

Agreement for Settlement of Water Court Application of the City of Boulder and County of Boulder in Case No. 20CW3053

- A. **Parties.** The parties to this Settlement Agreement are the City of Boulder (“City”), the County of Boulder (“County”), and the Boulder and White Rock Ditch and Reservoir Company (“BWR”). The City, County and BWR may collectively be referred to as the “Parties” or individually as a “Party.”
- B. **Recitals.**
- (1) The City and County have applied as co-applicants to adjudicate a storage right for an enlarged Panama Reservoir (“Reservoir”) and the City has applied as sole applicant for certain rights of substitution and exchange using releases of water stored by the City in an enlarged Reservoir to Boulder Creek, as more fully set forth in the application, as amended, in Case No. 20CW3053 (“Application”).
 - (2) BWR owns and operates the Reservoir and related BWR system infrastructure and has opposed the Application.
 - (3) The City and County are willing to agree to certain terms and conditions regarding the development of a future enlargement of the Reservoir in cooperation with BWR.

Now, therefore, the Parties agree as follows:

1. **Water Quality Monitoring.** BWR intends to conduct water quality monitoring in the Reservoir and perform related water quality analyses to understand the baseline water quality parameters for the Reservoir throughout the water year.¹ The scope and parameters of the water quality monitoring and analyses shall be developed and managed by BWR in consultation with the City and County. BWR agrees to provide the City and County with copies of the water quality monitoring and analyses for the reservoir and the City and County agree to protect such information, to the extent possible, from disclosure as confidential and trade secret information of BWR. The Parties may enter into a nondisclosure agreement to provide additional protections for such information shared by BWR to the City and County. During the initial diligence period following entry of the final decree in the Application, the City and County agree to provide reimbursement to BWR for the reasonable costs incurred by BWR for the water quality monitoring and analyses in the amount of up to \$30,000 per year. The Parties agree to work together in good faith to update the water quality monitoring and analysis performed during the initial diligence period, as may be appropriate, to understand the baseline water quality parameters for the Reservoir within two to three years prior to the commencement of any construction for an enlargement at no expense to BWR. The amount of reimbursement to BWR may be increased based on actual costs for work done following the initial diligence period.
2. **Operational Study.** BWR intends to conduct an operational study of existing BWR system operations and the anticipated future operations for the proposed enlargement of the Reservoir described in the Application. The scope and parameters of the operational study shall be developed and managed by BWR in consultation with the City and County. The Parties agree to cooperate in the development of the operational study and the City and County agree to make their technical consultants reasonably available to engage in discussions with BWR’s technical consultants to inform the operational study. BWR agrees to share information with the City and County as it is developed for the operational study and the City and

¹ Baseline water quality parameters for the Reservoir shall be based on water quality monitoring data and related analyses for existing water quality conditions prior to any enlargement of the Reservoir and shall be the point of comparison for water quality conditions following any enlargement of the Reservoir.

County agree to protect such information, to the extent possible, from disclosure as confidential and trade secret information of BWR. In addition, BWR agrees to protect as confidential information shared by the City and County as part of the operational study. The Parties may enter into a nondisclosure agreement to provide additional protections for such information shared between the Parties. The timing for completion of the operational study may extend beyond the initial diligence period for the Application, so long as the study is completed prior to negotiations between the Parties for an operational agreement for the Reservoir enlargement or the development of final plans for construction of the Reservoir enlargement, whichever occurs later. The City and County agree to provide reimbursement to BWR for the reasonable costs incurred by BWR for the operational study, including but not limited to, legal and engineering fees and time spent by representatives of BWR, in the amount of up to \$150,000.

3. **Panama Reservoir Enlargement Agreement.** The City and County agree that prior to making any modifications to the BWR system for the Reservoir enlargement contemplated by the Application, they will enter into an operational and enlargement agreement with BWR to address the enlargement of the Reservoir, the shared use of BWR infrastructure, potential damage to BWR and anticipated impacts to BWR operations and deliveries to shareholders; or if such agreement cannot be reached between the Parties and both the City and County - or one of the City or County - still intend to make such modifications, then the City and/or County (whichever Party or Parties still intend(s) to make such modifications) agree to seek a declaratory order pursuant to the standard adopted by the Colorado Supreme Court in *Roaring Fork Club v. St. Jude's Company*, 36 P.3d 1229 (Colo. 2001), that the proposed modifications do not damage BWR's interests in accordance with the Restatement (Third) of Property (Servitudes) Section 4.8(3); provided, however, the City and/or County shall not be required to seek a declaratory order to the extent that the determinations required in *Roaring Fork* are consolidated or otherwise made in conjunction with any condemnation proceeding, or it is determined by a court of competent jurisdiction that the City and/or County do not have standing to seek a declaratory action under *Roaring Fork* without first acquiring an interest in the BWR system (in which case the City and County reserve the right to proceed through condemnation prior to seeking the declaration under *Roaring Fork*).
4. **Reimbursement to BWR for Litigation Costs in Case No. 20CW3053.** Upon execution of this Settlement Agreement and in addition to other reimbursement obligations addressed in Paragraphs 1 and 2 above, the City and County shall provide reimbursement to the Ditch Company for the reasonable costs, up to a total amount of \$110,000, associated with the Ditch Company's evaluation of and participation in the adjudication of the Application, including participation at trial and in any appeal, if applicable.
5. **Stipulations in Case Nos. 20CW3053 and 21CW3236.** In addition to the Application, the City filed an application to adjudicate, *inter alia*, rights of substitution and exchange using releases of foreign water stored by the City in an enlarged Reservoir to Boulder Creek, as more fully set forth in the application in Case No. 21CW3236. BWR has also opposed the City's application in Case No. 21CW3236 as it relates to a proposed enlargement of the Reservoir. In consideration for the terms and conditions agreed to herein, BWR agrees to execute stipulations in both Case Nos. 20CW3053 and 21CW3236 contemporaneous with this Settlement Agreement.
6. **Miscellaneous:**
 - a. The limitations described in this Settlement Agreement are in addition to other terms and conditions in the decrees ultimately entered by the Water Court in the Application and Case No. 21CW3236.

- b. This Settlement Agreement is entered for the limited purposes of resolving the issues raised or that could have been raised by BWR in the Application and Case No. 21CW3236 and no others. Nothing in this Settlement Agreement is intended to limit, prevent, or preclude either Party from appearing or otherwise participating in any future proceeding (administrative, rulemaking, or otherwise).
- c. The Parties shall strive for cooperation and improved communication on matters regarding the future development of the Reservoir enlargement.
- d. The amounts identified for reimbursement to BWR in this Settlement Agreement shall be paid by the City and County to BWR within 45 days of being provided with an invoice or itemized statement for the costs chargeable by BWR. For purposes of this Settlement Agreement, reimbursement shall be made by the City and County at the actual hourly rate for labor and equipment incurred by BWR.
- e. The studies and evaluations described in this Settlement Agreement are being conducted for the benefit of the City and County related to their claims to enlarge the Reservoir as described in the Application. The estimates being provided are the best estimates based on the information available at the time of this Settlement Agreement. To the extent the proposed studies and evaluations require more time and the compilation of additional information to complete, the Parties shall discuss the work to be performed to complete or expand those studies and, upon mutual approval of the Parties to proceed with the additional work, the City and County shall be responsible for reimbursing BWR for that work. BWR shall not be responsible for any costs for the studies and evaluations described in this Settlement Agreement.
- f. The waiver of any provision in this Settlement Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.
- g. For notices and all other communication between the Parties pursuant to this Settlement Agreement, the communication shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by mail or email addressed to the Party to whom such notice is intended to be given, at the address set forth below, or at such other address as has been previously furnished in writing to the other Party. Such notice shall be deemed to have been given when deposited in the U.S. mail or when emailed.

- i. If to BWR:
Boulder and White Rock Ditch and Reservoir Company
P.O. Box 119
Longmont CO, 80502-0119

With a copy to:
Bradley C. Grasmick
Lawrence Custer Grasmick Jones & Donovan, LLP
5245 Ronald Reagan Blvd
Johnstown CO 80534
brad@lcwaterlaw.com

- ii. If to the City:
Attention: Kim Hutton, Water Resource Manager
City of Boulder, Utilities Department
1777 Broadway, P.O. Box 791
Boulder, CO 80306
huttonk@bouldercolorado.gov

With a copy to:

Attention: Jessica Pault-Atiase, Senior Attorney – Water & Utilities
Boulder City Attorney's Office
1777 Broadway, P.O. Box 791
Boulder, CO 80306
pault-atiasej@bouldercolorado.gov

iii. If to the County:

Attention: Darren Beck, Water Program Supervisor
Boulder County Parks & Open Space
Agricultural Resources Division
5201 St. Vrain Road
Longmont, CO 80503
dbeck@bouldercounty.gov

With a copy to:

Attention: Ryan Malarky, Assistant Attorney
Liana Larremore, Assistant Attorney
Boulder County Attorney's Office
P.O. Box 471
Boulder, CO 80306
rmalarky@bouldercounty.gov
llarremore@bouldercounty.gov

- h. The terms of this Settlement Agreement shall be specifically enforceable as a water matter in the District Court for Water Division No. 1. If any Party defaults as to any obligation or agreement set forth herein, the non-defaulting Party may elect to treat this Settlement Agreement as being in full force and effect and shall have the right to any relief it may be entitled to under law, equity, or both.
- i. This Settlement Agreement shall not create a duty of care or liability with respect to any person or entity, other than the parties hereto, and their respective heirs, successors, and assigns.
- j. This Settlement Agreement shall not waive any of the privileges or immunities the Parties, and their respective officers, employees, successors, and assigns may present pursuant to law, including but not limited to the Colorado Governmental Immunity Act, Section 24-10-101, C.R.S., et seq., as amended.
- k. The City and County's financial obligations pursuant to this Settlement Agreement shall be subject to any necessary annual appropriation by the Boulder City Council or Boulder County Commissioners, respectively, in accordance with Colorado law.

The Parties to this Settlement Agreement have caused it to be executed by their authorized officers as of the day and year written below. This Settlement Agreement may be executed in counterparts, each of which shall be original, but all of which together shall constitute a fully binding and executed agreement.

