

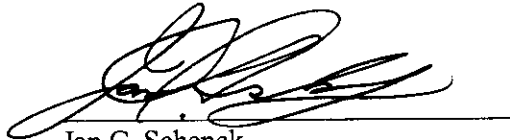
RESOLUTION NO. 1192

A RESOLUTION OF THE GOLDEN CITY COUNCIL
APPROVING THE WATER AGREEMENT BETWEEN THE
CITY OF GOLDEN AND CLEAR CREEK COUNTY

THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN,
COLORADO:

The settlement agreement between the City of Golden and Clear Creek County regarding water is
approved in substantially the form attached as Exhibit "A".

Adopted the 8th day of March, 2001.



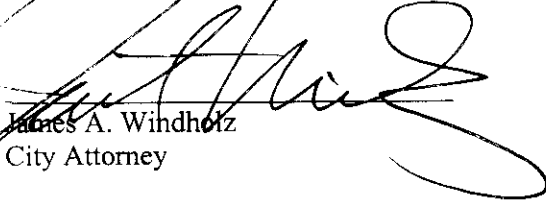
Jan C. Schenck
Mayor

ATTEST:



Susan M. Brooks, CMC/AAE
City Clerk

APPROVED AS TO FORM:

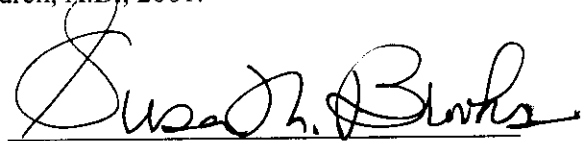


James A. Windholz
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the
foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden,
Colorado at a regular meeting thereof held on the 8th day of March, A.D., 2001.

(SEAL)

ATTEST:



Susan M. Brooks, City Clerk of the City of
Golden, Colorado

WATER AGREEMENT

This Agreement dated this 1st day of February, 2001, is between the City of Golden, a Colorado municipal corporation ("Golden") and the County of Clear Creek, Colorado, a political subdivision of the state of Colorado (the "County").

RECITALS

A. Golden entered into a Purchase, Option and Lease Agreement with the Vidler Water Company, Inc., a Delaware corporation ("Vidler"), on September 14, 2000, and recorded in the real property records Summit County on October 17, 2000, at Reception Number 63560, and the First Amendment to Purchase, Option and Lease Agreement entered into on December 28, 1999, between Vidler and Golden (collectively the "Golden/Vidler Agreement"), which pertains to certain water rights and water facilities located in Summit County and Clear Creek County, Colorado.

B. By virtue of the Golden/Vidler Agreement, Golden is the owner of, or has the contractual right to purchase, certain water rights and water facilities including, but not limited to, the following:

1. A water collection system located in Summit County, Colorado, as more particularly described in the attached Exhibit 1 (the "Collection System"), and a transmountain water diversion tunnel located beneath the Continental Divide in Summit and Clear Creek Counties, Colorado, as more particularly described in the attached Exhibit 2 (the "Vidler Tunnel"). The Collection System and the Vidler Tunnel are hereinafter collectively referred to as the "Vidler Tunnel Collection System." The Collection System consists of the existing alternate points of diversion more particularly described in the attached Exhibit 3 ("Collection System Diversion Points").

2. 155 consumptive acre feet ("af") of water per year out of a total of 361 af, and 13.40 cubic feet per second ("cfs") out of a total maximum diversion rate of 31.22 cfs decreed by the District Court in and for Water Division No. 5 (the "Division No. 5 Water Court") in Case Nos. W-217 and W-2110, as being historically attributable to the water rights described in the attached Exhibit 4 (the "Rice Ranch Rights").

3. 25 consumptive af of water per year out of a total 52.5 consumptive af, and 1.431 cfs out of a total maximum diversion rate of 3 cfs decreed by the Division No. 5 Water Court in Case No. 2350 as being historically attributable to the Arduser Ditch, Ditch No. 230, Priority No. 249, decreed by the Summit County District Court in Civil Action No. 1709 for 3 cfs with a September 28, 1934 appropriation date and an October 26, 1937 adjudication date, as changed in Case No. 2350 to the Collection System Diversion Points for all beneficial uses (collectively the "Arduser Ditch Rights").

4. 100 af of storage in Georgetown Reservoir (the "Georgetown Reservoir Storage Right"), as more particularly described in and pursuant to the terms of the Georgetown Lake Water Supply and Storage Agreement dated August 17, 2000, between the City of Georgetown ("Georgetown") and Vidler, attached hereto as Exhibit 5 (the "Georgetown/Vidler Agreement").

C. Golden is the owner of Golden Reservoir Nos. 1, 2 and 3, a/k/a Guanella Reservoir, located adjacent to the West Fork of Clear Creek in Sections 29 and 30, Township 3 South, Range 74 East of the 6th P.M., as decreed by the District Court in and for Water Division No. 1 (the "Division No. 1 Water Court") in Case No. 82CW469 (collectively the "Guanella Reservoir"). The County has not issued any land use or other regulatory approvals (a "1041 Permit") for the construction or operation of the Guanella Reservoir.

