ATTACHMENT Q

DISTRICT COURT, WATER DIVISION 5, COLORADO Garfield County Courthouse 109 8th Street, Suite 104 Glenwood Springs, CO 81601	**DRAFT** **April 5, 2012** CRE 408: FOR PURPOSES OF COMPROMISE AND SETTLEMENT ▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS IN GRAND COUNTY, COLORADO	Case No: 2007CW029 (C.A. No. 1430; W-3757; Case Nos. 82CW127; 86CW129; 90CW116; 98CW189 WD5) Div.: Water Division No. 5
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE WATER COURT	

THIS MATTER comes before the Court concerning the Application for Finding of Reasonable Diligence for the Darling Creek Enlargement and Extension of the Williams Fork Diversion project, Williams Fork Power Conduit, and the Moffat Tunnel Collection System by the Applicant, City and County of Denver, acting by and through its Board of Water Commissioners (hereinafter "Denver Water"). Having reviewed and considered the pleadings, documentary and other evidence, the stipulations of several parties, and the arguments of counsel, the Court finds, determines and decrees that:

I. FINDINGS OF FACT

The Court having received and considered all evidence offered, pleadings, and arguments by counsel, hereby makes the following findings:

GENERAL MATTERS

1. Applicant.

City and County of Denver,
acting by and through its
Board of Water Commissioners
("Applicant" or "Denver")
1600 West 12th Avenue,
Denver, Colorado 80204
(303) 628-6000

Denver Water is a home rule municipal corporation of the State of Colorado. Denver Water derives its authority and power to operate a water supply system under the state constitution, the Denver City Charter and provisions of state law. Pursuant to the Denver City Charter, Denver Water provides all treated and raw water necessary for the full development of land within the City and County of Denver. Pursuant to perpetual water service agreements, Denver Water serves as the water utility for other governmental entities outside the City and County of Denver, but within Denver Water's Service Area, providing all treated and raw water necessary to serve the full development of all land within the Service Area depicted in Exhibit ___. Denver Water also has commitments to provide nearly 68,000 acre-feet of treated and raw water to customers outside its Service Area under perpetual fixed amount contracts listed on Exhibit ___. The entities receiving water under fixed amount contracts are all located within the Counties of Adams, Arapahoe, Douglas and Jefferson and the City and County of Broomfield. From time to time, Denver Water provides treated and raw water to customers under temporary arrangements.

Denver Water operates extensive raw water collection systems including the South Platte Collection System, the Roberts Tunnel Collection System, the Moffat Tunnel Collection System and the Williams Fork Diversion System. On the South Platte River, Denver Water typically stores water at Antero, Eleven Mile, Cheesman and Chatfield reservoirs for delivery or exchange of water to either Strontia Springs Reservoir or Conduit 20 intakes in Waterton Canyon. Denver Water stores and diverts Colorado River water at Dillon Reservoir and delivers this water through the Roberts Tunnel to the North Fork of the South Platte River above Strontia Springs Reservoir. Denver Water also collects water from the Fraser and Williams Fork Rivers for delivery through the Moffat Tunnel for storage in Gross Reservoir and delivery to Ralston Reservoir via the South Boulder Diversion Canal.

Raw water diverted from these systems is treated at Foothills, Marston and Moffat treatment plants and delivered to Denver Water's customers in the metropolitan area. Denver Water also delivers raw water to a number of customers. After indoor use by customers, the water is discharged back to the South Platte River as treated effluent from the

Littleton-Englewood or the Metropolitan Reclamation District Wastewater Treatment Plant. Water used outdoors returns to the South Platte River by means of lawn irrigation return flows. Denver Water possesses and controls water from the various streams and rivers by diversion, storage, treatment and delivery and also through contractual provisions in its treated and raw water leases with various water suppliers.

Denver Water operates exchanges of its water to and from various facilities in its system including Strontia Springs Diversion facility (a/k/a Roxborough Diversion facility), Cheesman Reservoir and Chatfield Reservoir. Denver Water diverts by exchange water otherwise out of priority, replacing an equivalent amount of water to the river to satisfy the calling senior water right. Denver Water has various types of replacement water available in its system, including releases from storage, Colorado River sources, reusable wastewater return flows and lawn irrigation return flows.

2. Water Rights at Issue. The water rights at issue in this matter are the water rights decreed in Civil Action No. 1430, Grand County District Court, November 7, 1974 (collectively referred to as the "Subject Water Rights").

3. Application. The Application at issue in this matter is the Application filed by Denver Water on February 27, 2007, for finding of reasonable diligence in Case No. 2007CW029.

4. Jurisdiction. The Court has subject matter jurisdiction over the Application and this proceeding, and personal jurisdiction over all persons who would have standing to appear as parties, regardless of whether they have appeared.

5. Notice. Timely and adequate notice of the pendency of this proceeding in rem has been given in the manner required by law. The Application was published in the March 2007 resume. Newspaper notice of the Application was also provided in the Grand Junction Daily Sentinel, the Glenwood Springs Post Independent, and the Granby Sky-High News during the month of March 2007. Denver Water also provided notice to owners or reputed owners of land upon which any new diversion or storage structures, including the City of Englewood, Bureau of Land Management, the United States of America, and Climax Molybdenum Company.

6. Statements of Opposition. The following Objectors filed timely statements of opposition: Trout Unlimited; Climax Molybdenum Company; Grand Valley Water Users Association; Orchard Mesa Irrigation District; Middle Park Water Conservancy District; City of Englewood; Intrawest-Winter Park Operations Corporation; and the Colorado River Water Conservation District.

7. Withdrawals of Statements of Opposition. On May 7, 2007, Intrawest-Winter Park Operations Corporation withdrew its statement of opposition in this matter.

8. Stipulations. The following Objectors have stipulated to a form of this Decree under stipulations entered into with Denver Water: Grand Valley Water Users Association; Orchard Mesa Irrigation District; Middle Park Water Conservancy District; and the Colorado River Water Conservation District. These Objectors and other West Slope entities entered into an agreement with Denver Water dated _____, 2012, which is the basis upon which the Objectors have entered the stipulations and provided their consent to these Findings of Fact, Conclusions of Law, and Judgment and Decree.

9. Summary of Consultation. A Summary of Consultation by the Division Engineer for Water Division 5 was entered on May 11, 2007. Denver Water served the Summary of Consultation on all parties to this matter on June 8, 2007.

10. Re-referral. On October 5, 2007, Climax Molybdenum Company moved to re-refer this matter to the Water Court. An order of re-referral was entered October 23, 2007.

DESCRIPTION OF SUBJECT WATER RIGHTS

11. Name of Structures and Systems. The following structures and systems are at issue in this matter: (1) Darling Creek Enlargement and Extension of the Williams Fork Diversion Project; (2) Williams Fork Power Conduit; (3) Moffat Tunnel Collection System.

12. Locations of Points of Diversion and Places of Storage.

(1) Darling Creek Enlargement and Extension of the Williams Fork Diversion Project. Locations of the several points of diversion of the canals of the Darling Creek Enlargement and Extension of the Williams Fork Diversion Project are as follows:

(a) West Branch of Darling Creek – a point on the South bank of the West branch of Darling Creek whence the southeast corner of Section 8, Township 3 South, Range 77 West, of the 6th P.M., bears South 39°27' West a distance of 11,939 feet.

(b) The North Fork of Darling Creek – a point on the North bank of the North Fork of Darling Creek whence the southeast corner of Section 8,

Township 3 South, Range 77 West, of the 6th P.M., bears South 49°53' West a distance of 16,640 feet.

(c) The South Fork of Darling Creek – a point on the South bank of the South Fork of Darling Creek whence the southeast corner of Section 8, Township 3 South, Range 77 West, of the 6th P.M. bears South 59°39' West a distance of 15,368 feet.

(d) Eleventh Creek – a point on the South bank of Eleventh Creek, whence the southeast corner of Section 8, Township 3 South, Range 77 West, of the 6th P.M. bears South 67°16' West a distance of 12,705 feet.

(e) Those points along the unnamed streams described under sources where the project facilities intersect said streams.

The places of storage in Water Division 1 are as follows:

(f) Gross Reservoir – a dam constructed across the bed of South Boulder Creek in Boulder County, Colorado located in Tracts 48 and 49, Township 1 South, Range 71 West, 6th P.M. (where the North one-half (N1/2) of the Southeast quarter of Section 20, Township 1 South, Range 71 West, the 6th P.M. would be located by ordinary survey practices), and will create a reservoir covering parts of Tracts 47, 48, 49, 44, 45, 63, 107, 108, 109, 110, the South half (S1/2) of the South half (S1/2) of Section 18, Section 19, Section 30, the South half (S1/2) of the Northeast quarter (NE1/4) of Section 25, and the East half (E1/2) of the Southeast quarter (SE1/4) of Section 24, all in Township 1 South, Range 71 West, of the 6th P.M. in Boulder County, Colorado.

(g) Ralston Reservoir – the dam for which is located on or near the East side of the Northeast quarter (NE1/4) of the Southeast quarter (SE1/4) of Section 32, Township 2 South, Range 70 West, of the 6th P.M. and creates a reservoir which covers parts of Section 32, Township 2 South, Range 70 West, of the 6th P.M., and Sections 5 and 6, Township 3 South, Range 70 West of the 6th P.M., in Jefferson County, Colorado.

(h) Marston Reservoir – a dam for which is located in Jefferson County, Colorado in Township 5 South, Range 69 West, of the 6th P.M..

(i) Two Forks Reservoir – a dam to be constructed across the South Platte River at one of the following places:

i. A dam located in Section 30, Township 7 South, Range 69 West, 6th P.M. in the bed of the South Platte River, or

ii. A dam to be located in Section 1, Township 8 South, Range 70 West, 6th P.M. across the bed of the South Fork of the South Platte River.

(j) Cheesman Reservoir – is formed by a dam across the South Fork of the South Platte River located in the Southwest quarter (SW1/4) of Section 6, Township 10 South, Range 70 West, of the 6th P.M., in Douglas and Jefferson Counties.

(k) Eleven Mile Canon Reservoir – located in the stream above an arch type dam across the bed of the South Fork of the South Platte River located near the center of the Southwest quarter (SW1/4) of Section 20, Township 13 South, Range 72 West, 6th P.M., in Park County, Colorado.

(l) Antero Reservoir – located in the stream above a dam across the bed of the South Fork of the South Platte River in Sections 21 and 28, Township 12 South, Range 76 West, 6th P.M. in Park County, Colorado.

(2) Williams Fork Power Conduit. The point of diversion for the Williams Fork Power Conduit is located in the Williams Fork Reservoir Dam, the Southeast end of the dam which is at a point whence Southeast corner of Section 23, Township 1 North, Range 79 West, 6th P.M. bears South 24°53' East a distance of 2,175 feet.

(3) Moffat Tunnel Collection System.

Points of Diversion:

(a) Meadow Creek Meadow Creek – a point on the South bank of said creek from which point the Northwest corner of Section 15, Township 1 North, Range 75 West, 6th P.M., bears North 44°14.2' West 2,689.6 feet.

(b) Trail Creek – a point on the South bank of said creek from which point the Southeast corner of Section 15, Township 1 North, Range 75 West, 6th P.M., bears South 60°26.5' East 1,149.3 feet.

(c) Hurd Creek – a point on the South bank of said creek from which point the Southwest corner of Section 26, Township 1 North, Range 75 West, 6th P.M., bears South 83°8.4' West a distance of 2,105.5 feet.

(d) Hamilton Creek – a point on the South bank of said creek from which point the Northeast corner of Section 2, Township 1 South, Range 75 West, 6th P.M., bears North 76°52.1' East 2,642.8 feet.

(e) Cabin Creek – a point on the North bank of said creek from which point the Northeast corner of Section 2, Township 1 South, Range 75 West, 6th P.M., bears North 21°29.2' East 4,930.4 feet.

(f) Little Cabin Creek – a point on the South bank of said creek from which point the Northeast corner of Section 11, Township 1 South, Range 75 West 6th P.M., bears North 20°27.5'East 2,580.4 feet.