[SIGNATURE PAGE/S FOLLOW]

**BOULDER AND WHITE ROCK DITCH AND RESERVOIR
COMPANY**

By: _____

Title: _____

Date: _____

CITY OF BOULDER

City Manager

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

**BOARD OF COUNTY COMMISSIONS OF BOULDER
COUNTY**

By _____

Ashley Stoltzman

Chair

DISTRICT COURT, WATER DIVISION NO. 1,
COLORADO

P.O. Box 2038, 901 9th Avenue
Greeley, Colorado 80632
(970) 475-2400

CONCERNING THE APPLICATION FOR WATER
RIGHTS OF THE CITY OF BOULDER AND COUNTY
OF BOULDER, COLORADO

IN BOULDER COUNTY.

Attorneys for Co-Applicant City of Boulder:

Jessica L. Pault-Atiase, #36739
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Michael A. Kopp, #43204
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Attorneys for Co-Applicant County of Boulder:

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Andrea L. Benson, #33176
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Telephone: 303-894-8191; fax: 303-861-0420
Email: gym@alpersteincovell.com

**Attorneys for Opposer Boulder & White Rock Ditch
Company:**

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DONOVAN, LLP
Bradley C. Grasmick, #35055
David L. Strait, #52659
Ryan M. Donovan, #44435
5245 Ronald Reagan Blvd., #1, Johnstown, CO 80534
Telephone (970) 622-8181
Email: brad@lcwaterlaw.com; dstrait@lcwaterlaw.com,
ryan@lcwaterlaw.com

▲ COURT USE ONLY ▲

Case No. 2020CW3053

**STIPULATION BETWEEN APPLICANTS AND
BOULDER & WHITE ROCK DITCH COMPANY**

City of Boulder and County of Boulder (“Applicants”), and Opposer Boulder & White Rock Ditch Company (“BWR”), by and through their undersigned attorneys, hereby stipulate and agree as follows:

1. BWR is an Opposer in 2020CW3053.
2. BWR consents to the entry of a decree that contains terms and conditions no less restrictive on Applicants and no less protective of BWR’s interests than those contained in the proposed decree attached hereto as **Exhibit A**.
3. BWR shall be notified by Applicants of any proposed changes in the decree whether by Applicants, other Opposers, or the Court, prior to submittal of the final proposed decree to the Court for entry.
4. **Evaporative and other Losses.** Implementation of the Panama Reservoir Enlargement Project will result in reservoir accounts separately owned by BWR, City of Boulder and Boulder County. Evaporative losses will generally be allocated proportionately to each of those accounts based on the amount of water each entity holds in their accounts. The Enlargement Project may result in an increase in evaporative and other losses from the Reservoir. Therefore, BWR may allocate additional shrinkage loss to the City of Boulder and Boulder County accounts. Such shrinkage loss will be determined by comparing the surface area computed using the existing stage-area-capacity table, attached to the proposed decree as Exhibit C, to a revised stage-area-capacity table developed after Project completion by the City and County and determining any incremental change in surface area that resulted from the Project. BWR may also assess other reasonable system losses to the water diverted into, stored, and released from Panama Reservoir for City of Boulder and Boulder County.
5. This Stipulation shall be binding on the parties, their successors and assigns.
6. Each party will be responsible for its own attorney's fees and costs in this matter.
7. This Stipulation shall be enforceable by the parties either as an agreement or as an order of the Court.
8. Applicants and BWR hereby move the Court to enter an Order approving this Stipulation.

Respectfully submitted this _____ day of August 2024.

CITY OF BOULDER, COLORADO
OFFICE OF THE CITY ATTORNEY

By: _____
Jessica L. Pault-Atiase, #36739
Senior Counsel

TROUT RALEY

By: _____
Lisa M. Thompson, #35923
Michael A. Kopp, 43204

ATTORNEYS FOR CO-APPLICANT
CITY OF BOULDER

ALPERSTEIN COVELL PC

By: _____
Gil Y. Marchand, Jr., #19870
Cynthia F. Covell, #10169
Andrea L. Benson, #33176

ATTORNEYS FOR CO-APPLICANT
COUNTY OF BOULDER

LAWRENCE CUSTER GRASMICK
JONES & DONOVAN, LLP

By: _____
Bradley C. Grasmick, #35055
David L. Strait, #52659
Ryan M. Donovan, #44435

ATTORNEYS FOR BOULDER &
WHITE ROCK DITCH COMPANY

*Pursuant to Rule 121, a printed or printable copy of the document bearing the original,
electronic, or scanned signature is on file in the Office of the City Attorney*

DISTRICT COURT, WATER DIVISION NO. 1,
COLORADO

P.O. Box 2038, 901 9th Avenue
Greeley, Colorado 80632
(970) 475-2400

CONCERNING THE APPLICATION FOR WATER
RIGHTS OF THE CITY OF BOULDER AND
COUNTY OF BOULDER, COLORADO

IN BOULDER COUNTY.

Attorneys for Co-Applicant City of Boulder:

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Attorneys for Co-Applicant County of Boulder:

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▲ COURT USE ONLY ▲

Case No. 2020CW3053

**MOTION TO APPROVE STIPULATION BETWEEN APPLICANTS
AND BOULDER & WHITE ROCK DITCH COMPANY**

Applicants City of Boulder and County of Boulder, by and through their undersigned counsel, hereby move for an Order approving the Stipulation between Applicants and Opposer Boulder & White Rock Ditch Company.

A copy of this Stipulation is attached.

Respectfully submitted this _____ day of August 2024.

CITY OF BOULDER, COLORADO
OFFICE OF THE CITY ATTORNEY

By: _____
Jessica L. Pault-Atiase, #36739

TROUT RALEY

By: _____
Lisa M. Thompson, #35923
Michael A. Kopp, 43204

ATTORNEYS FOR CO-APPLICANT CITY OF
BOULDER

ALPERSTEIN COVELL PC

By: _____
Gil Y. Marchand, Jr., #19870
Cynthia F. Covell, #10169
Andrea L. Benson, #33176

ATTORNEYS FOR CO-APPLICANT COUNTY
OF BOULDER

Pursuant to Rule 121, a printed or printable copy of the document bearing the original, electronic, or scanned signature is on file in the Office of the City Attorney.

CERTIFICATE OF SERVICE

I hereby certify that on _____ day of _____ 2024, a true and correct copy of the above and foregoing was electronically served via Colorado e filing upon the parties of record at the time of filing.

s/Mary Wallace _____
Mary Wallace

DISTRICT COURT, WATER DIVISION NO. 1, COLORADO P.O. Box 2038, 901 9 th Avenue Greeley, Colorado 80632 (970) 475-2400	▲ COURT USE ONLY ▲ <hr/> Case No. 2020CW3053
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY OF BOULDER AND COUNTY OF BOULDER, COLORADO IN BOULDER COUNTY.	
ORDER RE: STIPULATION BETWEEN APPLICANTS AND BOULDER & WHITE ROCK DITCH COMPANY	

THE COURT, having reviewed the Applicants' Motion to Approve Stipulation between Applicants and Opposer Boulder & White Rock Ditch Company, hereby GRANTS same. This Order is binding between the parties thereto and enforceable in this proceeding.

Dated: _____

BY THE COURT:

 District Court Judge, Division No. 1

<p>DISTRICT COURT, WATER DIVISION NO. 1, COLORADO</p> <p>P.O. Box 2038, 901 9th Avenue Greeley, Colorado 80632 (970) 475-2400</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case No. 2020CW3053</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY OF BOULDER AND COUNTY OF BOULDER, COLORADO</p> <p>IN BOULDER COUNTY</p> <hr/> <p>Attorneys for Co-Applicant County of Boulder:</p> <p>Gilbert Y. Marchand, Jr., #19870 Andrea L. Benson, #33176 ALPERSTEIN & COVELL, P.C. 2299 Pearl Street, Suite 400-C Boulder, CO 80302 Telephone: 303-894-8191; fax: 303-861-0420 Email: gym@alpersteincovell.com; alb@alpersteincovell.com</p> <p>Attorneys for Opposer Town of Erie: BUSHONG & HOLLEMAN PC Steven J. Bushong, #21782 Gunnar J. Paulsen, #52433 1525 Spruce Street, Suite 200, Boulder, CO 80302 Telephone Number: (303) 431-9141 Email: sbushong@BH-Lawyers.com; gpaulsen@BH-Lawyers.com</p>	
<p>STIPULATION BETWEEN CO-APPLICANT COUNTY OF BOULDER AND TOWN OF ERIE</p>	

Co-Applicant, County of Boulder (“County”), and Opposer Town of Erie (“Erie”), by and through their undersigned attorneys, hereby stipulate and agree as follows:

1. Erie is an Opposer in 2020CW3053.
2. Erie consents to the entry of a decree that contains terms and conditions no less restrictive on County and no less protective of Erie’s interests than those contained in the proposed decree attached hereto as **Exhibit A**. Erie has already consented to entry of a decree as it relates to co-applicant the City of Boulder’s interests at this time.
3. Erie shall be notified by County of any proposed changes in the decree whether by Applicants, other Opposers, or the Court and shall be given time to determine whether the modified decree is consistent with this Stipulation, prior to submittal of the final proposed decree

to the Court for entry. Erie reserves the right to oppose entry of a modified decree if inconsistent with this Stipulation.

4. In the event that Erie is unable to secure access to monitor for water quality at the Panama Reservoir outlet from the owner of the Reservoir and underlying property, Erie may request from the County access to County land along the outlet channel as close to the Panama Reservoir as possible. County agrees to work with Erie in good faith towards providing such access by separate written agreement, subject to the requirements of the County Land Use Code, lease rights, and other applicable rules, regulations, or legal requirements. All such monitoring conducted by Erie shall be at Erie's cost.

5. This Stipulation shall be binding on the parties, their successors and assigns.

6. Each party will be responsible for its own attorney's fees and costs in this matter.

7. This Stipulation shall be enforceable by the parties either as an agreement or as an order of the Court.

8. County shall move the Court for entry of an Order approving this Stipulation and Erie consents thereto.

Respectfully submitted this _____ day of August 2024.

ALPERSTEIN & COVELL, P.C.

