

Homestake Scoping Comments on proposed Camp Hale Restoration and Enhancement Project

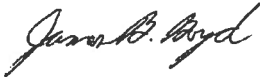
Exhibit 1: Case No. 13CW3045

DISTRICT COURT, GARFIELD (GLENWOOD SPRINGS) COUNTY, COLORADO	
Court Address: 109 8th Street, Ste. 104, Glenwood Springs, CO, 81601	DATE FILED: February 9, 2014 8:22 AM CASE NUMBER: 2013CW3045
In the Interest of: HOMESTAKE STEERING COMMITTEE	Δ COURT USE ONLY Δ Case Number: 2013CW3045 Division: E Courtroom:
Decree: Decree of the Water Court	

The motion/proposed order attached hereto: GRANTED.

Any request for a further finding of reasonable diligence shall be filed in February 2020.

Issue Date: 2/9/2014



JAMES BERKLEY BOYD
District Court Judge

DISTRICT COURT, WATER DIVISION NO. 5
STATE OF COLORADO
Garfield County Courthouse
109 8th Street, Suite 104
Glenwood Springs, CO 81601-3303

IN THE MATTER OF THE APPLICATION FOR
WATER RIGHTS OF: THE CITY OF COLORADO
SPRINGS, COLORADO, ACTING THROUGH
COLORADO SPRINGS UTILITIES, AND THE CITY
OF AURORA, COLORADO, ACTING BY AND
THROUGH ITS UTILITY ENTERPRISE, BOTH
ACTING BY AND THROUGH THE HOMESTAKE
STEERING COMMITTEE IN THE EAGLE RIVER
AND CERTAIN TRIBUTARIES THEREOF, IN
EAGLE COUNTY, LAKE COUNTY, AND PITKIN
COUNTY, COLORADO

▲ COURT USE ONLY ▲

Case Number: 13CW3045
(CA1193; 06CW225)

Division 5 Ctrm:

**FINDINGS OF FACT, CONCLUSIONS OF LAW, REFEREE'S RULING AND
DECREE OF THE WATER COURT**

This matter has come before the Court on the application of the City of Colorado Springs, Colorado, acting through Colorado Springs Utilities, and the City of Aurora, Colorado, acting by and through its Utility Enterprise, both acting by and through the Homestake Steering Committee (collectively hereinafter "Homestake " or "Applicants") for a finding of reasonable diligence in the development of conditionally decreed water rights, and to make conditional water rights absolute in part. The Referee, having considered the pleadings and the evidence presented, and otherwise being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law and enters a Referee's Ruling as set forth below.

FINDINGS OF FACT

1. Procedural Matters

1.1 Applicants: The Applicants are:

City of Colorado Springs, acting through Colorado Springs Utilities
c/o Water Services Division
121 South Tejon Street, MC0950
Colorado Springs, Colorado 80903
Phone: (719) 668-8000

and:

City of Aurora, acting by and through its Utilities Enterprise
c/o Utilities Department
15151 E. Alameda Parkway, Suite 3600
Aurora, Colorado 80012
Phone: (303) 695-7370

Both acting through the Homestake Steering Committee.

1.2 Jurisdiction: A Decree of the Water Court entered in Case No. 06CW225 on September 17, 2007 specified that an Application for a finding of reasonable diligence or to make conditional water right absolute be filed in the month of September, 2013. The Application herein was filed on September 25, 2013. Notice of the Application was given in the manner required by law, with certificate of mailing of notice to landowners filed on September 25, 2013, and proof of publication filed on November 19, 2013. The time for filing Statements of Opposition has expired. The Court has jurisdiction in this matter and over all persons who have standing to appear herein whether they have appeared or not.

1.3 Statements of Opposition: No Statements of Opposition were filed to the Application within the time allowed for such filing pursuant to statute.

1.4 Summary of Consultation: In accordance with C.R.S. § 37-92-302(4), the Referee has consulted with the Division Engineer on this matter; a Consultation Report herein recommending approval of the Application was completed by the Division Engineer, filed with the Court, and served on Homestake on December 11, 2013. The Court has duly considered the Division Engineer's recommendation.