(g) Beaver Creek – a point on the North bank of said creek from which point the Southeast corner of Section 14, Township 1 South, Range 75 West, 6th P.M., bears South 7°38.3' East 2,633.4 feet.

Places of storage in Water Division No. 5:

(h) Meadow Creek Reservoir – a dam to be constructed across Meadow Creek, the right abutment of which is at a point from which the Northwest corner of Section 14, Township 1 North, Range 75 West, 6th P.M., bears North 84°09.1' West 4,226.1 feet.

(i) Cabin Creek Reservoir – a dam to be constructed across Cabin Creek, the right abutment of which is at point from which the Northeast corner of Section 2, Township 1 South, Range 75 West, 6th P.M., bears North 17°21' East a distance of 4,517.8 feet.

Places of storage in Water Division No. 1:

(j) Gross Reservoir – a dam constructed across the bed of South Boulder Creek in Boulder County, Colorado located in Tracts 48 and 49, Township 1 South, Range 71 West, 6th P.M. (where the North half (N1/2) of the Southeast quarter of Section 20, Township 1 South, Range 71 West, the 6th P.M., would be located by ordinary survey practices) and will create a

reservoir covering parts of Tracts 47,48, 49, 44, 45, 63, 107, 108, 109, 110, the south half (Sl/2) of the south half of Section 18, Section 19, Section 30, South half (S1/2) of the Northeast quarter (NE1/4) of Section 25, the East half (E1/2) of the Southeast quarter (SE 1/4) of Section 24, all in Township 1 South, Range 71 West, of the 6th P.M. in Boulder County, Colorado.

(k) Ralston Reservoir – a dam for which is located on or near the East side of the Northeast quarter (NE1/4) of the Southeast quarter (SE1/4) of Section 43, Township 2 South, Range 70 West, of the 6th P.M., and creates a reservoir which covers parts of Section 32, Township 2 South, Range 70 West, 6th P.M., in Sections 5 and 6, Township 3 South, Range 70 West, of the 6th P.M., in Jefferson County, Colorado.

(l) Marston Reservoir – the dam for which is located in Jefferson County, Colorado in Township 5 South, Range 69 West, of the 6th P.M.

(m) Two Forks Reservoir – a dam to be constructed across the South Platte River at one of the following places:

i. A dam located in Section 30, Township 7 South, Range 69 West, 6th P.M., in the bed of the South Platte River; or

ii. A dam to be located in Section 1, Township 8 South, Range 70 West, of the 6th P.M., across the bed of the South Fork of the South Platte River.

(n) Cheesman Reservoir – is formed by a dam across the South Fork of the South Platte River located in the Southwest quarter (SE1/4) of Section 6, Township 10 South, Range 70 West, 6th P.M., in Douglas and Jefferson Counties.

(o) Eleven Mile Canõn Reservoir – located in the stream above an arch-type dam across the bed of the South Fork of the South Platte River located near the center of the Southwest quarter (S1/4) of Section 20, Township 13 South, Range 72 West, 6th P.M., in Park County, Colorado.

(p) Antero Reservoir – located in the stream above a dam across the bed of the South Fork of the South Platte River in Sections 21 and 28, Township 12 South, Range 76 West, 6th P.M., in Park County, Colorado.

13. Source.

(1) Darling Creek Enlargement and Extension of the Williams Fork Diversion Project. West Branch of Darling Creek, North Fork of Darling Creek, South Fork of Darling Creek, Eleventh Creek and tributary and intervening tributary drainage thereto and unnamed streams between those streams which are named and the point of connection of the system with Claimant's present facilities at McQueary Creek.

(2) Williams Fork Power Conduit. Williams Fork River.

(3) Moffat Tunnel Collection System. Tributaries of the Fraser River and intervening drainage thereto.

14. Appropriation Dates.

(1) Darling Creek Enlargement and Extension and Extension of the Williams Fork Diversion Project. August 26, 1953

(2) Williams Fork Reservoir Power Conduit. October 9, 1956

(3) Moffat Tunnel Collection System. August 30, 1963

15. Amount.

(1) Darling Creek Enlargement and Extension of the Williams Fork Diversion Project.

(a) For direct and immediate use from.

(i) West Branch Darling Creek. 5 c.f.s., conditional

(ii) North Fork of Darling Creek. 25 c.f.s., conditional

(iii) South Fork of Darling Creek. 25 c.f.s., conditional

(iv) Eleventh Creek and tributary drainage. 35 c.f.s., conditional

Total: 90 c.f.s., conditional

(b) For Storage for later use, the following amounts to be stored in.

(i) Gross Reservoir. 113,078 ac. ft.

(ii) Ralston Reservoir. 12,758 ac. ft.

(iii) Marston Reservoir. 19,800 ac. ft.

(iv) Two Forks Reservoir. 600,000 ac. ft.

(v) Cheesman Reservoir. 79,000 ac. ft.

(vi) Eleven Mile Canon Reservoir. 97,779 ac. ft.

(vii) Antero Reservoir. 85,564 ac. ft.

(2) Williams Fork Reservoir Power Conduit.

For direct and immediate use:

105 c.f.s., conditional
295 c.f.s., absolute
400 c.f.s. total

(3) Moffat Tunnel Collection System for direct and immediate use.

(a) For direct and immediate use from.

100 c.f.s., conditional

(b) For storage and alter use, the following amounts to be stored in.

(i) Meadow Creek Reservoir. 5,100 ac. ft.

(ii) Cabin Creek Reservoir. 4,250 ac. ft.

(iii) Gross Reservoir. 113, 078 ac. ft.

(iv) Ralston Reservoir. 12,758 ac. ft.

(v) Marston Reservoir. 19,800 ac. ft.

(vi) Two Forks Reservoir. 600,000 ac. ft.

(vii) Cheesman Reservoir. 79,000 ac. ft.

(viii) Eleven Mile Canon Reservoir. 81,917 ac. ft.

(ix) Antero Reservoir. 85,564 ac. ft.

16. Use:

(1) Darling Creek Enlargement and Extension of the Williams Fork Diversion Project. All municipal uses, including domestic use, mechanical use, manufacturing use, generation of electric power, power generally, fire protection, use for sewage treatment, street sprinkling, watering of parks, lawns and grounds, maintaining of adequate storage reserves, irrigation, exchange, replacement and the adjustment and regulation of the units of the Denver Municipal Water System within themselves and with other water users.

(2) Williams Fork Reservoir Power Conduit. The mechanical purpose of generating electric energy, and in part as an adjunct to additional uses, through exchange for the following purposes:

All municipal uses, including domestic use, mechanical use, manufacturing use, generation of electric power, power generally, fire protection, sewage treatment, street sprinkling, watering of parks, lawns and grounds, maintaining of adequate storage reserves, irrigation, exchange, replacement and the adjustment and regulation of the units of the Denver Municipal Water System within themselves and with other water users.

(3) Moffat Tunnel Collection System. All municipal uses, including domestic use, mechanical use, manufacturing use, generation of electric power, power generally, fire protection, sewage treatment, street sprinkling, watering of parks, lawns and grounds, maintaining of adequate storage reserves, irrigation, exchange, replacement and the adjustment and regulation of the units of the Denver Municipal Water System within themselves and with other water users.

17. Integration with Existing Municipal Water System. The water collected in the Darling Creek Enlargement of the Williams Fork Collection System can be transported through the Jones Pass Tunnel to Clear Creek or redirected at the Vasquez Tunnel for transportation to the Moffat Tunnel to South Boulder Creek. Water diverted in the Moffat Tunnel Collection System facilities connects to Denver Water's Ranch Creek collection system for transportation to the Moffat Tunnel to South Boulder Creek. Once in the South Platte watershed, Denver Water can directly store the Subject Water Rights in Gross and Ralston Reservoirs; and by exchange, to Strontia Springs Reservoir, the proposed Two Forks Reservoir; Cheesman, Eleven Mile Cañon, and Antero Reservoirs. Denver Water can then deliver these waters to its intake structures on South Boulder Creek or Waterton Canyon (Strontia Springs or Conduit 20) for treatment at Moffat, Foothills or Marston Water Treatment Plants. After treatment, Denver Water can deliver potable water to any part of its service area by means of conduits, pumping plants, and clear water reservoirs. Effluent from the use of water diverted under the Subject Water Rights can be recaptured at Denver Water's gravel pit reservoirs for exchange into its municipal water system or treated at Denver Water's Recycle Water Plant for further non-potable uses. Power generated at the Williams Fork Power Plant is used to pay power interference under the Blue River Decree.

APPLICANT'S CLAIM FOR FINDING OF REASONABLE DILIGENCE

18. Denver has been Reasonably Diligent. On February 2, 2001, the Water Judge for Water Division No. 5, in Case No. 98CW189, confirmed and approved the ruling of the referee, which found that Denver Water had diligently prosecuted work toward the completion of the Subject Water Rights. In finding that Denver Water had been reasonably diligent in the development of the Subject Water Rights, the court continued the conditional Subject Water Rights in full force and effect and ordered Denver Water to file an Application for Finding of Reasonable Diligence on or before the last day of February 2007. On February 27, 2007, Denver Water filed this Application for a finding of reasonable diligence and to make absolute, in accordance with the Order of the court dated February 2, 2001, and C.R.S. § 37-92-301(4).

19. The Subject Water Rights are Part of Denver Water's Integrated System. The Fraser River Diversion Project and the Williams Fork Diversion Project are integral parts of the Denver Municipal Water System. The projects are large and intricate, require extensive scientific research and development, and necessarily take many years to complete in a sequence established and executed by Denver Water and its employees to bring about the complete utilization of all the waters involved, expeditiously and with reasonable diligence. Denver Water has demonstrated a steady application of effort to complete the appropriation of the Subject Water Rights. Work on the facilities necessary to put the subject waters to

their decreed beneficial uses has progressed continuously and without interruption, and in the most expedient and efficient fashion possible under the circumstances. Work accomplished toward the completion of the Subject Water Rights and application of water to the beneficial uses for which they are decreed includes work which has been done on the design, construction, and integration of structures for the storage, treatment, distribution, and reuse and successive use of the waters which are the subject of this proceeding. Such work has progressed continuously and without interruption and with reasonable dispatch.

20. Diligence Activities. The Darling Creek Enlargement and Extension of the Williams Fork Diversion Project, the Williams Fork Power Conduit and the Moffat Tunnel Collection System are an integral part of the Denver Municipal Water Works System. Denver Water has regularly operated the Williams Fork Power Conduit and the Moffat Tunnel Collection System during the diligence period. Completion of the conditional portions of the Subject Water Rights will depend upon future hydrologic circumstances and demands in the Denver Municipal Water System. No evidence was presented of any circumstance that would prevent waters under the conditional water right from being diverted, stored, or otherwise captured, possessed and controlled and applied to beneficial use within a reasonable time. The activities completed by Denver Water during the most recent diligence period are set forth in paragraph 4 of the Application filed in this matter. The diligence activities described in the Application and are incorporated herein by this reference.

21. Need. Based on the evidence considered by the court in connection with the following factors, the court finds that Denver Water continues to have a non-speculative need for the conditional portion of the Subject Water Rights that are the subject of this decree.

(1) Denver Water has a Reasonable Water Supply Planning Period. Denver Water's current water supply planning period extends to 2050. The court finds that this is a reasonable water supply planning period, particularly considering the size of Denver Water, both in population and geography, and Denver Water's contractual commitments within and outside of its service area.

(2) Denver Water's Substantiated Population/Rate of Growth Projections. Denver Water bases its demand projections on an econometric model that relies on numerous factors, including population growth within the Denver Metropolitan Area as predicted by the Denver Regional Council of Governments ("DRCOG") in 2030, and the U.S. Census Bureau as projected in 2050. The court finds that Denver Water reasonably relied on the rate of population growth used by DRCOG and the U.S. Census Bureau. Population growth factor is one of several factors considered by

Denver Water's model. Denver Water relies on a model that interrelates water usage with demographics and various other socio-economic factors. This includes the rate of usage for single-family households in the future, so that total single-family usage can be determined by multiplying that usage rate by the future number of single-family households. The model assumes a rate of growth of 0.8 percent per year from 2005 through 2050, and a population of 1.57 million residents in 2050. In addition, the model projects employment in the service area to increase to a total of 1.33 million jobs by 2050, reflecting an average annual job growth rate of a little over 0.9 percent from 2005 through 2050. The court finds that the model assumes a water demand projection based on a reasonable rate of population and employment growth.

