus approximately 42% of the Subject ISF Water Right.

Fort Collins previously owned a water storage right for an enlarged version of Halligan Reservoir, which was decreed in Case No. 1985CW435, District Court, Water Division 1 ("Original Water Right"), that was senior to the Subject ISF Water Right.⁸ The Original Water Right was for 33,462 AF, with an appropriation date of August 1, 1979. However, that water storage right was cancelled by operation of law for failure to timely file a diligence application.⁹ Consequently, the Subject ISF Water Right became senior to the planned inundation of portions of the Subject ISF Water Right.

1.4. Background on Previous Agreements with CWCB.

Fort Collins and the CWCB have previously addressed the proposed inundation to a certain extent. In 2013, following the cancellation of the Original Water Right, Fort Collins filed for a new water storage right for the enlarged reservoir, which was Case No. 2013CW3185, District Court, Water Division 1.¹⁰

CWCB filed a statement of opposition and participated in that Case No. 2013CW3185. Pursuant to a stipulation between Fort Collins and CWCB, the decree entered in that case includes terms related to the proposed inundation.¹¹ Due to uncertainty associated with the size of the

⁶ See C.R.S. § 37-60-122.2(1)(c).

⁷ Case No. 1985CW430, District Court, Water Division 1. A copy of the decree from that case is available here: <https://dwr.state.co.us/Tools/WaterRights/NetAmounts/1478219>

⁸ Case No. 1985CW435, District Court, Water Division 1. A copy of the decree from that case is attached to this letter.

⁹ Case No. 2007CW84, District Court, Water Division 1. A copy of the notice of cancellation from that case is attached to this letter.

¹⁰ See ISF Rule 7.c.

¹¹ Case No. 2013CW3185, District Court, Water Division 1. A copy of the decree from that case is available here: <https://dnrweblink.state.co.us/dwr/DocView.aspx?id=2893706>. A copy of the stipulation with the CWCB from that case is attached to this letter.



reservoir's enlargement at that time, the proposed inundation addressed in the decree and stipulation from Case No. 2013CW3185 are larger than the Proposed Inundation Reach now before the CWCB.

At the CWCB's board meeting on May 20-21, 2015, the CWCB approved a deferral of Fort Collins request to inundate.¹²

2. Required Information (ISF Rule 7.e).

ISF Rule 7.e states:

In any written request to inundate, the requesting Person shall at a minimum include information on the following factors: the location of the inundation, the size of the inundation, impact of the inundation on the natural environment, any unique or rare characteristics of the ISF water right to be inundated, any regulatory requirements or conditions imposed upon the applicant by federal, state and/or local governments, all terms and conditions included in applicant's water court decree, and any compensation or mitigation offered by the Person proposing the inundation.

Pursuant to ISF Rule 7.e, Fort Collins provides the following required information.

2.1. Location of the inundation.

The Proposed Inundation Reach is located on the North Fork, from the upstream end of the existing reservoir to a point approximately 0.75 mile upstream. See attached map.

2.2. Size of the inundation.

The Proposed Inundation Reach is approximately 0.75 mile.

2.3. Impact of the inundation on the natural environment.

The impact of the proposed inundation is the transition of the aquatic environment for 0.75-mile lotic system to a lentic inlet channel, which will result in the loss of approximately 3.5 acres of riffle-and-pool complex. The inundation affects are analyzed in detail in the Draft EIS (Sections 4.7.2.1.2, 4.8.3.1, and 4.8.3.4.1.1) and FWMEP Sections 3.3.2.1 and 3.3.2.2.

2.4. Any unique or rare characteristics of the ISF water right to be inundated.

Fort Collins is not aware of any unique or rare characteristics of the Subject ISF Water Right.

¹² See Memo, from Linda Bassi, Section Chief Kaylea White, Senior Water Resource Specialist Stream and Lake Protection Section, to CWCB Board Members, *Consent Agenda # 2. Deferral of Consideration of Request to Inundate; Case No. 1-13CW3185: Application of the City of Fort Collins*, dated May 20-21, 2015 Board Meeting. A copy of that memo is attached to this letter.



2.5. Any regulatory requirements or conditions imposed upon the applicant by federal, state and/or local governments.

The Halligan Project is in the midst of various permitting processes. At this point, other than in Fort Collins' relevant water court decrees, no final requirements or conditions have been imposed by federal, state and/or local governments.

The FWMEP being presented to CWCB at the board meeting on July 19-20, 2023 is expected to become the official position of the State of Colorado in August.¹³ In addition, it is expected that any final mitigation requirements and conditions will be included in the Corps' Record of Decision (ROD) for the project, which are anticipated to include many of the conditions included in the FWMEP.

2.6. All terms and conditions included in applicant's water court decree.

Fort Collins intends to use various water rights to fill its approximately 8,200 AF portion of the enlarged reservoir. These include:

- Changed water rights attributable to shares in the so-called "Southside Ditches" companies (Arthur Irrigation Company, Larimer County Canal No. 2 Irrigating Company, and New Mercer Ditch Company) that were historically used on lands Fort Collins grew into.¹⁴;
- Changed water rights attributable to shares in the Water Supply and Storage Company that were "floating shares"¹⁵;
- A portion of the one-eighth interest of the Grey Mountain conditional water right¹⁶; and
- The Halligan Reservoir Enlargement conditional water right decreed in Case No. 2013CW3185 ("13CW3185 Decree").¹⁷

As noted above, Fort Collins would primarily use changed water rights that were historically used on lands Fort Collins grew into and have been developed.

¹³ See C.R.S. § 37-60-122.2(1)(c).

¹⁴ Case No. 1992CW129 and Case No. 2005CW323, District Court, Water Division 1. Copies of the decrees from those cases are available here:

<https://dnrweblink.state.co.us/dwr/DocView.aspx?id=516821>
<https://dnrweblink.state.co.us/dwr/DocView.aspx?id=2618395>

¹⁵ Case No. 2011CW265, District Court, Water Division 1. A copy of the decree from that case is available here: <https://dnrweblink.state.co.us/dwr/DocView.aspx?id=2774322>

¹⁶ Case No. 2003CW405, District Court, Water Division 1. A copy of the decree from that case is available here: <https://dnrweblink.state.co.us/dwr/DocView.aspx?id=565554>

¹⁷ Case No. 2013CW3185, District Court, Water Division 1. A copy of the decree from that case is available here: <https://dnrweblink.state.co.us/dwr/DocView.aspx?id=2893706> A copy of the stipulation with the CWCB from that case is attached to this letter.



Paragraph 25 of the 13CW3185 Decree includes specific terms and conditions related to the enlarged reservoir as it relates to the Subject ISF Water Right, including terms to which Fort Collins and the CWCB stipulated.

2.7. Compensation or mitigation offered by the Person proposing the inundation.

Fort Collins received approval from the CPW Commission for its proposed FWMEP on June 23, 2023. The FWMEP includes numerous measures by which Fort Collins will avoid, minimize, and compensate for impacts from the Halligan Project, in addition to various enhancements. Relevant to the Proposed Inundation, these include:

- Flow-related operational measures, including the following:
 - Winter Release Plan to provide continuous releases of 3 cubic feet per second (cfs) from the enlarged reservoir to the North Fork from October 1 through April 30 each year;
 - Summer Low-Flow Program to maintain a continuous flow of at least 5 cfs in the approximately 22 miles of the North Fork between Halligan Dam and Seaman Reservoir from May 1 to September 30 each year;
 - Ramping rate limitations on Fort Collins' operations to gradually change flow rates associated with diversions and releases from its portion of the enlarged reservoir; and
 - Peak Flow Bypass Program to maintain historical peak flushing flows for at least 3 days.
- Fort Collins will attempt to protect the winter releases from Halligan Dam to Seaman Reservoir using the "Protected Mitigation Release" statute, which will be the subject of subsequent discussions with the CWCB, following approval of the FWMEP and approval to inundate a portion of the Subject ISF Water Right.¹⁸
- Operational measures for sediment management, such as construction-related sediment controls and the Peak Flow Bypass Program.
- Design and construction of features to improve fish passage around the Fort Collins Intake on the Main Stem.
- Create a temporary environmental pool within Halligan Reservoir.
- Provide fish passage around the North Poudre Canal Diversion.
- Improve the North Fork channel at the Calloway Diversion and remove some or all elements of the diversion structure to support flow, sediment transport, and fish movement.

3. Consideration of Request to Inundate (ISF Rule 7.g).

ISF Rule 7.g states:

If the Board determines that a proposed inundation interferes with an ISF right, the Board may then approve, approve with conditions, defer, or deny the request to inundate. In making this decision, the Board shall consider all relevant factors, including, but not limited to (1) the extent of inundation proposed; (2) the impact of the proposed

¹⁸ See C.R.S. § 37-92-102(8).



inundation on the natural environment existing prior to the inundation; (3) the degree to which the beds and banks adjacent to the ISF right subject to the inundation are publicly or privately owned; (4) the economic benefits arising from the inundation; (5) the benefits to recreation and downstream ISF segments arising from the inundation; (6) the degree to which the proposed inundation will allow development of Colorado's allotment of interstate waters as determined by compact or adjudication; and, (7) any mitigation or compensation offered to offset adverse impacts on the ISF right. After considering all relevant factors, the Board shall take one of the actions set forth in Rules 7h. - 7k. below.

To facilitate the CWCB's consideration of this request, Fort Collins hereby provides the following comments related to the relevant factors.

3.1. Extent of inundation proposed.

As noted above, the CWCB holds the Subject ISF Water Right on the North Fork, between North Fork's confluence with Dale Creek to the existing reservoir, being approximately 1.8 miles. The Proposed Inundation Reach is approximately 0.75 mile, being approximately 42% of the Subject ISF Water Right.

The extent of the Proposed Inundation is also significantly smaller than what was historically proposed when the enlargement of the reservoir was contemplated under the Original Water Right. That inundation would have inundated the entire Subject ISF Water Right, as well as a portion of an additional instream flow water right on the North Fork farther upstream, which was decreed in Case No. 1985CW428.¹⁹

3.2. Impact of the proposed inundation on the natural environment existing prior to the inundation.

The impacts of the Proposed Inundation are the transition of the aquatic environment for 0.75 miles lotic system to a lentic inlet channel, which will result in the loss of approximately 3.5 acres of riffle-and-pool complex. The inundation affects are analyzed in detail in the Draft EIS (Sections 4.7.2.1.2, 4.8.3.1, and 4.8.3.4.1.1) and FWMEP Sections 3.3.2.1 and 3.3.2.2.