BUSHONG & HOLLEMAN PC

By: _____
Gilbert Y. Marchand, Jr., #19870
Andrea L. Benson, #33176

By: _____
Steven J. Bushong, #21782
Gunnar J. Paulsen, #52433

ATTORNEYS FOR CO-APPLICANT
COUNTY OF BOULDER

ATTORNEYS FOR TOWN OF ERIE

<p>DISTRICT COURT, WATER DIVISION NO. 1, COLORADO</p> <p>P.O. Box 2038, 901 9th Avenue Greeley, Colorado 80632 (970) 475-2400</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case No. 2020CW3053</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY OF BOULDER AND COUNTY OF BOULDER, COLORADO</p> <p>IN BOULDER COUNTY</p> <hr/> <p>Attorneys for Co-Applicant County of Boulder:</p> <p>Gilbert Y. Marchand, Jr., #19870 Andrea L. Benson, #33176 ALPERSTEIN & COVELL, P.C. 2299 Pearl Street, Suite 400-C Boulder, CO 80302 Telephone: 303-894-8191; fax: 303-861-0420 Email: gym@alpersteincovell.com; alb@alpersteincovell.com</p>	
<p style="text-align: center;">MOTION TO APPROVE STIPULATION BETWEEN COUNTY OF BOULDER AND TOWN OF ERIE</p>	

Co-Applicant County of Boulder, by and through its undersigned counsel, hereby moves for an Order approving the Stipulation between County and Opposer Town of Erie.

A copy of this Stipulation is attached.

Respectfully submitted this _____ day of August 2024.

ALPERSTEIN & COVELL, P.C.

By: _____
Gilbert Y. Marchand, Jr., #19870
Andrea L. Benson, #33176

ATTORNEYS FOR CO-APPLICANT COUNTY
OF BOULDER

CERTIFICATE OF SERVICE

I hereby certify that on _____ day of _____ 2024, a true and correct copy of the above and foregoing was electronically served via Colorado eFiling upon the parties of record at the time of filing.

DISTRICT COURT, WATER DIVISION NO. 1, COLORADO P.O. Box 2038, 901 9 th Avenue Greeley, Colorado 80632 (970) 475-2400	▲ COURT USE ONLY ▲ <hr/> Case No. 2020CW3053
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY OF BOULDER AND COUNTY OF BOULDER, COLORADO IN BOULDER COUNTY	
<p align="center">ORDER RE: STIPULATION BETWEEN COUNTY OF BOULDER AND TOWN OF ERIE</p>	

THE COURT, having reviewed the County of Boulder’s Motion to Approve Stipulation between County and Opposer Town of Erie, hereby GRANTS same. This Order is binding between the parties thereto and enforceable in this proceeding.

Dated: _____

BY THE COURT:

 District Court Judge, Division No. 1

DISTRICT COURT, WATER DIVISION NO. 1, COLORADO P.O. Box 2038 901 9 th Avenue Greeley, Colorado 80632	▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY OF BOULDER AND COUNTY OF BOULDER IN BOULDER COUNTY, COLORADO	<hr/> Case No. 2020CW3053 <i>Draft 2024-23-08</i>
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE	

This matter has come before the Court on the Application of the City of Boulder filed on April 23, 2020, as amended and restated on June 10, 2020. The County of Boulder was included as a co-applicant in the amended Application. The Court, having reviewed the pleadings, the evidence presented and the stipulations of the parties, hereby enters the following Findings of Fact, Conclusions of Law, Judgment and Decree:

FINDINGS OF FACT

1. Applicants: City of Boulder (“City”), P. O. Box 791, Boulder, Colorado 80306-0791; and County of Boulder (“County”), 5201 St. Vrain Road, Longmont, Colorado 80503.
2. Notice and Jurisdiction: Timely and adequate notice of the Application, as amended, was given as required by statute, and the Court has jurisdiction over the subject matter of this proceeding and over all parties affected hereby, whether they have appeared or not. None of the lands or water involved in this Application, as amended, is within the boundaries of a designated groundwater basin.
3. Summary of Consultation: The Division Engineer for Water Division No. 1 filed its Summary of Consultation to the original Application on July 31, 2020, copies of which were served on all parties on the same date. The Division Engineer for Water Division No. 1 filed a Summary of Consultation regarding the amended Application on September 30, 2020, copies of which were served on all parties on the same date. The Applicants have addressed the concerns raised by the Division Engineer herein. The Court has duly considered the Summaries of Consultation and the Applicants’ responses thereto.

4. Statements of Opposition: Timely statements of opposition were filed to the original Application by Shores on Plum Creek Metropolitan District Nos. 1 through 10 (“SPC Districts”); Farfrumwurkin, LLLP (“Farfrumwurkin”); Dream Weaver Holdings, LLC (“Dream Weaver”); City of Lafayette; United Water and Sanitation District (“United”); Public Service Company of Colorado (“PSCo”); Varra Companies, Inc. (“Varra”); and Boulder and White Rock Ditch and Reservoir Company (“Boulder and White Rock”). Timely statements of opposition were filed to the amended Application by Water Users Association of District No. 6 (“Water Users”); New Consolidated Lower Boulder Reservoir and Ditch Company (“Lower Boulder”); and Town of Erie. The time for filing statements of opposition has expired. United withdrew its statement of opposition on January 26, 2021. Lower Boulder withdrew its statement of opposition on May 12, 2023.
5. Stipulations: Applicants have entered into stipulations with opposers as set forth below. The Court has reviewed the stipulations and has entered orders approving them. The Court finds that this decree is consistent with the provisions of the stipulations.
 - a. SPC Districts stipulation dated June 25, 2024.
 - b. Farfrumwurkin stipulation dated June 25, 2024.
 - c. Dream Weaver stipulation dated June 25, 2024.
 - d. City of Lafayette stipulation dated August 23, 2024.
 - e. PSCo stipulation dated June 25, 2024.
 - f. Varra stipulation dated August 1, 2024.
 - g. Boulder and White Rock stipulation dated _____.
 - h. Water Users stipulation dated October 23, 2023.
 - i. Town of Erie stipulation dated _____.
6. General Description of Application: The City and the County seek a decree confirming and approving a conditional water storage right for Panama Reservoir. In addition, the City seeks confirmation and approval of conditional appropriative rights of substitution and exchange on Boulder Creek and its tributaries. The City will operate the exchanges in coordination with the water rights decreed on March 29, 2020 in Case No. 2016CW3160, District Court, Water Division No. 1, and pending in Case No. 2021CW3236, District

Court, Water Division No. 1. The County's interests in the water rights decreed herein are limited to a joint interest in the water storage right, together with the City. The City is the sole applicant for the conditional appropriative rights of substitution and exchange and the County has no rights or claims whatsoever to the City's water stored in Panama Reservoir for use by exchange.

7. Description of Conditional Water Storage Right:

- a. Name of Reservoir: Panama Reservoir Enlargement.
- b. Legal Description: Panama Reservoir No. 1 (a.k.a. Six Mile Reservoir No. 2) is located primarily in Section 35, Township 2 North, Range 69 West, 6th P.M., Boulder County, as depicted on the map attached hereto as **Exhibit A**; the center of said reservoir generally located at 105° 5' 0.76" W and 40° 5' 40.90" N. The outlet is located on the east side of said Section 35, Township 2 North, Range 69 West, and is also depicted on **Exhibit A**. Water will be released to Boulder Creek through the proposed Release Structure described in Section 8(b)(i) and depicted on **Exhibit A**.
- c. Source: Boulder Creek and Goose Creek.
- d. Filling Structure: The Panama Reservoir is filled via (i) the Boulder and White Rock Ditch, with a diversion structure located on the north side of Boulder Creek in Section 30, Township 1 North, Range 70 West, 6th P.M., Boulder County, east of the Twelfth Street Bridge in the City of Boulder, and (ii) the Leggett Ditch, with a diversion structure located on the east bank of Boulder Creek at a point from whence the east quarter corner of Section 18 in Township 1 North, Range 69 West, 6th P.M., Boulder County bears south 11° 45' east 785 feet.
- e. Date of Appropriation: April 23, 2020 for water diverted by the City for City uses, on which date there was a concurrence of intent to appropriate and overt acts in furtherance of such intent, including, without limitation, the filing date of the original Application. June 10, 2020 for water diverted by the County for County uses based on the filing date of the amended Application.
- f. Amount: 2,600 acre-feet, new conditional enlargement, with 2,000 acre-feet belonging to the City and 600 acre-feet belonging to the County. The rate of diversion in cubic feet per second for filling the reservoir is 134.13 c.f.s. through the Boulder and White Rock Ditch, conditional; and 65 c.f.s. through the Leggett Ditch, conditional. The diversions into Panama Reservoir under the Panama Reservoir Enlargement will be measured at the reservoir inlet flumes for the

Boulder and White Rock Ditch and Leggett Ditch, respectively. The operation and use of the Panama Reservoir Enlargement Water Storage Right will be the subject of a future agreement between the City and County.