(3) Water Required to Meet Denver Water's Reasonably Anticipated Needs. Denver Water demonstrated that the remaining amount of conditionally decreed water is reasonably necessary to serve the reasonably anticipated needs of Denver Water for the planning period, above its current water supply.

(a) Implementation of Reasonable Water Conservation Measures During Planning Period. Denver Water has adopted an accelerated conservation plan intended to achieve by 2016 the 29,000 acre-feet of savings targeted in its 1996 Integrated Resource Plan for 2045. To achieve these goals, Denver Water has instituted a new customer information system that provides customers with access to monthly consumption information rather than the by-monthly consumption data historically provided by Denver Water to its customers. Denver Water has also instituted a rebates and incentives program to encourage customers to convert to low water use appliances, plumbing fixtures, irrigation systems and more efficient landscapes. Denver Water has developed a rate structure that encourages conservation through price signals, and allows for more effective demand management during peak summer irrigation use and severe droughts. In addition, Denver Water is engaged in educational outreach to provide customers with information to reduce their consumption through best-practices for irrigation and other water use. The court finds that these conservation measures are reasonable

(b) Reasonably Expected Land Use Mixes during the Planning Period. Denver Water's demand model considers three types of customers, which could be characterized as land use mixes. These uses include: (1) single-family residences; (2) commercial, multi-family and industrial users; (3) and government and institutional users. The court finds that these are reasonable land use mixes to consider for the planning period.

(c) Reasonably Attainable Per Capita Usage Projections for Indoor and Outdoor Use Based on the Land Use Mixes During the Planning Period. In year 2000, Denver Water's system-wide metered water use was 204 gallons per capita per day. Denver Water's forecast projects that system-wide metered use will decline to 171 gallons per capita per day by 2050. Along with other economic and demographic factors, this decline reflects the impact of natural replacement of older, less efficient fixtures. Traditionally, 60 percent of Denver Water's use is for indoor purposes and 40 percent is for outdoor purposes. Denver Waters projections represent the exercise of informed judgment.

(d) Amount of Consumptive Use Reasonably Necessary to Serve the Increased Population. The court finds that Denver Water's past and planned future demands account for a reasonable amount of consumptive use to serve its customers.

(e) Denver Water's Future Demand Projections. Denver Water presented an econometric demand model and projections of future water demands for Denver Water's service area and its fixed-amount contractual commitments. The model, which projects unconstrained water demand, meaning water demand without emergency water restrictions, forecasts Denver Water's water demands through 2050 by utilizing socioeconomic forecasts, historical data, and U.S. Census data. Specifically, the model relies on socioeconomic projections made by DRCOG, which projects future population as far as 2030, and then extends the socioeconomic forecasts through 2050 based on national projections from the U.S. Census Bureau and other sources, such as historic relationships between service area growth and national trends. To determine, Denver Water's 2050 demand, the DRCOG data is extended forward to 2050 using U.S. Census Bureau data and projections. In order to accurately forecast Denver Water's demand, the model uses separate equations to measure (1) single family water use per household customers; (2) multi-family, commercial and industrial customers; and (3) institutional (governmental) customers. The data for these three types of customers is based on annual water use data collected by Denver Water and its distributors from 1973 to 1999. Denver Water's model projects that Denver Water's 2050 treated water demand at the customers' meters would be 370,000 acre feet, including a 5 percent calibration adjustment. To estimate Denver Water's total system-wide demand water requirements a number of adjustments must be made. First, system losses and unaccounted for water use, which is estimated to average six percent, must be added

(22,000 acre feet). Second, 39,000 acre feet must be subtracted to account for improved efficiency of water using fixtures. Third, 67,000 acre feet in fixed and special commitments with customers outside of Denver Water's service area must be added. Fourth, pursuant to Denver Water's policy of maintaining a 30,000 acre foot safety factor, 30,000 acre feet was added. With these adjustments Denver Water's total system-wide demand in 2050 is 450,000 acre feet. Denver Water analyzed the demand forecast results. Such analysis included evaluation of overall usage and demographic metrics of the forecast in comparison to historical statistics. The court concludes that the Applicant has engaged in a thoughtful planning process and has properly taken into account both its own experience and expertise, and analysis by outside experts.

(4) Denver Water's Current Water Supply. Denver Water's future projected demands are in excess of the water supply currently available from its Municipal Water System. Denver Water generally uses its direct flow water rights first before using its reservoir storage to meet its water supply needs. During the period of 1998-2007, Denver Water's storage declined to a point where Denver Water's storage reserves were drawn down to less than its annual demand. The Subject Water Rights are a key part in meeting this future demand.

(5) Safety Factor. The court finds that Denver Water's 30,000 acre foot safety factor (30,000 acre-feet/year of a four-year drought) is reasonable and prudent amount of water to store in reserve in light of the number of customers which rely on Denver Water's system and the importance of Denver Water to the economic development of the State.

II. CONCLUSIONS OF LAW

Based upon the Findings of Fact set forth above, this Court concludes as a matter of law that:

22. Incorporation of Findings of Fact. The foregoing Findings of Fact are incorporated herein to the extent they constitute Conclusions of Law.

23. Denver Water has been Reasonably Diligent. Denver Water has been reasonably diligent in developing the Subject Water Rights. The measure of reasonable diligence is the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the

development of water rights for all features of the entire project or system. C.R.S. § 37-92-301(4)(b) (2010).

A water court makes a case-by-case consideration of several factors to determine whether an applicant has made the required effort. *See City of Lafayette v. New Anderson Ditch Co.*, 962 P.2d 955, 961 (Colo.1998) (citing *Dallas Creek v. Huey*, 933 P.2d 27, 36 (Colo.1997)). These factors include but are not limited to: (1) economic feasibility; (2) the status of requisite permit applications and other required governmental approvals; (3) expenditures made to develop the appropriation; (4) the ongoing conduct of engineering and environmental studies; (5) the design and construction of facilities; and (6) the nature and extent of land holdings and contracts demonstrating the water demand and beneficial uses which the conditional right is to serve when perfected. *Dallas Creek*, 933 P.2d at 36.

All acts necessary to complete the appropriation need not be accomplished in the same diligence period. What must be demonstrated is continued intent and progress toward finalizing the conditionally decreed appropriation. The existence of a plan, capability, and need for the water is examined periodically by the water court, at the close of each diligence period, to determine whether the applicant is entitled to retain the antedated priority. Monitoring of use and need for the conditional appropriation is a proper role of the water court in a diligence proceeding. *Dallas Creek*, 933 P.2d at 36. Denver Water has shown a continued intent and progress toward finalizing the conditional decreed appropriation, and has established that it has a plan, capability and need for the water.

24. Can and Will. Denver Water can and will divert, store, or otherwise capture, possess, and control and beneficially use the Subject Water Rights. C.R.S. § 37-92-305(9)(b) (2010). Denver Water demonstrated a "substantial probability that within a reasonable time the facilities necessary to affect the appropriation can and will be completed with diligence, and that as a result water will be applied to a beneficial use. *Id.* Proof of such a substantial probability necessarily involves imperfect predictions of future events and conditions. The can and will requirement should not be applied rigidly to prevent beneficial uses where an applicant otherwise satisfies the legal standard of establishing a non-speculative intent to appropriate for a beneficial use. Further, the existence of contingencies does not prevent the can and will test from being satisfied. *City of Black Hawk v. City of Central,* 97 P.3d 951 (Colo. 2004); *City of Thornton v. Bijou Irr. Co.*, 926 P.2d 1, 43-45 (Colo. 1996). Neither current economic conditions beyond the control of the applicant which adversely affect the feasibility of perfecting a conditional water right or the proposed use of water from a conditional water right nor the fact that one or more governmental permits or approvals have not been obtained shall be considered sufficient to deny a diligence application, so long as other facts and circumstances which show diligence are present. C.R.S. § 37-92-301(4)(c) (2010).

25. Anti-Speculation. Denver Water does not have speculative intent in using the remaining conditional portions of the Subject Water Rights. Denver Water is a governmental agency which will serve persons proposed to be benefited by the Subject Water Rights, and therefore does not need to demonstrate a legally vested interest in the lands or facilities to be served. C.R.S. § 37-92-103(3)(a)(I) (2010). Denver Water demonstrated its intent to make a non-speculative use of the conditional appropriation based on: (1) a reasonable water supply planning period; (2) that its substantiated population projections are based on a normal rate of growth for that period; and (3) the amount of conditionally decreed water is reasonably necessary to serve the reasonably anticipated needs of the governmental agency for the planning period, above its current water supply. C.R.S. § 37-92-103(3)(a) (2010). *Pagosa Area Water and Sanitation Dist. v. Trout Unlimited*, 219 P.3d 774, 780 (Colo. 2009); *Pagosa Area Water & Sanitation District v. Trout Unlimited*, 170 P.3d 307, 309-310, 312 (Colo. 2007).

26. Burden of Proof Met. Denver Water has complied with all requirements and met all standards and burdens of proof, including but not limited to C.R.S. §§ 37-92-302(1); 37-92-103(3); 37-92-305(9) (2010) to adjudicate its claim for the Subject Water Rights and is therefore entitled to a conditional decree confirming and approving its conditional water storage rights as described in the Findings of Fact.

27. All other requirements. Denver Water has satisfied all other statutory and legal requirements to support a finding of reasonable diligence.

III. JUDGMENT AND DECREE

The Court incorporates its findings of fact and concludes that Denver Water has met the requirements of law for a finding of diligence.

28. The foregoing Findings of Fact and Conclusions of Law are incorporated herein.

29. Denver Water has been reasonably diligent in the development of the remaining conditionally decreed water rights in C.A. 1430; namely, Darling Creek Enlargement and Extension of the Williams Fork Diversion Project, Williams Fork Power Conduit and the Moffat Tunnel Collection System since the last Finding of Diligence, and the said conditionally decreed water rights and priorities are hereby continued in full force and effect and no order or decree is directed or entered for the cancellation of them in whole or in part.

30. Pursuant to C.R.S. § 37-92-301(4), Denver Water shall file an Application for Finding of Reasonable Diligence on or before the last day of _____, 2017, so long as Denver Water desires to maintain those conditionally decreed water rights or until a determination has been made that these conditionally decreed water rights have become absolute water rights by reason of the completion of the appropriation.

DATED this ___ day of ____, 2011.

_____
James Boyd
Water Judge
Water Division No. 5
State of Colorado

ATTACHMENT Q

DISTRICT COURT, WATER DIVISION 5, COLORADO Garfield County Courthouse 109 8th Street, Suite 104 Glenwood Springs, CO 81601	**DRAFT** **April 5, 2012** CRE 408: FOR PURPOSES OF COMPROMISE AND SETTLEMENT
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: THE CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS IN GRAND COUNTY.	▲COURT USE ONLY▲ Case No: 2007CW30 (CA657; 80CW162; 84CW087; 88CW209; 98CW214) Div.: 5

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE WATER COURT

THIS MATTER comes before the Court concerning the Application for Finding of Reasonable Diligence for the Carr No. 2 Ditch by the Applicant, City and County of Denver, acting by and through its Board of Water Commissioners (hereinafter "Denver Water"). Having reviewed and considered the pleadings, documentary and other evidence, the stipulations of several parties, and the arguments of counsel, the Court finds, determines and decrees that:

I. FINDINGS OF FACT

The Court having received and considered all evidence offered, pleadings, and arguments by counsel, hereby makes the following findings:

GENERAL MATTERS

1. Applicant.

City and County of Denver,
acting by and through its
Board of Water Commissioners
1600 West 12th Avenue,
Denver, Colorado 80204

(303) 628-6000

Denver Water is a home rule municipal corporation of the State of Colorado. Denver Water derives its authority and power to operate a water supply system under the state constitution, the Denver City Charter and provisions of state law. Pursuant to the Denver City Charter, Denver Water provides all treated and raw water necessary for the full development of land within the City and County of Denver. Pursuant to perpetual water service agreements, Denver Water serves as the water utility for other governmental entities outside the City and County of Denver, but within Denver Water's Service Area, providing all treated and raw water necessary to serve the full development of all land within the Service Area depicted in Exhibit ___. Denver Water also has commitments to provide nearly 68,000 acre-feet of treated and raw water to customers outside its Service Area under perpetual fixed amount contracts listed on Exhibit ___. The entities receiving water under fixed amount contracts are all located within the Counties of Adams, Arapahoe, Douglas and Jefferson and the City and County of Broomfield. From time to time, Denver Water provides treated and raw water to customers under temporary arrangements.