3.3. Degree to which the beds and banks adjacent to the ISF right subject to the inundation are publicly or privately owned.

As discussed in the FWMEP, the lands adjacent to the Proposed Inundation Reach are privately owned, though the City intends to acquire them as part of the Halligan Project. As addressed with CPW in the FWMEP, Fort Collins intends to grant the public access to the lands adjacent to portions of the Proposed Inundation Reach after the reservoir is enlarged, subject to the completion of an intergovernmental agreement between CPW and Fort Collins.

¹⁹ Case No. 1985CW428, District Court, Water Division 1. A copy of the decree from that case is available here: <https://dnrweblink.state.co.us/dwr/DocView.aspx?id=96170&page=1>



3.4. Economic benefits arising from the inundation.

The proposed inundation is a result of the enlargement of Halligan Reservoir, which will provide 7,900 AF of additional firm yield for its present and future customers in its water service area, as well as for increased drought protection. As discussed in the Draft EIS, this will provide significant benefits to the Fort Collins community and the region.

3.5. Benefits to recreation and downstream ISF segments arising from the inundation.

As noted above and addressed with CPW in the FWMEP, Fort Collins intends to grant the public access to the lands adjacent to portions of the Proposed Inundation Reach after the reservoir is enlarged, subject to the completion of an intergovernmental agreement between CPW and Fort Collins.

There are currently no downstream ISF segments below the reservoir. However, as discussed in the FWMEP, Fort Collins intends to work with the CWCB to seek a water court decree to protect Fort Collins' releases from the enlarged reservoir pursuant to C.R.S. §37-92-102(8) (Senate Bill 2018-170).

3.6. Degree to which the proposed inundation will allow development of Colorado's allotment of interstate waters as determined by compact or adjudication.

The Halligan Project is located in the Poudre River basin, which is part of the greater South Platte River basin. As noted above, the project will allow Fort Collins to utilize its senior changed water rights, further developing its native supplies.

Fort Collins, like many Front Range communities, also relies on water from the Colorado River through the Colorado-Big Thompson Project and Windy Gap Project. The Halligan Project will help the City diversify its water portfolio and reduce its reliance on Colorado River water.

3.7. Any mitigation or compensation offered to offset adverse impacts on the ISF right.

Fort Collins received approval from the CPW Commission for its proposed FWMEP on June 23, 2023. Key mitigations and enhancement measures detailed from the FWMEP are noted above in Section 2.7 of this letter.

4. Request for Approval.

Fort Collins believes that these FWMEP mitigation and enhancements are more than sufficient to justify the CWCB's approval of the Proposed Inundation under ISF Rule 7. Fort Collins thus respectfully requests CWCB approval of the Proposed Inundation under ISF Rule 7.h.



Sincerely,

A handwritten signature in blue ink, appearing to read "Eric Potyondy".

Eric Potyondy
Assistant City Attorney

Attachments

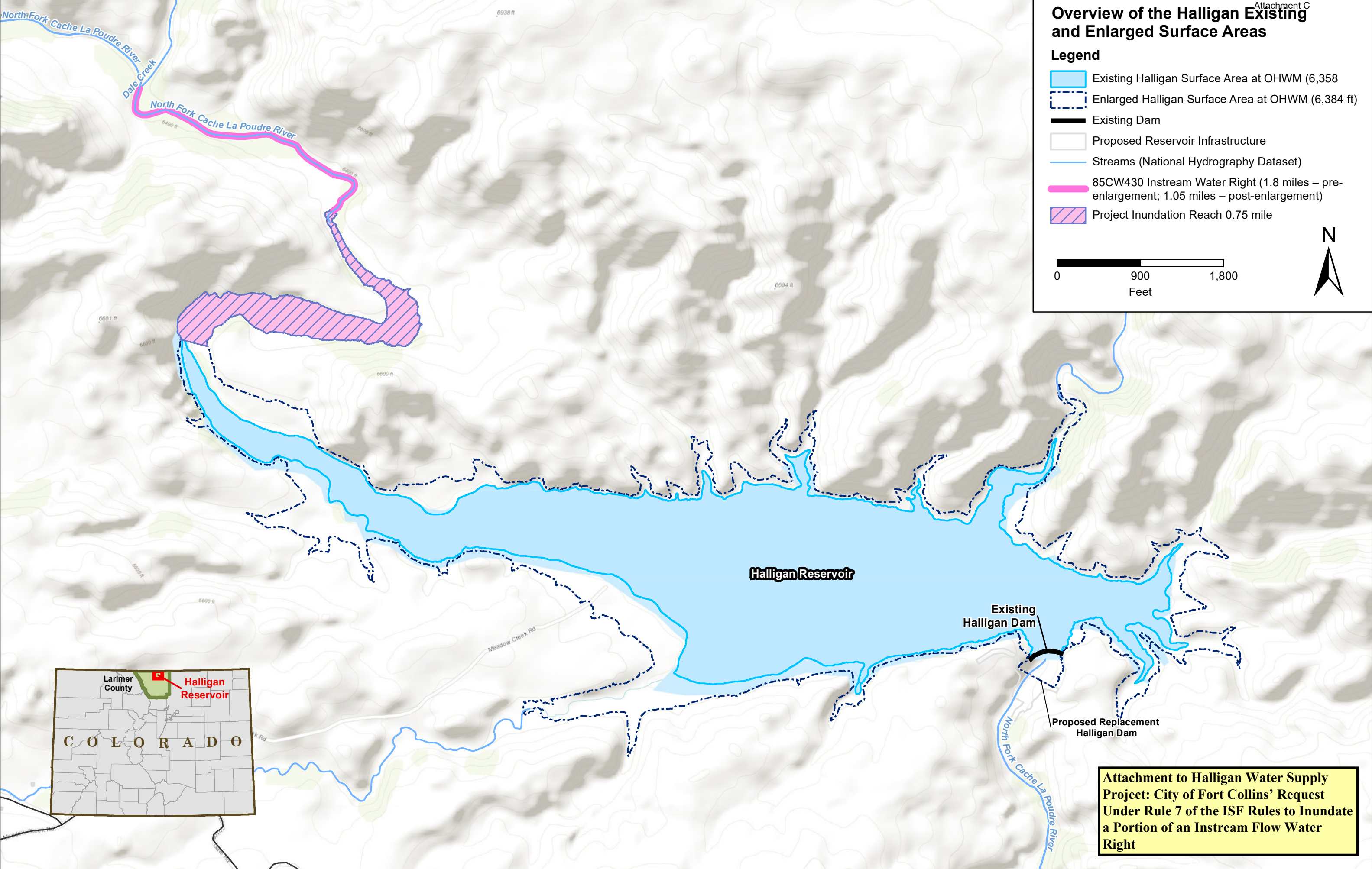
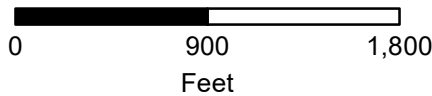
- Map
- Case No. 1985CW435 Decree, District Court, Water Division 1
- Case No. 2007CW84 Notice of Cancellation, District Court, Water Division 1
- Case No. 2013CW3185 Stipulation, District Court, Water Division 1
- Memo, from Linda Bassi, Section Chief Kaylea White, Senior Water Resource Specialist Stream and Lake Protection Section, to CWCB Board Members, *Consent Agenda # 2. Deferral of Consideration of Request to Inundate; Case No. 1-13CW3185: Application of the City of Fort Collins*, dated May 20-21, 2015 Board Meeting

pc: Jason Graham, Director of Water Utilities
Darren Parkin, Halligan Water Supply Project Manager
Donnie Dustin, Water Resources Engineer
Whitney Wilmer, Jacobs
Kaylea White, Instream Flow Legal Protection Coordinator

Overview of the Halligan Existing and Enlarged Surface Areas

Legend

- Existing Halligan Surface Area at OHWM (6,358
- Enlarged Halligan Surface Area at OHWM (6,384 ft)
- Existing Dam
- Proposed Reservoir Infrastructure
- Streams (National Hydrography Dataset)
- 85CW430 Instream Water Right (1.8 miles – pre-enlargement; 1.05 miles – post-enlargement)
- Project Inundation Reach 0.75 mile



Attachment to Halligan Water Supply Project: City of Fort Collins' Request Under Rule 7 of the ISF Rules to Inundate a Portion of an Instream Flow Water Right

DISTRICT COURT, WATER DIVISION NO. 1, COL
Case No. 85CW435

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF
NORTH POUDRE IRRIGATION COMPANY AND HALLIGAN RESOURCES CO.

IN LARIMER COUNTY

THIS MATTER has come before the Court upon the application of North Poudre Irrigation Company and Halligan Resources Co. for a conditional storage right. The Court, having considered the pleadings, the stipulations of the parties, and the evidence presented, and being fully advised in the premises does hereby make the following Findings of Fact:

1. The application herein was filed with the Water Clerk for Water Division No. 1 on December 30, 1985. The names and addresses of the applicants are as follows:

A. North Poudre Irrigation Company, 3729 Cleveland Avenue, P.O. Box 100, Wellington, Colorado 80549.

B. Halligan Resources Co., P.O. Box 96, Livermore, Colorado 80536.

2. Timely and adequate notice of these proceedings has been given in the manner required by law. The time for filing statements of opposition and for seeking leave to intervene has expired. The Court has jurisdiction over all persons who have standing to appear herein, whether they have appeared or not.

3. A statement of opposition was timely filed by Pine Creek Water Development Company and Campbell Development Co., Inc. on February 11, 1986. No other person or entity has filed a statement of opposition or sought to intervene in the matter.

4. A stipulation between applicants and objectors Pine Creek Water Development Company and Campbell Development Co., Inc. attached hereto as Exhibit A and incorporated herein by this reference, is hereby approved. The parties consent to the entry of a decree herein, subject to the terms of the stipulation.

5. The name of the structure for which applicants seek a conditional storage decree is Halligan Reservoir Enlargement.

A. The dam will be located in the SW $\frac{1}{4}$ of Section 34, Township 11 North, Range 71 West of the 6th P.M. The left

North Poudre Irr. Co.
Halligan Resources Co.
Case No. 85CW435
Page 2

or easterly abutment will be located at a point whence the Southwest corner of said Section 34 bears South 52°30' West a distance of 3000 feet, Larimer County, Colorado.

B. The source of water for the dam will be Six Mile Creek, Meadow Creek, the North Fork of the Cache La Poudre River and any water tributary thereto above the dam, all tributary to the Cache La Poudre River.

6. The date of appropriation of this right is August 1, 1979. The appropriation was initiated by the installation of reference monuments at the existing dam site.