2. Structures: The following component parts of the Homestake Project, a joint venture of the City of Colorado Springs and the City of Aurora are involved:

- 2.1 Homestake Conduit
- 2.2 East Fork Conduit
- 2.3 Homestake Tunnel
- 2.4 Homestake Reservoir
- 2.5 Eagle-Arkansas Ditch

3. Description of Conditional Water Rights:

3.1. Date of Original Decree: June 8, 1962; Case No.: CA1193; Court: Eagle County District Court

3.2. Subsequent decrees awarding findings of diligence:

- (1) September 17, 2007; Case No. 06CW225; Division 5 Water Court;
- (2) October 2, 2000; Case No. 00CW37; Division 5 Water Court;
- (3) March 14, 1994; Case No. 90CW117; Division 5 Water Court;
- (4) March 6, 1987; Case No. 86CW141; Division 5 Water Court;
- (5) September 27, 1984; Case No. 82CW120; Division 5 Water Court;
- (6) August 19, 1980; Case No. W-2321-78; Division 5 Water Court;
- (7) December 12, 1974; Case No. W-2321; Division 5 Water Court;
- (8) June 14, 1973; Case No. W-620; Division 5 Water Court;
- (9) June 14, 1971; Case No. W-45; Division 5 Water Court;
- (10) July 10, 1968; Case No. CA-1193; Eagle County District Court

3.3. Structure Legal Descriptions and Amounts (see Exhibit A):

3.3.1 Homestake Conduit: The following are the legal descriptions for the Homestake Conduit as originally decreed or as changed pursuant to the decree in Case No. 95CW272A. Case No. 95CW272A decreed changed points of diversion for originally decreed structures that were located within the boundaries of the Holy Cross Wilderness Area established in 1980 and alternate points of diversion for the remaining conditional portion of some of the structures that are a part of the original Homestake Conduit. Table 1, below, further details where the original water rights decreed to the Homestake Conduit may be diverted as changed by Case No. 95CW272A.

3.3.1.1 Blodgett Reservoir: the centerline of the dam axis is located on Homestake Creek within the NE¼ of the NE¼ of Section 6, T7S, R80W of the 6th P.M. at a point approximately 1,050 feet south of the north section line and 800 feet west of the east section line, Eagle County, Colorado.

3.3.1.2 Homestake Creek Intake: located within the NE¼ of the SE¼ of Section 31, T6S, R80W of the 6th P.M. Eagle County, Colorado, at a point on Homestake Creek approximately 1,900 feet North of the South section line and 75 feet West of the East section line.

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3.3.1.3 Turkey Creek Intake: located within the SW¼ of the NW¼ of Section 20, T6S, R80W of the 6th P.M., Eagle County, Colorado at a point on Turkey Creek approximately 1,500 feet South of the North section line and 880 feet East of the West section line.

3.3.1.4 Cross Creek Intake of Eagle-Cross Pump and Pipeline: located within the SE¼ of the SW¼ Section 36, T5S, R81W of the 6th P.M. at a point on Cross Creek approximately 2,000 feet East of the West section line and 1,250 feet North of the South section line.

3.3.1.5 Fall Creek Intake of Eagle-Cross Pump and Pipeline: located within the SW¼ of the NW¼ of Section 13, T6S, R81W of the 6th P.M. at a point on Fall Creek approximately 4,300 feet East of the West section line and 2,400 feet South of the North section line.

3.3.1.6 Peterson Creek Intake of Eagle-Cross Pump and Pipeline: located within the NW¼ of the NE¼ of Section 24, T6S, R81W of the 6th P.M. at a point on Peterson Creek approximately 1,400 feet West of the East section line and 1,100 feet South of the North section line.

3.3.1.7 Eagle River Diversion of Eagle-Cross Pump and Pipeline: located within the SE¼ of the SW¼ of Section 19, T6S, R80W of the 6th P.M. at a point on the Eagle River approximately 1,100 feet North of the South section line and 1,750 feet East of the West section line.

3.3.1.8 French Creek Intake (as changed in Case Nos. 85CW151, 85CW582 and 85CW583): S 82° 18.3'E 20,988 ft. to NW cor 31-7S-80W.

3.3.1.9 Fancy Creek Intake (as changed in Case Nos. 85CW151, 85CW582 and 85CW583): N 85° 10.5'E 25,280 ft. to NW cor 31-7S-80W.

3.3.1.10 Missouri Creek Intake (as changed in Case Nos. 85CW151, 85CW582 and 85CW583): N 77° 12.4'E 28,800 ft. to NW cor 31-7S-80W.

3.3.1.11 Sopris Creek Intake (as changed in Case Nos. 85CW151, 85CW582 and 85CW583): N 74° 7.6'E 29,848 ft. to NW cor 31-7S-80W.

3.3.1.12 Peterson Creek Intake (as changed in Case Nos. 85CW151, 85CW582 and 85CW583): S 64° 05'E 6,822 ft. to NW cor Section 6, Township 7 South, Range

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80 West Alternate Point: S 76° 2.9' E 6,474 ft. to NW cor Section 6, Township 7 South, Range 80 West.