Denver Water operates extensive raw water collection systems including the South Platte Collection System, the Roberts Tunnel Collection System, the Moffat Tunnel Collection System and the Williams Fork Diversion System. On the South Platte River, Denver Water typically stores water at Antero, Eleven Mile, Cheesman and Chatfield reservoirs for delivery or exchange of water to either Strontia Springs Reservoir or Conduit 20 intakes in Waterton Canyon. Denver Water stores and diverts Colorado River water at Dillon Reservoir and delivers this water through the Roberts Tunnel to the North Fork of the South Platte River above Strontia Springs Reservoir. Denver Water also collects water from the Fraser and Williams Fork Rivers for delivery through the Moffat Tunnel for storage in Gross Reservoir and delivery to Ralston Reservoir via the South Boulder Diversion Canal.

Raw water diverted from these systems is treated at Foothills, Marston and Moffat treatment plants and delivered to Denver Water's customers in the metropolitan area. Denver Water also delivers raw water to a number of customers. After indoor use by customers, the water is discharged back to the South Platte River as treated effluent from the Littleton-Englewood or the Metropolitan Reclamation District Wastewater Treatment Plant. Water used outdoors returns to the South Platte River by means of lawn irrigation return flows. Denver Water possesses and controls water from the various streams and rivers by diversion, storage, treatment and delivery and also through contractual provisions in its treated and raw water leases with various water suppliers.

Denver Water operates exchanges of its water to and from various facilities in its system including Strontia Springs Diversion facility (a/k/a Roxborough Diversion facility), Cheesman Reservoir and Chatfield Reservoir. Denver Water diverts by exchange water otherwise out of priority, replacing an equivalent amount of water to the river to satisfy the calling senior water right. Denver Water has various types of replacement water available in its system, including releases from storage, Colorado River sources, reusable wastewater return flows and lawn irrigation return flows.

2. Water Rights at Issue. The water rights at issue in this matter are the Carr No. 2 Ditch water rights decreed in Civil Action No. 657, Grand County District Court, November 5, 1937 (the "Subject Water Rights").

The Carr No. 2 Ditch water right was one of several water rights acquired by Denver Water in the mid-1980's in connection with the purchase of the John Kemp Ranch, located near Williams Fork Reservoir, in Grand County, Colorado. The point of diversion for the Carr No. 2 Ditch is downstream of Williams Fork Reservoir near a point on the east bank of the Williams Fork River in the SW1/4, Section 13, TIN, R79W of the 6th P.M., in Grand County, Colorado.

In 1985, Denver Water acquired the Kemp Ranch, comprised of approximately 1,783 acres of land, and numerous water rights that diverted from Williams Fork River, the Colorado River, Little Muddy Creek and Smith Gulch. Included in this acquisition was the Carr Ditch and the Carr No. 2 Ditch that had been previously decreed 5.4 cfs absolute, and the 16 cfs (power portion) as conditional.

The Carr Ditch and Carr Ditch No. 2 have historically diverted water from the Williams Fork River downstream of Williams Fork Reservoir. The Carr No. 2 Ditch was used to irrigate land east of the Williams Fork River. The Carr No. 2 Ditch was originally decreed for 21.4 cfs, conditional, of which 5.4 cfs was for irrigation purposes and 16.0 cfs was for power purposes to raise the irrigation water approximately 65 feet in elevation to the lands irrigated.

After Denver Water's acquisition of the Kemp Ranch and associated water rights in 1985, the property and certain water rights were conveyed to the Colorado Division of Wildlife in 1993, while Denver Water retained ownership of the Carr and Carr No. 2 Ditches. Denver Water entered into a lease agreement with the Colorado Division of Wildlife for the continued use of the Carr Ditch on the Kemp Ranch property. The conveyance allowed public access to the Williams Fork River downstream of Williams Fork Dam that had previously been closed to the public.

The Carr No. 2 Ditch was originally decreed in CA-657, Water Division No. 5, with the claimant William Carr. By that decree, it was granted an appropriation

date of October 15, 1933, with a conditional Priority No. 22 on the Williams Fork River. As such, the Carr No. 2 Ditch is senior to Williams Fork Reservoir, but junior to Shoshone and Cameo Colorado River main stem calls. John Kemp subsequently acquired the ranch and water rights in the mid-1960's, and, in Case 80CW162, Water Division No. 5, was granted a decree declaring 3.0 cfs as absolute diverted for irrigation of about 70 acres, with the remaining 18.4 cfs as conditional.

John Kemp then was granted an additional 2.4 cfs as absolute, totaling 5.4 cfs absolute, and the remaining 16 cfs conditional, in Case No 84CW087. It was determined that the applicant at the time had exercised reasonable diligence efforts that included purchase of a water pump, aluminum water pipe, a fuel tank for the water pump and construction work on the penstock for the water power system.

Since Denver Water's acquisition of the Kemp Ranch and associated water rights in 1985, Denver Water has secured diligence decrees in Case No.'s 88CW209 and 98CW214. The State Engineer's Office 2001 Abandonment List included the 5.4 cfs of the Carr No. 2 Ditch that had previously been decreed absolute. Denver Water did not protest this inclusion of this portion of the Carr No. 2 Ditch on the abandonment list. The 16.0 cfs conditional water right remains an active water right.

3. Application. The Application at issue in this matter is the Application filed by Denver Water on February 27, 2007, for finding of reasonable diligence in Case No. 2007CW30.

4. Jurisdiction. The Court has subject matter jurisdiction over the Application and this proceeding, and personal jurisdiction over all persons who would have standing to appear as parties, regardless of whether they have appeared.

5. Notice. Timely and adequate notice of the pendency of this proceeding in rem has been given in the manner required by law. The Application was published in the March 2007 resume. Newspaper notice of the application was also provided in the Grand Junction Daily Sentinel, the Glenwood Springs Post Independent, and the Granby Sky-High News during the month of March 2007. Denver Water also provided notice to owners or reputed owners of land upon which any new diversion or storage structures, including the United States of America, Bureau of Land Management; and State of Colorado, Division of Wildlife.

6. Statements of Opposition. The following Objectors filed timely statements of opposition: Trout Unlimited; Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise; Grand Valley Water Users Association; Orchard Mesa

Irrigation District; Intrawest-Winter Park Operations Corporation; and the Colorado River Water Conservation District.

7. Withdrawals of Statements of Opposition. On May 7, 2007, Intrawest-Winter Park Operations Corporation withdrew its statement of opposition in this matter.

8. Stipulations. The following Objectors have stipulated to a form of this Decree under stipulations entered into with Denver Water: Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise; Grand Valley Water Users Association; Orchard Mesa Irrigation District; and the Colorado River Water Conservation District. These Objectors and other West Slope entities entered into an agreement with Denver Water dated _____, 2012, which is the basis upon which the Objectors have entered the stipulations and provided their consent to these Findings of Fact, Conclusions of Law, and Judgment and Decree.

9. Summary of Consultation. A Summary of Consultation by the Division Engineer for Water Division 5 was issued on May 11, 2007. Denver Water served the Summary of Consultation on all parties to this matter on June 8, 2007.

DESCRIPTION OF SUBJECT WATER RIGHT

10. Description of Subject Water Right. On November 5, 1937, in Civil Action No. 657, the Grand County District Court awarded to Carr No. 2 Ditch, Structure No. 417, Priority No. 22 on the Williams Fork River, a conditional water right not to exceed 21.4 cubic feet of water per second of time for the purpose of operating a water wheel to elevate 5.4 cubic feet of water per second of time for the irrigation of 110 acres of land, with appropriation date of October 15, 1933.

11. Date of Original Decree and Case No. November 5, 1937, Civil Action No. 657, District Court of Grand County.

12. Location. The headgate is located at a point on the east bank of the Williams Fork River whence the Southwest corner of Section 13, Township 1, North, Range 79 West of the 6th P.M. bears South 56°45' West 1920 feet.

13. Source. Williams Fork River, tributary to the Colorado River.

14. Appropriation date. October 15, 1933.

15. Amount. 5.4 cfs absolute

16.0 cfs conditional
21.4 cfs total

16. Use. Irrigation and power purposes.

APPLICANT'S CLAIM FOR FINDING OF REASONABLE DILIGENCE

17. Denver Water has been Reasonably Diligent. On February 8, 2001, the Water Judge for Water Division No. 5, in Case No. 98CW214, confirmed and approved the ruling of the referee, which found that Denver Water had diligently prosecuted work toward the completion of the Subject Water Right. In finding that Denver Water had been reasonably diligent in the development of the Subject Water Right, the court continued the conditional Subject Water Right in full force and effect and ordered Denver Water to file an Application for Finding of Reasonable Diligence on or before the last day of February 2007. On February 27, 2007, Denver Water filed this application for a finding of reasonable diligence in accordance with the Order of the court dated February 8, 2001, and C.R.S. § 37-92-301(4).

18. Denver Water Operates an Integrated Waterworks System. Denver Water's Municipal Water System provides for the diversion, storage, purification, delivery, use, and reuse of the waters of the State of Colorado. These waters will be used for the various beneficial purposes to which Denver Water's municipal water system have been appropriated and deemed.

19. Activities Demonstrating Reasonable Diligence. The Carr No. 2 Ditch is an existing structure. Denver Water has regularly operated the Subject Water Right during the diligence period. Completion of this appropriation will depend upon future hydrologic circumstances and demands in the Denver Municipal Water System. No evidence was presented of any circumstance that would prevent waters under the conditional portion of the Subject Water Right from being diverted, stored, or otherwise captured, possessed and controlled and applied to beneficial use within a reasonable time. The activities completed by Denver Water during the most recent diligence period are set forth in paragraph 4 of the Application filed in this matter.

20. Can and Will. Denver Water can and will divert and put the remaining conditional portion of the Subject Water Right to beneficial use. Denver Water established that the waters can be 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.

21. No Speculative Intent. Denver Water is a governmental agency, and has a specific plan and intent to divert, store, or otherwise capture, possess, and control the conditional water right for specific beneficial uses decreed herein.

The Carr No. 2 Ditch power right for 16.0 cfs, conditional, could be an integral component of the hydro-electric power generating facility operation located at the base of Williams Fork Dam. The water right, if changed to a new point of diversion, specifically the Williams Fork Power Conduit, located approximately 4,000 feet upstream of the Carr No. 2 Ditch headgate, at the Williams Fork Dam, would allow for the beneficial use of this water right.

Under current administration by the Office of the State Engineer, a water user may store water whenever the water is physically available, its water right is in-priority, and the amount of the water storage right has not been satisfied. Under Colorado court decisions and current administrative practices, a reservoir may only be filled once during each year, unless a decree provides for refill rights or for storage in the reservoir under multiple rights with different priorities.