7. Applicants seek a decree determining and confirming a conditional right to store 33,462 acre-feet of water. This is in addition to the 6428 acre-feet of water currently decreed and made absolute for Halligan Reservoir and the right to re-fill the reservoir decreed in Case No. 11217 in Larimer County District Court, which is conditional in part.

8. The surface area of the Halligan Reservoir Enlargement will be 736 acres at spillway elevation of 6420 feet. The maximum height of the dam is 180 feet. The length of the dam is 710 feet. The total capacity of the reservoir, including both presently decreed volumes and the conditional volumes sought herein shall be 39,890 acre-feet, with an active capacity of 39,890 acre-feet and dead storage of 0 acre-feet.

9. Water stored pursuant to this conditional decree will be used for irrigation of approximately 42,000 acres located in Larimer and Weld Counties, and for municipal, domestic, industrial, commercial, hydroelectric power generation, irrigation, stockwatering, recreational, and fish and wildlife propagation and maintenance within the South Platte River drainage. Said water may also be used for exchange purposes, for replacement of depletions resulting from use of water from other sources, and for augmentation purposes.

10. The names and addresses of the owners of land on which the dam is located and land within the high water line are as follows:

A. North Poudre Irrigation Company, 3729 Cleveland Avenue, P. O. Box 100, Wellington, Colorado 80549.

B. Free Enterprises, Inc., 1803 Garfield, Loveland, Colorado 80537.

C. State of Colorado, Division of Wildlife, 6060 Broadway, Denver, Colorado 80216.

North Poudre Irr. Co.
Halligan Resources Co.
Case No. 85CW435
Page 3

D. United States Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

E. Phantom Canyon Ranch Company, Box 96, Livermore, Colorado 80536.

11. This reservoir as it currently exists is also known as the North Poudre Irrigation Company Reservoir No. 16.

12. Water is found to be available for appropriation under this application, and applicants have established that these waters can and will be diverted, stored, or otherwise captured, possessed, and controlled, and will be beneficially used and that the project can and will be completed with diligence and within a reasonable time.

CONCLUSIONS OF LAW

13. The Court concludes that the application herein is one contemplated by law, and this Court has exclusive jurisdiction over the subject matter of this proceeding. §37-92-203, C.R.S.

14. The application herein was filed with the Water Clerk in accordance with the provisions of §37-92-302(1)(a), C.R.S.

15. Timely and adequate notice of this filing and of the contents of the application herein were given in the manner provided by law, and this Court has jurisdiction over all persons or entities affected hereby, whether they have appeared or not.

16. Timely statements of opposition were filed as indicated in 3 hereof. The time for filing additional statements of opposition and motions to intervene has expired according to law. §§37-92-302(1)(c) and 37-92-304(3), C.R.S.

17. Applicants have established their appropriation and are entitled as a matter of law to a decree determining and confirming its conditional right to the storage and use of waters which are the subject of this application for existing and future uses. The date of appropriation for the conditional right sought herein is August 1, 1979.

18. Water shall not be impounded, except pursuant to the operation of a lawful exchange, unless entitled to do so by virtue of the priority herein awarded. At all other times, all inflow of water into the reservoir from any source, including precipitation, shall be removed by applicants or applicants' successors-in-interest by draining, pumping or other means, and

North Poudre Irr. Co.
Halligan Resources Co.
Case No. 85CW435
Page 4

released into the nearest natural watercourse or below the reservoir, and not utilized by applicants or applicants' successors-in-interest in any manner. Applicants shall install and maintain such meters, measuring devices or other structures as may be required by the Division Engineer of Water Division No. 1.

19. Applicants shall submit for approval by the State Engineer all plans and specifications for the Halligan Reservoir Enlargement as required by law. § 37-87-105, C.R.S.

JUDGMENT AND DECREE

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

20. The application herein is granted subject to the terms of the stipulation between the parties which is incorporated herein by this reference.

21. Each of the foregoing Findings of Fact and Conclusions of Law is incorporated herein.

22. Applicants' conditional storage right which is the subject of this case is hereby confirmed. The water may be used for the purposes and in the manner set forth in 9 hereof.


23. The priority herein awarded said Halligan Reservoir Enlargement was filed in the Water Court in the year of 1985 and shall be administered as having been filed in that year, and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year priorities shall be determined by historical dates of appropriation and not affected by the date of entry of ruling.

24. It is also ordered that the conditional water right herein awarded is hereby continued in full force and effect until June, 1991. If applicants desire to maintain such conditional decree, an application for a quadrennial finding of reasonable diligence shall be filed on or before June, 1991 or a showing made on or before such date that the conditional water right has become an absolute water right by reason of the completion of the appropriation.

North Poudre Irr. Co.
Halligan Resources Co.
Case No. 85CW435
Page 5

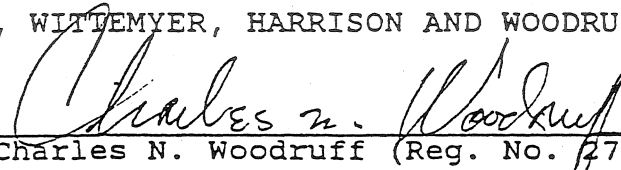
Dated this 12th day of June, 1987.

BY THE COURT:

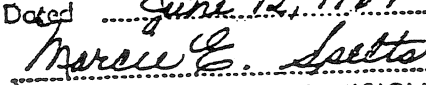

Hon. Robert A. Behrman
Water Judge
Water Division No. 1
State of Colorado

APPROVED AS TO FORM AND CONTENT:

MOSES, WITTEMYER, HARRISON AND WOODRUFF, P.C.

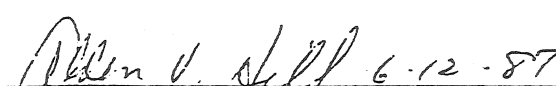
By: 
Charles N. Woodruff (Reg. No. 2772)
P.O. Box 1440
Boulder, Colorado 80306
(303) 443-8782

Certified to be a full, true and correct
copy of the original in my custody.

plus Encl. of 3 pages.
Dated June 12, 1987

CLERK, WATER DIVISION 1
STATE OF COLORADO

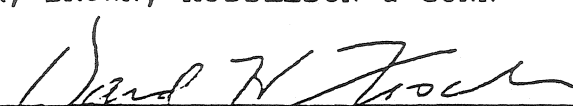
Attorneys for Halligan Resources Co.

HILL, HILL AND MANGES, P.C.

By: 
Alden V. Hill (Reg. No. 2021)
P.O. Box 421
Fort Collins, Colorado 80522
(303) 482-3683

Attorneys for The North Poudre Irrigation Company

FISCHER, BROWN, HUDDLESON & GUNN

By: 
Ward H. Fischer (Reg. No. 2086)
P.O. Drawer J
Fort Collins, Colorado 80522
(303) 482-1056

Attorneys for Pine Creek Water Development
Company and Campbell Development Co., Inc.

Exhibit A

DISTRICT COURT, WATER DIVISION NO. 1, COLORADO
Case No. 85CW435

STIPULATION

CONCERNING THE APPLICATION FOR WATER RIGHTS OF
NORTH POUDDRE IRRIGATION COMPANY AND
HALLIGAN RESOURCES CO.

IN LARIMER COUNTY

WHEREAS, the North Poudre Irrigation Company (North Poudre) and Halligan Resources Co. (Halligan) have filed an application in the captioned case for a conditional storage right for the Halligan Reservoir Enlargement claiming a conditional right to store 33,482 acre-feet of water with a priority date of August 1, 1979; and

WHEREAS, Pine Creek Water Development Company (Pine Creek) has filed for an appropriation through the Killpecker Pipeline in Case No. 85CW222 in Water Division No. 1 with an appropriation date of August 19, 1985; and

WHEREAS, Pine Creek and Campbell Development Company, Inc. (Campbell) have filed a statement of opposition in Case No. 85CW435; and

WHEREAS, the parties hereto wish to cooperate and settle the above-referenced cases in Water Court without further litigation so that development of each party's rights may be allowed to proceed.

NOW, THEREFORE, the parties hereto stipulate and agree as follows:

1. North Poudre and Halligan hereby agree to subordinate the priority of their storage right claimed for the Halligan Reservoir Enlargement in Case No. 85CW435 to the priority of the water right claimed by Pine Creek for the Killpecker Pipeline from Killpecker Creek in Case No. 85CW222, but only to the extent of fifteen (15) cfs and only during the period April 1 through October 31 of each year, and the amount so diverted shall not exceed a total of 550 acre feet per year.

2. Pine Creek and Campbell shall install and maintain adequate measuring devices and diversion records for the administration of this agreement and shall measure and record all out-of-priority diversions pursuant to this agreement. Such

records shall be furnished to North Poudre and Halligan monthly. Pine Creek and Campbell are obligated to have an approved augmentation plan if any water is diverted out of priority.

3. This subordination does not affect or apply to the rights previously decreed to Halligan Reservoir, also known as the North Poudre Irrigation Co. Reservoir No. 16, final and conditional, and any other North Poudre Decrees on the North Fork and its tributaries.

4. This subordination agreement shall apply only to diversions by the Killpecker Pipeline from Killpecker Creek for use in connection with Pine Creek's and Campbell's Fox Acres and Red Feather Lakes developments.

5. Except for the limited subordination provided for herein, the water rights claimed in Case No. 85CW222 shall at all times be administered as junior in priority to the water rights claimed for the Halligan Reservoir Enlargement in Case No. 85CW435.

6. Pine Creek and Campbell consent to the entry of a decree granting the application in Case No. 85CW435, subject to the terms of this Stipulation.

7. This Stipulation shall be effective upon the entry of a final Decree granting the application in Case No. 85CW435, and shall be binding on the parties, their successors and assigns.

Entered into this 12th day of June, 1987.

MOSES, WITTEMYER, HARRISON AND WOODRUFF, P.C.

By

Charles N. Woodruff
Charles N. Woodruff (Reg. No. 2722)
P. O. Box 1440
Boulder, CO 80306
(303)443-8782

Attorneys for Halligan Resources Co.

HILL, HILL & MANGES, P.C.

By

Alden V. Hill 6-12-87
Alden V. Hill, (Reg. No. 2021)
P. O. Box 421
Fort Collins, CO 80522
(303)482-3683

Attorneys for The North Poudre Irrigation Company

FISCHER, BROWN, HUDDLESON & GUNN

By

Ward H. Fischer (Reg. No. 2086)

P. O. Drawer J

Fort Collins, CO 80522

(303)482-1056

Attorneys for Pine Creek Water Development
Company and Campbell Development Co., Inc.

