

DISTRICT COURT, ROUTT COUNTY, COLORADO	
Court Address: 1955 Shield Drive, Unit 200, Steamboat Springs, CO, 80487	
DATE FILED: August 27, 2016 7:24 AM CASE NUMBER: 2014CW3043	
In the Interest of: RIO BLANCO WATER CONSERVANCY DISTRICT	
<b>⚠ COURT USE ONLY ⚠</b>	
Case Number: 2014CW3043 Division: 2B                      Courtroom:	
<b>Order Approving Stipulation Between Applicant and United States of America Bureau of Land Management</b>	

The motion/proposed order attached hereto: APPROVED.

Issue Date: 8/27/2016



MICHAEL ANDREW O'HARA III  
District Court Judge

<p>DISTRICT COURT, WATER DIVISION NO. 6, COLORADO Court Address: 1955 Shield Drive Unit 200 Steamboat Springs, CO 80487 (970) 879- 5020</p> <hr/> <p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF</p> <p>The RIO BLANCO WATER CONSERVANCY DISTRICT, a Colorado Water Conservancy District</p> <p>In the White River or its Tributaries</p> <p>In RIO BLANCO COUNTY, COLORADO</p>	<p style="text-align: center;"><b>COURT USE ONLY</b></p>
<p>Attorney for Applicant: Edward B. Olszewski, Atty. Reg. #24723 Olszewski, Massih &amp; Maurer, P.C. P.O. Box 916 1204 Grand Avenue Glenwood Springs, CO 81602 Phone Number: (970) 928-9100 Fax Number: (970) 928-9600 E-mail: <a href="mailto:ed@ommpc.com">ed@ommpc.com</a></p>	<p>Case Number: 14CW003043</p> <p>Division:                      Courtroom:</p>
<p style="text-align: center;"><b>STIPULATION BETWEEN APPLICANT AND OBJECTOR UNITED STATES OF AMERICA BUREAU OF LAND MANAGEMENT</b></p>	

Applicant, Rio Blanco Water Conservancy District (“Applicant”), and Opposer, the United States of America Bureau of Land Management (“BLM”), by and through their respective counsel, hereby stipulate and agree as follows:

1. BLM consents to the entry of a decree in Case No. 2014 CW 3043 in the form of the Proposed Findings of Fact, Conclusions of Law, and Judgment and Decree of the Water Court, dated 1/15/2015, attached hereto as Exhibit A (“Proposed Decree”), and to any modified form of that proposed decree, including the decree ultimately entered by the Court herein, as long as the decree contains terms and conditions that are no less restrictive on the Applicants and no less protective of BLM’s water rights and interests than those contained in Exhibit A. Applicants shall not submit for entry a proposed decree that contains terms and conditions that are less restrictive on Applicants or less protective of BLM’s water rights than those contained in Exhibit A.

2. BLM shall remain a party to these proceedings for the limited purpose of ensuring that any ruling and decree entered herein is consistent with this stipulation. BLM shall remain on the service list in the case and shall continue to receive all pleadings in this case, but is not required to submit further disclosures or to meet further deadlines in this case. This stipulation does not limit BLM's ability to invoke or participate in retained jurisdiction or diligence proceedings for the conditional water rights described in Exhibit A.
3. Prior to submitting any ruling and decree to the Water Court, if in different form than Exhibit A, or in any way inconsistent with the terms and conditions of this Stipulation, the Applicant shall provide a copy of such proposed ruling to BLM for its review pursuant to this Stipulation.
4. Any conditional water rights decreed in this case shall be subject to the following acknowledgements and agreements:
  - A. **Access to Public Lands.** Applicant acknowledges that access to public lands managed by the BLM may be necessary to construct and operate water diversion, conveyance, and storage facilities necessary to exercise the water rights described herein;
  - B. **Land Use Authorization on Public Lands Granted Pursuant to Applicable Statutes, Regulations, Guidance, and Land Use Plans.** To the extent land use authorization from the BLM is necessary to construct and operate water facilities decreed herein, Applicant agrees that it will not construct any such facility on public lands managed by the BLM unless and until Applicant has obtained from the BLM any necessary right-of-way grants, permits, and/or approvals. Applicant and the BLM agree that the BLM's consideration of any such necessary land use authorization must be carried out pursuant to all pertinent statutes, federal regulations, BLM guidelines, and BLM land use plans concerning the use of BLM lands, including, but not limited to: the National Environmental Policy Act, the Endangered Species Act, the Antiquities Act, the Wild and Scenic Rivers Act, and BLM manual direction and land use plan provisions for species that appear on BLM's sensitive species list. Nothing in this stipulation limits Applicant's right to seek administrative or judicial review of the BLM's action on an application for land use authorization or the BLM's determination that such an authorization is necessary.
  - C. **Analysis of Water Rights Changes and Exchanges.** Applicant acknowledges that if land use authorization is needed to construct and operate the facilities decreed herein, and if such facility will be used to exercise changes of water rights and appropriate

