

DENVER BOARD OF WATER COMMISSIONERS

Meeting Date: October 24, 2013

Board Item: 2-A-2

Sulphur Gulch Reservoir Conditional Water Right

Action by Consent

Action

Information

In 2007, the Water Court entered a decree for a conditional water right to Denver Water and Northern Colorado Water Conservancy District ("Northern Water") for Sulphur Gulch Reservoir in the amount of 16,000 acre feet. The purpose of this water right was to create a permanent source of all or a part of the water users' commitment to provide 10,825 acre feet of water to the Upper Colorado River Recovery Program for Endangered Fish Species. Diligence for a conditional water right must be filed every six years, and Denver Water and Northern Water are required to file a diligence application by the end of October to maintain this conditional water right.

Paragraph 29 of the Sulphur Gulch Reservoir conditional decree provides: "If Applicants do not construct the Sulphur Gulch Reservoir and instead construct or use a different project to fully satisfy the East Slope's obligation for its part of the 10,825 Water, then Applicants shall, upon completion of such different project to satisfy the East Slope's obligation for the 10,825 water and within a reasonable time thereafter for the Applicants' to determine the sufficiency of that project to fulfill the East Slope obligations under the Programmatic Biologic Opinion, file a statement with the Water Court canceling and abandoning the conditional water right for the Sulphur Gulch Reservoir."

Since the entry of this decree, the water users have pursued a different project, Red Top Valley Ditch Project (RTVD) to satisfy part of the obligation for 10,825 acre-feet of water. In 2013, Northern Water began delivery of water under the RTVD Project. Because the RTVD is operational, the development of the Sulphur Gulch Project and a filing for diligence are no longer necessary. Northern Water's staff has made a similar recommendation to its board.

Recommendation: It is recommended that, subject to similar action by Northern Water, the Board cancel and abandon the Sulphur Gulch Reservoir conditional water right in its entirety because Northern Water's agreement to provide 5,412.5 acre feet in perpetuity as a result of the purchase and retirement of the Red Top Valley Ditch has replaced and superseded the need to construct and operate Sulphur Gulch Reservoir for the same purpose.

Approvals:



David Little
Director of Planning

Respectfully submitted,



James S. Lochhead
CEO/Manager



Patti Wells
General Counsel