**Attachment to Halligan Water Supply
Project: City of Fort Collins' Request
Under Rule 7 of the ISF Rules to Inundate
a Portion of an Instream Flow Water
Right**

DISTRICT COURT, WATER DIVISION NO. 1
STATE OF COLORADO
901 9th Avenue
P. O Box 2038
Greeley, Colorado 80632

DATE FILED: December 2, 2013
CASE NUMBER: 2007CW84

**CONCERNING THE APPLICATION FOR WATER
RIGHTS OF:**

THE CITY OF FORT COLLINS

IN LARIMER COUNTY

COURT USE ONLY

Case Number:

07CW84
(85CW435, 93CW078,
00CW211)

NOTICE OF CANCELLATION OF CONDITIONAL WATER RIGHT

THIS MATTER comes before the Court on the failure by the owner of the subject conditional water right ("Owner") to timely file an Application for Finding of Reasonable Diligence. As reasons for cancellation of this conditional water right, the Referee finds as follows:

On November 1, 2007, a conditional water right was continued for the following:

Halligan Reservoir Enlargement, located in the SW ¼ of Section 34, T11N, R71W, 6th P.M., the eastern abutment of which will be located at a point whence the southwest corner of said Section 34 bears S 52° 30' W a distance of 3000 feet. The amount continued conditional in 07CW84 is 33,462 acre-feet.


The Decree provides that if Applicant desires to maintain this conditional water right in full force and effect, an application for a finding of reasonable diligence for said conditional water right must be filed by no later than November 30, 2013.

Pursuant to § 37-92-305(7), C.R.S., the Clerk of the Water Court gave notice of the deadline for filing an application for finding of reasonable diligence, within not less than sixty days nor more than ninety days, by certified mail to all persons to whom such conditional right was granted, at the last known address appearing on the records of the Court.

Owner failed to file an application for finding of reasonable diligence on or before the deadline stated in the said notice. Pursuant to § 37-92-301(4)(a)(I), C.R.S., if the owner or user of a conditional water right fails to file an application for finding of reasonable diligence on or before the deadline, the conditional water right shall be considered abandoned.

The abandoned Conditional Water Right terminated by operation of law. The subject Conditional Water Right is therefore CANCELLED.

Dated: December 2, 2013

A handwritten signature in black ink that reads "John S. Cowan". The signature is written in a cursive style with a large initial "J" and a distinct "S" and "C".

John S. Cowan
Water Referee
Water Division 1

**Attachment to Halligan Water Supply
Project: City of Fort Collins' Request
Under Rule 7 of the ISF Rules to Inundate
a Portion of an Instream Flow Water
Right**

DATE FILED: September 22, 2015 9:45 AM
FILING ID: 9B638C7B8B88F
CASE NUMBER: 2013CW3185

<p>DISTRICT COURT, WATER DIVISION NO. 1 STATE OF COLORADO</p> <p>Weld County Courthouse 901 Ninth Ave, P.O. Box 2038 Greeley, CO 80632 Telephone Number: (970) 475-2400</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Concerning the Application for Water Rights of:</p> <p>City of Fort Collins,</p> <p>IN LARIMER COUNTY</p>	
<p>Attorneys for Applicant, City of Fort Collins:</p> <p>Stuart B. Corbridge, Atty Reg. #33355 Leila C. Behnampour, Atty Reg. #42754 Vranesh and Raisch, LLP 1720 14th Street, Suite 200 Boulder, CO 80302 Telephone Number: (303) 443-6151 Fax Number: (303) 443-9586 E-mail: sbc@vrlaw.com; lcb@vrlaw.com</p> <p>Eric R. Potyondy, Atty. Reg. #38243 Fort Collins City Attorney's Office 300 LaPorte Avenue Fort Collins, CO 80521 Telephone Number: (970) 416-2126 Fax Number: (970) 221-6327 E-mail: epotyondy@fcgov.com</p>	<p>Case Number: 2013CW3185 Water Div: 1</p>

Stipulation Between Applicant and Opposer
Colorado Water Conservation Board
Case No. 13CW3185
Application of City of Fort Collins

<p>Attorneys for Opposer:</p> <p>Cynthia Coffman, Attorney General Susan J. Schneider, Atty. Reg. #19961* First Assistant Attorney General Natural Resources & Environment Section Office of the Colorado Attorney General 1300 Broadway Street, 7th Floor Denver, CO 80203 Telephone Number: (720) 508-6311 Email: susan.schneider@state.co.us FAX Number: (720) 508-6039 *Counsel of Record</p>	
<p>STIPULATION BETWEEN APPLICANT AND OPPOSER COLORADO WATER CONSERVATION BOARD</p>	

Applicant, the City of Fort Collins ("Fort Collins"), by and through its undersigned counsel, and Opposer, the Colorado Water Conservation Board ("CWCB"), by and through its undersigned counsel, hereby stipulate and agree as follows:

1. CWCB consents to the entry of a decree in this case that is no less restrictive on Fort Collins than the proposed decree dated 7/29/15, attached hereto as Exhibit 1.
2. In reaching settlement of this case, Fort Collins and CWCB have agreed that the following terms and conditions concerning certain instream flow water rights owned by CWCB shall be included in any decree submitted to and entered by the Court in this case:
 - Colorado Water Conservation Board. Fort Collins acknowledges that the Colorado Water Conservation Board ("CWCB") holds the following instream flow water rights ("CWCB Instream Flow Rights"):

CWCB Case No.	Stream/Lake	Amount (c.f.s.)	Appropriation Date	Watershed	County
85CW428	North Fork Cache la	14	11/8/1985	Cache la Poudre	Larimer

Stipulation Between Applicant and Opposer
Colorado Water Conservation Board
Case No. 13CW3185
Application of City of Fort Collins

	Poudre River				
85CW430	North Fork Cache la Poudre River	20	11/8/1985	Cache la Poudre	Larimer

- The CWCB Instream Flow Rights are senior in priority to the Halligan Reservoir Enlargement Water Right decreed herein. Enlargement of the existing Halligan Reservoir (also known as North Poudre Reservoir No. 16) may result in the inundation of all or a portion of the CWCB Instream Flow Rights on the North Fork of the Cache la Poudre River, and such inundation may cause injury to the CWCB Instream Flow Rights. Fort Collins agrees that no diversion under the Halligan Reservoir Enlargement Water Right shall occur and no absolute water right should be granted for the Halligan Reservoir Enlargement Water Right until: (a) the CWCB has approved a request to inundate pursuant to Rule 7 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2, or any comparable successor rule, filed by Fort Collins with the CWCB regarding the enlargement of the existing Halligan Reservoir, and Fort Collins agrees to provide appropriate mitigation to offset any inundation in order to continue to preserve the natural environment to a reasonable degree as set forth in the CWCB's approval of Fort Collins' request to inundate; or (b) Fort Collins and the CWCB have otherwise reached an agreement pursuant to the CWCB rules and regulations enacted under C.R.S. §§ 37-60-108 and 37-92-102(3), or their successor statutes, that addresses the potential injury that may occur to the CWCB Instream Flow Rights from the exercise of the Halligan Reservoir Enlargement Water Right.
- Fort Collins has applied for a Clean Water Act Section 404 permit for enlarging Halligan Reservoir and, to assist the CWCB in its evaluation of injury to the CWCB Instream Flow Rights, agrees to provide to the CWCB staff copies of the draft and final environmental impact statements for that enlargement which will include a description of the alternatives considered for enlarging Halligan Reservoir to meet Fort Collins' purpose and need. If inundation of the CWCB Instream Flow Rights will occur as a result of enlarging Halligan Reservoir, Fort Collins agrees to provide mitigation as required by the CWCB for such inundation, and to inform

Stipulation Between Applicant and Opposer
Colorado Water Conservation Board
Case No. 13CW3185
Application of City of Fort Collins

the CWCB about issues that may affect the CWCB Instream Flow Rights after such inundation.

- Upon reasonable notice and coordination, the CWCB and CPW shall have access to completed and submitted accounting records for the Halligan Reservoir Enlargement Water Right, and any measuring devices used to measure diversions of the Halligan Reservoir Enlargement Water Right.
- Fort Collins has submitted to the CWCB, pursuant to its Instream Flow and Natural Lake Level Program Rules and Regulations, a request to defer the CWCB's consideration of a Request to Inundate pursuant to Rule 7j of those Rules and Regulations. The CWCB has agreed to defer such consideration until permitting by other state, federal, or local governmental agencies concerning the Halligan Reservoir enlargement is completed. In the event that Fort Collins is required by other governmental entities to provide mitigation to offset impacts of the Halligan Reservoir enlargement, the CWCB shall consider the cumulative effect of such mitigation on the mitigation or compensation it will require as a condition of granting its approval to inundate any portion of the CWCB Instream Flow Rights. Fort Collins agrees that, for any inundation caused by enlarging Halligan Reservoir, some mitigation other than that already required by the other governmental agencies should be provided in accordance with the CWCB's rules and the requirements of the Board's fiduciary duty to protect its existing instream flow under Colorado law. The CWCB may deny the request to inundate if it determines, pursuant to the Rules and Regulations Concerning Colorado's Instream Flow and Natural Lake Level Program in effect at that time, that mitigation is insufficient or the request is inconsistent with the goals of the instream flow program. Prior to any construction that would cause inundation of the CWCB Instream Flow Rights, Fort Collins will comply with the CWCB rules in effect at that time regarding the mitigation to be made upon inundation of the CWCB Instream Flow Rights.

These provisions can be found at Paragraph 25 of the proposed decree attached to this stipulation as Exhibit 1.

3. CWCB shall remain a party to these proceedings for the limited purpose of ensuring that any decree entered herein is consistent with this stipulation.

Stipulation Between Applicant and Opposer
Colorado Water Conservation Board
Case No. 13CW3185
Application of City of Fort Collins

4. Prior to submitting any final decree to the Water Court, Fort Collins shall provide a copy of such decree to CWCB for its review pursuant to this stipulation.

5. This stipulation is entered into by way of compromise and settlement of this litigation. Any agreements or terms and conditions herein are due solely to the unique circumstances of this case. This stipulation shall not establish any precedent and shall not be construed as a commitment to include any specific Findings of Fact, Conclusions of Law, or specific engineering methodologies or administrative practices in future stipulations or decrees.

6. The signatories hereto represent and warrant that they are authorized to bind their clients, respectively, to the terms of this stipulation.


7. Each party shall bear its own costs and attorney fees associated with this case.

8. The parties desire that this stipulation be approved by and entered as an Order of the Court.

Dated this 21st day of September, 2015.