- g. City's Uses of Panama Reservoir Enlargement Water Storage Right: All municipal purposes, including, without limitation, domestic, storage, irrigation, commercial, industrial, power generation, fire protection, recreation, fish and wildlife preservation and propagation, exchange, substitution, augmentation, replacement and recharge, within the City of Boulder service area and outside the Boulder service area for such extra-territorial customers as the City may serve from time to time pursuant to City Charter and contracts, including potential leases of the City's interest in the Panama Reservoir Enlargement to the County for the County's uses as described in paragraph 7(h); irrigation of open space lands owned or controlled by the City. Such use may be fully consumptive. Use outside the Boulder service area by extra-territorial customers of Boulder, is subject to the limitations of Section 7(g)(ii), below. If the use is to occur on lands other than the Panama Reservoir site, as the same may be enlarged, the use will be accomplished by release of water to Boulder Creek and subsequent redirection or exchange, or pursuant to internal trades with Boulder and White Rock. The Division Engineer shall assess transit losses that are reasonably necessary in circumstances where Boulder delivers water to Boulder Creek for redirection at a downstream location. No specific plan for augmentation or recharge rights are requested or approved by this decree. Use of water stored under the Panama Reservoir Enlargement Water Storage Right for augmentation or recharge purposes shall be made pursuant to separate water court decree or administrative approval. All fish and wildlife preservation and propagation uses will be limited to in and around the Panama Reservoir site, as the same may be enlarged.
 - i. Reuse and Successive Use: The City may make a fully consumptive first use of the water and use, reuse and successively use and dispose of the water to extinction for the decreed purposes. Following release from Panama Reservoir, such reuse, successive use and use by disposition may be made directly, by exchange, or by re-diversion and storage. The City shall quantify return flows from municipal indoor use of the Panama Reservoir Enlargement water storage right using the methodology described below, which is consistent with the previous quantifications of the City's municipal return flows decreed for the sources of substitute supply described in Section 8(e) below.
 - 1. City Indoor Use Return Flow Quantification Methodology:

- a. During November through February, the amounts of daily reusable indoor return flow attributable to the Panama Reservoir Enlargement water storage right shall be determined using the following formula:

$$\begin{array}{l} \text{Daily Panama Reservoir Enlargement Reusable Indoor Return Flow} \\ = \text{Previous Day's Treated Water Production Attributed to Panama Reservoir Enlargement/Previous Day's Total Treated Water Production} \\ \times \text{Minimum of:} \\ \text{(Previous Day's Total Treated Water Production} \\ \text{or Previous Day's Wastewater Discharge)} \\ \times 95\% \end{array}$$

- b. During the months of March through October, the amounts of daily reusable indoor return flow attributable to the Panama Reservoir Enlargement water storage right shall be determined using the following formula:

$$\begin{array}{l} \text{Daily Panama Reservoir Enlargement Reusable Indoor Return Flow} \\ = \text{Previous Day's Treated Water Production Attributed to Panama Reservoir Enlargement/Previous Day's Total Treated Water Production} \\ \times \text{Minimum of:} \\ \text{(Previous November-February Average Daily Total Treated Water Production} \\ \text{or Previous Day's Wastewater Discharge)} \\ \times 95\% \end{array}$$

- ii. Limitation on Disposition of Water for Outside Boulder's Service Area:
 Water stored under the City's interest in the Panama Reservoir Enlargement is intended for and necessary to meet the needs of Boulder and its customers for the uses described in Section 7(g), above. Use of water attributable to the Panama Reservoir Enlargement shall be limited to the type, place, and manner of use described in Section 7(g). Boulder may dispose of water attributable to the Panama Reservoir Enlargement to third parties only for successive use outside Boulder's service area, and only to the extent that such water is 1) excess water remaining after use by Boulder, and 2) not needed by Boulder. Boulder may lease such excess water attributable to the Panama Reservoir Enlargement to third parties for successive use outside Boulder's service area provided 1) such successive use by others shall be

for a period not to exceed one year at a time; 2) such successive use shall be in accordance with a substitute water supply plan approved by the State Engineer pursuant to C.R.S. § 37-90-137(11), 37-92-308 or successor statutes, or a Court decree; and 3) if such successive use is made by any other water user or users in five consecutive years, such other water user(s) shall be required to apply to the Court for, and obtain, a decree or decrees authorizing such use(s) in order for the use(s) to continue. The limitation in this Section 7(g)(ii) applies only to the use of water stored pursuant to the Panama Reservoir Enlargement decreed in this case and shall not limit leases of the City's interest in the Panama Reservoir Enlargement to the County for the County's uses as described in paragraph 7(h).

- h. County's Uses of Panama Reservoir Enlargement Water Storage Right: Irrigation of open space lands owned or controlled by the County, augmentation and replacement purposes, and fish and wildlife preservation and propagation, and potential leases of the County's interest in the Panama Reservoir Enlargement to the City for the City's uses as described in paragraph 7(g). No specific plan for augmentation or replacement is requested or approved by this decree. Use of water stored under the Panama Reservoir Enlargement water storage right for augmentation and replacement purposes shall be made pursuant to separate water court decree or administrative approval. All fish and wildlife preservation and propagation uses will be limited to in and around the Panama Reservoir site, as the same may be enlarged.
 - i. Total Capacity of Reservoir in Acre-Feet: The exact parameters of the enlarged storage structure will not be known until final design and construction is completed. Upon final construction of the reservoir enlargement, which construction may be done in phases, the City and County shall abandon any portion of the conditional Panama Reservoir Enlargement water storage right to the extent that the final as-built capacity of the reservoir enlargement is less than 2,600 acre-feet.
8. Description of Conditional Substitution and Exchange: Panama Reservoir Enlargement Exchanges.

Pursuant to C.R.S. §§ 37-80-120, 37-83-104 and 37-92-302(1)(a), the City seeks adjudication of appropriative rights of substitution and exchange on Boulder Creek, Middle Boulder Creek, and North Boulder Creek, whereby water attributable to the Panama Reservoir Enlargement water storage right and other fully consumable supplies owned or controlled by the City will be released from Panama Reservoir and delivered to Boulder Creek to supply downstream appropriators, and an equivalent amount of water will be diverted from (i) Middle Boulder Creek and its tributaries at Barker Meadow Reservoir,

Boulder City Pipeline #3, and/or Skyscraper Reservoir; and (ii) North Boulder Creek and its tributaries at Lakewood Pipeline, Silver Lake Pipeline, Silver Lake Reservoir, Island Lake, Goose Lake, Lake Albion, Green Lakes Reservoir #1, Green Lakes Reservoir #2, Green Lakes Reservoir #3, Green Lakes Reservoir #4 and/or Green Lakes Reservoir #5, for direct use or for storage for subsequent use by the City for the uses described below.

- a. Exchange Reaches: The lower terminus of each exchange is the Release Structure and the upper termini are Boulder’s upstream structures on Middle Boulder Creek and North Boulder Creek, as described more particularly below.
 - i. Middle Boulder Creek Exchange. The upper terminus of the substitution and exchange reach on Boulder Creek/Middle Boulder Creek is Skyscraper Reservoir.
 - ii. North Boulder Creek Exchange. The upper termini of the substitution and exchange reach on Boulder Creek/North Boulder Creek are Goose Lake and Green Lakes Reservoir #5.
- b. Exchange-From Location (Boulder County, Colorado):
 - i. Release Structure: The City will release water through the Panama Reservoir outlet to Release Structure No. 6 for delivery to Boulder Creek. The proposed location for Release Structure No. 6 is described below and depicted on **Exhibit A**. Release Structure No. 6, together with Release Structures Nos. 1 through 5, were originally decreed as exchange-from locations for the Boulder Municipal Exchanges in Case No. 2016CW3160. The City plans to operate the Panama Reservoir Enlargement Exchanges decreed herein in coordination with the Boulder Municipal Exchanges decreed in Case No. 2016CW3160 and the 2021 HMR Exchanges claimed in pending Case No. 2021CW3236 that operate from the Release Structures including Release Structure No. 6, subject to the terms and conditions of this decree.

Structure	LAT/LONG		UTM zone 13N	
	<i>x_coord</i>	<i>y_coord</i>	<i>Easting</i>	<i>Northing</i>
Release Structure No. 6	-105.0560561	40.0914679	495221.459	4437910.851

- c. Exchange-To Locations Middle Boulder Creek (all in Boulder County, Colorado):

- i. Boulder City Pipeline #3: The pipeline intake from Barker Reservoir, located at a point whence the northwest corner of Section 17, Township 1 South, Range 72 West, 6th P.M., bears North 16°04' West a distance of 1920± feet.
 - ii. Barker Meadow Reservoir: Barker Meadow Reservoir is located on the mainstem of Middle Boulder Creek in the W ½ of Section 17 and in Section 18, Township 1 South, Range 72 West, of the 6th P.M. and in the E ½ of Section 13, Township 1 South, Range 73 West, of the 6th P.M.
 - iii. Skyscraper Reservoir: Skyscraper Reservoir is located in the SW ¼ SE ¼, Section 16, Township 1 South, Range 74 West of the 6th P.M.
- d. Exchange-To Locations North Boulder Creek (all in Boulder County, Colorado):
- i. Lakewood Pipeline: The pipeline intake from Lakewood Reservoir, also known as Headgate No. 1 of the Boulder City Pipeline (Lakewood Pipeline) is located at a point whence the southeast corner of Section 1, Township 1 South, Range 73 West of the 6th P.M., bears South 3°15' East a distance of 2,300 feet.
 - ii. Silver Lake Pipeline: Headgate No. 3 of the Boulder City Pipeline, located at a point whence the NW corner of Section 34, Township 1 North, Range 73 West of the 6th P.M., bears North 77°35' West a distance of 1076+ feet.
 - iii. Silver Lake Reservoir: Silver Lake Reservoir is located in Sections 20, 21, 28 and 29 of Township 1 North, Range 73 West, 6th P.M.
 - iv. Island Lake: Island Lake is located in Sections 20 and 29, Township 1 North, Range 73 West, 6th P.M.
 - v. Goose Lake: Goose Lake is located in Section 19 and 30, Township 1 North, Range 73 West, 6th P.M.
 - vi. Lake Albion: Lake Albion is located in Section 18, Township 1 North, Range 73 West, 6th P.M.
 - vii. Green Lakes Reservoir #1: Green Lakes Reservoir #1 is located in Section 18, Township 1 North, Range 73 West, 6th P.M.

- viii. Green Lakes Reservoir #2: Green Lakes Reservoir #2 is located in Section 18, Township 1 North, Range 73 West, 6th P.M.
- ix. Green Lakes Reservoir #3: Green Lakes Reservoir #3 is located in Section 18, Township 1 North, Range 73 West, 6th P.M.
- x. Green Lakes Reservoir #4: Green Lakes Reservoir #4 is located in the Northwest Quarter of the Northwest Quarter of Section 18, Township 1 North, Range 73 West of the 6th P.M. and the North Half of the Northeast Quarter of Section 13, Township 1 North, Range 74 West of the 6th P.M.
- xi. Green Lakes Reservoir #5: Green Lakes Reservoir #5 is located in the Southeast Quarter of the Northwest Quarter and the North Half of the Southwest Quarter of Section 13, in Township 1 North of Range 74 West of the 6th P.M.