TABLE 1 – Homestake Conduit		
Stream or Source of Supply	Diversion Points	Amounts in cubic feet per second (“cfs”)
Unnamed Creek (near Cross Creek below West Cross confluence – Homestake Conduit)	Blodgett; Homestake Creek Intake (“HC”); Turkey Creek Intake (“TC”); Cross Creek Intake (“CC”); Fall Creek Intake (“FC”); Peterson Creek Intake of Eagle-Cross Pump and Pipeline (“PC2”); Eagle River Intake (“ER”)	60 conditional (“C”)
West Cross Creek	Blodgett; HC; TC; CC; FC; PC2; ER	200 C
Cross Creek	Blodgett; HC; TC; CC; FC; PC2; ER	300 C
East Cross Creek	Blodgett; HC; TC; CC; FC; PC2; ER	130 C
Fall Creek	Blodgett; HC; TC; CC; FC; PC2; ER	260 C
Peterson Creek	Blodgett; HC; TC; CC; FC; Peterson Creek (“PC1”); PC2; ER	50 C
Unnamed Creek (tributary to Homestake Creek – Homestake Conduit)	Blodgett; HC; TC; CC; FC; PC2; ER	50 C
Whitney Creek	Blodgett; HC; TC; CC; FC; PC2; ER	80 C
French Creek	French Creek Intake	60.1 absolute (“A”)
French Creek	French Creek Intake, Blodgett, HC, TC, CC, FC, PC2, ER	119.9 C
Fancy Creek	Fancy Creek Intake	38.6 A
Fancy Creek	Fancy Creek Intake; Blodgett, HC, TC, CC, FC, PC2, ER	91.4 C
Missouri Creek	Missouri Creek Intake	39.8 A
Missouri Creek	Missouri Creek Intake; Blodgett, HC, TC, CC, FC, PC2, ER	80.2 C

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Sopris Creek	Sopris Creek Intake	41.3 A
Sopris Creek	Sopris Creek Intake; Blodgett, HC, TC, CC, FC, PC2, ER	118.7 C
Small unnamed streams, seeps, sheet flows and ground waters along conduit	Blodgett, HC, TC, CC, FC, PC2, ER	120 C
Total		179.8 cfs A ¹ 1,660.2 cfs C

3.3.2 East Fork Conduit. The East Fork Conduit diverts water from the East Fork of Homestake Creek pursuant to its appropriation of 260 cfs, of which 70.8 cfs was made absolute in Case Nos. 85CW151, 85CW582 and 85CW583, and 189.2 cfs remains conditional as of the filing of this Application, and conveys these waters to Homestake Reservoir for conveyance to Homestake Tunnel or storage in the reservoir, said East Fork Conduit having a capacity of 260 cfs and a total length of approximately 3093 feet. The point of diversion of said conduit, as changed in Case Nos. 85CW151, 85CW582 and 85CW583, is on East Fork Homestake Creek at a point whence the Northwest Corner of Section 31, Township 7 South, Range 80 West bears North 55° 40.5' East, 22,917 feet.

3.3.3 Homestake Tunnel. Homestake Tunnel, as changed in Case Nos. 85CW151, 85CW582 and 85CW583, under the Continental Divide for the conveyance of water into the Arkansas River Basin, with its intake located at a point under Homestake Reservoir whence the Northwest corner of Section 10, Township 9 South, Range 81 West of the 6th P.M. bears South 15° 27'08" East 26,173.03 feet appropriates a maximum amount of 10 cfs, conditional as of the filing of this Application, of water seeping and percolating into Homestake Tunnel from former Water District No. 37 areas and 300 cfs, absolute as determined by the court in Case Nos. 85CW151, 85CW582 and 85CW583, from Middle Fork of Homestake Creek, at its said Northerly portal, its point of diversion; said tunnel has a length of 27,400 feet and a capacity of 700 cfs of time. The tunnel conveys out of former Water District No. 37 up to 700 cfs of waters appropriated by the tunnel from the Middle Fork of Homestake Creek, together with water appropriated by the tunnel from the Homestake Creek and East Fork Conduits and Homestake Reservoir, to an outlet at a point from where the Northwest corner of Section 10, Township 9 South, Range 81 West of the 6th P.M. bears North 6°40'52" East, a distance of 2,173.54 feet.

¹ The Court made these water rights absolute in Case Nos. 85CW151, 85CW582 and 85CW583.