VRANESH and RAISCH, LLP

*Signature on file pursuant to C.R.C.P. 121
§ 1-26(7)*

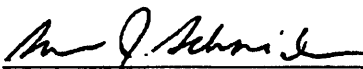
By: 

Stuart B. Corbridge, #33355
Leila C. Behnampour, #42754

Attorneys for the Applicant, the City of
Fort Collins

CYNTHIA COFFMAN
ATTORNEY GENERAL

*Signature on file pursuant to C.R.C.P. 121
§ 1-26(7)*


By: 

Susan J. Schneider, #19961
First Assistant Attorney General
Natural Resources and Environment
Section

Attorneys for the Colorado Water
Conservation Board

FORT COLLINS CITY ATTORNEY'S
OFFICE

*Signature on file pursuant to C.R.C.P. 121
§ 1-26(7)*

By:  5/22/2015
Eric R. Potyondy, #38243

Attorneys for the Applicant, the City of
Fort Collins

CRE 408 SETTLEMENT COMMUNICATION

DISTRICT COURT, WATER DIVISION NO. 1 STATE OF COLORADO Weld County Courthouse 901 Ninth Ave, P.O. Box 2038 Greeley, CO 80632 Telephone Number: (970) 475-2400	<b style="color: red;">DRAFT 7.29.15 ▲ COURT USE ONLY ▲
Concerning the Application for Water Rights of: City of Fort Collins, IN LARIMER COUNTY	Case No.: 2013CW3185 Water Division: 1
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND DECREE OF THE WATER COURT	

This matter comes before the Water Court for consideration upon the application of the City of Fort Collins for a conditional water storage right in the Halligan Reservoir enlargement (“Application”). The Court, having considered the pleadings, evidence presented where such evidence was required, and the stipulations of the parties, and being fully advised in the premises hereby finds, concludes, rules, and decrees as follows:

FINDINGS OF FACT

1. The Applicant. The City of Fort Collins (“Fort Collins”), 700 Wood Street, Fort Collins, Colorado 80522. Fort Collins is a Colorado municipal corporation with home-rule authority, and owns and operates a municipal water supply system. Fort Collins owns and operates a wastewater treatment system to collect and treat wastewater resulting from water use by persons located within its municipal wastewater service area. Fort Collins also owns lands that require non-potable water supplies for uses pertaining to its activities on these lands.

EXHIBIT 1

2. The Application. Fort Collins filed the Application in the Water Court, Water Division No. 1, on December 31, 2013. The Application was published in the December 2013 Water Division No. 1 Resume pursuant to §37-92-302(3)(a), C.R.S.

3. Notice and Jurisdiction. All notices of this matter required by law have been fulfilled and the Court has jurisdiction over the subject matter of this Application, and over all persons and property affected by it, regardless of whether the persons and property owners have appeared.

4. Summary of Consultation. The Division Engineer for Water Division No. 1 filed a Summary of Consultation on March 31, 2013. The Summary of Consultation was served on Objectors in the case. The Court has duly considered the Summary of Consultation, and all issues raised in the Summary of Consultation have been addressed by Fort Collins.

5. No Designated Ground Water. The land and water rights involved herein are not included within the boundaries of any designated ground water basin.

6. Statements of Opposition. The following parties filed timely Statements of Opposition. No other Statements of Opposition have been filed and the time for filing Statements of Opposition has expired.

6.1 North Poudre Irrigation Company

6.2 Colorado Water Conservation Board

6.3 United States of America – Department of the Interior

6.4 City of Greeley, Acting by and Through its Water and Sewer Board

6.5 City of Thornton

6.6 Cache la Poudre Water Users Association

6.7 Colorado Division of Parks and Wildlife

6.8 Soldier Canyon Filter Plant, North Weld County Water District, East Larimer County Water District, and Fort Collins-Loveland Water District

6.9 Divide Canal and Reservoir Company

7. Withdrawals and Stipulations. Withdrawals of Statements of Opposition were filed and/or Stipulations were entered into between Fort Collins and Objectors as follows:

- 7.1 North Poudre Irrigation Company entered into a stipulation on February 19, 2015, which was approved by the Court by order entered February 19, 2015.
- 7.2 Colorado Water Conservation Board entered into a stipulation on _____, which was approved by the Court by order entered _____.
- 7.3 United States of America – Department of the Interior entered into a stipulation on April 23, 2015, which was approved by the Court by order entered April 24, 2015.
- 7.4 City of Greeley, Acting by and Through its Water and Sewer Board entered into a stipulation on February 26, 2015, which was approved by the Court by order entered February 27, 2015.
- 7.5 City of Thornton entered into a stipulation on April 17, 2015, which was approved by the Court by order entered April 20, 2015.
- 7.6 Cache la Poudre Water Users Association entered into a stipulation on _____, which was approved by the Court by order entered _____.
- 7.7 Colorado Division of Parks and Wildlife entered into a stipulation on February 3, 2015, which was approved by the Court by order entered February 6, 2015.
- 7.8 Soldier Canyon Filter Plant, North Weld County Water District, East Larimer County Water District, and Fort Collins-Loveland Water District entered into a stipulation on _____, which was approved by the Court by order entered _____.

7.9 Divide Canal and Reservoir Company entered into a stipulation on _____,
which was approved by the Court by order entered _____.

WATER STORAGE RIGHT

8. Name of Structure: Halligan Reservoir. The water storage right claimed by Fort Collins in this matter is part of its project to enlarge the existing Halligan Reservoir structure (also known as North Poudre Reservoir No. 16). The dam that will create the enlarged reservoir will be constructed at substantially the same location as the dam for the existing Halligan Reservoir. The enlarged Halligan Reservoir will have a total capacity of approximately 22,700 acre-feet, and will be designed such that it can store at the same time the total volumes of water associated with both: (a) the 6,408 acre-feet water storage right, including right to one refill, decreed to Halligan Reservoir in Case No. 11217, Larimer County District Court ("Halligan Reservoir Water Right"), which right is currently owned by the North Poudre Irrigation Company; and (b) the water storage right, including right to one refill, decreed herein to Fort Collins ("Halligan Reservoir Enlargement Water Right").

8.1 Amount claimed: The Application described a conditional water storage right in an enlarged Halligan Reservoir in an amount of 33,482 acre-feet, with the right to refill. Fort Collins' claim is for a water storage right in Halligan Reservoir, as enlarged, in addition to the Halligan Reservoir Water Right. Fort Collins has reduced the claimed amount for the Halligan Reservoir Enlargement Water Right to 16,250 acre-feet, conditional, with the right to one refill, conditional.

8.2 Legal description of location of proposed dam centerline: The centerline of the proposed dam for the enlarged Halligan Reservoir will cross the North Fork of the Cache la Poudre River at a point in the NE1/4 SW1/4 of Section 34, approximately 1,630 feet from the South section line and 1,719 feet from the West section line, Township 11 North, Range 71 West, of the 6th P.M., Larimer County, Colorado. Depending on final design of the dam and reservoir, the dam will be constructed across the North Fork of the Cache la Poudre River within approximately 1,500 feet of the proposed centerline described above. The proposed dam and enlarged Halligan Reservoir are generally depicted on the map attached hereto as **Exhibit A**.

8.3 Surface area of high water line of Halligan Reservoir, as enlarged:
Approximately 460 acres.

8.4 The vertical height of the proposed dam: From the lowest point of the natural surface of the ground where that point occurs along the longitudinal centerline of the proposed dam for the enlarged Halligan Reservoir up to the crest of the emergency spillway of the proposed dam is approximately 116.5 feet.

8.5 Length of the proposed dam: Approximately 600 feet.

8.6 Capacity. The total active capacity of Halligan Reservoir, as enlarged, will be approximately 22,700 acre-feet.

8.7 Sources for Filling: Halligan Reservoir, as enlarged, will be an on-channel reservoir. The sources for filling the Halligan Reservoir Enlargement Water Right include Six Mile Creek and Meadow Creek, which are tributaries to the North Fork of the Cache la Poudre River, and the North Fork of the Cache la Poudre River, which is tributary to the Cache la Poudre River.

8.8 Appropriation Information.

8.8.1 Date of Appropriation: December 10, 2013.

8.8.2 How appropriation was initiated: The Halligan Reservoir Enlargement Water Right was initiated through overt acts by Fort Collins showing its intent to appropriate the Halligan Reservoir Enlargement Water Right, and providing notice to others of Fort Collins' intent and the nature and scope of the intended appropriation. These acts included: (1) Fort Collins staff's and special legal counsel's analyses of, and other work on, the details of the conditional water storage right needed; (2) On December 10, 2013, the Executive Director of the Fort Collins' Utilities issued a memorandum stating that Fort Collins had formulated the necessary intent to appropriate the Halligan Reservoir Enlargement Water Right and directing staff and special legal counsel to take additional specific steps to provide necessary notice to the public; (3) On December 10, 2013, staff posted signs noticing Fort Collins' appropriation to the public, and posted notice on the City's Utilities website of the claimed appropriation; (4) On December 12, 2013, notice of the appropriation was published in the Fort Collins' Coloradoan; and (5) Special legal counsel filed the Application.

8.9 Date water applied to beneficial use: N/A

8.10 Uses: Fort Collins will use the Halligan Reservoir Enlargement Water Right for the following municipal and related beneficial uses within Fort Collins' service area as it now exists (as generally depicted on **Exhibit C**) or may from time to time be expanded: all municipal uses, including, but not limited to, domestic, industrial, commercial, hydroelectric power generation, irrigation (including, without limitation, agricultural irrigation), storage, stock watering, recreation, fish and wildlife propagation and maintenance, and environmental mitigation and restoration. Fort Collins will also reuse, make a succession of uses, and dispose of and fully consume the water available to the Halligan Reservoir Enlargement Water Right for these uses subject to the requirements of this decree. The use, reuse, successive use, and disposition to extinction of the water available to the Halligan Reservoir Enlargement Water Right may also include use for exchange, replacement, and augmentation, and to serve water users with whom Fort Collins has contracts to deliver water from its water system, and pursuant to contract exchanges or water trades made by mutual agreement with other water users, both within and outside of Fort Collins' current or future service areas, provided these uses are in accordance with a decree that authorizes the use, or pursuant to a substitute water supply plan approved under C.R.S. § 37-92-308 or interruptible water supply agreement approved under C.R.S. § 37-92-309, or successor statutes. The use, reuse, and successive use of the water available to the Halligan Reservoir Enlargement Water Right is further described in ¶21.1 and ¶21.2. No claims for approval of a plan for augmentation or for appropriative rights of exchange were made in this case, and no plan for augmentation or appropriative rights of exchange are decreed herein.