D. Golden is the owner of Upper and Lower Urad Reservoirs, located in Sections 29 and 30 of Township 3 South, Range 75 West of the 6th P.M., and in Section 36 of Township 3 South, Range 76 West of the 6th P.M., as decreed by the Division No. 1 Water Court in Case No. 88CW240 and 88CW241 (the "Upper and Lower Urad Reservoirs").

E. Golden has filed an application for junior water rights with the Division No. 1 Water Court in Case No. 98CW448, pertaining to an instream recreational kayak course on Clear Creek ("Case No. 98CW448"). The County has entered an appearance as an opposer to Golden's application in Case No. 98CW448.

F. In August 1998, Golden filed Civil Action No. 98-CV-83 in District Court, Clear Creek County, Colorado challenging Resolution R-98-98, adopted by the Board of County Commissioners of the County (the "Land Use Lawsuit"). Said resolution zoned 5,647.72 total acres of real property owned by Golden in Clear Creek County, Colorado, (collectively known as the Beaver Brook Watershed) for minimal development. Simultaneous with the execution of this Agreement, the parties have executed a Settlement Agreement regarding the Land Use Lawsuit (the "Settlement Agreement") which is expressly conditioned upon the approval of a Resolution approving the Development Plan for the Beaver Brook Watershed.

G. The parties desire to enter into an agreement that provides for the following:

1. The conveyance by Golden to the County of portions of the Rice Ranch Rights and Arduser Ditch Rights, and/or the assignment by Golden to the County of a portion of the Georgetown Reservoir Storage Right.

2. The grant by Golden to the County of an option to purchase additional portions of the Rice Ranch Rights, Arduser Ditch Rights, and the Georgetown Reservoir Storage Right.

3. The acknowledgment by the County that any 1041 Permit or other County regulations do not apply to or are not required for Guanella Reservoir.

4. The entry by the parties into a settlement stipulation in Case No. 98CW448.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals, promises, payments, covenants and undertakings hereinafter set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, Golden and the County agree as follows:

1. Conveyance. Subject to the occurrence of the Contingency defined in paragraph 7 and the other terms and conditions of this Agreement, Golden hereby agrees to convey or assign to the County, and the County agrees to accept from Golden, all right, title and interest in and to the following (collectively referred to as the "25 Acre Feet"):

(a) 5 consumptive af of the 52.5 consumptive af and 0.285 cfs out of a total maximum diversion rate of 3 cfs of the Arduser Ditch Rights, and a total of 20 af from any one or more of a combination of the following water rights (collectively, the "20 Acre Feet"):

(1) Up to 20 consumptive af of the 361 consumptive af and 1.729 cfs out of a total maximum diversion rate of 31.22 cfs of the Rice Ranch Rights; and/or

(2) Up to 7.5 consumptive af of the 52.5 consumptive af and 0.428 cfs out of a total maximum diversion rate of 3 cfs of the Arduser Ditch Rights; and/or

(3) Up to 20 af of the Georgetown Reservoir Storage Right, subject to the delivery obligations described in paragraph 6 below.

(b) The right to have any portion of the Rice Ranch Rights and Arduser Ditch Rights comprising the 25 Acre Feet delivered through the Vidler Tunnel Collection System pursuant to the Delivery Commitment as defined in paragraph 5 below.

2. Option. (a) Golden agrees to grant to the County, and the County agrees to accept from Golden, an option to purchase up to an additional 100 af of water rights (collectively the "Option Rights") consisting of:

(1) 20 consumptive af of the 52.5 consumptive af and 1.142 cfs out of a total maximum diversion rate of 3 cfs of the Arduser Ditch Rights minus any portion of the 7.5 consumptive af and 0.428 cfs of the Arduser Ditch Rights set forth in paragraph 1(a)(2) above that is included within the 25 Acre Feet; and

(2) Up to an additional 80 af from any one or more of a combination of the following water rights:

(i) Up to 50 consumptive af of the 361 consumptive af and 4.324 cfs out of a total maximum diversion rate of 31.22 cfs of the Rice Ranch Rights minus any portion of the Rice Ranch Rights that is included in the 25 Acre Feet.

(ii) Up to 80 af of from the Georgetown Reservoir Storage Right, subject to the delivery obligations described in paragraph 6.

(b) The term of the option provided for herein during which the Option Rights may be exercised shall commence upon the occurrence of the Contingency defined in paragraph 7 below and extending until January 31, 2011. The Option Rights may be exercised in whole or in part, and in one or more transactions, but in no event more than once per every 12 calendar months. The County shall provide Golden with notice at any time of its intent to exercise any portion of the Option Rights, and closing on the Option Rights shall occur within 60 days thereafter, at a time and at a location mutually agreeable to the parties.

(c) The price for the Option Rights shall be \$13,000.00 per consumptive a.f. of the Rice Ranch Rights and the Arduser Ditch Rights, and \$4,000.00 per af of the Georgetown Reservoir Storage Right (collectively the "Option Prices"). In addition, an annual interest rate of 6% shall be added to the Option Prices, which shall be tabulated from the date of execution of this Agreement to the date of closing or closings on the Option Rights. For example, should the County choose to purchase 20 consumptive af of Arduser Ditch Rights and 50 af of the Georgetown Reservoir Storage Right and the closing occurs on February 1, 2005, the total price will be \$570,400.00, consisting of \$260,000.00 for the Arduser Ditch Rights, \$200,000.00 for the Georgetown Reservoir Storage Right, and \$110,400.00 in interest.