A map showing the approximate locations of the above-described structures and the substitution and exchange reaches is attached as **Exhibit A**. An exchange matrix for the Panama Reservoir Enlargement Exchanges is attached hereto as **Exhibit B**.

- e. Water and Water Right to be Used for Substitution and Exchange: The sources of substitute water supply for the exchanges are the Panama Reservoir Enlargement water storage right including return flows from the indoor use of such water storage right, as more particularly described in Section 7 above, and other fully consumable water rights and return flows from the indoor use of such water rights owned or controlled by the City more particularly described below. Boulder's fully consumable water rights and return flows from the indoor use of such water rights will be discharged to Boulder Creek from the City of Boulder Water Resource Recovery Facility (or Boulder WRRF) and rediverted into storage in Panama Reservoir and subsequently released to Release Structure No. 6 for use by exchange.
 - i. Windy Gap Project: Return flows attributable to the indoor use of Windy Gap Project water, a transmountain water diversion project that delivers water from the Colorado River Basin to the South Platte River Basin. The City owns a Water Allotment Contract with the Municipal Subdistrict of the Northern Colorado Water Conservancy District, a political subdivision of the State of Colorado, for 37 units of Windy Gap Project water. The water rights for the Windy Gap Project consist of the Jasper Pump and Pipeline, Jasper Reservoir, Windy Gap Pump, Pipeline and Canal, Windy Gap Pump,

Pipeline and Canal First Enlargement, Windy Gap Pump, Pipeline and Canal Second Enlargement, and Windy Gap Reservoir. These water rights were originally decreed in Civil Action No. 1768, Grand County District Court, on October 27, 1980, and in Case Nos. W-4001 and 80CW108, District Court, Water Division No. 5, on October 27, 1980. Windy Gap Project water is introduced, stored, carried and delivered in and through the components of the Colorado-Big Thompson Project. The sources of water for the Windy Gap Project are the Colorado River and Willow Creek, a tributary of the Colorado River.

1. Return Flows: The return flows attributable to the indoor use of the City's 37 Windy Gap units were previously quantified in the decrees entered in the following cases: Case No. 1990CW193, District Court, Water Division No. 1, on December 20, 1993; Case No. 1994CW285, District Court, Water Division No. 1, on December 22, 1997; Case No. 1994CW284, District Court, Water Division No. 1, on May 8, 2000 (corrected decree entered on October 12, 2020); and Case No. 2008CW163, District Court, Water Division No. 1, on January 11, 2011.
- ii. Municipal Water Rights Decreed to Barker Meadow Reservoir:
1. 1999CW217 Decree Barker Storage Rights: Return flows attributable to water diverted pursuant to the water rights decreed to the Barker Meadow Reservoir in Case No. 1999CW217, District Court, Water Division No. 1, on April 5, 2013, which rights are more particularly described as follows:
 - a. Legal description: Barker Meadow Reservoir is located on the mainstem of Middle Boulder Creek in the W 1/2 of Section 17 and in Section 18, Township 1 South, Range 72 West, of the 6th P.M. and in the E 1/2 of Section 13, Township 1 South, Range 73 West, of the 6th P.M.
 - b. Source: Middle Boulder Creek, a tributary of Boulder Creek.
 - c. Date of appropriation: November 17, 1999.
 - d. Amount: 3,687 acre-feet per year fill, ABSOLUTE; 1,307 acre-feet per year refill (460 acre-feet, ABSOLUTE, and 847 acre-feet, CONDITIONAL).

- e. Use: All municipal purposes including, without limitation, domestic, irrigation, commercial, industrial, power generation, fire protection, recreation, fish and wildlife preservation and propagation, exchange, substitution, augmentation, replacement and recharge, within the City service area and outside the City service area for such extra-territorial customers as the City may serve from time to time pursuant to City Charter and contracts. Such use shall include the right to make a fully consumptive first use of the water and to use, reuse and successively use the water to extinction for the purposes described in the foregoing sentence.
 - f. Return Flows: The return flows attributable to the indoor use of the 1999CW217 Decree Barker Storage Rights were previously quantified in the corrected decree entered in Case No. 2015CW3047, District Court, Water Division No. 1, on February 23, 2018.
2. 2015 Barker Storage Rights: Return flows attributable to water diverted pursuant to the water rights decreed for Barker Meadow Reservoir in Case No. 2015CW3175, District Court, Water Division No. 1, on January 16, 2019, which rights are more particularly described as follows:
- a. Legal Description: Barker Meadow Reservoir is located on the mainstem of Middle Boulder Creek in the W 1/2 of Section 17 and in Section 18, Township 1 South, Range 72 West, of the 6th P.M. and in the E 1/2 of Section 13, Township 1 South, Range 73 West, of the 6th P.M.
 - b. Source: Middle Boulder Creek, a tributary of Boulder Creek.
 - c. Uses: All municipal purposes, including, without limitation, domestic, storage, irrigation, commercial, industrial, power generation, fire protection, recreation, fish and wildlife preservation and propagation, exchange, substitution, augmentation, replacement and recharge, within the City service area and outside the City service area for such extra-territorial customers as the City may serve from time to time

pursuant to City Charter and contracts. Such use shall include the right to make a fully consumptive first use of the water and to use, reuse and successively use the water to extinction for the purposes described in the foregoing sentence.

- d. Return Flows: The methodology for quantifying return flows attributable to the indoor use of the 2015 Barker Storage Rights was decreed in Case No. 2015CW3175.
- iii. Lower Boulder and Baseline Water Rights: Water rights represented by the City's ownership of 7 shares of the preferred capital stock and 10 shares of the common capital stock of the New Consolidated Lower Boulder Reservoir and Ditch Company and its pro-rata share of the water rights decreed to Baseline Reservoir represented by 11.265 shares of stock of the Base Line Land and Reservoir Company decreed for the alternate uses in Case No. 1994CW284, District Court, Water Division No. 1, entered on May 8, 2000 (corrected decree entered on October 12, 2020). The Lower Boulder and Baseline Water Rights are more fully described as follows:
 1. Description of Lower Boulder Ditch Water Rights: The New Consolidated Lower Boulder Reservoir and Ditch Company ("New Lower Boulder Company") is a mutual ditch company. The New Lower Boulder Company operates the Lower Boulder Ditch. The following water rights are decreed to the Lower Boulder Ditch:
 - a. Date, Case No. and Court: June 2, 1882, Civil Action No. 1282, District Court in and for Boulder County.
 - b. Decreed Point of Diversion: The headgate of the Lower Boulder Ditch is located on the south bank of Boulder Creek at a point in the SW1/4 SW1/4, Section 16, Township 1 North, Range 69 West, 6th P.M., Boulder County, Colorado.
 - c. Source: Boulder Creek.
 - d. Appropriation Dates and Amounts: October 1, 1859 for 25.0 cfs; June 1, 1870 for 97 cfs.
 2. Description of Baseline Reservoir Water Rights: The Base Line Land and Reservoir Company ("Base Line Company") is a mutual

ditch company with 553 shares of stock outstanding. The Base Line Company operates Baseline Reservoir. The following water rights are decreed to Baseline Reservoir:

- a. Dates, Case Nos. and Court: June 21, 1926, Civil Action No. 6672; January 9, 1935, Civil Action No. 6672 (supplemental decree); September 28, 1953, Civil Action No. 12111; all Boulder County District Court.
- b. Decreed Point of Diversion: Baseline Reservoir is located in Sections 2 and 3, Township 1 South, Range 70 West, 6th P.M., and in Sections 34 and 35, Township 1 North, Range 70 West, 6th P.M., all in Boulder County, Colorado. Water has historically been diverted into Baseline Reservoir from Boulder Creek, Bear Creek and South Boulder Creek at the following points:
 - i. A point on the south or east bank of Boulder Creek near the east line of the NE1/4 NE1/4, Section 35, Township 1 North, Range 71 West, 6th P.M., Boulder County, Colorado. The structure is known as the Anderson Ditch.
 - ii. A point on the south bank of Bear Creek in the SW1/4 SE1/4, Section 5, Township 1 South, Range 70 West, 6th P.M., Boulder County, Colorado. The structure is known as the Anderson Extension Ditch.
 - iii. A point on the east bank of South Boulder Creek in the SW1/4 SW1/4, Section 3, Township 1 South, Range 70 West, 6th P.M., Boulder County, Colorado. The structure is known as the New Dry Creek Carrier and the Enterprise Ditch.
- c. Source: Boulder Creek, Bear Creek and South Boulder Creek.
- d. Appropriation Dates and Amounts: November 4, 1904 in the amount of 2,929.9 acre-feet; November 29, 1922 in the amount of 1,671.7 acre-feet; November 30, 1935 in the

amount of 847 acre-feet; December 31, 1929 in the amount of 1,395 acre-feet (refill).

3. Return Flows: The return flows attributable to the indoor use of the City's Lower Boulder and Baseline Water Rights were previously quantified in the decree entered in Case No. 1994CW284.
- iv. North Boulder Farmers Water Rights: Fully consumable water that is available to the City from water rights represented by the City's ownership of 656.2 shares of stock in North Boulder Farmers Ditch as these shares and rights are decreed for the alternate uses in Case No. 1994CW285, District Court, Water Division No. 1, entered on December 22, 1997. The North Boulder Farmers Water Rights are more fully described as follows:
 1. Description of Water Rights: The North Boulder Farmers Ditch Company is a mutual ditch company with 5,712 shares of stock outstanding. The North Boulder Farmers Ditch Company operates the North Boulder Farmers Ditch. The following water rights are decreed to the North Boulder Farmers Ditch:
 - a. Dates, Case Nos., and Court for Previous Decrees: June 2, 1882, Original Adjudication of Water Rights in Water District 6, District Court in and for Boulder County; June 9, 1914, Case No. 6582, District Court in and for Boulder County.
 - b. Decreed Point of Diversion: The decreed point of diversion for the North Boulder Farmers Ditch is on the north bank of Boulder Creek in the SW1/4 SW1/4, Section 30, Township 1 North, Range 70 West of the 6th P.M., commonly known as the 12th Street Bridge Headgate at the intersection of Broadway with Boulder Creek, between Canyon Boulevard and Arapahoe Avenue in the City of Boulder, Colorado.
 - c. Source: Boulder Creek.
 - d. Appropriation Dates and Amounts: June 1, 1862 for 10.78 c.f.s.; June 1, 1863 for 37.22 c.f.s.