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3.3.4 Homestake Reservoir. Homestake Reservoir, also known as Elliott-Weers Reservoir, as changed in Case Nos. 85CW151, 85CW582 and 85CW583, capacity of 83,338.98 acre feet, conditional as of the filing of this Application, is located on Homestake Creek with a dam whence Homestake Peak bears South 73° 26' East 10,477 feet from the easterly end thereof and South 74° 57' East 13,347 feet from the westerly end thereof, said dam having a maximum height of 411.5 feet and a length of 3,380 feet. The sources of supply of said reservoir are Homestake Conduit, East Fork Conduit, the Middle Fork of Homestake Creek, and Homestake Creek, and said reservoir has appropriated for storage 83,338.98 acre feet annually from said sources. Homestake Reservoir also conveys water from Homestake Conduit and East Fork Conduit to Homestake Tunnel. Existing Homestake Reservoir has a storage capacity of 43,504.7 acre feet, absolute as determined by the court in Case Nos. 85CW151, 85CW582 and 85CW583, and is located on Homestake Creek with a dam whence the NW Corner of Section 31, T7S, R80W of the 6th P.M. bears North 58° 30.6' East 24,659 feet from the East dam abutment and North 62° 25.8' East 25,746 feet from the West dam abutment; said dam has a maximum height of 265.0 feet and a length of 1,996 feet. The sources of supply of said existing Homestake Reservoir are Homestake Conduit, East Fork Conduit, the Middle Fork of Homestake Creek and Homestake Creek. Existing Homestake Reservoir has appropriated 43,504.7 acre feet annually from said sources and also conveys water from Homestake Conduit and East Fork Conduit to Homestake Tunnel.

3.3.5 Eagle-Arkansas Ditch. The Eagle-Arkansas Ditch, as changed in Case Nos. 85CW151, 85CW582 and 85CW583, receives and delivers into the Tennessee Pass Tunnel for conveyance under the Continental Divide and out of former Water District No. 37 into the Arkansas River Basin the water appropriated from the sources as described in Table 2 below:

TABLE 2 – Eagle-Arkansas Ditch		
Stream or Other Source of Supply	Point of Diversion (Bearing and distance to land corners of the Sections, Ranges and Townships Indicated, all refer to 6 th P.M.)	Amount in cfs
Cataract Creek	S 54° 46'35"W 3,147.15 ft. to E/4 cor Sec 24-7S-80W (as Corrected in Case No. 06CW255)	90 C
Sheep Gulch	S 61° 59'03"W 262.66 ft. to NW cor Sec 29-7S-79W	20 C
East Fork Eagle River	N 27° 54'39"E 1,328.12 ft. to E/4 cor Sec 32-7S-79W	230 C
Jones Gulch	N 29° 19'38"E 826.82 ft. to E/4 cor Sec 26-7S-80W	90 C
Fiddler Creek	N 83° 20'47"W 1,360.22 ft. to NW cor Sec 2-8S-80W	30 C

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Taylor Gulch	S 9° 55'55"W 6,128.68 ft. to SW cor Sec 11-8S-80W	20 C
Piney Creek	S 52° 18'04"W 2,193.82 ft. to SW cor Sec 11-8S-80W	20 C
Small unnamed streams, springs, seeps, sheet flows and ground water along Eagle-Arkansas Ditch, one of which is located at a point on an unnamed tributary of the East Fork of The Eagle River whence the S¼ cor of S¼ cor of Sec 29-7S-79W of the 6 th P.M. bears S60°9'47"W, a distance of 1,551.06 ft.		30 C
Total		530 C

3.4. Sources: The Sources of the Homestake Project Water Rights are described in Paragraphs 3.3.1 through 3.3.5 above.

3.5. Appropriation Date: September 22, 1952.

Table 3 below summarizes the amounts, as of the date of filing of the Application herein, of the component parts of the Homestake Project that have been made absolute and that remain conditional, along with the ditch number and priority number:

TABLE 3 – Homestake Project Priorities and Amounts				
Number of Ditch	Name of Ditch or Reservoir	Homestake Project Original Construction or Enlargement	Priority No.	Water Allowed
358 ½ A	Homestake Conduit	Original	536 ½ A	179.8 cfs A 1660.2 cfs C
358 ½ B	East Fork Conduit	Original	536 ½ B	70.8 cfs A 189.2 cfs C
358 ½ C	Homestake Tunnel	Original	536 ½ C	300 cfs A 10.0 cfs C (10 cfs is seepage & percolation)
358 ½ D	Homestake Reservoir	Original	536 ½ D	43,504.7acre feet A 83,338.98 acre feet C
358 ½ E	Eagle-Arkansas Ditch	Original	536 ½ E	530 cfs C

3.6. Decreed Uses:

3.6.1 The Homestake Project comprises a system of works, including ditches, tunnels and reservoirs, for the collection, diversion, storage, regulation, and transportation of water to supply the water works and water systems of the City of Colorado Springs, the City of Aurora and other entities and persons as may use the water from the City of Colorado Springs and City of Aurora for domestic and municipal uses, and other uses made of water furnished through municipal and other water systems furnishing water to inhabitants of municipalities and suburban areas, including in such uses, but not by way of limitation or exclusion, domestic and household uses, industrial, business and mechanical uses, generation of power, sewage treatment, street sprinkling and washing, watering of parks, lawns and gardens, fire protection and other use as may be necessary or proper to safeguard the health and welfare of the persons and communities using this water, including such uses as may be necessary, proper, or incident to providing a safe, firm and adequate supply of water for the present and future water needs of the communities and the inhabitants thereof to be served by this water supply.