Because the Carr No. 2 Ditch water right is senior to Williams Fork Reservoir's 1935 and 1956 storage priorities, water used for power generation can be allocated to the Carr No. 2 water right, rather than allocated to Williams Fork storage priorities as bypassed storable inflow. If the water released from the reservoir for power generation is allocated as bypassed storable inflow then Williams Fork Reservoir would be administered as having achieved its first annual fill without actually physically filling with water. By allocating all or a portion of the water released from Williams Fork Reservoir for power generation towards the Carr No. 2 Ditch water right, rather than bypassed storable inflow, the ability for Williams Fork Reservoir to physically achieve its first annual fill is enhanced. The amount of water preserved under the Williams Fork Reservoir storage priorities is that amount of water used for power generation that would be allocated towards the Carr No. 2 Ditch water right. Based on the foregoing description of Denver Water's plan to utilize the conditional portion of the Carr No. 2 Ditch water right, the court finds that Denver Water has a non-speculative need for the Subject Water Right.

II. CONCLUSIONS OF LAW

Based upon and fully incorporating the Findings of Fact set forth above, this Court concludes as a matter of law that:

NOTICE AND JURISDICTION

22. Application was Timely. The Application for a Finding of Diligence and to Make Absolute was timely filed with the Water Clerk pursuant to C.R.S. §37-92-301(4) (2010).

23. Notice. Denver Water satisfied all requirements for notice under C.R.S. §37-92-302(3) (2010).

24. Denver Water has been Reasonably Diligent. Denver Water has been reasonably diligent in developing the Subject Water Right. The measure of reasonable diligence is the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system. C.R.S. § 37-92-301(4)(b) (2010).

A water court makes a case-by-case consideration of several factors to determine whether an applicant has made the required effort. *See City of Lafayette v. New Anderson Ditch Co.*, 962 P.2d 955, 961 (Colo.1998) (citing *Dallas Creek v. Huey*, 933 P.2d 27, 36 (Colo.1997)). These factors include but are not limited to: (1) economic feasibility; (2) the status of requisite permit applications and other required governmental approvals; (3) expenditures made to develop the appropriation; (4) the ongoing conduct of engineering and environmental studies; (5) the design and construction of facilities; and (6) the nature and extent of land holdings and contracts demonstrating the water demand and beneficial uses which the conditional right is to serve when perfected. *Dallas Creek*, 933 P.2d at 36.

All acts necessary to complete the appropriation need not be accomplished in the same diligence period. What must be demonstrated is continued intent and progress toward finalizing the conditionally decreed appropriation. The existence of a plan, capability, and need for the water is examined periodically by the water court, at the close of each diligence period, to determine whether the applicant is entitled to retain the antedated priority. Monitoring of use and need for the conditional appropriation is a proper role of the water court in a diligence proceeding. *Dallas Creek*, 933 P.2d at 36. Denver Water has shown a continued intent and progress toward finalizing the conditional decreed appropriation, and has established that it has a plan, capability and need for the water.

25. Can and Will. Denver Water can and will divert, store, or otherwise capture, possess, and control and beneficially use the Subject Water Right. C.R.S. § 37-92-305(9)(b) (2010). Denver Water demonstrated a "substantial probability that within a reasonable time the facilities necessary to affect the appropriation can and will be completed with diligence, and that as a result water will be applied to a beneficial use. *Id.* Proof of such a substantial probability necessarily involves imperfect predictions of future events and conditions. The can and will requirement should not be applied rigidly to prevent beneficial uses where an applicant otherwise satisfies the legal standard of establishing a non-speculative intent to appropriate for a beneficial use. Further, the existence of contingencies does not prevent the can and will test from being satisfied. *City of Black Hawk v. City of Central,* 97 P.3d 951 (Colo. 2004); *City of Thornton v. Bijou Irr. Co.*, 926 P.2d 1, 43-45 (Colo. 1996). Neither current economic conditions beyond the control of the applicant which adversely affect the feasibility of perfecting a conditional water right or the proposed use of water from a conditional water right nor the fact that one or more governmental permits or approvals have not been obtained shall be considered sufficient to deny a diligence application, so long as other facts and circumstances which show diligence are present. C.R.S. § 37-92-301(4)(c) (2010).

26. Anti-Speculation. Denver Water does not have speculative intent in appropriating the Subject Water Right. Denver Water is a governmental agency which will serve persons proposed to be benefited by the Subject Water Rights, and therefore does not need to demonstrate a legally vested interest in the lands or facilities to be served. C.R.S. § 37-92-103(3)(a)(I) (2010). Denver Water demonstrated its intent to make a non-speculative use of the conditional appropriation based on: (1) a reasonable water supply planning period; (2) that its substantiated population projections are based on a normal rate of growth for that period; and (3) the amount of conditionally decreed water is reasonably necessary to serve the reasonably anticipated needs of the governmental agency for the planning period, above its current water supply. C.R.S. § 37-92-103(3)(a) (2010). *Pagosa Area Water and Sanitation Dist. v. Trout Unlimited*, 219 P.3d 774, 780 (Colo. 2009); *Pagosa Area Water & Sanitation District v. Trout Unlimited*, 170 P.3d 307, 309-310, 312 (Colo. 2007).

27. Burden of Proof Met. Denver Water has complied with all requirements and met all standards and burdens of proof, including but not limited to C.R.S. §§ 37-92-302(1); 37-92-103(3); 37-92-305(9) (2010) to adjudicate its claim for the Subject Water Rights and is therefore entitled to a conditional decree confirming and approving its conditional water storage rights as described in the Findings of Fact.

28. All other requirements. Denver Water has satisfied all other statutory and legal requirements to support a finding of reasonable diligence.

III. JUDGMENT AND DECREE

The Court incorporates its findings of fact and concludes that Denver Water has met the requirements of law for a finding of diligence.

29. The foregoing Findings of Fact and Conclusions of Law are incorporated herein.

30. Denver Water has been reasonably diligent in the development of the Carr No. 2 Ditch water right since the last Finding of Diligence, and the said conditionally decreed water rights and priorities are hereby continued in full force and effect and no order or decree is directed or entered for the cancellation of them in whole or in part.

31. Pursuant to C.R.S. § 37-92-301(4), Denver Water shall file an Application for Finding of Reasonable Diligence on or before the last day of _____, 2017, so long as Denver Water desires to maintain those conditionally decreed water rights or until a determination has been made that these conditionally decreed water rights have become absolute water rights by reason of the completion of the appropriation.

DATED this ___ day of ____, 2012.

_____
Holly K. Strabilzky
Water Referee
Water Division No. 1

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.

THE FOREGOING RULING IS CONFIRMED AND APPROVED AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: _____

_____
James Boyd
Water Judge
Water Division No. 5
State of Colorado

ATTACHMENT Q

DISTRICT COURT, WATER DIVISION 5, COLORADO Garfield County Courthouse 109 8th Street, Suite 104 Glenwood Springs, CO 81601	**DRAFT** **April 5, 2012** **CRE 408: FOR PURPOSES OF COMPROMISE AND SETTLEMENT**
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: THE CITY AND COUNTY OF DENVER ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS IN GRAND COUNTY.	▲COURT USE ONLY▲ Case No. 2007CW031 Div.: Water Division No. 5 (98CW190; 90CW113; 86CW218; 82CW125; W-736-78; W-736-74; W-736; W-737; W-741; W-751; W-155; W-156; C.A.657)

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE WATER COURT

THIS MATTER comes before the Court concerning the Application for Finding of Reasonable Diligence and to Make Absolute by the Applicant, City and County of Denver, acting by and through its Board of Water Commissioners (hereinafter "Denver Water"). Having reviewed and considered the pleadings, documentary and other evidence, the stipulations of several parties, and the arguments of counsel, the Court finds, determines and decrees that:

I. FINDINGS OF FACT

The Court having received and considered all evidence offered, pleadings, and arguments by counsel, hereby makes the following findings:

GENERAL MATTERS

1. Applicant.

City and County of Denver,
acting by and through its
Board of Water Commissioners
1600 West 12th Avenue,
Denver, Colorado 80204
(303) 628-6000

Denver Water is a home rule municipal corporation of the State of Colorado. Denver Water derives its authority and power to operate a water supply system under the state constitution, the Denver City Charter and provisions of state law. Pursuant to the Denver City Charter, Denver Water provides treated and raw water for all uses and purposes necessary for the full development of land within the City and County of Denver. Pursuant to perpetual water service agreements, Denver Water serves as the water utility for other governmental entities outside the City and County of Denver, but within Denver Water's Service Area, providing all treated and raw water necessary to serve the full development of all land within the Service Area depicted in Exhibit ___. Denver Water also has commitments to provide nearly 68,000 acre-feet of treated and raw water to customers outside its Service Area under perpetual fixed amount contracts listed on Exhibit ___. The entities receiving water under fixed amount contracts are all located within the Counties of Adams, Arapahoe, Douglas and Jefferson and the City and County of Broomfield. From time to time, Denver Water provides treated and raw water to customers under temporary arrangements.

Denver Water operates extensive raw water collection systems including the South Platte Collection System, the Roberts Tunnel Collection System, the Moffat Tunnel Collection System and the Williams Fork Diversion System. On the South Platte River, Denver Water typically stores water at Antero, Eleven Mile, Cheesman and Chatfield reservoirs for delivery or exchange of water to either Strontia Springs Reservoir or Conduit 20 intakes in Waterton Canyon. Denver Water stores and diverts Colorado River water at Dillon Reservoir and delivers this water through the Roberts Tunnel to the North Fork of the South Platte River above Strontia Springs Reservoir. Denver Water also collects water from the Fraser and Williams Fork Rivers for delivery through the Moffat Tunnel for storage in Gross Reservoir and delivery to Ralston Reservoir via the South Boulder Diversion Canal.

Raw water diverted from these systems is treated at Foothills, Marston and Moffat treatment plants and delivered to Denver Water's customers in its Combined Service Area. Denver Water also delivers raw water to a number of customers outside of its Combined Service Area within the Denver Metropolitan Area. After indoor use by customers, the water is discharged back to the South Platte River as treated effluent from

the Littleton-Englewood or the Metropolitan Reclamation District Wastewater Treatment Plant. Water used outdoors returns to the South Platte River by means of lawn irrigation return flows. Denver Water possesses and controls water from the various streams and rivers by diversion, storage, treatment and delivery and also through contractual provisions in its treated and raw water leases with various water suppliers.

Denver Water operates exchanges of its water to and from various facilities in its system including Strontia Springs Diversion facility (a/k/a Roxborough Diversion facility), Cheesman Reservoir and Chatfield Reservoir. Denver Water diverts by exchange water otherwise out of priority, replacing an equivalent amount of water to the river to satisfy the calling senior water right. Denver Water has various types of replacement water available in its system, including releases from storage, Colorado River sources, reusable wastewater return flows and lawn irrigation return flows.

2. Water Rights at Issue. The water rights at issue in this matter are the Fraser River Diversion Project and Williams Fork Diversion Project water rights decreed in Civil Action No. 657, Grand County District Court, November 5, 1937, as modified and supplemented March 4, 1940, and April 15, 1946 (collectively referred to herein as the "Subject Water Rights").

3. Application. The Application at issue in this matter is the Application filed by Denver Water on February 27, 2007, for finding of reasonable diligence and to make absolute in Case No. 2007CW031, Water Division 5.

4. Jurisdiction. The court has subject matter jurisdiction over the Application and this proceeding, and personal jurisdiction over all persons who would have standing to appear as parties, regardless of whether they have appeared.

5. Notice. Timely and adequate notice of the pendency of this proceeding in rem has been given in the manner required by law. The Application was published in the March 2007 resume. Newspaper notice of the Application was also provided in the Grand Junction Daily Sentinel, the Glenwood Springs Post Independent, and the Granby Sky-High News during the month of March 2007. Denver Water also provided notice to the United States of America, which is an owner or reputed owner of land upon which any new diversion or storage structures.

6. Statements of Opposition. The following Objectors filed timely statements of opposition: Trout Unlimited; Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise; Grand Valley Water Users Association; Orchard Mesa

Irrigation District; Middle Park Water Conservancy District; Intrawest-Winter Park Operations Corporation; and the Colorado River Water Conservation District.

7. Withdrawals of Statements of Opposition. On May 7, 2007, Intrawest-Winter Park Operations Corporation withdrew its statement of opposition in this matter.

