

4. SPECIAL CONDITIONS

A. The permittee agrees that all reports or correspondence required under these special conditions shall include the following information:

Project: Raw Water Diversion from Elk Creek
Corps Permit No: NWO-2008-2659-DEN
County: Park County
Permittee: Will-O-Wisp Metropolitan District
Expiration Date: April 8, 2013

and shall be sent to:

US Army Corps of Engineers
Denver Regulatory Office (DRO)
9307 S. Wadsworth Blvd.
Littleton, CO 80128-6901

(Continued)

B. The permittee agrees to construct the project and mitigation as shown on the attached drawings in eight (8) Sheets dated March 25, 2010, which are attached to, and made a part of, this permit. The permittee maintains that no wetland impacts will occur as a result of the pipeline crossing Jones Creek, the Construction of the Water Treatment Plant and its connection to the existing infrastructure. If there are unforeseen wetland impacts – no matter how minor – connected with these activities, the permittee agrees to contact DRO for consultation and approval before impacts occur.

C. The permittee agrees to restore 1.23 acre of wetlands commencing by January 1, 2012 and completing [through planting] the mitigation before December 31, 2013. The permittee shall hire a professional ecologist – approved by the DRO - to be onsite to oversee that the mitigation, which will be accomplished in accordance with the mitigation plan (Attachment B) which is attached to, and a part of, this permit and with these special conditions. In cases where a conflict between the two exists, the special conditions supersede the mitigation plan.

D. The permittee agrees to verify that the mitigation site has the appropriate hydrology to ensure success of wetland creation and/or enhancement. This verification will be reported in the first annual monitoring report submitted after construction of the mitigation site and can be done with photographs, moisture probe data, ground water monitoring stations or other techniques approved by the DRO. If site conditions indicate that adequate hydrology is not present, the permittee agrees that remedial efforts will be undertaken after consultation with the DRO.

E. The permittee agrees that the restored (1.23 acres) wetlands will be considered successful and self-sustaining when the baseline conditions as required in the mitigation plan have been met without intervention in the form of irrigation, removal of undesirable vegetation or replanting of desirable vegetation for a five (5) consecutive year period.

F. The permittee agrees to monitor the authorized work (see below) and mitigation (during the summer months) each year beginning in 2010. Annual Reports will be submitted to the DRO before December 31 of each year beginning in 2010. The format of this report shall follow the requirements shown in Attachment A. The permittee also agrees to monitor all wetlands within, or contiguous to, the project site that are to remain ‘undisturbed’ as the authorized work progresses. If there is any indication that the ‘undisturbed’ wetlands are being adversely impacted, the permittee will contact the DRO for potential remedial actions to be taken. Your responsibility to complete the required compensatory mitigation will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the Corps.

Monitoring report for the authorized work entails:

- Date permitted activity was begun; if work has not begun on-site, please so indicate.
- Brief description and extent of work (site preparation, mitigation activity, new home construction, taps added etc.) completed since the previous report or since permit was issued. Indicate on copies of the permit drawings those areas where work has been completed.
- Brief description and extent of work anticipated in the next six months. Indicate on copies of the permit drawings those areas where it is anticipated that work will be done.

G. The permittee agrees that no more than 250 new taps shall be added, for a total of 370 taps, without construction and filling of a water storage reservoir within the Elk Creek Watershed. Before the 250th new tap is added the permittee will request a meeting with the DRO to outline steps to be taken for additional on-site water storage.

H. The permittee agrees that they are responsible for all work accomplished in accordance with the terms and conditions of this authorization. If a contractor or other authorized representative will be accomplishing the work hereby authorized in behalf of the permittee, such parties shall be provided a copy of this authorization so they are aware of the terms and conditions. An activity that fails to comply with the terms and conditions of this authorization will be considered unauthorized and all responsible parties will be subject to appropriate enforcement action.

I. If heavy equipment is acquired that was previously working in another stream, river, lake, pond, or wetland, one of the following disinfection practices is necessary prior to construction to prevent the spread of New Zealand mud snails and other aquatic hitchhikers into this drainage. These practices are also necessary after project completion, prior to this equipment being used in another stream, river, lake, pond, or wetland, for the same purpose:

1. Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with a 1:15 solution of Sparquat institutional cleaner and water. Keep equipment moist for at least 10 minutes **OR**
2. Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with water greater than 140 degrees F for at least 10 minutes.
3. Clean hand tools, boots, and any other equipment that will be used in the water using one of the above options as well.

J. The permittee agrees to follow the following:

Diversions from Elk Creek are based on the Operating Principles dated March 6, 2007 (Attachment C), except as listed elsewhere (Special Condition Q).