3.6.2 In addition, pursuant to the decree in Case No. 95CW272A, for 9,316 acre feet, conditional, of the Homestake Reservoir, for 1660.20 cfs, conditional, of the Homestake Conduit, for 189.20 cfs, conditional, of the East Fork Conduit, and for 530 cfs, conditional, of the Eagle-Arkansas Ditch, the decreed uses include:

3.6.2.1 Exchange, augmentation, aquifer recharge, municipal, irrigation, commercial, domestic, industrial, snowmaking, recreation, fishery, wetland creation and irrigation, wildlife and including delivery to the Cities of Aurora and Colorado Springs, Colorado, for all such uses, and for reuse and successive use to extinction by the Cities of all such water delivered to the Eastern Slope.

3.6.2.2 Description of Non-Irrigation Purposes: Applicants may utilize the storage rights for purposes of developing their vested or conditionally decreed water rights, including those for the Homestake Project; for transmountain diversions directly to the Eastern Slope; and for meeting federal, state and local permit conditions that necessitate the use of water resources. Applicants may also use or transport water from this source for municipal, commercial, domestic, industrial, snowmaking, recreation, fishery, wildlife, exchange, and augmentation uses in the service areas of the Colorado River Water Conservation District, the Upper Eagle Regional Water Authority, and the Eagle River Water and Sanitation District as they now or hereafter exist, and of Cyprus-Climax Metals Company and Vail Associates, as they now exist.

Water delivered to the Eastern Slope may be used within any area capable of being served

by these diversion and storage points and the Applicants' municipal water supply systems for any water supply obligations of Applicants for municipal and domestic purposes including, but not limited to, fire protection, irrigation of lawns, gardens, parks, private and municipal facilities, sanitary, commercial, manufacturing, mechanical and industrial use, recreational purposes, creation and maintenance of wetlands, stock watering, fish and wildlife propagation, allowable instream uses, if any, snowmaking, revegetation, storage and maintenance of storage reserves, reservoir evaporation replacement, augmentation, exchange, and replacement purposes, and for use, reuse for successive uses, disposition following initial use, and reuse until extinction.

3.6.2.3 Total Number of Acres Proposed to be Irrigated: Up to 275 acres within Eagle Park as described below. Applicants also reserve the right to use the water decreed herein for irrigation purposes within their respective water service areas. The acreage to be irrigated on the Western Slope is located entirely within T7S, R80W of the 6th P.M in an area comprising approximately 1,450 surface acres, in the following sections, commonly known as Eagle Park or Camp Hale:

- Section 3: Part of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$
- Section 4: Part of the SE $\frac{1}{4}$
- Section 9: Part of the E $\frac{1}{2}$
- Section 10: Part of the W $\frac{1}{2}$ of the NW $\frac{1}{4}$
Part of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$
Part of the S $\frac{1}{2}$ of the SW $\frac{1}{4}$
Part of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$
- Section 15: Part of the W $\frac{1}{2}$
Part of the W $\frac{1}{2}$ of the NE $\frac{1}{4}$
Part of the SE $\frac{1}{4}$
- Section 16: Part of the E $\frac{1}{2}$ of the NE $\frac{1}{4}$
Part of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$
- Section 22: Part of the E $\frac{1}{2}$
Part of the E $\frac{1}{2}$ of the NW $\frac{1}{4}$
Part of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$
- Section 23: Part of the S $\frac{1}{2}$
Part of the S $\frac{1}{2}$ of the NW $\frac{1}{4}$

Part of the SW¼ of the NE¼

Section 24: Part of the SW¼

3.6.3 In addition, pursuant to the decree in Case No. 95CW272A, the conditional water rights are subject to the following:

3.6.3.1 Augmentation Use. Augmentation use of the water diverted on the subject rights on the Western Slope may be made in the service areas of the Colorado River Water Conservation District, the Upper Eagle Regional Water Authority, and the Eagle River Water and Sanitation District, as they now or hereafter exist and of Cyprus-Climax Metals Company and Vail Associates, as they now exist, pursuant to agreement with the Applicants and in accordance with the terms of separately decreed augmentation plans providing for such use for the structures to be augmented.

3.6.3.2 Reuse and Successive Use to Extinction: Water imported to the Eastern Slope may be used, reused, successively used, and fully consumed on the Eastern Slope. No reuse or successive use of the water rights shall be made on the Western Slope without a subsequent proceeding confirming such reuse or successive use. The decree in Case No. 95CW272A neither precludes the Applicants or their privies in interest from claiming a right of reuse of the changed water rights on the Western Slope, nor confirms a right to reuse or successive use of such water on the Western Slope, creates any presumption, shifts the burden of proof, or serves as a defense in such subsequent proceeding.