8. Stipulations. The following Objectors have stipulated to a form of this Decree under stipulations entered into with Denver Water: Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise; Grand Valley Water Users Association; Orchard Mesa Irrigation District; Middle Park Water Conservancy District; and the Colorado River Water Conservation District. These Objectors and other West Slope entities entered into an agreement with Denver Water dated _____, 2012, which is the basis upon which the Objectors have entered the stipulations and provided their consent to these Findings of Fact, Conclusions of Law, and Judgment and Decree.

9. Summary of Consultation. A Summary of Consultation by the Division Engineer for Water Division 5 was entered on May 11, 2007. Denver Water served the Summary of Consultation on all parties to this matter on June 8, 2007.

DESCRIPTION OF SUBJECT WATER RIGHTS

10. Subject Water Rights. The water rights involved in this proceeding are those conditionally decreed to the Fraser River Diversion Project and the Williams Fork Diversion Project, by Decree of the District Court of Grand County, Colorado in Civil Action No. 657, entered November 5, 1937 as modified and supplemented March 4, 1940, and April 15, 1946.

11. Locations of Points of Diversion and Places of Storage.

(1) Fraser River Diversion Project.

(a) The location of the several points of diversion of the canals of the Fraser River Diversion Project are as follows:

(i) West Canal Line intake from the Fraser River at a point on the East bank of said river whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M. bears North 22°22' West 18,656 feet;

(ii) Jim Creek feeder at a point on the North bank of said creek whence the southeast corner of Section 33, Township 1 south, Range 75 West, 6th P.M. bears North 41°50' West 13,863 feet;

(iii) Little Vasquez Creek feeder at a point on the East bank of said creek whence angle point No. 2 of Tract 37, Township 2 South, Range 75 West, 6th P.M., bears South 63°48'03" West 526.84 feet;

(iv) West Canal Line intake from Vasquez Creek at a point on the East bank of said creek whence angle point No. 2 of Tract 37, Township 2 South, Range 75 West, 6th P.M., bears North 37°58' East 11,416.58 feet;

(v) West Canal Line intake from Cooper Creek at a point where said canal crosses said creek whence angle point No.1 of Tract 37, Township 2 South, Range 75 West, 6th P.M., bears South 80°56' West 729.10 feet;

(vi) West Canal Line intake from St. Louis Creek at a point on the East bank of said creek whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears North 69°47' East 36,547 feet;

(vii) West Canal Line intake from West St. Louis Creek at a point on the East bank of said creek whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears North 79°01' East 36,009 feet;

(viii) East Canal Line intake from Buck Creek at a point on the South bank of said creek where said canal crosses the creek 957 feet approximately due North of the mouth of the intake shaft of the Moffat Water Tunnel;

(ix) East Canal Line intake from Faun Creek at a point on the West bank of said creek whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears South 61°35' West 7,801 feet;

(x) East Canal Line intake from South Ranch Creek at a point on the West bank of said creek whence the southeast corner of

Section 33, Township 1 South, Range 75 West, 6th P.M., bears South 45°37' West 13,221 feet;

(xi) East Canal Line intake from Ranch Creek at a point on the West bank of said creek whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears South 40°22' West 16,151 feet;

(xii) East Canal Line intake from North Ranch Creek at a point on the South bank of said creek whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears south 33°0' West 19,000 feet.

(b) The locations of the several western slope reservoirs of the Fraser River Diversion Project are as follows:

(i) Vasquez Reservoir in Sections 18 and 19, Township 2 South, Range 75 West, 6th P.M., with the east end of the dam at a point whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears North 45°3' East 15,551 feet.

(ii) St. Louis Reservoir in Sections 16 and 21, Township 2 South, Range 76 West, 6th P.M., with the East end of the dam at a point whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears North 69°47' East, 36,547 feet.

(c) The locations of the several eastern slope reservoirs in which the waters of the Fraser River Diversion Project are and will be stored are as follows:

(i) Ralston Creek Reservoir in Sections 32 and 33, Township 2 South, and Sections 5 and 6, Township 3 South, all in Range 70 West, 6th P.M.;

(ii) Cheesman Reservoir in Township 10 South, Ranges 70 and 71 West, 6th P.M.;

(iii) Eleven Mile Canyon Reservoir in Township 13 South, Ranges 72 and 73 West, 6th P.M.;

(iv) Marston Reservoir in Township 5 South, Range 69 West, 6th P.M.;

(v) Antero Reservoir in Township 12 South, Ranges 76 and 77 West, 6th P.M.;

(vi) Gross Reservoir in Township 1 South, Range 71 West, 6th P.M. in Boulder County, Colorado.

(2) Williams Fork Diversion Project.

(a) The locations of the several points of diversion of the canals of the Williams Fork Diversion Project are as follows:

(i) North Canal Line, Section 1 from McQueary Creek at a point on the South bank of said creek whence the United States Location Monument Wilson near Minnehaha Gulch, LaPlata mining district Grand County, Colorado, (hereinafter referred to as the Wilson Monument) bears South 31°56'15" East 8,333.32 feet;

(ii) North Canal Line, Section 2, from Jones Creek at a point on the South bank of said creek whence the Wilson Monument bears South 66°29' 40" East 1,983.49 feet;

(iii) North Canal Line, Section 3 receives its water through Sections 1 and 2 and from tributary drainage and has no independent point of diversion on any stream;

(iv) South Canal Line, Section 1 from Bobtail Creek at a point on the East bank of said creek whence the Wilson Monument bears North 65°34'50" East 2,007.47 feet;

(v) South Canal Line, Section 2, From Steelman Creek at a point on the East bank of said creek whence Wilson Monument bears North 78°46' 45" East 9,525.25 feet;

(vi) South Canal Line, Section 3 receives its water through Sections 1 and 2 and has no independent point of diversion on any stream;

(vii) South Canal Line, Section 4 from Bobtail Creek at a point on the East bank of said creek whence the Wilson Monument bears North 62°23' East 1,967.2 feet;

(viii) South Canal Line, Section 5 from Steelman Creek at a point on the East bank of said creek whence the Wilson Monument bears North 75°07' East 9,715.3 feet;

(ix) South Canal Line, Section 6 receives its water through Section 7 and from tributary drainage and has no independent point of diversion on any stream;

(x) South Canal Line, Section 7 from the Middle Fork of the Williams Fork River at a point on the East bank of said Middle Fork whence Ptarmigan Peak Monument bears South 73°33' East 23,868 feet;

(xi) South Canal Line, Section 8, from Allen Creek at a point on the North bank of said creek whence the Ptarmigan Monument bears North 86°07' East 20,897 feet;

(xii) South Canal Line, Section 9 receives its water through Section 8 and has no independent point of diversion on any stream;

(xiii) South Canal Line, Section 10 from the South Fork of the Williams Fork River at a point on the North bank of said South Fork whence the Ptarmigan Peak Monument bears North 50°47' East 11,999 feet;

(xiv) Middle Fork Feeder Ditch of the South Canal Line receives its water from tributary drainage and has no point of diversion on any stream.

(b) The locations of the several eastern slope reservoirs in which waters of the Williams Fork Diversion Project will be stored are as follows:

(i) Empire Reservoir in Section 29, Township 3 South, Range 74 West, 6th P.M.;

(ii) Cheesman Reservoir in Township 10 South, Ranges 70 and 71 West, 6th P.M.;

(iii) Eleven Mile Canon Reservoir in Township 13 South, Ranges 72 and 73 West, 6th P.M.;

(iv) Marston Reservoir in Township 5 South, Range 69 West, 6th P.M.;

(v) Antero Reservoir in Township 12 South, Ranges 76 and 77 West, 6th P.M.

(vi) Gross Reservoir in Township 1 South, Range 71 West, 6th P.M.

(vii) Ralston Creek Reservoir in Sections 32 and 33, Township 2 South, and Sections 5 and 6, Township 3 South, all in Range 70 West, 6th P.M.

12. Dates of Appropriation.

(1) Fraser River Diversion Project. July 4, 1921 except as to the enlargement of the Vasquez Reservoir, which date is July 7, 1936.

(2) Williams Fork Diversion Project. July 4, 1921.

13. Amounts of Water.

(1)	Fraser River Diversion Project:	352 cfs conditional 928 cfs absolute 1280 cfs total
(2)	Williams Fork Diversion Project:	406 cfs conditional 214 cfs absolute 620 cfs total

See attached tables I, II, III and IV for amounts remaining conditionally decreed for direct flow and storage rights for each of the within described features of the Fraser River and Williams Fork Diversion Projects.

14. The Sources of Water and Amounts for Intake Rights.

(1) Fraser River Diversion Project. The Fraser River, a tributary of the Colorado River, and those of its several tributaries from which intakes have been or will be constructed and also tributary drainage.

(a) From St. Louis Creek, East St. Luis Creek, Fool Creek, King Creek, East King Creek, West Elk Creek, Elk Creek, and tributary drainage above the canal, the maximum amount of 700 c.f.s., through the West Canal Line intake from said St. Louis Creek;

(b) From West St. Louis Creek, Byers Creek, and tributary drainage above the canal, the maximum amount of 112 c.f.s., through the West Canal Line intake from said West St. Louis Creek;

(c) From Faun Creek, and tributary drainage above the canal, the maximum amount of 280 c.f.s., through the East Canal Line intake from said Faun Creek;

(d) From South Ranch Creek, and tributary drainage above the canal, the maximum amount of 180 c.f.s., through the East Canal Line intake from said South Ranch Creek;

(e) From Ranch Creek, and tributary drainage above the canal, the maximum amount of 112 c.f.s., through the East Canal Line intake from said Ranch Creek; and

(f) From North Ranch Creek, and tributary drainage above the canal, the maximum amount of 112 c.f.s., through the East Canal Line intake from said North Ranch Creek;

Provided that the total diversions by means of the twelve sources described above shall be limited at any one time to the maximum of 1280 c.f.s..

(2) Williams Fork Diversion Project. The Williams Fork River, a tributary of the Colorado River and its several tributaries from which intakes have been or will be constructed and also tributary drainage.

(a) From McQueary Creek, the maximum amount of 70 c.f.s., through the North Canal Line, Section 1;

(b) From Jones Creek, the maximum amount of 25 c.f.s., through the North Canal Line, Section 2;

(c) From McQueary and Jones Creeks, and tributary drainage above the canal, the maximum amount of 115 c.f.s., through the North Canal Line, Section 5;

(d) From Bobtail Creek, the maximum amount of 115 c.f.s., through the South Canal Line, Section 1;

(e) From Steelman Creek, the maximum amount of 90 c.f.s., through the South Canal Line, Section 2;

(f) From Bobtail Creek, the maximum amount of 195 c.f.s., through the South Canal Line, Section 4, but this amount shall be inclusive of the amount from said creek through Section 1 of the South Canal Line as mentioned in subsection (d) herein;

(g) From Steelman Creek, the maximum amount of 150 c.f.s., through the South Canal Line, Section 5, but this amount shall be inclusive of the amount from said creek through Section 2 of the south canal line as mentioned in subsection (e) herein;

(h) From the Middle Fork of the Williams Fork River and from tributary drainage above the canal, the maximum amount of 400 c.f.s., through the South Canal Line, Section 6, but this amount shall be inclusive of the amount from said Middle Fork through Section 7 of the South Canal Line as mentioned in subsection (j) herein;

(i) From the Middle Fork of Williams Fork River, the maximum amount of 350 c.f.s., through the South Canal Line, Section 7;

(j) From Allen Creek, the maximum amount of 250 c.f.s., through the South Canal Line, Section 8;

(k) From the South Fork of the Williams Fork River, the maximum amount of 200 c.f.s., through the South Canal Line, Section 10;

(l) From tributary drainage above the feeder, the maximum amount of 50 c.f.s., through the Middle Fork Feeder Ditch;

Provided, however, that the total diversions by means of the twelve priorities awarded in subsection (a) to (l), shall be limited at any one time to the maximum of 620 c.f.s., which is the total capacity of the Williams Fork Tunnel.