3. Right of First Refusal. From February 1, 2011 to January 31, 2016, the County shall have a right of first refusal to purchase any of the Option Rights not previously purchased prior to January 31, 2011 in the event that Golden should agree to sell all or any portion of the water rights comprising the remaining Option Rights to a third party (the "Right of First Refusal"). Should the County choose to exercise the Right of First Refusal, it must purchase all of the water rights comprising the remaining Option Rights that are offered to the third party and under the same terms and conditions offered to the third party; provided, however, that the Right of First Refusal shall not allow the County to purchase more water rights than originally contemplated under this Agreement. The County shall give written notice of its intent to exercise its Right of First Refusal within 30 days of receiving notice from Golden of the terms and conditions of the proposed sale of water rights comprising the remaining Option Rights. In the event the County should choose to exercise the Right of First Refusal, closing of the sale of such rights shall be held within 30 days of the giving of notice by Golden. Should Golden agree to sell all or any portion of the water rights comprising the remaining Option Rights to a third party, and should the County choose not to exercise its Right of First Refusal, the period to exercise

Right of First Refusal shall terminate as to any water rights comprising the remaining Option Rights that are not part of said offer.

4. Conveyance Caps. The parties agree that between the 25 Acre Feet, the Option Rights, and the Right of First Refusal, the County shall not be entitled to acquire from Golden any more than 75 consumptive af of the direct flow rights associated with the Rice Ranch Rights and Arduser Ditch Rights (of which the first 25 af must come from the Arduser Ditch Rights and a maximum of 50 af may come from the Rice Ranch Rights), nor shall it acquire more than 100 af of the Georgetown Reservoir Storage Right (the "Conveyance Caps").

5. Delivery Commitment. (a) Upon closing of the 25 Acre Feet and upon any closings of the Option Rights, Golden shall have the continuing obligation to deliver the Rice Ranch Rights and Arduser Ditch Rights associated with the 25 Acre Feet and the Option Rights through the Vidler Tunnel Collection System for the County's benefit subject to the legal and physical availability of the Rice Ranch Rights and Arduser Ditch Rights under the Colorado priority system (the "Delivery Commitment"). The Delivery Commitment shall survive the delivery of any deeds and closings hereunder.

(b) All water delivered by Golden to the County pursuant to the Delivery Commitment shall be delivered through the Vidler Tunnel Collection System to the point at which the east portal of the Vidler Tunnel discharges into Leavenworth Creek in Clear Creek County, Colorado.

(c) The County shall be under an obligation to Golden to pay an annual carriage fee for the Rice Ranch Rights and Arduser Ditch Rights delivered for the County's benefit (the "Carriage Fee"). The County shall pay to Golden the annual Carriage Fee in arrears equal to a base amount of \$90 per acre foot of Rice Ranch Rights and Arduser Ditch Rights acquired. The amount of the Carriage Fee shall be adjusted by Golden annually effective the first day of March, commencing February 1, 2002, to an amount equal to the product of the base amount set forth above multiplied by a fraction, the numerator of which is the Consumer Price Index - Denver Metropolitan Area - All Items (1967=100) prepared by the Bureau of Labor Statistics of the United States Department of Labor ("CPI") for the most current month for which the CPI is available at the time the adjusted Carriage Fee is to be determined, and the denominator of which is the CPI for April, 2000. If publication of the CPI is discontinued, Golden and the County shall agree upon a substitute index published by an agency of the United States or by a responsible financial periodical of recognized authority. In the event of the occurrence of weather conditions or of any act of God beyond the control of Golden that would prevent diversion, collection, transportation or delivery of a portion of or all of the Delivery Commitment, then the Carriage Fee for the year following any year in which such conditions occur shall be reduced in proportion to the corresponding reduction in the amount of the Delivery Commitment which is not delivered. Golden shall promptly notify the County in writing of the occurrence of any weather conditions or act of God that occurs to prevent such diversion, collection, transportation or delivery. By March 15 of the year following the year in which any

such condition has occurred. Golden shall provide the County with written notice setting forth the amount and calculation of the reduction in the Carriage Fee.

(d) Annual costs associated with the operation, maintenance, and repair associated with any interest that the County may acquire in the Georgetown Reservoir Storage Right shall be paid by the County according to the schedule outlined in the Georgetown/Vidler Agreement attached as Exhibit 5, and as further detailed in paragraph 6 below.

6. Georgetown Reservoir Storage Right. (a) As further described in the Georgetown/Vidler Agreement, the Georgetown Reservoir Storage Right provided Vidler, and subsequently Golden, with 100 af of storage in Georgetown Reservoir, and, in turn, requires Golden to provide Georgetown with 25 af of direct flow rights consisting of the Rice Ranch Rights and/or Arduser Ditch Rights. Therefore, any interest that the County acquires in the Georgetown Reservoir Storage Right is also subject to the obligation to provide direct flow water rights to Georgetown. In other words, for every 4 af of storage in the Georgetown Reservoir that the County acquires, it must, in turn, provide 1 af of the Arduser Ditch Rights and/or Rice Ranch Rights to Georgetown. This means, for example, that if the County chooses to acquire 5 af of Arduser Ditch Rights and 20 af of the Georgetown Reservoir Storage Right, it must provide Georgetown with 5 af of the Arduser Ditch Rights.