4. Integrated System: The Homestake Project is an integrated water supply project including the foregoing conditional and absolute water rights and collection, storage, and transmission structures, as well as additional related water rights and facilities located in the Colorado, Arkansas, and South Platte River basins. Further, the Homestake Project is integrated into the integrated water supply systems of the City of Colorado Springs and the City of Aurora. Diligence in the development of any conditional water right or any portion of the integrated systems shall be considered in determining diligence as to all conditional water rights and portions of the integrated system.

5. Diligence:

5.1 Diligence activities: The Application requests a finding that the Applicants have exercised reasonable diligence in the development of the conditional water rights awarded to the conditional portions of the Homestake Project. The Referee finds that the work and expenditures described in the Application constitute reasonable diligence in the development of the

conditional portions of the subject water rights and the Application should be granted. C.R.S. § 37-92-301(4).

6. Claim to make absolute in part:

6.1 Homestake Conduit by virtue of diversions through the French Creek Intake:

6.1.1 Date of diversions: July 17, 2008, as follows:

On that date, Applicants measured and diverted in priority 123.34 acre feet (62.18 cfs) of water into the Homestake Conduit at the French Creek Intake. The water was conveyed into Homestake Reservoir, and then into the Arkansas River basin via the Homestake Tunnel. It was then conveyed via the Mt. Elbert Conduit and Forebay, Twin Lakes Reservoir and outlet, Otero Pipeline and Pumping Plant, and Homestake Pipeline, to storage, treatment, and distribution facilities of the City of Aurora in the South Platte basin and of the City of Colorado Springs in the Fountain Creek basin.

6.1.2 Additional amount claimed Absolute: 2.08 cfs
Cumulative amount Absolute for this intake: 62.18 cfs
Remaining Conditional for this intake: 117.82 cfs
Cumulative amount Absolute for Homestake Conduit: 181.88 cfs
Remaining Conditional for Homestake Conduit: 1658.2 cfs

6.1.3 Type and Place of Use: municipal use in the municipal water supply systems of the Cities of Colorado Springs and Aurora.

6.2 East Fork Conduit:

6.2.1 Date of diversions: June 5, 2010, as follows:

On that date, Applicants measured and diverted in priority 148.03 acre feet (74.63 cfs) of water into the East Fork Conduit. The water was conveyed into Homestake Reservoir, and then into the Arkansas River basin via the Homestake Tunnel. It was then conveyed via the Mt. Elbert Conduit and Forebay, Twin Lakes Reservoir and outlet, Otero Pipeline and Pumping Plant, and Homestake Pipeline, to storage, treatment, and distribution facilities of the City of Aurora in the South Platte basin and of the City of Colorado Springs in the Fountain Creek basin.

6.2.2 Additional amount claimed Absolute: 3.83 cfs
Cumulative amount claimed Absolute for this structure: 74.63 cfs
Remaining Conditional for this structure: 185.37 cfs

6.2.3 Type and Place of Use: municipal use in the municipal water supply systems of the Cities of Colorado Springs and Aurora.

6.3 Make Absolute: Applicants seek a finding that a portion of the conditional water right for the Homestake Conduit by virtue of diversions through the French Creek Intake should be made absolute for an additional 2.08 cfs, which is a cumulative amount absolute for this intake of 62.18 cfs and cumulative amount absolute for Homestake Conduit of 181.88 cfs. Additionally, the Applicants seek a finding that a portion of the conditional water right for the East Fork Conduit should be made absolute for an additional 3.83 cfs, which is a cumulative amount for this structure of 74.63 cfs. The Applicant has provided evidence that illustrates that it has put this portion of the water right to beneficial use; therefore, the referee finds that Homestake Conduit and the East Fork Conduit should be made absolute for the amounts and uses claimed. C.R.S. § 37-92-301(4)

CONCLUSIONS OF LAW

7. Incorporation by Reference. The foregoing Findings of Fact are incorporated herein to the extent that they constitute or include conclusions of law.
8. Timely filing. The Application herein was timely filed.
9. Notice of Proceeding. Timely and adequate notice of the pendency of this proceeding and the subject matter thereof was given in the manner required by law.
10. Jurisdiction. This Court has jurisdiction over the subject matter of this proceeding and over all who may be affected hereby, whether they have appeared or not.
11. Integrated Project. As found in previous decrees, the conditional water rights herein are a part of the integrated Homestake Project, which includes conditional and absolute water rights and collection, storage, transmission and related facilities, and of the integrated water systems comprising all water rights decreed and used for development and operation of the City of Colorado Springs municipal water supply system and the City of Aurora municipal water supply system, and diligence as to one component of the integrated system comprises diligence as to the entire system.

REFEREE'S RULING

12. Incorporation by Reference. The Findings of Fact and Conclusions of Law set forth in Paragraphs above are incorporated herein by this reference.