15. Storage Amounts and Sources.

(1) The following West Slope reservoirs of the Fraser River Diversion Project are entitled to store water from the following sources and in the following amounts, under the Reservoir Appropriation 11A and their respective priorities:

(a) In St. Louis Reservoir, from the waters of St. Louis Creek, Byers Creek and West St. Louis Creek, under and by virtue of original construction, the maximum amount of 50,000,000 cubic feet, 1,150 acre feet, under priority date July 4, 1921.

(b) In Vasquez Reservoir, from the waters of Vasquez, Elk West Elk, East King, King, Fool, East St. Louis, St. Louis, Byers and West St. Louis Creeks, under and by virtue of original construction the maximum amount of 12,000,000 cubic feet, 275 acre feet, under priority date of July 4, 1921;

(c) In Vasquez Reservoir, from the waters of Vasquez, Elk, West Elk, East King, King, Fool, East St. Louis, St. Louis, Byers and West St. Louis Creeks, under and by virtue of enlargement, the maximum amount of 276,201,400 cubic feet, 6,341 acre feet, under priority date July 7, 1936;

(2) The following Eastern Slope Reservoirs of the Denver Municipal Water System are entitled to store the following amounts of water under Reservoir Appropriation No. 11, as part of the Fraser River Diversion Project, for the benefit of the persons lawfully entitled thereto:

(a) In Ralston Creek Reservoir 12,758 acre feet;

(b) In Cheesman Reservoir 79,000 acre feet;

(c) In Eleven Mile Cañon Reservoir 81,971 acre feet;

(d) In Marston Reservoir 19,800 acre feet;

(e) In Empire Reservoir 6,494.39 acre feet;

(f) In Gross Reservoir 113,077.7 acre feet; and

(g) In Antero Reservoir 33,000 acre feet.

(3) The following Eastern Slope Reservoirs of the Denver Municipal Water System are entitled to store the following amounts of water under Reservoir Appropriation No. 25, as part of the Williams Fork Diversion Project, for the benefit of the persons lawfully entitled thereto:

(a) In Empire Reservoir, 6,494.39 acre feet;

(b) In Cheesman Reservoir, 79,000 acre feet;

(c) In Eleven Mile Cañon Reservoir, 81,917 acre feet;

(d) In Marston Reservoir, 19,800 acre feet;

(e) In Antero Reservoir, 33,000 acre feet.

(f) In Ralston Creek Reservoir 12,758 acre feet; and

(g) In Gross Reservoir 113,077.7 acre feet.

16. Use. Municipal uses, including domestic use, fire protection, sewage treatment, sanitation, street sprinkling, watering of parks, lawns and grounds, mechanical uses and every other type of municipal uses, generation of electrical energy, and for maintaining adequate storage reserves, and regulation of direct flow of water to meet the exigencies of fluctuating demands for the above named uses; together with the right to fill, refill, regulate and replace losses by reason of evaporation for the listed purposes.

17. The Denver Municipal System is an Integrated System. Denver Water operates an integrated Municipal Water System. This system provides for the diversion, storage, purification, delivery, use, and reuse of the waters of the State of Colorado. These waters will be used for the various beneficial purposes to which Denver Water's municipal water system have been appropriated and decreed. The widely fluctuating and unpredictable flows of water in the streams of Colorado require the incorporation of

storage reservoirs into this system. These reservoirs must be able to store a sufficient amount of water that will guarantee a continuous annual supply of water for all municipal uses and purposes.

CLAIM TO MAKE ABSOLUTE

18. Denver's Claim to Make Absolute a Portion of the Williams Fork Diversion Project. The court finds that on June 4, 2006, Denver Water legally diverted and put to beneficial use 254 cfs of water under the Williams Fork Diversion Project, in compliance with the decree in C.A. 657.

19. Date water applied to beneficial use. June 4, 2006.

20. Amount. 254 cfs.

21. Use. All decreed beneficial uses.

22. Description of place of use where water was applied to beneficial use. The water was placed to beneficial use in the area served by the Denver Municipal Water System including areas served by fixed contracts.

CLAIM FOR FINDING OF REASONABLE DILIGENCE

23. Denver has been Reasonably Diligent. On February 2, 2001, the Water Judge for Water Division No. 5, in Case No. 98CW190, confirmed and approved the ruling of the referee, which found that Denver Water had diligently prosecuted work toward the completion of the Subject Water Rights. In finding that Denver Water had been reasonably diligent in the development of the Subject Water Rights, the court continued the conditional Subject Water Rights in full force and effect and ordered Denver Water to file an Application for Finding of Reasonable Diligence on or before the last day of February 2007. On February 27, 2007, Denver Water filed this Application for a finding of reasonable diligence and to make absolute, in accordance with the Order of the court dated February 2, 2001, and C.R.S. § 37-92-301(4).

24. The Subject Water Rights are Part of Denver Water's Integrated System. The Fraser River Diversion Project and the Williams Fork Diversion Project are integral parts of the Denver Municipal Water System. The projects are large and intricate, require extensive scientific research and development, and necessarily take many years to complete in a sequence established and executed by Denver Water and its employees to bring about the complete utilization of all the waters involved, expeditiously and with

reasonable diligence. Denver Water has demonstrated a steady application of effort to complete the appropriation of the Subject Water Rights. Work on the facilities necessary to put the subject waters to their decreed beneficial uses has progressed continuously and without interruption, and in the most expedient and efficient fashion possible under the circumstances. Work accomplished toward the completion of the Subject Water Rights and application of water to the beneficial uses for which they are decreed includes work which has been done on the design, construction, and integration of structures for the storage, treatment, distribution, and reuse and successive use of the waters which are the subject of this proceeding. Such work has progressed continuously and without interruption and with reasonable dispatch.

25. Activities Demonstrating Reasonable Diligence. In support of its Application, Denver Water performed activities and made expenditures during this last diligence period sufficient to demonstrate reasonable diligence toward the development of its conditionally decreed water rights. The activities referred to in this paragraph are listed in the Application and are incorporated herein by this reference. The activities listed in the Application are evidence of Denver Water's continued reasonable diligence in developing the conditional portion of the Subject Water Rights, and evidence the continuous efforts of development and construction of the facilities necessary to divert, store and use the Subject Water Rights.

26. Need. Based on the evidence considered by the court in connection with the following factors, the court finds that Denver Water continues to have a non-speculative need for the conditional Subject Water Rights that are the subject of this decree.

(1) Denver Water has a Reasonable Water Supply Planning Period. Denver Water's current water supply planning period extends to 2050. The court finds that this is a reasonable water supply planning period, particularly considering the size of Denver Water's Combined Service Area, in population and geography, and Denver Water's contractual commitments outside of its Combined Service Area.

(2) Denver Water's Substantiated Population/Rate of Growth Projections. Denver Water bases its demand projections on an econometric model that relies on numerous factors, including population growth within the Denver Metropolitan Area as predicted by the Denver Regional Council of Governments ("DRCOG") in 2030, and the U.S. Census Bureau as projected in 2050. The court finds that Denver Water reasonably relied on the rate of population growth used by DRCOG and the U.S. Census Bureau. Population growth factor is one of

several factors considered by Denver Water's model. Denver Water relies on a model that interrelates water usage with demographics and various other socio-economic factors. This includes the rate of usage for single-family households in the future, so that total single-family usage can be determined by multiplying that usage rate by the future number of single-family households. The model uses a projected growth rate of 1.0 percent per year for the years 2005 through 2050, and a population of 1.74 million residents in 2050. In addition, the model projects employment in the service area to increase to a total of 1.25 million jobs by 2050, reflecting an average annual job growth rate of just under 0.9 percent from 2005 through 2050. The court finds that the model assumes a water demand projection based on a reasonable rate of population and employment growth.

(3) Water Required to Meet Denver Water's Reasonably Anticipated Needs. Denver Water demonstrated that the remaining amount of conditionally decreed water is reasonably necessary to serve the reasonably anticipated needs of Denver Water for the planning period, above its current water supply.

(a) Implementation of Reasonable Water Conservation Measures During Planning Period. Denver Water has adopted an accelerated conservation plan intended to achieve by 2016 the 29,000 acre-feet of savings targeted in its 1996 Integrated Resource Plan for 2045. To achieve these goals, Denver Water has instituted a new customer information system that provides customers with access to monthly consumption information rather than the by-monthly consumption data historically provided by Denver Water to its customers. Denver Water offers rebates and incentives to encourage customers to convert to low water use appliances, plumbing fixtures, irrigation systems and more efficient landscapes. Denver Water has developed a rate structure that encourages conservation through price signals, and allows for more effective demand management during peak summer irrigation use and severe droughts. In addition, Denver Water is engaged in educational outreach to provide customers with information to reduce their consumption through best-practices for irrigation and other water use. The court finds that these conservation measures are reasonable.

(b) Reasonably Expected Land Use Mixes during the Planning Period. Denver Water's demand model considers three types of customers, which could be characterized as land use mixes. These uses include (1) single-family residences; (2) commercial, multi-family and industrial users;

(3) and government and institutional users. The court finds that these are reasonable land use mixes to consider for the planning period.

(c) Reasonably Attainable Per Capita Usage Projections for Indoor and Outdoor Use Based on the Land Use Mixes During the Planning Period. In year 2000, Denver Water's system-wide metered water use was 220 gallons per capita per day. Denver Water's forecast projects that system-wide metered use will decline to 181 gallons per capita per day by 2050. Along with other economic and demographic factors, this decline reflects the conservation savings from natural replacement of older, less efficient fixtures. Traditionally, 60 percent of Denver Water's use is for indoor purposes and 40 percent is for outdoor purposes. Denver Waters projections represent the exercise of informed judgment.

(d) Amount of Consumptive Use Reasonably Necessary to Serve the Increased Population. The court finds that Denver Water's past and planned future demands account for a reasonable amount of consumptive use to serve its customers.

(4) Denver Water's Future Demand Projections. Denver Water presented an econometric demand model and projections of future water demands for Denver Water's Service Area and its fixed-amount contractual commitments. The model, which projects unconstrained water demand, meaning water demand without emergency water restrictions, forecasts Denver Water's water demands through 2050 by utilizing socioeconomic forecasts, historical data, and U.S. Census data. Specifically, the model relies on socioeconomic projections made by DRCOG, which projects future population as far as 2030, and then extends the socioeconomic forecasts through 2050 based on national projections from the U.S. Census Bureau and other sources, such as historic relationships between service area growth and national trends. To determine Denver Water's 2050 demand, the DRCOG data is extended forward to 2050 using U.S. Census Bureau data and projections. In order to accurately forecast Denver Water's demand, the model uses separate equations to measure (1) single family water use per household customers; (2) multi-family, commercial and industrial customers; and (3) institutional (governmental) customers. The data for these three types of customers is based on annual water use data collected by Denver Water and its distributors from 1973 to 1999. Denver Water's model projects that Denver Water's 2050 treated water demand at the customers' meters would be 370,000 acre feet, including a 5 percent calibration adjustment. To estimate Denver Water's total system-wide demand water requirements a number of adjustments

must be made. First, system losses and unaccounted for water use, which is estimated to average six percent, must be added (22,000 acre feet). Second, 39,000 acre feet must be subtracted to account for improved efficiency of water using fixtures. Third, 67,000 acre feet in fixed and special commitments with customers outside of Denver Water's Combined Service Area must be added. Fourth, pursuant to Denver Water's policy of maintaining a 30,000 acre foot safety factor, 30,000 acre feet was added. With these adjustments Denver Water's total system-wide demand in 2050 is 450,000 acre feet. Denver Water has analyzed the demand forecast results. Such analysis included evaluation of overall usage and demographic metrics of the forecast in comparison to historical statistics. The court concludes that the Applicant has engaged in a thoughtful planning process and has properly taken into account both its own experience and expertise, and analysis by outside experts.

(5) Denver Water's Current Water Supply. Denver Water's projected future demands are in excess of the water supply currently available from its Municipal Water System. Denver Water generally uses its direct flow water rights first before using its reservoir storage to meet its water supply needs. During the period of 1998-2007, Denver Water's storage declined to a point where Denver Water's storage reserves were drawn down to less than its annual demand. The Subject Water Rights are a key part in meeting this future demand.

