

08CW142 (W-8771-77, 82CW355, 82CW369, 94CW183 and 01CW105), WILL-O-WISP METROPOLITAN DISTRICT, 956 Wisp Creek Drive, Bailey, Colorado 80421. Application for Sexennial Finding of Reasonable Diligence, IN PARK COUNTY.

(Richard W. Toussaint, Esq., Toussaint, Nemer & Coaty, P.C. 3081 Bergen Peak Drive, Suite 210, Evergreen, Colorado 80439, Telephone 303 674-0800; Lee H. Johnson, Esq. and Beth Ann J. Parson, Esq., Carlson, Hammond & Paddock, LLC., 1700 Lincoln Street, Suite 3900, Denver, Colorado 80203, Telephone 303 861-9000)

All correspondence and pleadings should be sent to both counsel for the Applicant as indicated in the case caption, above.

2. Name of Structures: Woodside Reservoir;

3. Description of conditional water right: In Case No. W-8771-77, a conditional storage decree was entered for Woodside Reservoir. The description of the water right is as follows:

A. Date of Original Decree: December 7, 1978, Case No. W-8771-77, Water Court, Division 1, State of Colorado. A change decree entered on October 5, 1988, Case No. 82CW369, changing the location of the Woodside Reservoir to the location set forth in paragraph 3 B., below. Pursuant to said decree, the Glasman Ditch is utilized to fill the reservoir at a rate of fill of up to 5 c.f.s.

B. Location of Structure: Woodside Reservoir will be located in the E1/2 SW1/4, of Section 26, Township 6 South, Range 72 West, 6th P.M., Park County, Colorado, on Lots 132 and 133 of Unit 5 of the Woodside Park Subdivision. The outlet of the Reservoir will be located at a point approximately 1,400 feet from the South section line and 2,400 feet from the West section line of said Section 26.

C. Source: Elk Creek and an unnamed tributary to Elk Creek.

D. Appropriation Date: September 1, 1977 for 50.0 acre feet of water.

E. Use: Domestic, municipal, irrigation, recreational, light industrial, piscatorial, fire fighting, exchange, commercial and all other beneficial uses.

4. Detailed outline of what has been done toward completion of the appropriation and application to a beneficial use.

A. Will-O-Wisp Metropolitan District (“Will-O-Wisp” or “District”) operates an integrated Water Supply System under § 37-92-301(4)(b), C.R.S., including the Woodside Reservoir water right. During the diligence period, Will-O-Wisp has continued the development of its Water Supply System. Activities have included defending various lawsuits, permitting work related to water supply components, including, but not limited to, work on the Glasman Ditch No. 2 1041 permit application and the associated pipeline to convey diverted water to the District, obtaining property interests related to the same, ongoing operation of the Water Supply System, work on a master plan for the District’s water supply needs and analysis of increased water supply opportunities. The District has incurred costs during the diligence period related to these activities.

B. Pursuant to the decree in Water Court Case No. 81CW144, the Glasman Ditch water right was changed to cover evaporation losses from Woodside Reservoir. Pursuant to relevant deeds and actions and as set forth in the decree in Case No. 81CW144, the District claims ownership of the Glasman Ditch water right. During the diligence period, however, Case No. 07CW45 was filed in Water Court challenging the District’s ownership of the Glasman Ditch water right. The District has actively defended this lawsuit and filed a related counterclaim. Said case is still pending. The District has incurred costs during the diligence period related

to defending against this challenge to the ownership of the Glasman Ditch water right, and, as such, the future use of said right related to Woodside Reservoir. The District asserts that activities related to defending against this ownership challenge are relevant for purposes of this diligence action and constitute additional evidence of the District's diligence related to the Woodside Reservoir conditional decree.

C. The location of Woodside Reservoir, as set forth in the decree in Case No. 82CW369, is within the boundaries of Woodside Unit # 5 subdivision in Park County, Colorado. In Case No. 05CV302, an action was filed against the District claiming that Woodside Reservoir itself, including both the construction and operation of the same, violated certain restrictive covenants applicable to Woodside Unit # 5. The District vigorously defended said action and ultimately obtained a dismissal of said lawsuit. Costs in excess of \$65,000.00 were incurred during the diligence period related to the lawsuit. The District asserts that activities related to defending this direct challenge to Woodside Reservoir are relevant for purposes of this diligence action and constitute additional evidence of the District's diligence related to the Woodside Reservoir conditional decree.

D. During the diligence period, the District has conducted surveys and studies related, in part, to Woodside Reservoir, including, but not limited to, wetlands surveys, flow determinations, land surveys and preliminary design activities. Costs associated with these activities have been incurred during the diligence period.