(b) The County must also pay proportionate costs associated with the portions of the Georgetown Reservoir Storage Right that it acquires, including, but not limited to, costs associated with operation, maintenance, modifications, major repairs and replacement of the Georgetown Reservoir, as specifically described in the Georgetown/Vidler Agreement. The County must furthermore accept all other responsibilities contained in the Georgetown/Vidler Agreement commensurate with the portion of the Georgetown Reservoir Storage Right that it acquires.

(c) Although the Georgetown Reservoir Storage Right is capable of assignment, Golden must obtain written authority from Georgetown in order to assign it to the County. The parties agree that Golden shall have one year from the execution of this Agreement to obtain the necessary consent from Georgetown to assign all or a portion of the Georgetown Reservoir Storage Right to the County. In the event that Golden is unable to obtain the necessary consent from Georgetown to assign a portion of or all of the Georgetown Reservoir Storage Right, or the Georgetown Reservoir Storage Right should otherwise fail, Golden agrees to provide the County with an equivalent amount of storage water from the Guanella Reservoir or the Upper or Lower Urad Reservoirs as the County would have otherwise acquired from the Georgetown Reservoir Storage Right. Should a situation arise in which Golden provides the County with storage in Guanella Reservoir or Upper or Lower Urad Reservoirs instead of from the Georgetown Reservoir Storage Right, the County agrees to provide Golden with the equivalent amount of direct flow rights from the Arduser Ditch Rights and/or Rice Ranch Rights that it otherwise would have been required to provide to Georgetown. The County shall also be required to pay to Golden the proportionate costs associated with the portions of the Guanella

Reservoir, or Upper or Lower Urad Reservoirs that it acquires, including but not limited to costs associated with operation, maintenance, modification, major repairs and replacements of such reservoirs.

(d) Notwithstanding the option provided for herein, Golden may terminate its rights to any portion of the Georgetown Reservoir Storage Right under the Georgetown/Vidler Agreement to which the County has not already exercised its option, provided that Golden makes an equivalent amount of storage available in Guanella Reservoir or the Upper or Lower Urad Reservoirs as provided for above.

7. Contingency. Except for the provisions of paragraph 10 regarding Case No. 98CW448, the terms of the Agreement are contingent upon the satisfaction of each of the conditions precedent set forth in Section 1.5 of the Settlement Agreement (the "Contingency"). This Agreement shall terminate and be of no further force and effect if the Contingency does not occur on or before August 1, 2002.

8. Closings. (a) Closing on the 25 Acre Feet shall occur within thirty days of the occurrence of the Contingency, at a time and at a location mutually agreeable to the parties. At least 15 days prior to this closing, the County shall specify to Golden which of the water rights from those set forth in paragraph 1(a)(1), (2) and (3) shall be included within the 20 Acre Feet. At closing, the parties shall simultaneously perform the following:

(1) Golden shall execute and deliver to the County a special warranty deed for the Arduser Ditch Rights and any Rice Ranch Rights acquired, free and clear of all liens, encumbrances and assessments.

(2) Golden shall execute and deliver to the County an assignment of its interest in the portion of the Georgetown Reservoir Storage Right acquired, if any, together with all commensurate obligations associated with the Georgetown/Vidler Agreement.

(3) The parties shall execute and deliver to each other all other instruments, certificates, affidavits and other documents necessary to satisfy any requirements of this Agreement.

(4) The conveyances and assignments at closing shall be subject to a right of reverter to Golden in the event the County defaults under the Settlement Agreement.

(5) Possession of the 25 Acre Feet shall be delivered immediately upon closing.

(b) For each separate year in which the County chooses to exercise a portion of its right to purchase the Option Rights, a separate closing shall occur. Closing on the Option

Rights shall occur at a time and at a location mutually agreeable to the parties. At closing, the parties shall simultaneously perform the following:

(1) Golden shall execute and deliver to the County a special warranty deed for any Arduer Ditch Rights and/or any Rice Ranch Rights acquired, free and clear of all liens, encumbrances and assessments.

(2) Golden shall execute and deliver to the County an assignment of its interest in the portion of the Georgetown Reservoir Storage Right acquired, if any, together with all commensurate obligations associated with the Georgetown/Vidler Agreement.

(3) The County shall pay to Golden in cash or certified funds the requisite amount of money dictated by the Option Prices, together with annual interest as detailed in paragraph 2(c) above.

(4) The parties shall execute and deliver to each other all other instruments, certificates, affidavits and other documents necessary to satisfy any requirements of this Agreement.

(5) The conveyances and assignments at closing on the Option Rights shall be subject to a right of reverter to Golden in the event the County defaults under the Settlement Agreement.

(6) Possession of the portion of the Option Rights exercised shall be delivered immediately upon closing.