2. Return Flows: The return flows attributable to the indoor use of the City's North Boulder Farmers Water Rights were previously quantified in the decree entered in Case No. 1994CW285.
- v. Wittemyer Ponds Water Storage Right: Return flows attributable to water diverted pursuant to the water right decreed for Wittemyer Ponds in Case No. 2016CW3160, District Court, Water Division No. 1, on March 29, 2020, which right is more particularly described as follows:
1. Legal Description: The Wittemyer Ponds are proposed ponds, including existing gravel pit ponds that may be enlarged or reconfigured, that will be lined to allow storage. The Ponds will be located in portions of the NE 1/4 of NW 1/4, SE 1/4 of NW 1/4, NW 1/4 of SW 1/4, NE 1/4 of SW 1/4, SW 1/4 of SW 1/4, and N 1/2 of SE 1/4 of SW 1/4 of Section 1, T1N, R69W, 6th P.M., Boulder County, Colorado
 2. Source: Boulder Creek.
 3. Uses: All municipal purposes, including, without limitation, domestic, storage, irrigation, commercial, industrial, power generation, fire protection, recreation, fish and wildlife preservation and propagation, exchange, substitution, augmentation, replacement and recharge, within the City service area and outside the City service area for such extra-territorial customers as the City may serve from time to time pursuant to City Charter and contracts, and on open space lands owned or controlled by the City. Such use may be fully consumptive. Instream flow use by the CWCB to preserve to a reasonable degree the natural environment in South Boulder Creek between an enlarged Gross Reservoir and the confluence with Boulder Creek. Use outside the Boulder service area by extra-territorial customers of Boulder, is subject to the limitations of paragraph 9.g.iv. of the decree entered in Case No. 2016CW3160.
 4. Appropriation Dates and Amounts: December 27, 2017 for 2,000 acre-feet with one refill, CONDITIONAL.
 5. Return Flows: The methodology for quantifying return flows attributable to the indoor use of the Wittemyer Ponds water storage right was decreed in Case No. 2016CW3160.

- vi. Gross Reservoir Environmental Pool Water Storage Right: Water diverted into the Gross Reservoir Environmental Pool pursuant to Boulder's interests in the decree entered for Boulder, Lafayette and the CWCB in Case No. 2017CW3212, District Court, Water Division No. 1, on February 11, 2021, which water right is more particularly described as follows:
 1. Legal Description: Gross Reservoir is an on-stream reservoir that is proposed to be enlarged. The dam of Gross Reservoir is located in Tracts 48 and 49, Township 1 South, Range 71 West of the 6th Principal Meridian (where the north half (N1/2) of the southeast quarter (SE1/4) of Section 20 of Township 1 South, Range 71 West of the 6th Principal Meridian would be located by ordinary survey practices) and creates a reservoir covering parts of Tracts 47, 48, 49, 44, 45, 63, 107, 108, 109 and 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 Principal Meridian in Boulder County, Colorado. The planned enlargement of Gross Reservoir may inundate portions of additional parcels from time to time.
 2. Source: South Boulder Creek and its tributaries.
 3. Claimed Uses: Municipal, domestic, commercial, industrial, irrigation, recreational, piscatorial, wildlife propagation, power generation, fire protection, exchange, replacement, augmentation, and all other beneficial purposes related to, occurring in or deriving from the operation of the municipal utility, parks, and open space systems of Boulder and Lafayette, including use by their extra-territorial customers. The water will be released from Gross Reservoir and conveyed to downstream points of diversion on South Boulder Creek and Boulder Creek for both immediate use and storage in reservoirs owned and available for use by Boulder and Lafayette. In addition, co-applicant CWCB claims instream flow use in South Boulder Creek between Gross Reservoir and the confluence of South Boulder Creek and Boulder Creek, for water released pursuant to the Water Delivery Agreement. Boulder and Lafayette assert the right to reclaim return flows from the use of water stored under the Gross Reservoir Environmental Pool priority

and to totally consume by a first use, reuse, successive use, exchange or other recognized method, all of the water stored.

4. Claimed Date of Appropriation: February 24, 2010.
 5. Claimed Amount: 5,000 acre-feet, Conditional.
 6. Return Flows: The methodology for quantifying return flows attributable to the indoor use of the Gross Reservoir Environmental Pool storage right was decreed in Case No. 2016CW3160.
- f. Date of Appropriation for Substitutions and Exchanges: April 23, 2020, for exchanges of the Panama Reservoir Enlargement water storage right, on which date there was a concurrence of intent to appropriate and overt acts in furtherance of such intent, including, without limitation, the filing date of the original Application. June 10, 2020, for exchanges of the City's other water supplies stored in Panama Reservoir, on which date there was a concurrence of intent to appropriate and overt acts in furtherance of such intent, including, without limitation, the filing date of the amended Application
- g. Amount: The rate of diversion at each of the above-described facilities by exchange from Release Structure No. 6 shall be the lesser of 100 c.f.s. or the diversion capacity of the facility, **CONDITIONAL**, as shown in **Exhibit B**. The combined rate of diversion by exchange at each facility shall be the sum of the individual exchange rates in **Exhibit B**. The simultaneous combined rate of the Panama Reservoir Enlargement Exchanges and the exchanges decreed in Case No. 2016CW3160 and pending in Case No. 2021CW3236 that operate from the Release Structures, including Release Structure No. 6, shall not exceed 100 c.f.s.
- h. City's Uses of Water Diverted by Substitution and Exchange: All municipal purposes, including, without limitation, irrigation, industrial and recreational, within the City service area and outside the City service area for such extra-territorial customers as the City may serve from time to time pursuant to City Charter and contracts, and irrigation of open space lands owned or controlled by the City. Such use shall include the right to make a fully consumptive first use of the water and to use, reuse and successively use and dispose of the water to extinction for the purposes described above.
9. Need: The Applicants have demonstrated that the water available under the Panama Reservoir Enlargement is needed for use by the Applicants or by persons or entities with which Applicants have either agency relationships or firm contractual commitments. The

City has demonstrated that the water available under the Panama Reservoir Enlargement Exchanges is needed for use by the City or by persons or entities with which the City has either agency relationships or firm contractual commitments.

10. Intent: The Applicants have a specific plan and intent to divert, store, or otherwise capture, possess and control a specific quantity of water for specific beneficial uses.
11. Water Availability: The Applicants have demonstrated that unappropriated water is available for diversion in the amounts claimed from the sources claimed.
12. Can and Will: The Applicants have demonstrated that the water can and will be diverted and beneficially used, and that the project can and will be completed with diligence and within a reasonable time.
13. No Injury: The conditional water rights claimed by the Applicants in this case, if exercised and administered in accordance with the provisions of this decree, will not cause injury to any owner of or person entitled to use water under any vested water right or decreed conditional water right.

CONCLUSIONS OF LAW

14. Notice and Jurisdiction: The Application, as amended, was filed with the Water Court pursuant to section 37-92-302(1)(a), C.R.S. Timely and adequate notice of this proceeding was given in the manner required by law. The Court has jurisdiction over the subject matter of this Application, as amended, and over all persons and water rights affected hereby, whether they have appeared or not.
15. Application Authorized by Law: Adjudication of the Applicants' conditional water storage right for the Panama Reservoir Enlargement described in this decree is authorized by law. Section 37-92-302(1), C.R.S. Adjudication of the City's conditional Panama Reservoir Enlargement Exchange rights described in this decree is authorized by law. Sections 37-80-120, 37-83-104 and 37-92-302(1), C.R.S. The rights of substitution and exchange are appropriate water rights with priority dates and, like other appropriate water rights, must be exercised within the priority system.
16. Applicants' Burden of Proof Met: The Applicants have complied with all requirements and met all standards and burdens of proof and are therefore entitled to a decree confirming the conditional water storage right and the conditional appropriate rights of substitution and exchange as described herein.

17. No Injury: The subject conditional rights, if exercised and administered in accordance with the provisions of this decree, will not cause injury to any owner of or person entitled to use water under any vested water right or decreed conditional water right. *See, e.g., Centennial Water and Sanitation Dist. v. City and County of Broomfield*, 256 P.3d 677 (Colo. 2011).

JUDGMENT AND DECREE

18. Incorporation: The foregoing Findings of Fact and Conclusions of Law are incorporated herein by this reference as if set forth fully herein.
19. Conditional Water Storage Right: A water storage right for the Panama Reservoir Enlargement in the amount of 2,600 acre-feet, CONDITIONAL, with an appropriation date of April 23, 2020, and a rate of diversion of 134.13 c.f.s. through the Boulder and White Rock Ditch, CONDITIONAL, and 65 c.f.s. through the Leggett Ditch, CONDITIONAL, is hereby approved, subject to the terms and conditions of this decree, including but not limited to the following:
- a. Dam Safety and Construction: The dam for the Panama Reservoir Enlargement must comply with all applicable requirements of the Rules and Regulations for Dam Safety and Dam Construction, 2 C.C.R. 402-1.
 - b. Stage-Area Capacity Chart: No water may be diverted into the Panama Reservoir Enlargement for storage pursuant to this decree until the Applicants have provided the Division Engineer and opposers in this case with a stage-area capacity chart for the Panama Reservoir Enlargement.
 - c. Administration: The Applicants must obtain prior permission from the Water Commissioner before diverting any water to storage. No augmentation plan is decreed herein. The Applicants will divert water from Boulder Creek under the Panama Reservoir Enlargement water storage right only when such right is in priority at the river headgates for the Boulder and White Rock Ditch (or as measured at the Goose Creek inlet to the Boulder and White Rock Ditch), Leggett Ditch, or both, and when there is excess capacity in the Boulder and White Rock Ditch, Leggett Ditch, or both; provided, however, that out-of-priority storage of water in the Panama Reservoir Enlargement shall be allowed if in accordance with § 37-80-120(1), C.R.S. (2002), or successor statutes. The City may also divert and store in the Panama Reservoir Enlargement its other fully consumable water rights and return flows as sources of substitute supply for exchange as described herein this decree. The Applicants shall release, as soon as practicable, but no later than 72 hours, to Boulder Creek as directed by the Division Engineer and the Water Commissioner, any out-of-priority inflows stored in the Panama Reservoir

Enlargement. All diversions into the Panama Reservoir Enlargement will be measured. Unmeasured inflows will be calculated on a daily basis using the following equation: unmeasured reservoir inflow equals change in reservoir storage plus calculated reservoir evaporation plus measured reservoir releases minus measured reservoir inflows. The Panama Reservoir Enlargement will be administered with a storage accounting year that begins on November 1st and ends on October 31st.