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13. Conditional Water Rights Made Absolute. The following additional amounts conditionally decreed to the Homestake Project for all decreed uses are hereby made absolute:

13.1 **2.08 cfs of the Homestake Conduit** by virtue of diversions through the **French Creek Intake**; and

13.2 **3.83 cfs of the East Fork Conduit.**

14. Application for Diligence Granted. The Court GRANTS the Applicants' request to find that they have been diligent in the development of the remaining conditional portions of the water rights for the Homestake Conduit, the East Fork Conduit, the Homestake Tunnel, the Homestake Reservoir, and the Eagle-Arkansas Ditch.

15. Homestake Conduit Water Right Amounts. The Following Table identifies the amounts of water rights originally decreed to the Homestake Conduit by the Eagle County District Court in CA 1193 and delineates amounts that are now absolute and remain conditional as of this Ruling:

Stream or Source of Supply	Diversion Points	Amounts
Unnamed Creek (near Cross Creek below West Cross confluence – Homestake Conduit)	Blodgett; HC; TC; CC; FC; PC2; ER	60 cfs C
West Cross Creek	Blodgett; HC; TC; CC; FC; PC2; ER	200 cfs C
Cross Creek	Blodgett; HC; TC; CC; FC; PC2; ER	300 cfs C
East Cross Creek	Blodgett; HC; TC; CC; FC; PC2; ER	130 cfs C
Fall Creek	Blodgett; HC; TC; CC; FC; PC2; ER	260 cfs C
Peterson Creek	Blodgett; HC; TC; CC; FC; PC1; PC2; ER	50 cfs C
Unnamed Creek (tributary to Homestake Creek – Homestake Conduit)	Blodgett; HC; TC; CC; FC; PC2; ER	50 cfs C
Whitney Creek	Blodgett; HC; TC; CC; FC; PC2; ER	80 cfs C

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French Creek	French Creek Intake	62.18 cfs A
French Creek	French Creek Intake, Blodgett, HC, TC, CC, FC, PC2, ER	117.82 cfs C
Fancy Creek	Fancy Creek Intake	38.6 cfs A
Fancy Creek	Fancy Creek Intake; Blodgett, HC, TC, CC, FC, PC2, ER	91.4 cfs C
Missouri Creek	Missouri Creek Intake	39.8 cfs A
Missouri Creek	Missouri Creek Intake; Blodgett, HC, TC, CC, FC, PC2, ER	80.2 cfs C
Sopris Creek	Sopris Creek Intake	41.3 cfs A
Sopris Creek	Sopris Creek Intake; Blodgett, HC, TC, CC, FC, PC2, ER	118.7 cfs C
Small unnamed streams, seeps, sheet flows and ground waters along conduit	Blodgett, HC, TC, CC, FC, PC2, ER	120 cfs C
Total		181.88 cfs A 1,658.2 cfs C

16. Homestake Project Water Right Amounts. The Following Table identifies the amounts of water rights originally decreed to the entire Homestake Project by the Eagle County District Court in CA 1193 and delineates amounts that are now absolute and remain conditional as of this Ruling:

Number of Ditch	Name of Ditch or Reservoir	Homestake Project Original Construction or Enlargement	Priority No.	Water Allowed A = Absolute C = Conditional
358 ½ A	Homestake Conduit	Original	536 ½ A	181.88 cfs A 1658.2 cfs C
358 ½ B	East Fork Conduit	Original	536 ½ B	74.63 cfs A 185.37 cfs C

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358 ½ C	Homestake Tunnel	Original	536 ½ C	300 cfs A 10.0 cfs C (10 cfs is seepage & percolation)
358 ½ D	Homestake Reservoir	Original	536 ½ D	43,504.7 acre feet A 83,338.98 acre feet C
358 ½ E	Eagle-Arkansas Ditch	Original	536 ½ E	530 cfs C

17. Diligence Filing. The Applicant shall file an Application for Sexennial Finding of Reasonable Diligence for the conditional water rights maintained in this decree before the end of the month six years from the date of the water judge's order, and every sixth calendar year after a diligence decree is entered by the court, for so long as it desires to maintain these conditional water rights, or until a determination has been made that these conditional water rights have become absolute.

18. Sale or Transfer of Conditional Rights. After entry of this decree and upon the sale or other transfer of the conditional water rights described in Paragraph 3 above, the transferee will file with this Court a notice of transfer, stating the title and case number of this ruling, a description of the conditional water rights transferred, its address, and a copy of the recorded deed. The owner of the conditional water rights decreed herein will notify the clerk of this Court of any change in its mailing address.

19. Filing with State and Division Engineers. A copy of this Ruling shall be filed with the State Engineer and with the Division Engineer for Water Division No. 5.