9. County 1041 Permit Issues. The parties agree that prior to the County adopting any 1041 Permit regulations, Golden (a) entered into a 130 year lease for the property on which the Guanella Reservoir is located; (b) adjudicated the necessary water rights and plans for augmentation for the Guanella Reservoir; (c) completed detailed design and engineering work for the Guanella Reservoir; (d) entered into a contract with the company mining the Guanella Reservoir property which requires that any excavation be conducted in a manner which completes the construction of the side slopes and capacity of the site in accordance with Golden's engineering plans for the Guanella Reservoir; and (e) has substantially completed construction of the Guanella Reservoir. Therefore, the parties agree that no 1041 Permit or any other County permits are required for the continued construction, operation, maintenance or repair of the Guanella Reservoir and its associated inlet and outlet diversion works and facilities.

10. Case No. 98CW448. Simultaneous with the execution of this Agreement, the County and Golden agree to execute and file with the Division No. 1 Water Court, the Stipulation attached hereto as Exhibit 6.

11. Representations of Golden. Golden hereby represents and warrants to the County as follows:

(a) Golden has obtained all necessary consents and authorizations necessary to complete the transactions contemplated herein; and

(b) Upon execution and delivery, this Agreement will constitute a valid and binding obligation of Golden, enforceable in accordance with its terms, subject, however, to the effects of bankruptcy, insolvency, reorganization and similar laws.

12. Representations of the County. The County hereby represents and warrants to Golden as follows:

(a) The County has obtained all necessary consents and authorizations necessary to complete the transactions contemplated herein; and

(b) Upon execution and delivery this Agreement will constitute valid and binding obligations of the County, enforceable in accordance with its terms, subject, however, to the effects of bankruptcy, insolvency, reorganization and similar laws.

13. Assignment. The terms of this Agreement shall be freely assignable provided any assignee has the power and authority to perform the obligations of the assignor, and in the case of the Georgetown Reservoir Storage Rights, Georgetown's consent is obtained pursuant to the terms of the Georgetown/Vidler Agreement.

14. Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service, if served personally on the party to whom notice is given, or on the third day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage prepaid and properly addressed as follows:

To Golden at: The City of Golden
 911 10th Street
 Golden, Colorado 80401
 Attn.: City Manager

To the County at: Clear Creek County
 P.O. Box 2000
 Georgetown, Colorado 80444
 Attn.: Planning Director

Any party may change its address for the giving of notice by giving notice in the manner provided hereunder.

15. General Provisions.

(a) The headings of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

(b) The representations, warranties, remedies, obligations and indemnities set forth in this Agreement shall survive the closing of the sale of the 25 Acre Plot and Option Rights.

(c) This Agreement constitutes the entire agreement between the parties and supersedes and abrogates all prior and contemporaneous agreements, oral or written, relating to this matter. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto.

(d) This Agreement shall be binding on and shall inure to the benefit of the parties to it and their respective successors and assigns.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

Executed as of the date first set forth above.

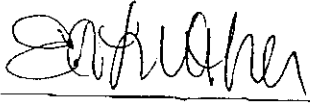
Attest:

City Clerk

CITY OF GOLDEN, a Colorado
municipal corporation

By: _____

Attest:



COUNTY OF CLEAR CREEK,
a political subdivision of the
state of Colorado

By: 

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 16 day of _____, 2001 by _____ as mayor and _____ as city clerk of the City of Golden, a Colorado municipal corporation, on behalf of such corporation.

Witness my hand and official seal.

My commission expires: _____

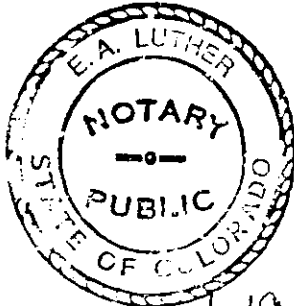
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF CLEAR CREEK)

The foregoing instrument was acknowledged before me this 14th day of February, 2001 by Robert J. Parot as Chairman ~~and~~ of BOCC of Clear Creek County, a political subdivision of the state of Colorado, on behalf of said County.

Witness my hand and official seal.

My commission expires: 1-19-03



My Comm. Expires 1-19-03

E.A. Luther
Notary Public

Any party may change its address for the giving of notice by giving notice in the manner provided hereunder.

15. General Provisions.

(a) The headings of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

(b) The representations, warranties, remedies, obligations and indemnities set forth in this Agreement shall survive the closing of the sale of the 25 Acre Feet and Option Rights.

(c) This Agreement constitutes the entire agreement between the parties and supersedes and abrogates all prior and contemporaneous agreements, oral or written, relating to this matter. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto.

(d) This Agreement shall be binding on and shall inure to the benefit of the parties to it and their respective successors and assigns.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

Executed as of the date first set forth above.