This decree authorizes Fort Collins to use the Halligan Reservoir Enlargement Water Right, by direct use and pursuant to contract exchanges or water trades made by mutual agreement with other water users, as an additional source of irrigation water for approximately 28,000 acres of already irrigated land located within the service area of the North Poudre Irrigation Company (as generally depicted on **Exhibit B**), which irrigated land generally falls within, but is not limited to, the following sections:

T6N/R68W

11

T7N/R67W

5, 6, 7, 8, 9, 16, 17

T7N/R68W	28, 33
T8N/R67W	30, 31, 32
T8N/R68W	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 24, 25, 26, 27, 30, 33, 35, 36
T8N/R69W	1, 3, 11, 12, 13, 24, 25
T8N/R70W	1, 11, 12, 13, 14
T9N/R68W	5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
T9N/R69W	1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 34, 35, 36
T9N/R70W	36
T10N/R68W	30, 31
T10N/R69W	14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, 36
T10N/R70W	18, 19, 20, 21, 22, 27, 28, 29

Fort Collins reserves the right to quantify and reuse the return flows from irrigation use of the Halligan Reservoir Enlargement Water Right on these lands. Such quantification is not decreed herein, and must be accomplished through a separate water court application and decree.

9. Fort Collins has provided evidence that it has the intent to divert and beneficially use the Halligan Reservoir Enlargement Water Right described in ¶8, that the Halligan Reservoir Enlargement Water Right is needed to serve its present and future growing demand, to facilitate the maximum utilization of its water resources portfolio, to further enhance its water supply system, and for the other beneficial uses

described herein, and that unappropriated water is available to satisfy the water storage right.

CONCLUSIONS OF LAW

10. Incorporation of Findings of Fact. The foregoing Findings of Fact are incorporated herein as if fully set forth.

11. Notice and Jurisdiction. The Water Court for Water Division No. 1 has jurisdiction over the subject matter of this proceeding and over all persons, owners of property, and water rights that may be affected by the Application, whether or not they have chosen to appear. The Application in this matter and the resume publication of the Application placed such persons on notice of the relief requested by Fort Collins and granted by this Decree.

12. Water Storage Right Contemplated by Law. The Application for approval of the Halligan Reservoir Enlargement Water Right, as described in ¶8, is contemplated by law and satisfies the requirements of §§ 37-92-101, et seq., C.R.S., including, but not limited to, §§ 37-92-103, 37-92-302, 37-92-305(1), and 37-92-305(9). Fort Collins has met its burdens of proof on all elements of the Halligan Reservoir Enlargement Water Right.

13. Approval. Fort Collins is entitled as a matter of law to a decree approving the Halligan Reservoir Enlargement Water Right described in ¶8.

14. Administration. The Halligan Reservoir Enlargement Water Right is administrable by the officials of the State of Colorado.

15. Can and Will. The Court concludes that the Halligan Reservoir Enlargement Water Right can and will be diverted, stored, or otherwise captured, possessed, and controlled, and will be beneficially used, and the water rights can and will be completed with diligence and within a reasonable time.

16. Demonstrated Need for the Water. Fort Collins has demonstrated its intent to make a non-speculative appropriation of unappropriated water based on: (1) a reasonable water supply planning period; (2) its substantiated population projections based upon a normal rate of growth for that planning period; and (3) a showing that the claimed amount of available unappropriated water is reasonably necessary to serve Fort

Collins' reasonably anticipated needs for the planning period, above its current water supply. *See Pagosa Area Water and Sanitation District v. Trout Unlimited*, 170 P.3d 307 (Colo. 2007).

17. Diligence During Pendency of Case. The Court finds that since the date of appropriation confirmed herein, Fort Collins has been diligent under all the facts and circumstances with respect to pursuing the Halligan Reservoir Enlargement Water Right.

RULING OF THE REFEREE AND DECREE

18. Incorporation of Findings and Conclusions. The foregoing Findings of Fact and Conclusions of Law are incorporated herein as if fully set forth.

19. Approval of Conditional Water Storage Right. The Halligan Reservoir Enlargement Water Right described in ¶8 is hereby confirmed, approved, adjudicated and decreed.

20. Terms and Conditions for Water Storage Right. The Halligan Reservoir Enlargement Water Right shall be subject to the following terms and conditions:

20.1 In-Priority Diversions. Fort Collins may divert and store water under the Halligan Reservoir Enlargement Water Right only when the right is in priority; provided however, that nothing herein shall preclude Fort Collins from seeking to store water under the Halligan Reservoir Enlargement Water Right pursuant to § 37-80-120, C.R.S., or successor statute(s). Water shall not otherwise be stored unless entitled to do so by virtue of the priority awarded herein or pursuant to some other decreed water right or administrative approval. At all other times, all inflow of water into the reservoir from any source, including precipitation, shall be released by Fort Collins into the nearest water course or below the reservoir through outlet works capable of passing all out-of-priority inflows within 72 hours of the out-of-priority storage.

20.2 Measurement and Recording. All measurable diversions, deliveries to, and releases of water from Halligan Reservoir, as enlarged, pursuant to the Halligan Reservoir Enlargement Water Right shall be measured daily. In addition to any measuring devices specifically required by this decree, Fort Collins shall install and

maintain, at Fort Collins' expense, any necessary meters, gauges, or other measuring devices reasonably required by the Water Commissioner or Division Engineer, and shall report at reasonable times to the Water Commissioner and/or Division Engineer the readings of such meters, gauges, or other measuring devices pursuant to § 37-92-502(5)(a), C.R.S. Fort Collins will provide the Division Engineer and Water Commissioner with a stage-area-capacity curve or tables for Halligan Reservoir, as enlarged.

20.3 Accounting.

20.3.1 Water Storage Accounts in Halligan Reservoir. Once enlarged, Halligan Reservoir will have separate water storage accounts for the Halligan Reservoir Water Right ("Halligan Reservoir Water Right Account"), and the Halligan Reservoir Enlargement Water Right ("Halligan Reservoir Enlargement Water Right Account").

20.3.2 Accounting Requirements. Water storage accounting for Halligan Reservoir shall follow a water year from November 1 to October 31 of the following year. The accounting for Halligan Reservoir shall include, at a minimum, the following information: (1) the name, location, and priority date of the calling water right; (2) the volume of water in storage, by account, and the water rights, or types of water rights, to which such water is attributable; (3) all measured inflows and outflows, by account; (4) evaporation losses, by account; (5) in and out-of-priority precipitation and other unmeasured inflows, by account; and (6) running annual totals on the first fill and the refill of the Halligan Reservoir Water Right and the Halligan Reservoir Enlargement Water Right.

20.3.3 Carryover. Accounting for carryover for the Halligan Reservoir Enlargement Water Right shall be performed separately from the accounting for carryover for the Halligan Reservoir Water Right. Any water stored under the Halligan Reservoir Enlargement Water Right and remaining in storage in the Halligan Reservoir Enlargement Water Right Account on October 31 of any year will be considered carryover storage for the new water year against the fill of the Halligan Reservoir Enlargement Water Right. Water stored in Halligan Reservoir in the Halligan Reservoir Enlargement Water Right Account at the end of any

water year other than water attributable to the Halligan Reservoir Enlargement Water Right ("Other Fort Collins Water") will not automatically count against the annual fill of the Halligan Reservoir Enlargement Water Right in the new water year. Instead, once the Halligan Reservoir Enlargement Water Right is filling in priority during the new water year, and storage of the Other Fort Collins Water results in insufficient capacity in the Halligan Reservoir Enlargement Water Right Account for additional water storage under the Halligan Reservoir Enlargement Water Right, Fort Collins will have the option of: (1) booking over the Other Fort Collins Water and counting it against the fill of the Halligan Reservoir Enlargement Water Right, or (2) choosing not to book over the Other Fort Collins Water, in which case the Halligan Reservoir Enlargement Water Right will be paper filled in the amount of in-priority water that could have been diverted and stored under the Halligan Reservoir Enlargement Water Right, or (3) releasing the Other Fort Collins Water from the Halligan Reservoir Enlargement Water Right Account. Any Other Fort Collins Water that is booked over will be accounted as and considered water stored under the Halligan Reservoir Enlargement Water Right. Any booking over will be at rates and times when water is legally and physically available for diversion under the Halligan Reservoir Enlargement Water Right.

20.3.4 Reporting. Accounting forms for Halligan Reservoir, as enlarged, will be prepared and submitted to the Division Engineer and Water Commissioner before water is stored therein. Fort Collins shall compile daily accounting, and shall submit such accounting to the Division Engineer on a monthly basis, or more frequently if requested by the Division Engineer. The accounting shall be delivered by Fort Collins to the Division Engineer and Water Commissioner as described herein, and to Objectors in the same format, if requested and upon payment of reasonable costs, except that if the accounting is provided to the Division Engineer in an electronic format, it shall be provided in the same format to requesting Objectors at no charge.

21. Terms and Conditions on Reuse and Successive Use.

21.1 In order to allow it to reuse, successively use, fully consume, and dispose of to extinction the water available to the Halligan Reservoir Enlargement Water Right, Fort Collins must maintain dominion and control over both the sewered and the non-sewered return flows resulting from its use of the right. Such dominion and control, and Fort Collins' reuse, successive use, full consumption, and disposition to extinction of water available to the Halligan Reservoir Enlargement Water Right that is discharged to the stream system after collection and treatment through the Fort Collins wastewater system or as subsurface returns resulting from outdoor municipal use within the Fort Collins service area will be accomplished and accounted for pursuant to the quantification methodology set forth in **Exhibit D** ("Quantification Methodology"). Fort Collins has demonstrated a specific plan to reuse, successively use, fully consume, and dispose of to extinction the water available to the Halligan Reservoir Enlargement Water Right pursuant to the Quantification Methodology and the terms and conditions of this decree. Subject to the requirements of this decree, Fort Collins may reuse, successively use, fully consume, and dispose of to extinction the sewered effluent and municipal lawn irrigation return flows resulting from municipal use of the water available to the Halligan Reservoir Enlargement Water Right for the uses described in this decree, provided the amount of such water available for such reuse, successive use, full consumption, and disposition is determined pursuant to the Quantification Methodology and is otherwise pursuant to the terms and conditions of this decree. Notwithstanding the other language in this paragraph, municipal lawn irrigation return flows from use of the water available to the Halligan Reservoir Enlargement Water Right quantified pursuant to the Quantification Methodology may only be used to meet return flow obligations and replacement and augmentation requirements within the river reach where they occur, and cannot be exchanged elsewhere or used for other purposes absent approval by the Court in a separate decree. This decree does not limit Fort Collins' ability to reuse, successively use, fully consume, or dispose of to extinction the water available to the Halligan Reservoir Enlargement Water Right in a manner or location that is different from that described and authorized in this decree, provided that any such reuse, successive use, full consumption, and disposition not so authorized must be made in accordance with a separate decree that authorizes the use, or pursuant to a substitute water supply plan approved

under C.R.S. 37-92-308 or interruptible water supply agreement approved under C.R.S. 37-92-309, or successor statutes.