(6) Safety Factor. The court finds that Denver Water's 30,000 acre foot safety factor (30,000 acre-feet/year of a four-year drought) is reasonable and prudent amount of water to store in reserve in light of the number of customers which rely on Denver Water's system and the importance of Denver Water to the economic development of the State.

27. Capability. The structures necessary to divert the waters of the Fraser River Diversion Project and the Williams Fork Diversion Project to the beneficial uses for which the appropriations are decreed have been constructed at the locations described in the Decree as nearly as reasonably may be, or are of a nature or location such as not to create a greater burden on the watershed of the Fraser River and its tributaries and the Williams Fork River and its tributaries than as provided for in said Decree.

All facilities required to directly divert the Subject Water Rights have been constructed and are in operation. All of the storage facilities have also been constructed and are currently operational and capable of storing the Subject Water Rights, except for Empire Reservoir, which has not been constructed. However, there are no

insurmountable hurdles which would prevent the permitting and construction of Empire Reservoir.

Denver Water has demonstrated that the remaining conditionally decreed amounts can and will be diverted, stored or otherwise captured, possessed, and controlled; and that the waters will be beneficially used.

II. CONCLUSIONS OF LAW

Based upon the Findings of Fact set forth above, this Court concludes as a matter of law that:

28. The foregoing Findings of Fact are incorporated herein to the extent they constitute Conclusions of Law.

29. Denver Water has been Reasonably Diligent. Denver Water has been reasonably diligent in developing the Subject Water Rights. The measure of reasonable diligence is the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system. C.R.S. § 37-92-301(4)(b) (2010).

A water court makes a case-by-case consideration of several factors to determine whether an applicant has made the required effort. *See City of Lafayette v. New Anderson Ditch Co.*, 962 P.2d 955, 961 (Colo.1998) (citing *Dallas Creek v. Huey*, 933 P.2d 27, 36 (Colo.1997)). These factors include but are not limited to: (1) economic feasibility; (2) the status of requisite permit applications and other required governmental approvals; (3) expenditures made to develop the appropriation; (4) the ongoing conduct of engineering and environmental studies; (5) the design and construction of facilities; and (6) the nature and extent of land holdings and contracts demonstrating the water demand and beneficial uses which the conditional right is to serve when perfected. *Dallas Creek*, 933 P.2d at 36.

All acts necessary to complete the appropriation need not be accomplished in the same diligence period. What must be demonstrated is continued intent and progress toward finalizing the conditionally decreed appropriation. The existence of a plan, capability, and need for the water is examined periodically by the water court, at the close

of each diligence period, to determine whether the applicant is entitled to retain the antedated priority. Monitoring of use and need for the conditional appropriation is a proper role of the water court in a diligence proceeding. *Dallas Creek*, 933 P.2d at 36. Denver Water has shown a continued intent and progress toward finalizing the conditional decreed appropriation, and has established that it has a plan, capability and need for the water.

30. Can and Will. Denver Water can and will divert, store, or otherwise capture, possess, and control and beneficially use the Subject Water Rights. C.R.S. § 37-92-305(9)(b) (2010). Denver Water demonstrated a "substantial probability that within a reasonable time the facilities necessary to affect the appropriation can and will be completed with diligence, and that as a result water will be applied to a beneficial use." *Id.* Proof of such a substantial probability necessarily involves imperfect predictions of future events and conditions. The can and will requirement should not be applied rigidly to prevent beneficial uses where an applicant otherwise satisfies the legal standard of establishing a non-speculative intent to appropriate for a beneficial use. Further, the existence of contingencies does not prevent the can and will test from being satisfied. *City of Black Hawk v. City of Central,* 97 P.3d 951 (Colo. 2004); *City of Thornton v. Bijou Irr. Co.*, 926 P.2d 1, 43-45 (Colo. 1996). Neither current economic conditions beyond the control of the applicant which adversely affect the feasibility of perfecting a conditional water right or the proposed use of water from a conditional water right nor the fact that one or more governmental permits or approvals have not been obtained shall be considered sufficient to deny a diligence application, so long as other facts and circumstances which show diligence are present. C.R.S. § 37-92-301(4)(c) (2010).

31. Anti-Speculation. Denver Water does not have speculative intent in using the remaining conditional portions of the Subject Water Rights. Denver Water is a governmental agency which will serve persons proposed to be benefited by the Subject Water Rights, and therefore does not need to demonstrate a legally vested interest in the lands or facilities to be served. C.R.S. § 37-92-103(3)(a)(I) (2010). Denver Water demonstrated its intent to make a non-speculative use of the conditional appropriation based on: (1) a reasonable water supply planning period; (2) that its substantiated population projections are based on a normal rate of growth for that period; and (3) the amount of conditionally decreed water is reasonably necessary to serve the reasonably anticipated needs of the governmental agency for the planning period, above its current water supply. C.R.S. § 37-92-103(3)(a) (2010). *Pagosa Area Water and Sanitation Dist. v. Trout Unlimited*, 219 P.3d 774, 780 (Colo. 2009); *Pagosa Area Water & Sanitation District v. Trout Unlimited*, 170 P.3d 307, 309-310, 312 (Colo. 2007).

32. Perfection of Water Rights. With regard to its claim to make absolute, Denver Water demonstrated that it: (1) captured, possessed, and controlled water; and (2) the applied the water to a beneficial use. *City of Lafayette v. New Anderson Ditch Co.*, 962 P.2d 955, 961-962 (Colo.1998) (citing *City & County of Denver v. Northern Colo. Water Conservancy Dist.*, 276 P.2d 992, 998-99 (Colo. 1954)). Denver Water has lawfully petitioned the Water Court to declare the right absolute for purposes of fixing its place in the priority system in relation to all other appropriators. *New Anderson Ditch Co.*, 962 P.2d 962; C.R.S. § 37-92-306 (2010).

33. Burden of Proof Met. Denver Water has complied with all requirements and met all standards and burdens of proof, including but not limited to C.R.S. §§ 37-92-302(1); 37-92-103(3); 37-92-305(9) (2010) to adjudicate its claim for the Subject Water Rights and is therefore entitled to a conditional decree confirming and approving its conditional water storage rights as described in the Findings of Fact.

34. All other requirements. Denver Water has satisfied all other statutory and legal requirements to support a finding of reasonable diligence.

III. JUDGMENT AND DECREE

The Court incorporates its findings of fact and concludes that Denver Water has met the requirements of law for a finding of diligence.

35. The foregoing Findings of Fact and Conclusions of Law are incorporated herein.

36. Denver Water has been reasonably diligent in the development of the Fraser River and Williams Fork Diver Projects since the last Finding of Diligence, and the said conditionally decreed water rights and priorities are hereby continued in full force and effect and no order or decree is directed or entered for the cancellation of them in whole or in part.

37. Denver Water demonstrated that it lawfully diverted the amount of 254 c.f.s. under the Williams Fork Diversion Project and put said amount to beneficial use by customers served by the Denver Municipal Water System. The amount of 254 c.f.s., as depicted on Exhibit A, is hereby decreed absolute, and no additional showing of diligence is required with regard to said amount.

38. Pursuant to C.R.S. § 37-92-301(4), Denver Water shall file an Application for Finding of Reasonable Diligence on or before the last day of _____, 2017, so long as the Applicant desires to maintain those conditionally decreed water rights or until

a determination has been made that these conditionally decreed water rights have become absolute water rights by reason of the completion of the appropriation.

DATED this ___ day of ____, 2011.

Holly K. Strabilzky
Water Referee
Water Division No. 1

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.

THE FOREGOING RULING IS CONFIRMED AND APPROVED AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: _____

James Boyd
Water Judge
Water Division No. 5
State of Colorado

ATTACHMENT Q

TABLE I
(Case No. 07CW31 WD5)
FRASER RIVER DIVERSION PROJECT
Amounts Conditionally Decreed for Direct Flow Diversion

Paragraph No. in Decreed Portion of Original Decree Civil Action No. 657	Sources	Amount Conditionally Decreed in cubic feet per second	Amount Remaining Conditionally Decreed in cubic feet per second
1(a-f) &1a	Fraser River, Jim, Little Vasquez, Vasquez, Cooper and Buck	335	260.0
2(a)	St. Louis Creek, East St. Louis, Fool, King, East King, West, Elk and Elk Creeks, and tributary drainage above the West Canal	700	486.0
2(b)	West St. Louis Creek, Byers Creek and tributary drainage above the East Canal	112	70.0
2(c)	Faun Creek (shown as South Ranch Creek on current U.S.G.S. mapping) and tributary drainage above the East Canal	280	230.0
2(d)	South Ranch Creek (shown as Middle Ranch Creek on current U.S.G.S. mapping) and tributary drainage above the East Canal	180	114.0
2(e)	Ranch Creek and tributary drainage above the East Canal	112	63.0
2(f)	North Ranch Creek and tributary drainage above the East Canal	112	79.0
6	Total diversion through the Moffat Tunnel from all sources described in paragraphs 1 and 2 of Civil Action No. 657	1,280	352.0

TABLE II
(Case No. 07CW31 WD5)
FRASER RIVER DIVERSION PROJECT
Amounts Conditionally Decreed for Storage

Paragraph No. in Decreed Portion of Original Decree Civil Action No. 657	Name	Sources	Amount Remaining Conditionally Decreed c.f.s.
3(a)	St. Louis Reservoir	St. Louis, Byers, West St. Louis Creeks	1,150.0

3(b)	Vasquez Reservoir	Vasquez, Elk, West Elk, East King, King, Fool, East St. Louis, St. Louis, Byers, West St. Louis Creeks	275.0
3(c)	Vasquez Reservoir	Vasquez, Elk, West Elk, East King, King, Fool, East St. Louis, St. Louis, Byers, West St. Louis Creeks	6,341.0
5	Antero Reservoir	Fraser River and its tributaries diverted by Fraser River Diversion Project	33,000.0
*	Gross Reservoir	Fraser River and its tributaries diverted by Fraser River Diversion Project	71,266.70

*Gross Reservoir, originally known as Reservoir No. 22, was decreed in "Supplemental Finding and Decree for Other Than Irrigation Purposes Respecting Reservoir No. 22 of the City and County of Denver" in Civil Action No. 657 by Decree of the Court entered April 15, 1946.

TABLE III
(Case No. 07CW31 WD5)
WILLIAMS FORK DIVERSION PROJECT
Amounts Conditionally Decreed for Direct Flow Diversion

Paragraph No. in Decreed Portion of Original Decree Civil Action No. 657	Sources	Amount Conditionally Decreed in cubic feet per second	Amount Remaining Conditionally Decreed in cubic feet per second
1(a)	McQueary Creek	70	21.4
1(b)	Jones Creek	25	3.5
1(c)	McQueary Creek and Jones Creek and tributary drainage of McQueary Creek and Jones Creek	115	45
1(f)	Bobtail Creek plus tributary drainage	195	80
1(g)	Steelman Creek plus tributary drainage	150	60
1(h)	Middle Fork – Williams Fork River	550	550
		350	350

1(i)	Middle Fork – Williams Fork River plus tributary drainage		
1(j)	Allen Creek	250	250
1(k)	South Fork Williams Fork River	200	200
1(l)	Middle Fork Feeder and tributary drainage	50	50
Last paragraph under paragraph 1on page 8	Total diversions through the Williams Fork Tunnel by means of priorities listed in subsections (a)to (l) of paragraph 1 of the decree	620	366.00

TABLE IV
(Case No. 07CW31 WD5)
WILLIAMS FORK DIVERSION PROJECT
Amounts Conditionally Decreed for Storage

Paragraph No. in Decreed Portion of Original Decree Civil Action No. 657	Name	Sources	Amount Remaining Conditionally Decreed c.f.s.
2(a)	Empire Reservoir	Williams Fork River and its tributaries	6,494.39
2(e)	Antero Reservoir	Williams Fork River and its tributaries	33,000.00