Attest:

CITY OF GOLDEN, a Colorado
municipal corporation

City Clerk

By: _____

Attest:

COUNTY OF CLEAR CREEK,
a political subdivision of the
state of Colorado

By: _____

DISTRICT COURT, WATER DIVISION NO. 1, STATE OF COLORADO 901 9th Avenue, Room 418 Greeley, CO 80631	
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY OF GOLDEN IN JEFFERSON COUNTY, COLORADO	▲ COURT USE ONLY ▲
Porzak Browning & Bushong LLP Glenn E. Porzak (#2793) 929 Pearl Street, Suite 300 Boulder, CO 80302 Tel: 303-443-6800 Fax: 303-443-6864 Email: gporzak@pbblaw.com	Case Number: 98CW448 Water Division: 1
STIPULATION BETWEEN CITY OF GOLDEN AND BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLEAR CREEK	

Applicant City of Golden (“Golden”) and Opposer Board of County Commissioners of the County of Clear Creek (the “County”), by and through their undersigned attorneys, do hereby stipulate and agree as follows:

1. The County hereby consents to the entry of a Ruling and/or Decree in this matter that is no less restrictive on Applicant than the proposed Ruling of the Referee and Decree of the Water Court attached hereto as Exhibit A (draft dated 1/9/01). The County shall not protest, appeal or otherwise challenge any Ruling or Decree ultimately entered by the Water Court in this matter, so long as its terms and conditions are no less restrictive on Applicant than those contained in the attached Exhibit A.

2. The County agrees to limit its future participation in this matter to ensuring that the Ruling and/or Decree ultimately entered herein by the Water Court is in conformity with the provisions of this Stipulation. Golden shall notify the County of all changes to the attached Ruling of the Referee and Decree of the Water Court.

3. As part of this Stipulation, Golden has agreed to forego up to a total of 15 cfs of its Golden White Water Course and Extension water rights during May and June, and up to a total of 10 cfs during July through April, to allow the County or its assigns to divert water pursuant to any water right it acquires by decree in the County’s pending application in

2000CW265, or by any other water right decree so long as the County is a co-applicant and files the application in Water Court within 5 years from the date of this Stipulation. However, Golden will forego the aforementioned diversion rates only so long as the timing of said diversions by the County or its assigns, taking into account the delayed impacts (i.e. transit time) on the downstream White Water Course, is limited to de-watering the White Water Course during the night time hours (i.e. between one hour after sunset and one hour before sunrise).

4. The above agreement by Golden to forego diversions is a limited agreement to surrender only the last portion of the night time diversions that would otherwise be available in priority to Golden's White Water Course and Extension. By way of example only, if there is 900 cfs available in priority to Golden's White Water Course and Extension in May, and the County is able to fully utilize the 15 cfs that Golden is willing to forego as part of this settlement, then Golden will be entitled to divert 885 cfs during the night time and the full 900 cfs during the rest of the day. This agreement is strictly limited to the County's benefit in the manner discussed above, and shall not be construed as requiring Golden to forego any other available in-priority diversions not expressly contemplated herein.

6. The foregoing 15 cfs in May and June and 10 cfs in July-April is in addition to the 1 cfs which is the subject of the Stipulation between Golden and the Clear Creek Skiing Corporation and the maximum of 25 cfs which is the subject of the Stipulation between Golden and the Town of Georgetown.

7. To ensure that the County's diversions under this Stipulation dewater the White Water Course at night as provided above, requires an estimate of the time for water to travel from the point of diversion by the County to the beginning of the White Water Course at the expected flows. The parties will mutually agree upon an average travel time for each reservoir and/or diversion structure that the County is using and which is subject to this agreement. During such times as Golden foregoes diversions as provided in paragraph 3 above in order to permit diversion by the County, the appropriate timing of the County's diversions into storage will be based upon the length of day and the agreed upon travel time so that the County's diversions are limited to dewatering the White Water Course between one hour after sunset and one hour before sunrise. The parties acknowledge that new or improved information may result in a party desiring a redetermination of the travel times, including a determination of up to two travel times for each County diversion structure depending upon the flows measured at the Golden gauge on Clear Creek. By way of example only, Golden may desire one travel time when river flows at the Golden gauge are less than or equal to 700 cfs, and one travel time when said river flows are greater than 700 cfs. Accordingly, the parties agree to cooperate in good faith to redetermine such travel times at the reasonable request of either party.

8. Each party hereto shall bear its own costs and attorneys' fees.

9. This Stipulation shall bind and benefit the parties hereto, their successors and assigns. This Stipulation shall be enforceable as an agreement between the parties or as an Order of the Court.

10. Golden agrees that it will not oppose the County's application in 2000CW265. Except for 2000CW265, nothing contained in this stipulation shall prevent Golden from opposing any future application filed by the County or its assigns to prevent injury to any water rights other than the Golden White Water Course and Extension decreed herein.

Dated this 15TH day of February, 2001.

PORZAK BROWNING & BUSHONG LLP

VRANESH AND RAISCH LLP

Glenn E. Porzak (#2793)
Steven J. Bushong (#21782)
929 Pearl Street, Suite 300
Boulder, Colorado 80302
(303) 443-6800
Attorneys for City of Golden



Paul J. Zilis (#12582)
1720 14th Street, Suite 200
P.O. Box 871
Boulder, CO 80306-0871
(303) 443-6151
Attorneys for Board of County
Commissioners of the County of Clear
Creek

CERTIFICATE OF MAILING

I certify that on this ____ day of _____, 2001, a true and correct copy of the foregoing **STIPULATION BETWEEN CITY OF GOLDEN AND BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLEAR CREEK** was placed in the United States mail, postage prepaid, addressed as follows:

Susan J. Schneider
Assistant Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203

Cynthia F. Covell
Alperstein & Covell, P.C.
1600 Broadway, Suite 2350
Denver, CO 80202-4920

Paul J. Zilis
John R. Henderson
1720 14th Street, Suite 200
P.O. Box 871
Boulder, CO 80306-0871

Case No. 98CW448

DECREE OF THE WATER COURT

**CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY OF GOLDEN
IN JEFFERSON COUNTY, COLORADO**

The above-captioned application was filed with the Water Court on December 30, 1998, and referred to the Water Referee for Water Division No. 1, State of Colorado by the Water Judge of said Court in accordance with Article 92, Chapter 37, of the Colorado Revised Statutes known as the Water Right Determination and Administration Act of 1969. The matter was then rereferred to the Water Judge by Order dated July 20, 2000.