E. During the diligence period, the District continued its efforts related to permitting, obtaining property interests for, and designing a new diversion structure on Elk Creek and a pipeline necessary for conveyance of Elk Creek water to the District. The District has continued its efforts to obtain approval of its 1041 Permit during the diligence period. The District will continue its efforts to obtain final approval from Park County relative to this diversion structure and pipeline. Costs in excess of \$300,000 related to these activities were incurred during the diligence period.

F. During the diligence period, the District has evaluated prior headgate and diversion structure designs associated with both the Glasman Ditch No. 2 and Woodside Reservoir and has conducted initial engineering updates on said design. Costs associated with this effort have been incurred by the District during the diligence period.

G. During the diligence period, Will-O-Wisp conducted studies regarding water availability and feasibility regarding diversions from Elk Creek. These efforts have included updated flow calculations on Elk Creek for incorporation into the District's planning process, a review of prior engineering reports, core sampling for the Woodside Reservoir site and water availability studies. Said flow calculations are relevant for diversions under the Woodside Reservoir conditional water right. The District has incurred both legal and engineering expenses during the diligence period in connection with these activities.

H. During the diligence period, the District has obtained, or is in the process of obtaining through eminent domain proceedings, property interests associated with the construction of the diversion facilities, pump station and pipeline from Elk Creek to the District. Costs associated with these activities have been incurred during the diligence period.

I. During the diligence period, the District addressed numerous concerns regarding the location of the appropriate diversion point on Elk Creek. These concerns were raised in the context of the Glasman Ditch No. 2 water right originally decreed in Case No. 83CW002. As indicated above and as set forth in the decree in Case No. 82CW369, the Glasman Ditch is utilized to fill Woodside Reservoir. The Glasman Ditch No. 2 water right also utilizes as its point of diversion the same Glasman Ditch legal description. Pursuant to previous decrees

including, but not limited to, Case No. 81CW144, Cases No. 83CW002, 88CW191, 95CW105 and 02CW21 and Case No. 82CW369, the Glasman Ditch headgate is described as being located at a point whence the W1/4 Corner of Section 26 bears North 52° 44" West, 2030 feet. This location is more generally described as being in the NE1/4SW1/4 Section 26, Township 6 South, Range 72 West of the 6th P.M., Park County. The District has obtained, or is in the process of obtaining, property interests and has initiated design activities for a new diversion structure diverting water from Elk Creek at a point on the south bank of Elk Creek consistent with the locations set forth in the underlying decrees identified above. By letter dated July 18, 2007, the District has obtained written acknowledgment of water right administration of the Glasman Ditch No. 2 water right at this point from the Division Engineer's Office. These efforts occurred during the diligence period.

J. During the previous diligence period, the District acquired the Woodside Reservoir conditional decree. The District is now the owner of the Woodside Reservoir conditional decree and any and all related property interests related to the same.

K. During the diligence period, the District applied for membership with the South Platte Water Related Activities Program, Inc., (SPWRAP), a Colorado nonprofit corporation established by Colorado water users for the purpose of representing water users' interests and partnering with the State of Colorado to implement the Platte River Recovery Implementation Program (PRRIP) in central Nebraska. SPWRAP's stated goals include assisting in the "recovery of species listed as threatened or endangered under the Endangered Species Act (ESA) through the development and operation of the Colorado Program component of the Platte River Recovery Implementation Program (PRRIP) in a manner that ensures the State of Colorado's compliance with PRRIP." This program potentially offers Colorado water users an option to address ESA issues on the Platte River related to the diversion and use of existing water rights and the development of new sources of water, including the Woodside Reservoir conditional water right. Membership application expenses were incurred during the diligence period.

5. Water Applied to Beneficial Use: N/A

6. Miscellaneous:

A. On information and belief, Woodside Reservoir itself and/or related structures, including the new diversion facilities and pump station, will be located on lands owned by the District; Magness Land Holdings, LLC, 1200 17th Street, #660, Denver, Colorado 80202; David William Brown Living Trust, 665 Meadow Drive, Pine, Colorado 80470; Mary and Douglas Windemuller, 350 Meadow Drive, P.O. Box 609, Pine, Colorado 80470; and, Christie Investments, LLC, 500 Meadow Drive, Pine, Colorado 80470. Notice of this application is being provided to said individuals and entities consistent with the requirements of C.R.S. § 37-92-302(2)(b)(II).

WHEREFORE, Will-O-Wisp requests the Court to enter its decree and ruling as follows:

A. To make a finding of reasonable diligence with respect to the conditional water right decreed for Woodside Reservoir in Case No. W-8771-71 and providing that a subsequent showing of diligence be made six years from the date of entry of a decree of diligence. (6 pages).