21.2 The Fort Collins municipal service area is in the same drainage basins as the areas historically irrigated by the Southside Ditches, as identified in the decree entered in Water Division 1 Case No. 92CW129. Municipal return flows resulting from outdoor municipal water use of the water available to the Halligan Reservoir Enlargement Water Right in the Fort Collins municipal service area will accrue to each such drainage basin in proportion to the amount of the service area within each drainage basin. A portion of the service area has not been shown to have water table conditions underlying it, and there are three enclaves within this area which are not served by the Fort Collins Water Utility. The map attached and included with **Exhibit D** shows the respective areas within which Fort Collins may claim lawn grass irrigation return flow credits, the three areas not served by the Fort Collins Water Utility and within which Fort Collins may not claim such credits, and the area within which Fort Collins must demonstrate that water table conditions exist in a subsequent proceeding, prior to claiming such credits.

21.3 The Court retains continuing jurisdiction to consider whether modification of the return flow quantification methodology decreed herein is necessary to prevent injury to other water rights as a result of material changes in the Fort Collins municipal system or municipal consumptive use pattern.

22. Administration by State and Division Engineers. The State Engineer and Division Engineer shall administer the water storage right confirmed in this decree in accordance with the terms and conditions set forth herein.

23. Priority. The Halligan Reservoir Enlargement Water Right shall be administered as having been filed with the Court in 2013 and shall be junior to all water rights filed in previous years. As between all water rights filed in the same calendar year, priority shall be determined by appropriation dates and shall not be affected by the date of entry of ruling or decree.

24. Colorado Division of Parks and Wildlife. Fort Collins agrees that it will obtain all of the necessary authorizations to construct any structures on or inundate Colorado Division of Parks and Wildlife ("CPW") property prior to constructing any

structures on CPW property or inundating CPW property for the purpose of diverting and storing water under the Halligan Reservoir Enlargement Water Right decreed herein. This paragraph has no bearing on any existing authorizations or interests concerning CPW property related to the existing or enlarged Halligan Reservoir.

25. Colorado Water Conservation Board. Fort Collins acknowledges that the Colorado Water Conservation Board (“CWCB”) holds the following instream flow water rights (“CWCB Instream Flow Rights”):

CWCB Case No.	Stream/Lake	Amount (c.f.s.)	Appropriation Date	Watershed	County
85CW428	North Fork Cache la Poudre River	14	11/8/1985	Cache la Poudre	Larimer
85CW430	North Fork Cache la Poudre River	20	11/8/1985	Cache la Poudre	Larimer

25.1 The CWCB Instream Flow Rights are senior in priority to the Halligan Reservoir Enlargement Water Right decreed herein. Enlargement of the existing Halligan Reservoir (also known as North Poudre Reservoir No. 16) may result in the inundation of all or a portion of the CWCB Instream Flow Rights on the North Fork of the Cache la Poudre River, and such inundation may cause injury to the CWCB Instream Flow Rights. Fort Collins agrees that no diversion under the Halligan Reservoir Enlargement Water Right shall occur and no absolute water right should be granted for the Halligan Reservoir Enlargement Water Right until: (a) the CWCB has approved a request to inundate pursuant to Rule 7 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2, or any comparable successor rule, filed by Fort Collins with the CWCB regarding the enlargement of the existing Halligan Reservoir, and Fort Collins agrees to provide appropriate mitigation to offset any inundation in order to continue to preserve the natural environment to a reasonable degree as set forth in the CWCB’s approval of Fort Collins’ request to inundate; or (b) Fort Collins and the CWCB have otherwise reached an agreement pursuant to the CWCB rules and regulations enacted under C.R.S. §§ 37-60-108 and 37-92-102(3), or their successor statutes, that addresses the

potential injury that may occur to the CWCB Instream Flow Rights from the exercise of the Halligan Reservoir Enlargement Water Right.

25.2 Fort Collins has applied for a Clean Water Act Section 404 permit for enlarging Halligan Reservoir and, to assist the CWCB in its evaluation of injury to the CWCB Instream Flow Rights, agrees to provide to the CWCB staff copies of the draft and final environmental impact statements for that enlargement which will include a description of the alternatives considered for enlarging Halligan Reservoir to meet Fort Collins' purpose and need. If inundation of the CWCB Instream Flow Rights will occur as a result of enlarging Halligan Reservoir, Fort Collins agrees to provide mitigation as required by the CWCB for such inundation, and to inform the CWCB about issues that may affect the CWCB Instream Flow Rights after such inundation.

25.3 Upon reasonable notice and coordination, the CWCB and CPW shall have access to completed and submitted accounting records for the Halligan Reservoir Enlargement Water Right, and any measuring devices used to measure diversions of the Halligan Reservoir Enlargement Water Right.

25.4 Fort Collins has submitted to the CWCB, pursuant to its Instream Flow and Natural Lake Level Program Rules and Regulations, a request to defer the CWCB's consideration of a Request to Inundate pursuant to Rule 7j of those Rules and Regulations. The CWCB has agreed to defer such consideration until permitting by other state, federal, or local governmental agencies concerning the Halligan Reservoir enlargement is completed. In the event that Fort Collins is required by other governmental entities to provide mitigation to offset impacts of the Halligan Reservoir enlargement, the CWCB shall consider the cumulative effect of such mitigation on the mitigation or compensation it will require as a condition of granting its approval to inundate any portion of the CWCB Instream Flow Rights. Fort Collins agrees that, for any inundation caused by enlarging Halligan Reservoir, some mitigation other than that already required by the other governmental agencies should be provided in accordance with the CWCB's rules and the requirements of the Board's fiduciary duty to protect its existing instream flow under Colorado law. The CWCB may deny the request to inundate if it determines, pursuant to the Rules and Regulations Concerning Colorado's Instream Flow and Natural Lake Level Program in effect at that time, that

mitigation is insufficient or the request is inconsistent with the goals of the instream flow program. Prior to any construction that would cause inundation of the CWCB Instream Flow Rights, Fort Collins will comply with the CWCB rules in effect at that time regarding the mitigation to be made upon inundation of the CWCB Instream Flow Rights.

26. Stipulations and Settlements. The Stipulations entered into between Fort Collins and Objectors are approved by the Court.

27. Diligence. The Halligan Reservoir Enlargement Water Right is continued in full force and effect until _____. If Fort Collins desires to maintain the Halligan Reservoir Enlargement Water Right, an application for finding of reasonable diligence shall be filed on or before _____, or a showing made on or before such date that the Halligan Reservoir Enlargement Water Right has become an absolute water right by reason of the completion of the appropriation.

DATED this ____ day of _____, 20__.

BY THE REFEREE:

John S. Cowan
Water Referee
Water Division No. 1

Findings of Fact, Conclusions of Law, Ruling
of the Referee, and Decree of the Water Court

City of Fort Collins

Case No. 2013CW3185

Page 17 of 17

THE COURT DOTH FIND: NO PROTEST WAS FILED IN THIS MATTER. THE
FOREGOING FINDINGS AND RULING ARE CONFIRMED AND APPROVED, AND
ARE HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

DATED this __day of _____, 20__.

BY THE COURT:

James F. Hartmann
Water Judge
Water Division No. 1

**COLORADO****Colorado Water
Conservation Board**

Department of Natural Resources

1313 Sherman Street
Denver, CO 80203P (303) 866-3441
F (303) 866-4474

John Hickenlooper, Governor

Mike King, DNR Executive Director

James Eklund, CWCB Director

TO: Colorado Water Conservation Board Members

FROM: Linda Bassi, Section Chief
Kaylea White, Senior Water Resource Specialist
Stream and Lake Protection Section

DATE: May 20-21, 2015 Board Meeting

AGENDA ITEM: Consent Agenda # 2. Deferral of Consideration of Request to Inundate;
Case No. 1-13CW3185: Application of the City of Fort Collins

Staff requests Board ratification of the Director's decision in this case to approve a deferral of the Board's consideration of the City of Fort Collins' ("City") inundation request, pursuant to ISF Rule 7 Inundation of ISF Rights ("Inundation"). The City has requested that the Board defer its consideration to inundate CWCB's instream flow water rights on the North Fork of the Cache la Poudre River, tributary to the Platte River. At this time, the City desires to move ahead with its water court decree for a conditional water right to enlarge Halligan Reservoir (also known as North Poudre Reservoir No. 16) without final resolution on the inundation issue. The City has agreed to include terms and conditions in its decree that it shall request the Board's consideration of its request to inundate prior to diverting the enlargement water right. This memo addresses the deferral request with a general description of the potential extent of inundation. A map is attached as Exhibit A and Applicant's request for deferral is attached as Exhibit B.

Staff Recommendation

Staff recommends that the Board:

- Defer consideration of a request to inundate, so long as,
- The City agrees to terms and conditions in its water court decree requiring the City to request the Board's approval of its inundation request before it diverts the enlargement water right.
- Not take action regarding the stipulation, but rather allow full resolution of the case to proceed as usual, under CWCB's ISF Rules wherein the Board has delegated authority to its Director to authorize resolution of opposed water court cases.

Case Background

The City submitted an application for a conditional water storage right in Case No. 1-13CW3185. In that case, the City is seeking a 16,250 acre-foot Halligan Reservoir Enlargement for a total reservoir capacity of 22,700 acre-feet with a December 10, 2013 appropriation date. Halligan Reservoir is an existing on-channel reservoir on the North Fork of the Cache la Poudre River, tributary to the Cache la Poudre River. The proposed dam and enlarged Halligan Reservoir are generally depicted on the attached map as Exhibit A.

**Attachment to Halligan Water Supply
Project: City of Fort Collins' Request
Under Rule 7 of the ISF Rules to Inundate
a Portion of an Instream Flow Water
Right**

tion • Flood Planning & Mitigation • Stream & Lake Protection
Conservation & Drought Planning • Water Supply Planning



If decreed, this conditional water storage right will be junior to the instream flow water rights ("ISF") on the North Fork of the Cache la Poudre River and may inundate approximately 2.0 miles of two ISF water rights. Proposed uses of the stored water generally are, all municipal and related beneficial uses within the City's service area and service to water users via contracts, contract exchanges or water trades, with a right to use and reuse to extinction.