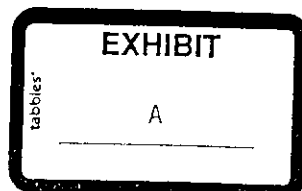
The Court, having made such investigations as are necessary to determine whether or not the statements in the application are true, and having become fully advised with respect to the subject matter of the application, does hereby make the following findings of fact, conclusions of law, and ruling and decree in this matter.

FINDINGS OF FACT

1. **Application.** The above-captioned application was filed in this Court on December 30, 1999. The Applicant is the City of Golden, a Colorado municipal corporation ("Golden"), with the following address: c/o Dan Hartman, 911 10th Street, Golden, CO 80401. The Referee finds that the application is complete, covering all matters required by law, and that the statements in the application are true.

2. **Objectors.** Timely statements of opposition were filed by the City of Arvada, City of Westminster, City of Idaho Springs, Town of Georgetown, Board of County Commissioners of Clear Creek County, Clear Creek Skiing Company, Coors Brewing Company and the Colorado Water Conservation Board. The City of Arvada, City of Idaho Springs, and Coors Brewing Company subsequently withdrew their statements of opposition. The State Engineer and Division Engineer for Water Division No. 1 filed a Motion to Intervene dated September 22, 2000, which was granted by Order dated January 3, 2001. The time for filing additional statements of opposition has expired.

3. **Stipulations.** Stipulations have been entered into between the Applicant Golden and Clear Creek Skiing Company, _____. The Objectors entering into said Stipulations have consented to entry of this Decree. The foregoing Stipulations are hereby approved by Order of this Court.



4. Summary of Application. Golden designed and constructed 8 dam structures and flow deflector control devices with boat chutes on Clear Creek which form the City of Golden White Water Course. These structures were designed to control and concentrate the flow of Clear Creek in order to serve the beneficial uses described herein, including the formation of a white water course for use by kayaks and for other recreational uses. Golden seeks absolute water rights for each of the structures which constitute this White Water Course based upon the amount of water previously controlled and applied to beneficial use by these structures. Golden seeks additional conditional water rights for these structures during May and July to achieve the optimum flows for the White Water Course during those months. Furthermore, Golden intends to extend the length of its White Water Course with additional dam and flow deflector control structures and seeks conditional water rights for those additional structures.

5. Name of Structures:

A. City of Golden White Water Course. The City of Golden White Water Course consists of 8 separate dam structures and water deflector control devices with boat chutes that concentrate and control the flows of Clear Creek for the beneficial uses claimed herein. Although Golden seeks water rights for each of the eight structures, these separate structures are collectively referred to herein as the City of Golden White Water Course (also referred to herein as the "Course") for ease of administration.

B. City of Golden White Water Course (Extension). Golden intends to extend the length of the City of Golden White Water Course by constructing approximately 10 additional dam structures and water deflector control devices with boat chutes designed to concentrate and control the flows of Clear Creek for the beneficial uses claimed herein. Although conditional water rights are sought for each of these additional structures, they are collectively referred to as the City of Golden White Water Course (Extension) (also referred to herein as the "Extension") for ease of administration.

6. Legal Description of Structures:

A. City of Golden White Water Course. The Course is located within the channel of Clear Creek in the NW1/4 of the NE1/4 of Section 33, T. 3 S., R. 70 W. of the 6th P.M., Jefferson County, Colorado. The Course begins with a rock deflector device followed by 7 deflector dam structures, each which is designed to control, concentrate and direct the stream flow for the beneficial uses described below. The locations of the 8 structures which constitute the Course are as follows:

i. Structure 1. A rock deflector located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. 82°11'5" W., a distance of approximately 2737 feet.

ii. Structure 2. A dam located at a point within the channel of Clear Creek

- iii. Structure 3. A deflector dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. $84^{\circ}37'37''$ W., a distance of approximately 2843 feet.
- iv. Structure 4. A deflector dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. $85^{\circ}38'33''$ W., a distance of approximately 2888 feet.
- v. Structure 5. A deflector dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. $85^{\circ}59'33''$ W., a distance of approximately 2954 feet.
- vi. Structure 6. A dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. $87^{\circ}25'56''$ W., a distance of approximately 3000 feet.
- vii. Structure 7. A dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. $88^{\circ}44'21''$ W., a distance of approximately 3245 feet.
- viii. Structure 8. A dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. $88^{\circ}25'32''$ W., a distance of approximately 3546 feet.

The Course extends approximately 1035 feet within the channel of Clear Creek. A map depicting the location of the Course, and of each of the above-referenced structures, is attached hereto as Exhibit A and incorporated herein by this reference.