Elk Creek Monitoring

- Pre construction baseline sample near the diversion point with field and laboratory parameters
- Semi-annual sampling (February and October) field parameters only
 - ..Sampling above the diversion point and downstream above the "fishing ponds"
 - ..This sampling will continue for five years after the completion of the diversion structure
- Single one year post construction sample
 - ..Sample during the next expected low flow period, October or February, one year after the completion of the diversion structure
 - ..Field and laboratory parameters
- In-stream continuous temperature monitoring
 - ..Collection of representative in-stream continuous temperature information from above the diversion point and downstream above the "fishing ponds"
 - ..Data collection will be to allow determination of a weekly average temperature using a minimum of three equally spaced measurements throughout a 24-hour day over a seven-day consecutive period .
 - ..This sampling will continue for five years after the completion of the diversion structure.
- All sampling will be reported to DRO electronic format. Submittal of the pre and post construction sampling results will be in a timely manner after the results have been received from the laboratory. Submittal of the semi-annual sampling and temperature monitoring will be at least annually.
- Field and laboratory parameters are identified on the table below.

The following table lists analysis, methodology, holding time, and practical quantitation level (PQL). All *QA/QC* material to be retained by Will O Wisp Metropolitan District.

Required Sampling Parameters
(All sample analysis dissolved unless noted)

Analysis	Methodology	Holding Time	PQL
Field Parameters			
pH		NA	0.1 S.U.
Temperature		NA	0.1°C
Dissolved Oxygen		NA	0.1 mg/l
Conductivity		NA	1 uS/cm
Laboratory Parameters			
ALKALINITY, TOTAL	EPA 310.1	14 DAYS	10 ppm
ARSENIC	EPA 200.8	6 MONTHS	1 ppb
CADMIUM	EPA 200.8	6 MONTHS	0.3 ppb
CHLORIDE	EPA 300.0	28 DAYS	2 ppm
CHROMIUM	EPA 200.7	6 MONTHS	20 ppb
COPPER	EPA 200.7	6 MONTHS	4 ppb
CYANIDE, DIRECT	EPA 335.2	14 DAYS	10 ppb
E. COLI	SM 9223-8	24 HOURS	Calculated MPN
HARDNESS, TOTAL	EPA 200.7	6 MONTHS	10 ppm
IRON, Total Recoverable	EPA 200.7	6 MONTHS	10 ppb
IRON, DIS	EPA 200.7	6 MONTHS	10 ppb
LEAD	EPA 200.8	6 MONTHS	1 ppb
MANGANESE	EPA 200.8	6 MONTHS	4 ppb
NICKEL	EPA 200.7	6 MONTHS	30 ppb
N-AMMONIA	EPA 350.1	28 DAYS	10 ppb
N-KJELDAHL	EPA 351.2	28 DAYS	200 ppb
N-NITRATE/NITRITE	EPA 353.2	28 DAYS	50 ppb
NITRITE	SM 4500-N02-B ¹	48 HOURS	20 ppb
N-TOTAL	CALCULATION	NA	NA
PHOSPHORUS, TOTAL	EPA 365.1	28 DAYS	3 ppb
SELENIUM	EPA 200.8	6 MONTHS	1 ppb
SILVER	EPA 200.8	6 MONTHS	0.4 ppb
SOLIDS, DISSOLVED	EPA 160.1	7 DAYS	10 ppm
SOLIDS, SUISPENDED	EPA 160.2	7 DAYS	10 ppm
SULFATE	EPA 300.0	28 DAYS	5 ppm
TOTAL ORGANIC CARBON	EPA 415.1	28 DAYS	1 ppm
ZINC	EPA 200.7	6 MONTHS	10 ppb

US EPA, Methods for the Determination of Metals in Environmental Samples, 1994

US EPA, Methods for the Determination of Inorganic Substances in Environmental samples, 1993

US EPA, Methods for the Chemical Analysis of Water and Wastes, 1983

¹Standard Methods for the Examination of Water and Wastewater, 19th Edition, 1995

K. The permittee agrees to follow the Section 401 Water Quality Certification, which is attached to (Attachment C), and a part of, this permit issued for this project by the state of Colorado on 26 February 2010.

L. The permittee agrees to construct the diversion structure in accordance with Sheets 4 through 8 of 8 and that if – for any reason – there are changes contemplated to this design, they will contact the DRO and await concurrence before any such changes are implemented. Further, the permittee agrees to use natural stream materials to construct the rock riffle and other structures associated with the diversion structure.

M. The permittee agrees to notify the DRO and Mr. Jeff Spohn of the Colorado Division of Wildlife (CDOW) before any in-stream work is started. Further, the permittee agrees that no in-stream work will occur between October 1st and June 1st.

N. The permittee agrees that the DRO, Mr. Howard Horton (CDOW District Wildlife Manager) and Mr. Jeff Spohn will have full and unfettered access to the construction site during construction to evaluate development progress.

O. The permittee agrees to install a continuous flow recording device in the still well upstream of the diversion structure and integrate it with the supervisory control and data acquisition system (SCADA) of the raw water pump station. If, and when, the flows in Elk Creek drop below 2.1 CFS, the recorded stream flow measurements and the raw water pump station flow rates will be provided to DRO in weekly intervals until Elk Creek flows exceed 2.1 CFS. Data will be submitted within seven (7) days of tabulation.