IT IS THEREFORE ORDERED that this Ruling shall be filed with the Water Clerk and will become effective upon filing, subject to judicial review pursuant to C.R.S. § 37-92-304.

DATED this 14th day of January, 2014

BY THE REFEREE:



Holly Kirsner Strablitzky, Water Referee
Water Division No.5

DECREE OF THE WATER COURT

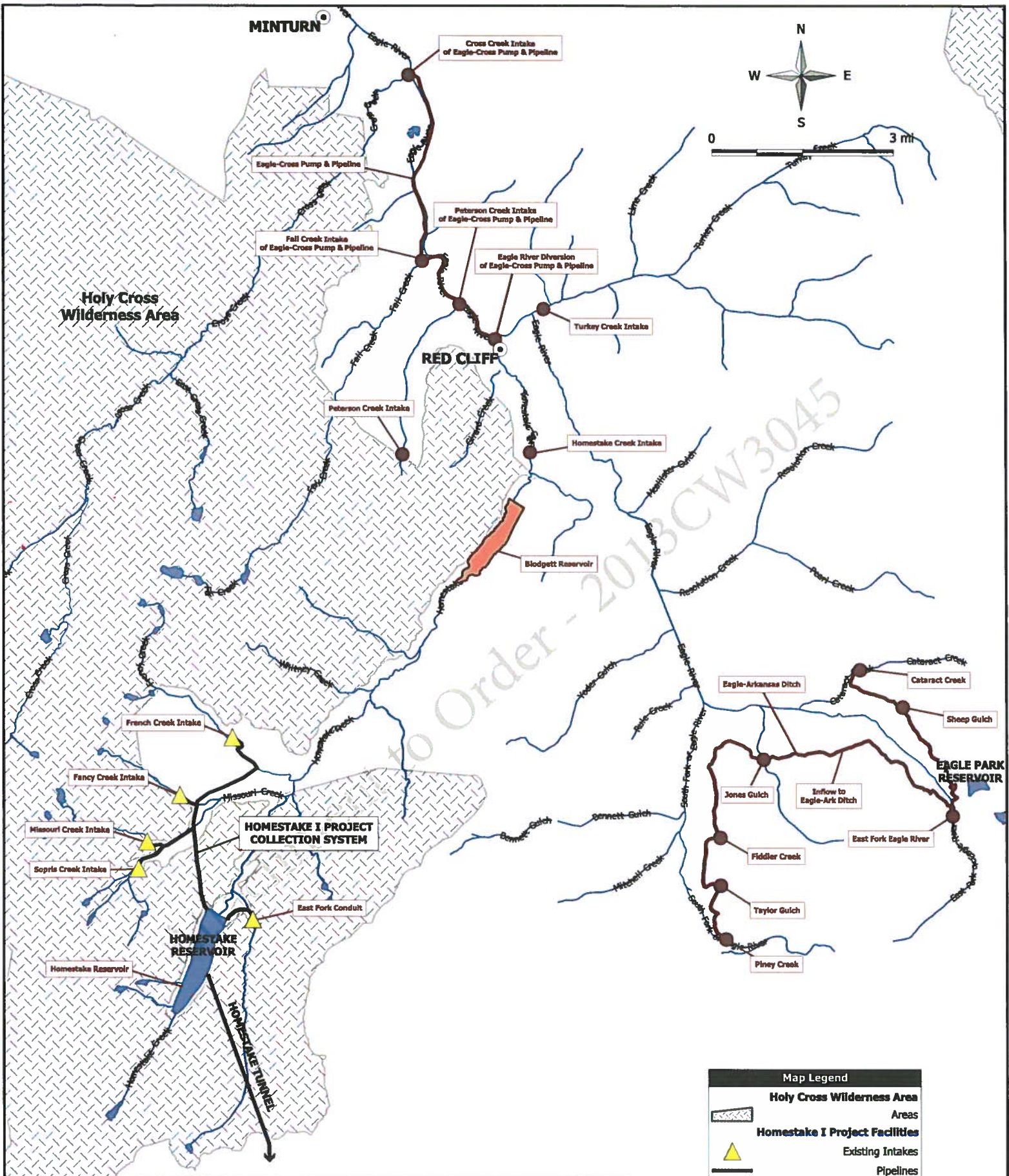
No Protest was filed herein. This matter comes before the Court pursuant to C.R.S. §§ 37-92-303(1) and 304(7), and the Court having reviewed the findings and determinations of the Water Referee and being fully apprised of the matter,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the Water Referee's Ruling is hereby confirmed and adopted as the Decree of this Court.

Dated this _____ day of _____, 2014.

BY THE COURT:

Hon. James B. Boyd, Water Judge
Water Division No. 5



EXHIBIT

Vicinity Map of Homestake Project Facilities Eagle County, Colorado



Date: 10/07/2013
File Name: 13CW_Exhibit.map