B. City of Golden White Water Course (Extension). The Extension will consist of approximately 10 additional dam deflector structures, each of which is designed to control, concentrate and direct the stream flow for the beneficial uses described below. The structures which will constitute the Extension will be distributed within the channel of Clear Creek in a reach beginning immediately below Structure 8 of the Course, as described above at paragraph 4(A)(viii), and extending approximately 2750 feet within the channel of Clear Creek, terminating at a point in the SW1/4 of the SW1/4 of Section 27, T. 3 S., R. 70 W., of the 6th P.M., approximately 1,300 feet North of the South section line and 800 feet East of the West Section Line, in Jefferson County. The location of the Extension is depicted on Exhibit A.

7. Source: The source for both the Course and the Extension is Clear Creek, a tributary of the South Platte River.

8. Appropriations by Golden.

A. City of Golden White Water Course.

i. Date of Initiation of Appropriation: November 15, 1996. The appropriation was initiated by formation of the requisite intent to appropriate for beneficial use coupled with actions manifesting such an intent sufficient to put third parties on notice, including but not limited to the Golden City Council's approval of the Course and appropriation of money for construction of the Course structures.

ii. Date Water First Applied to Beneficial Use: Construction of the dam structures which constitute the Course began in late October, 1997, and water was first diverted, or otherwise controlled, and applied to the beneficial uses described below in January, 1998.

B. City of Golden White Water Course (Extension).

i. Date of Initiation of Appropriation: December 10, 1998. The appropriation was initiated by formation of the requisite intent to appropriate for beneficial use coupled with actions manifesting such an intent sufficient to put third parties on notice, including but not limited to a Golden City Council resolution.

9. Amount.

A. City of Golden White Water Course.

i. Absolute Water Rights. The following amount of water in cubic feet per second, was appropriated and applied to beneficial use by Golden for the months given and for each structure which makes up the Course:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
101	75	96	255	836	1000	874	559	251	143	103	128

The above absolute water rights are based upon measured flows at the USGS gage, Clear Creek at Golden, Colorado (the "Clear Creek Gage") in 1998 and 1999. The absolute water rights claimed by Golden in the application were based upon measured flows at the Clear Creek Gage in 1998. After the application was filed, a portion of the conditional water rights claimed in the application for June and July were perfected as measured by the Clear Creek Gage in 1999.

ii. Conditional Water Rights: In addition to the above absolute water rights, Applicant requests a conditional water right for an additional 164 cfs in the month of May and

126 cfs in the month of July, so that the structures which constitute the City of Golden White Water Course may divert a total of up to 1000 cfs during those months.

B. City of Golden White Water Course (Extension). Golden requests approval of conditional water rights for the structures which will constitute the Extension equal to the absolute and conditional water rights described above for the Course. Specifically, Golden requests the following conditional water rights for the Extension structures in cubic feet per second:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
101	75	96	255	1000	1000	1000	559	251	143	103	128

10. Beneficial Uses for Course and Extension Structures. Boating (including kayaking, rafting and canoeing), piscatorial, and general recreational uses. The Court hereby finds that the amount of water decreed and approved herein for the White Water Course and Extension is reasonable and appropriate under reasonably efficient practices to accomplish without waste the purpose for which the appropriation is lawfully made.

11. Can and Will. The Court finds that water is available for the conditional appropriations described above at paragraphs 8(A)(ii) and 8(B) and Golden can and will perfect said appropriations within a reasonable time consistent with C.R.S. § 37-92-305(9)(b).

CONCLUSIONS OF LAW

12. Jurisdiction. Timely and adequate notice of the filing of this Application was given as required by law and this Court has jurisdiction over this Application and over all parties affected thereby, whether or not they have chosen to appear.

13. Diversion Structures. Pursuant to C.R.S. § 37-92-103(7), a diversion of water may include “controlling water in its natural course or location by means of a . . . structure or device.” The dam structures and flow deflector control devices which constitute the City of Golden’s White Water Course and which will constitute the Extension thereof are such diversion structures or devices. See City of Thornton v. City of Fort Collins, 830 P.2d 915 (Colo. 1992).

RULING AND DECREE

14. The foregoing Findings of Facts and Conclusions of law are fully incorporated into this Ruling and Decree by this reference.

15. The absolute water rights for the structures constituting the City of Golden White Water Course as described above, and in the amounts set forth above at paragraph 8(A)(i), are hereby approved and decreed as such. The conditional water rights for the months of May and July for the structures constituting the Golden White Water Course as described above, and in the amounts set forth above at paragraph 8(A)(ii), are hereby granted and decreed as such. The

requested conditional water rights for the structures that will constitute City of Golden White Water Course (Extension) as described above, and in the amounts set forth above at paragraph 8(B), are hereby granted and decreed as such.

16. An Application for Sextennial Finding of Reasonable Diligence shall be filed on or before the last day of _____, 2007, if Golden desires to maintain its conditional water rights, or a showing made on or before said date that the conditional rights have been made absolute by completion of the appropriation.

It is ORDERED that a copy of this Ruling shall be filed with the appropriate Division Engineer and the State Engineer.

Dated this ____ day of _____, 2001.

BY THE COURT:

Water Judge
Water Division No. 1