In March 2014, the Board ratified the statement of opposition to this application partially because the inundation could injure the Board's ISF water rights set forth below. CWCB became a party in this case with the intent of negotiating terms and conditions to protect the Board's ISF water rights by developing a plan with applicant to mitigate for any ISF interference that would result from the inundation.

The Board holds the following ISF water rights that could be injured by this application:

CWCB Case No.	Stream/Lake	Amount (cfs)	Approp. Date	Watershed	County
1-85CW428	North Fork Cache la Poudre River	14	11/8/1985	Cache la Poudre	Larimer
1-85CW430	North Fork Cache la Poudre River	20	11/8/1985	Cache la Poudre	Larimer

The ISF water right on the North Fork of the Cache la Poudre River decreed in Case No. 85CW430 that may be fully inundated, and the ISF water right decreed in Case No. 85CW428 that may be partially inundated by the Halligan Reservoir expansion extend from the confluence with Sheep Creek to the confluence with Dale Creek to the confluence with the existing Halligan Reservoir, approximately 15 miles northwest of Fort Collins, Colorado. Staff will continue negotiations in this case to ensure that the other aspects of the ISF water rights on the North Fork of the Cache la Poudre River will be 100% protected with terms and conditions in the decree.

Discussion

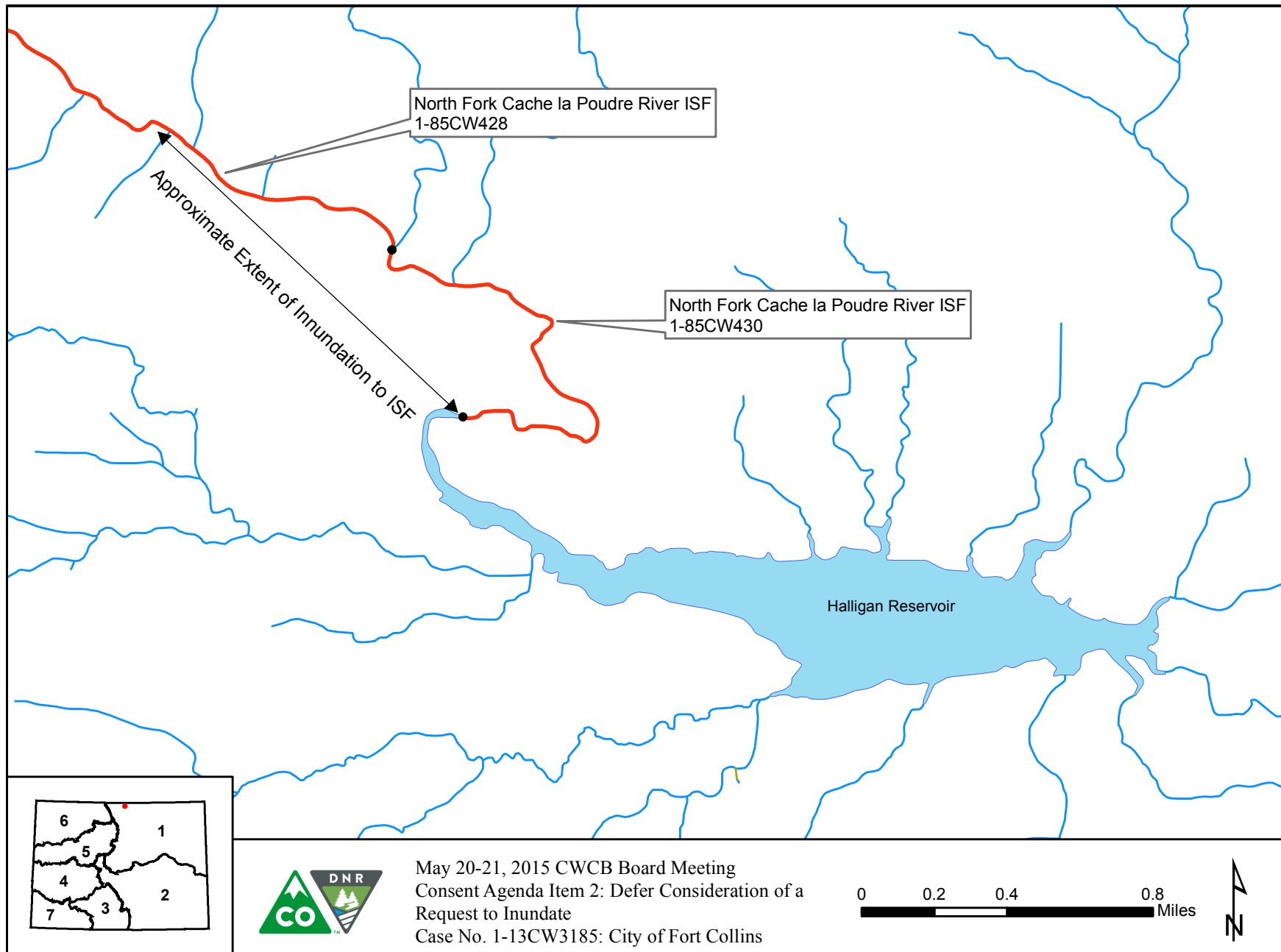
ISF Rule 7g. allows the Board several options regarding a request to inundate an ISF water right: to approve, approve with conditions, defer, or deny the request to inundate. Rule 7j. allows the Board to defer, as follows:

When it appears that other governmental agencies may impose terms and conditions upon the issuance of a permit to construct a facility which will cause an inundation, the Board may defer consideration of the request to inundate until all other governmental bodies have finalized the permit or approval conditions.

The City requests that the Board defer its consideration and has agreed to including terms and conditions in its decree that it shall request the Board's consideration of its request to inundate after applying for the required state and federal permits and approvals and prior to diverting the enlargement water right. CWCB and Colorado Parks and Wildlife ("CPW") staff agree that the appropriate course of action is to defer the request at this time.

Attachments

- Exhibit A: Map
Exhibit B: Applicant's Request to Defer its Request to Inundate





May 7, 2015

Via email Only

Colorado Water Conservation Board
c/o Linda Bassi, Section Chief
Stream and Lake Protection Section
Colorado Water Conservation Board
Department of Natural Resources
1313 Sherman Street, Room 721
Denver, CO 80203

Re: Halligan Reservoir Enlargement (Case No. 2013CW3185)
Fort Collins' request (a) to defer consideration of potential ISF inundation, and
(b) to approve stipulation to resolve CWCB statement of opposition

Members of the Board:

I am writing this letter to request the Colorado Water Conservation Board ("CWCB") to defer, pursuant to Rule 7j, its consideration of a request to inundate, and to approve the attached stipulation and proposed decree to resolve the CWCB's opposition in the above-referenced case.

In 2006, the City of Fort Collins ("City") initiated the Clean Water Act Section 404 permitting process to obtain Corps of Engineers' approval to enlarge the existing Halligan Reservoir located on the North Fork of the Poudre River ("North Fork"). That approval would have enabled the City to perfect its 1985 conditional water right for the Halligan Reservoir Enlargement. Due to an oversight, the diligence application for the 1985 conditional water right for the Halligan Reservoir Enlargement was not timely filed in 2013 and, as a result, that right was cancelled by operation of law.

The City still intends to enlarge Halligan Reservoir as part of its municipal water system and is still proceeding to obtain Corps' approval for the enlargement. As a result, the City addressed the 1985 water right cancellation by filing for a new conditional water right for an enlarged Halligan Reservoir which would have a 2013 priority.

May 7, 2015

Page 2

The CWCB holds certain Instream Flow Rights (“ISFs”) on the North Fork that generally begin at the current high water level of the existing Halligan Reservoir. Thus, any enlargement of the existing Halligan Reservoir is likely to inundate those ISFs and, in turn, may cause injury to them. Although those ISFs were junior to the cancelled 1985 right for the Halligan Reservoir Enlargement, they are senior in priority to the City’s new conditional water right. As a result, the City must request approval from the CWCB under Rule 7 before any inundation can occur.

At the present time, the City does not know if enlarging Halligan Reservoir (which is the City’s preferred alternative) will be permitted by the Corps. As you may know, the Corps is required to evaluate other reasonable alternatives that would satisfy the City’s purpose and need for enlarging Halligan Reservoir, and the Corps will ultimately make a decision on which of those alternatives is the least environmentally damaging practicable alternative or LEDPA. Thus, until that decision is made, the City does not know if, and to what extent, the CWCB’s ISFs on the North Fork will be inundated and/or injured. As a result, the City is not in a position to actually submit an inundation approval request and, therefore, hereby seeks the CWCB’s approval to defer consideration of the inundation matter as provided for in Rule 7j.

Despite the uncertainty about the potential inundation of the CWCB’s ISFs on the North Fork, the City would like to resolve the CWCB’s opposition to the City’s new conditional water right application. To do so, the City proposes to enter into a stipulation with the CWCB that preserves the CWCB’s rights regarding inundation review. Specifically, the City requests the CWCB’s approval of the attached stipulation and proposed decree to be filed in the above-referenced case which provides, among other items, that no diversion of water shall be made under the new conditional water right for the Halligan Reservoir Enlargement until:

(a) the CWCB has approved a request to inundate pursuant to Rule 7, or any comparable successor rule, filed by the City with the CWCB regarding the enlargement of the existing Halligan Reservoir, and the City agrees to the mitigation and other conditions that the CWCB incorporates into such approval; or (b) the City and the CWCB have otherwise reached an agreement pursuant to the CWCB’s rules and regulations enacted under C.R.S. §§ 37-60-108 and 37-92-102(3), or their successor statutes, that addresses the potential injury that may occur to the CWCB’s ISFs from the exercise of that right.

The City believes this condition is sufficient to protect and preserve the CWCB’s ISFs on the North Fork against the City’s new conditional water right. Further, settling the above-referenced case in this manner is appropriate given the status of the ongoing Clean Water Act Section 404 permitting process for enlarging Halligan Reservoir.

Thank you for your time and consideration in this matter. A representative of the City will be at the CWCB’s May meeting to address any questions you have.

May 7, 2015

Page 3

Sincerely,

VRANESH AND RAISCH, LLP

/s/ Eugene J. Riordan
Eugene J. Riordan, Esq.

Attachments

ec w/attachs: Stuart B. Corbridge, Esq.
Eric R. Potyondy, Esq.
Susan Schneider, Esq.
Kaylea White