- i. For any water stored in the Panama Reservoir Enlargement and subsequently released for delivery downstream, State water administration officials must be capable of administering the water past all intervening headgates on the stream, including at times when those intervening headgates are diverting the entire flow of (“sweeping”) the river. In the event that the Division Engineer determines that delivery past intervening headgates or other structures requires installation of a bypass structure or use or modification of an existing bypass structure by agreement with a third-party, the City and/or County shall install a new bypass structure with a continuous recording measuring device(s) as approved by the Water Commissioner or secure an agreement with a third-party to use or modify an existing bypass structure. The City and/or County may not deliver water past such intervening headgates until the necessary bypass structures have been installed and approved by state water officials, or until the City and/or County have provided to the Division Engineer a copy an agreement(s) for use of existing bypass structures.
- d. Evaporation: The surface area used to calculate daily gross evaporation for the Panama Reservoir Enlargement (Enlargement Surface Area) will be determined as the current total daily surface area of open water in Panama Reservoir less the historical surface area attributable to the current daily total volume of water stored by the Boulder and White Rock Ditch and Reservoir Company (Historical Surface Area). The Historical Surface Area will be calculated utilizing **Exhibit C**.

The calculated daily gross evaporation for the Panama Reservoir Enlargement will be allocated between the City and County based on the current daily volume of water stored in each of the City and County’s accounts (including the City’s stored Foreign Water) as a percentage of the total current daily volume of water stored in the City and County’s accounts (including the City’s stored Foreign Water) in Panama Reservoir.

- i. During the months of April through October, inclusive, evaporation from the Panama Reservoir Enlargement will be calculated as follows: The daily

standard alfalfa reference ETr in inches obtained from the Northern Colorado Water Conservancy District (“NCWCD”) Longmont South weather station will be multiplied by a factor (Kp) of 1.0 to yield gross pan evaporation. If information from the NCWCD Longmont South weather station is not available, the daily standard alfalfa reference ETr in inches from the NCWCD Longmont West weather station will be used. Gross pan evaporation will be multiplied by the monthly factors shown in Table 1 below to obtain gross pond evaporation in inches.

Table 1 – Pond Coefficient for Use in Calculating Evaporation
 for the Months of April through October

Month	Pond Coefficient (Kp)
April	0.57
May	0.65
June	0.69
July	0.80
August	0.83
September	0.83
October	0.83

The daily gross evaporation in acre feet for the Panama Reservoir Enlargement will be calculated by dividing gross pond evaporation by 12, and multiplying the result by the Enlargement Surface Area, in acres.

- ii. During the months of November through March, inclusive, and when real time data from either of the above-referenced NCWCD weather stations is not available during the months of April through October, inclusive, evaporation from the Panama Reservoir Enlargement will be calculated by multiplying the daily unit gross evaporation rate, as shown in Table 2 below, by the open water surface area.

Table 2 – Daily Gross Evaporation

Month	Daily Gross Evaporation, feet per day
January	0.0032
February	0.0041
March	0.0059
April	0.0100

May	0.0129
June	0.0161
July	0.0161
August	0.0145
September	0.0111
October	0.0075
November	0.0044
December	0.0032

- e. Paper Fill and Carryover: If during any water year the Applicants elect not to store water under the Panama Reservoir Enlargement water storage right at a time when water is legally and physically available in priority for diversion at the Boulder and White Rock and/or Leggett Ditches and capacity that the Applicants have obtained the legal right or are otherwise authorized to use is available in said ditches, the volume of water that could have been stored at that time shall be counted against the fill of the Panama Reservoir Enlargement water storage right. Water that was stored under the Panama Reservoir Enlargement water storage right in the previous water year and that remains in storage at the beginning of the new water year will be considered carryover storage against the Panama Reservoir Enlargement water storage right in the new water year. If multiple water rights are stored in the Panama Reservoir Enlargement, the Applicants shall separately account for water diverted into the Panama Reservoir Enlargement under the Panama Reservoir Enlargement water storage right versus water diverted into the Panama Reservoir Enlargement attributable to the other water sources, including those listed in Section 8(e), and any water diverted into storage under free river conditions. Any water other than water attributable to the Panama Reservoir Enlargement water storage right (“Foreign Water”) in storage at the end of any water year will not automatically count against the Panama Reservoir Enlargement water storage right in the new water year. Instead, once the Panama Reservoir Enlargement water storage right is filling in priority during the new water year, if there is insufficient capacity in the Panama Reservoir Enlargement for additional water, the Applicants shall do one of the following: (i) book over the Foreign Water to the subject water right that would be filling in priority under this decree; (ii) release the Foreign Water for beneficial use; or (iii) maintain the Foreign Water in the reservoir, and paper-fill the Panama Reservoir Enlargement water storage right in the amount of the Foreign Water maintained in the reservoir. Any water that is booked over will be considered and accounted for as water attributable to the Panama Reservoir Enlargement water storage right. Any booking over must be at rates and times when water is legally and physically available for diversion under the Panama Reservoir Enlargement water storage right.

- f. Maximum Cumulative Diversion Limitation on City's Storage Rights in Case Nos. 2020CW3053 and 2016CW3160: The City has a decree for a conditional water storage right for the Wittemyer Ponds in the amount of 2,000 acre-feet, with one refill, in Case No. 2016CW3160. The City shall limit the cumulative diversions under the storage rights decreed in Case No. 2016CW3160 (first fill only) and the Panama Reservoir Enlargement water storage right decreed herein to 2,000 acre-feet per year. Nevertheless, this limitation shall not act or be interpreted to limit operation of the refill right decreed in Case No. 2016CW3160; the City's storage of its reusable supplies in the Wittemyer Ponds, Panama Reservoir Enlargement, or both; or the County's interest in the Panama Reservoir Enlargement water storage right.
 - g. Prior to diverting water into storage under the Panama Reservoir Enlargement, the City and County will enter into an agreement with Boulder and White Rock to secure the legal right to use Boulder and White Rock facilities, or otherwise secure such rights by any other means provided by law.
20. Conditional Substitution and Exchange Rights: The City's rights of substitution and exchange for the amounts and locations described in **Exhibit B**, and a combined exchange rate of up to 100 cubic feet per second at any one or a combination of the exchange-to locations described in Sections 8(c) and 8(d) above, are hereby approved and confirmed as **CONDITIONAL**, subject to the terms of this decree listed below. Exchanges of the Panama Reservoir Enlargement water storage right shall have an appropriation date of April 23, 2020 based on the filing date of the original Application. Exchanges of the City's other water supplies stored in the Panama Reservoir Enlargement shall have an appropriation date of June 10, 2020 based on the filing date of the amended Application.
- a. Any substituted water provided hereunder shall be of a quality and quantity so as to meet the requirements for which the water of senior downstream appropriators has normally been used.
 - b. Each exchange may only operate when there is a continuous live stream at all locations between the exchange-from point and the exchange-to point for the particular exchange being administered and must be limited to no more than the minimum streamflow between the exchange-from point and the exchange-to point that would have existed but for the exchange. Boulder must ensure that any measuring devices determined to be necessary for administration and approved by the Division Engineer are installed prior to operating any exchange.
 - c. The amount of water diverted at the exchange-to location or locations shall not be greater than the amount of water introduced to Boulder Creek at the exchange-from

location, adjusted as necessary to account for transit losses as may be lawfully assessed by State water administration officials.

- d. The substitutions and exchanges may be operated only when all water rights, including other appropriative rights of exchange and the instream flow water rights decreed to the Colorado Water Conservation Board located between the exchange-from location and the exchange-to location or locations that are senior to the substitutions or exchanges (i) are satisfied to the extent of their calls, or (ii) are out of priority or required to bypass water to a senior downstream water right. Water rights or exchanges shall not be deemed to be out of priority if they would be able to divert but for the City’s diversion under the subject substitutions and exchanges. The CWCB holds instream flow water rights, including the following, that were decreed prior, and are senior, to the conditional appropriative rights of substitution and exchange confirmed in this decree:

Case No.	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
86CW0300	South Fork Middle Boulder Creek	Confl Jasper Creek	Confl NF Middle Boulder Creek	4 (10/1 – 3/31) 8 (4/1 – 9/30)	09/05/1986
78W9375	Middle Boulder Creek	Confl NF & SF M Boulder Creek	Inlet Barker Res.	12 (1/1 – 12/31)	07/11/1978
94CW0020	North Boulder Creek	Hdgt Silver Lake Div Structure	Confl Lakewood Res Inlet	4 (4/1 – 10/31) 1.5 (11/1 – 3/31)	11/10/1993
94CW0019	North Boulder Creek	Confl Lakewood Res Inlet	Confl N & M Boulder Creeks	5 (4/1 – 9/30) 2 (10/1 – 3/31)	11/10/1993
94CW0018	Boulder Creek	Confl N & M Boulder Creeks	PSC Hydro Plant Outfall	15 (4/1 – 10/31) 6 (11/1 – 3/31)	11/10/1993
74W7636	Boulder Creek	PSC Hydro Plant Outfall	75 th Street Bridge	15 (1/1 – 12/31)	10/01/1973
90CW0193*	Boulder Creek	Confl N & M Boulder Creeks	75 th Street Bridge	Varies from 0.45 – 15.0	Varies from 1859-1956
79CW308*	Boulder Creek	PSC Hydro Plant Outfall	75 th Street Bridge	1.0 cfs	06/01/1862