P. The permittee agrees that when the flow in Elk Creek drops below 2.8 CFS they will adjust the operation of their storage tanks to maximize water storage, thereby reducing adverse impacts on the Elk Creek if flows decline further. If, and when, the flows in Elk Creek drop below 2.8 CFS, the recorded stream flow measurements and the levels of the storage tanks will be sent to DRO in weekly intervals until Elk Creek flows exceed 2.8 CFS. Data will be submitted within seven (7) days of tabulation.

Q. The permittee agrees to divert only 65% of the flow to which they would normally be allowed under the Operating Principles (OP) until a reservoir is constructed as follows:

(All Flows in CFS)

Elk Creek Flow Rate	Diversions under the OP	Diversions allowed under 65% of OP
1.0	0.33	0.210
0.9	0.30	0.195
0.8	0.24	0.160
0.7	0.21	0.140
0.6	0.18	0.120
0.5	0.15	0.100
0.4	0.00	0.000
0.3	0.00	0.000
0.2	0.00	0.000

Note: 65% of the OP represents the existing 120 homes plus 250 new homes. The total of 370 homes is 65% of the total build out of 570 homes (or single family equivalents).

R. The permittee agrees that upon completion of construction and mitigation, the only vehicle access to the diversion structure will be by the upland 12' permanent easement from Meadow Drive. If other access is required, the permittee will contact the DRO and get concurrence before taking action.

S. Based on information provided by the applicant, the Corps has determined the basic project purpose to be raw water delivery to the District. This project purpose was the basis upon which the Corps conducted its review of the application, as well as a basis for the Corps' determination that

permit issuance is in the best interest of the public. Accordingly, the Corps authorizes no change in project purpose, or in the nature of the permitted activity, without prior review and approval.

T. The permittee agrees that once the mitigation areas have been constructed and planted, proper precautions will be taken to prevent domestic animals and human activity from adversely affecting them, and there will be no mowing, or other detrimental effects to the mitigation areas. Provided, however, the permittee shall not be responsible for any activities on the disturbed areas not under its control.

U. The permittee agrees that all construction debris will be disposed of on land in such a manner that it cannot enter a waterway or wetland.

V. This Corps permit does not authorize you to take an endangered species, in particular the endangered species dependent upon South Platte River flows. In order to legally take a listed species, you must have separate authorization under the ESA (e.g., an ESA section 10 permit, or a BO under ESA section 7, with "incidental take" provisions with which you must comply). The enclosed U.S. Fish and Wildlife Service (FWS) BO contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached BO, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute noncompliance with your Corps permit. The FWS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with the ESA.

W. The permittee agrees to contact the U. S. Fish and Wildlife Service, Office of Migratory Birds, at (303) 236-8171, for permitting requirements prior to the removal or destruction of any bird nest.

X. After a detailed and careful review of all of the conditions contained in this permit, the permittee acknowledges that, although said conditions were required by the Corps of Engineers, nonetheless the permittee agreed to those conditions voluntarily to facilitate issuance of the permit; the permittee will comply fully with all the terms of all the permit conditions.

Y. The permittee agrees that when the District Engineer has been notified that a filling activity is adversely affecting fish or wildlife resources or the harvest thereof and the District Engineer subsequently directs remedial measures, the permittee will comply with such directions as may be received to suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect as required.

Z. The permittee agrees that fuel storage tanks above ground shall be diked or curbed or other suitable means provided to prevent the spread of liquids in case of leakage in the tanks or piping.

AA. The permittee agrees that care will be taken to prevent any petroleum products, chemicals, or other deleterious materials from entering the water.

BB. The permittee agrees that steps will be taken to prevent materials spilled or stored on shore from washing into the water as a result of cleanup activities; natural runoff, flooding, and that, during construction, any materials which are accidentally spilled into the water will be retrieved.

CC. The permittee agrees that all work in the waterway will be performed in such a manner so as to minimize increases in suspended solids and turbidity which may degrade water quality and damage aquatic life outside the immediate area of operation.

- DD.** The permittee agrees that all areas along the bank disturbed or newly created by the construction activity will be seeded with vegetation indigenous to the area for protection against subsequent erosion.
- EE.** The permittee agrees that the clearing of vegetation will be limited to that which is absolutely necessary for construction of the project.
- FF.** The permittee agrees that close coordination will be maintained by the contractor with downstream water users, advising them of any water quality changes to be caused by the construction.
- GG.** The permittee agrees that all dredged or excavated materials, with the exception of that authorized herein, will be placed on an upland site above the ordinary high water line in a confined area, not classified as a wetland, to prevent the return of such materials to the waterway.
- HH.** The permittee agrees that deposition of excavated materials on shore and all earthwork operations on shore will be carried out in such a way that sediment runoff and soil erosion to the water are controlled.
- II.** The permittee agrees that adequate pipes shall be installed in any temporary crossing to carry normal flows and prevent the restriction of expected high flows during construction.
- JJ.** The permittee agrees that concrete trucks will be washed at a site and in such a manner that washwater cannot enter the waterway.
- KK.** The permittee agrees that equipment for handling and conveying materials during construction shall be operated to prevent dumping or spilling the materials into the water except as approved herein.
- LL.** The permittee agrees that the use of machinery in the waterway will be kept to a minimum.