*Donated/ Acquired Water Right

- e. Any exchange that utilizes the Panama Reservoir Enlargement water storage right as the source of substitute supply shall operate under the 2020CW3053 decree priority only. The City will separately measure and account for exchanges operated pursuant to the Panama Reservoir Enlargement Exchanges, Boulder Municipal Exchanges decreed in Case No. 2016CW3160, and the 2021 HMR Exchanges pending in Case No. 2021CW3236.
- f. Maximum Cumulative Exchange Volume: The City will limit the combined volume of the Panama Reservoir Enlargement Exchanges, Boulder Municipal Exchanges, and 2021 HMR Exchanges to the volumetric limit contained in paragraph 21.g. of the 2016CW3160 decree to limit exchanges operating from the Release Structures, including Release Structure No. 6, to a combined total of 4,000 acre-feet annually to all exchange-to locations. In other words, the Panama Reservoir Enlargement Exchanges operated under this decree, the Boulder Municipal Exchanges decreed in Case No. 2016CW3160 and 2021 HMR Exchanges pending in Case No. 2021CW3236 operating from the Release Structures, are limited to a combined volume of 4,000 acre-feet per year.
- g. Flow Threshold Limit: The City will limit operation of the Panama Reservoir Enlargement Exchanges during the months of May, June, July and August to days when flows in Boulder Creek as measured at the 75th Street Gage on Boulder Creek (USGS stream gage #06730200) are at least 75 c.f.s. If flow measurements are no longer available from the 75th Street Gage at the present location, the City will utilize another gage that measures the flow in Boulder Creek upstream of the point of discharge for the Boulder WRRF or at the point of diversion for the Leggett Ditch. For purposes of this subparagraph, the measured flow in Boulder Creek at the 75th Street Gage, or other location pursuant to the proceeding sentence, shall be determined daily as the flow measured at 6AM on the then-current day. At any time when the measured flow falls below 75 c.f.s. while the City is operating the Panama Reservoir Enlargement Exchanges, the City will discontinue the operation of the Exchanges before 6AM on the following day. To the extent there is a dispute regarding the measured flow in Boulder Creek on a given day for purposes of this section, the City shall consult with the Water Commissioner and defer to the stream flow as determined by the Water Commissioner.
- h. Prior to operation of the Panama Reservoir Enlargement Exchanges, the City will enter into an agreement with Boulder and White Rock to secure the legal right to use Boulder and White Rock facilities, or otherwise secure such rights by any other means provided by law.

21. Reuse and Successive Use: The City has the right to fully consume the water supplied by the Panama Reservoir Enlargement water storage right decreed herein, including the municipal return flows, by use, reuse, successive use, and disposition to extinction, in accordance with and subject to the terms of this decree. The County has the right to fully consume the water supplied by the Panama Reservoir Enlargement water storage right for the County's augmentation and replacement uses decreed herein, in accordance with and subject to the terms of this decree.
22. Water Commissioner Approval: Prior to operating the Panama Reservoir Enlargement Exchanges, the City shall notify the District No. 6 Water Commissioner in advance of the amount of the exchange(s), the source(s) of substitute supply and the duration of the proposed exchange(s). The City shall not operate the Panama Reservoir Enlargement Exchanges without the prior approval of the Water Commissioner.
23. Measuring Devices: The Applicants shall install and maintain such measuring devices and recorders as may be required by State water administration officials for administration of the water rights decreed herein.
24. Accounting: The Applicants shall account for the water rights decreed herein on a daily basis. The Applicants shall account for water diverted to storage in the Panama Reservoir Enlargement in separate storage accounts colored by water right. The accounting under this decree may be integrated with the City and County's other respective accounting provided the integrated accounting includes the information described in this decree. The Applicants have developed an accounting form for the water rights decreed herein in coordination with the Division Engineer. A copy of that accounting form is attached hereto as **Exhibit D**. The accounting form is not specifically decreed herein and may be changed from time to time with the approval of the Division Engineer and with 35 days advance written notice to all opposers in this case, provided that any modified accounting form includes the information described in this decree. The Applicants shall submit accounting reports to State water administration officials on a monthly basis, or more frequently if required by State water administration officials. The Applicants shall make the accounting reports available to the other parties hereto upon request and upon payment of reasonable copying charges (if applicable).
 - a. Minimum Requirements: The accounting shall include, at a minimum, the following information:
 - i. River call in effect each day, including the name, priority date and administration number;
 - ii. Daily diversion into Panama Reservoir at the Boulder and White Rock and Leggett Ditches attributable to the Panama Reservoir Enlargement water storage right;

- iii. Daily diversion into Panama Reservoir at the Boulder and White Rock and Leggett Ditches attributable to Foreign Water;
- iv. Daily staff gage reading for Panama Reservoir;
- v. Daily surface area and volume of storage in Panama Reservoir (total and by storage account);
- vi. Cumulative storage under the Panama Reservoir Enlargement water storage right, free river water, Foreign or other City water rights;
- vii. End of water year carryover (tracked between the Panama Reservoir Enlargement water storage right and Foreign Water);
- viii. Paper-fill of Panama Reservoir Enlargement water storage right;
- ix. Calculated evaporation for the City and County (tracked between the Panama Reservoir Enlargement water storage right and Foreign Water);
- x. Daily calculation of unaccounted losses and gains and allocation of same to the Panama Reservoir Enlargement water storage right and Foreign Water;
- xi. Daily amount of total treated water production at the Betasso and 63rd Street Water Treatment Plants;
- xii. Daily amount of Panama Reservoir Enlargement water storage right and fully consumable supplies released from Panama Reservoir;
- xiii. Daily amount of Panama Reservoir Enlargement water storage right for the County's uses;
- xiv. Daily amount of water supplies treated at the Betasso and 63rd Street Water Treatment Plants;
- xv. Previous day's measured wastewater discharge to Boulder Creek from the 75th Street Wastewater Treatment Plant Outfall (also known as the Water Resource Recovery Facility or WRRF Outfall);
- xvi. For the months of March through October, the average daily total treated water production during the previous November through February period;
- xvii. The total calculated indoor return flow credit available to the City at the 75th Street Wastewater Treatment Facility (WRRF) Outfall attributable to the Panama Reservoir Enlargement water storage right;
- xviii. The daily portion of indoor return flow credit released from the 75th Street Wastewater Treatment Facility (WRRF) Outfall that is re-diverted into Panama Reservoir;
- xix. Any transit losses attributable to the delivery of water in the natural stream;
- xx. The daily amount of water released by source of substitute supply from Panama Reservoir to be exchanged;
- xxi. Daily diversion by exchange at each of the Exchange-To locations;
- xxii. Daily combined rate of exchange under the Panama Reservoir Enlargement Exchanges, Boulder Municipal Exchanges, and 2021 HMR Exchanges operating from the Release Structures;

- xxiii. Cumulative exchange volume under the Panama Reservoir Enlargement Exchanges, Boulder Municipal Exchanges, and 2021 HMR Exchanges operating from the Release Structures;
 - xxiv. 6AM current day flow at 75th Street Gage, or other location, for operation of the Panama Reservoir Enlargement Exchanges in May, June, July, and August;
 - xxv. Cumulative diversions per year under the storage right decreed in Case No. 2016CW3160 (first fill only) and Panama Reservoir Enlargement water storage right decreed herein;
 - xxvi. The presence or absence of live stream conditions; and
 - xxvii. The priority under which exchanges from Release Structure No. 6 are being operated (2016CW3160, 2020CW3053, or 21CW3236).
25. Use of Land and Structures: This decree does not grant the Applicants any right to use land or structures that are not owned or controlled by Applicants. The Applicants must lawfully acquire any necessary rights to use such land and structures described in this decree prior to any construction of the Panama Reservoir Enlargement or diversion of water pursuant to the conditional water rights decreed herein.
26. 2001 IGA with Lafayette: On June 19, 2001, Boulder and Lafayette entered into an intergovernmental agreement (“2001 IGA”) involving, among other matters, Lafayette’s diversion of water from Boulder Creek at a new point of diversion near 75th Street (“Lafayette 75th Street Diversion”). Paragraph 5 of the 2001 IGA contains certain limitations on Lafayette’s ability to divert water at the Lafayette 75th Street Diversion. Lafayette’s 75th Street Diversion was constructed subsequent to the 2001 IGA and is located in the SW ¼ NE¼, Section 13, Township 1 North, Range 70 West, 6th P.M., Boulder County, Colorado, approximately 2,476 feet South of the North section line and 2,500 feet West of the East section line of said Section 13. This location is upstream of the Boulder WRRF Outfall. Notwithstanding any other term and condition of this decree, whenever Boulder is diverting water by exchange pursuant to the appropriate rights of substitution and exchange and Lafayette is diverting water at Lafayette’s 75th Street Diversion pursuant to its water rights with priority dates senior to June 10, 2020 and that are decreed for diversion at Lafayette’s 75th Street Diversion, Boulder shall not cause the remaining flow of water in Boulder Creek passing Lafayette’s 75th Street Diversion after Lafayette’s diversion to fall below 10 cfs, measured as provided in paragraph 5 of the 2001 IGA, during the May 1 through September 30 period or to fall below 3 cfs, measured as provided in paragraph 5 of the 2001 IGA, during the October 1 through April 30 period.
27. No Injury: The terms and conditions provided for in this decree are adequate to assure that no injury to any water rights will result from operation of the appropriate rights of

exchange provided they are operated and administered in accordance with the terms and conditions of this decree.

28. Administration: The State Engineer and Division Engineer shall administer the water rights described in this decree in accordance with the terms and conditions of this decree.
29. Priority Dates: The Application, as amended, herein was filed in the Water Court in the year of 2020. The conditional exchanges herein confirmed and awarded shall be administered as having been filed in 2020, and the conditional water storage right and direct shall be administered as having been filed in 2020 and shall be junior to all water rights for which applications were filed in previous years. As between all water rights, the applications for which were filed in the same calendar year, priorities shall be determined by historical dates of appropriation and shall not be affected by the date of entry of this decree.
30. The conditional water rights decreed herein are continued in full force and effect through _____, 20___. If the Applicants desire to maintain such conditional water rights, an application for finding of reasonable diligence shall be filed on or before the last day of _____, 20___, or a showing made on or before such date that the conditional water rights have become absolute by reason of the completion of the appropriation.

THE COURT DOTH FIND: 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 this ____ day of _____, 20__.

BY THE COURT:

Todd L. Taylor
Water Judge
Water Division No. 1