rights of exchange, BLM will be required to analyze the environmental impact of such changes and exchanges before granting authorization to use the facility for the proposed purposes. Nothing herein determines the form that such analysis will take.

**D. Land Use Authorization is a Discretionary Action.** Applicant recognizes that implementation of statutes, regulations, guidelines, and land use plans may result in a BLM denial, or approval with certain conditions, for facilities necessary to exercise the water right to be decreed herein. Implementation of statutes, regulations, guidelines, and land use plans, including those referenced in Section 4B above, may also result in terms and conditions that reduce the volume and rate of water under the decreed water rights that may be stored on, diverted through, and transported through facilities on BLM lands.

Applicant recognizes that authorization for use of BLM lands is a discretionary action on BLM's part, subject to legal constraints on that discretion, and decisions related to use of BLM lands shall in no way be prejudiced by the pre-existence of these conditional water rights. Specifically, by agreeing to entry of the attached decree, BLM does not imply approval, for the purpose of land use authorization, of the water demand calculations on which the subject decree may be based. Applicant acknowledges that natural resource management issues related to endangered species management, soils management, noxious weeds, botanical resources, cultural resources, land with wilderness characteristics and existing mineral leases could affect Applicant's ability to perfect all or a portion of the water rights decreed herein. Applicant explicitly accepts these risks in making a decision to rely upon the conditional water rights decreed herein.

By stipulating to the attached proposed decree, BLM does not imply, for purposes of land use authorizations, that the proposed facilities are the sole water supply alternative available to Applicant. However, BLM will consider the findings and conclusions of the Water Court in this matter in the BLM determination of the purpose and need for such facilities and the water stored and diverted in those facilities. The BLM takes no position in the original adjudication of this case as to whether any necessary land use authorizations can or will be obtained, or what conditions, if any, would be included in any BLM approval.

**5. Waiver of Takings Claims.** To the extent the use of the water rights to be decreed herein requires access to public lands managed by the BLM, and to the extent the Applicant may lawfully do so, Applicant: (a) agrees that denial of said approvals or the imposition of terms and conditions on said approvals, and the consequent limitation or elimination of Applicant's ability to divert, transport, store, use, and perfect the requested conditional water rights, shall not be construed to be a taking, in whole or in part, of the conditional water rights decreed herein; and (b) hereby waives the right to assert such a taking claim against the BLM. By agreeing to this waiver, the Applicants do not waive

the right to seek review of BLM decisions on land use authorizations through administrative and judicial processes.

6. **Obligation to Diligently Perfect.** Applicant shall take diligent action in accordance with Colorado state water law to perfect the water rights decreed herein in order to avoid an undeveloped encumbrance on public lands that could negatively affect the BLM's ability to execute land tenure adjustment, realty actions, and planning decisions, such as exchanges, mineral leasing, and designation of special management areas. Applicant acknowledges that unless it has perfected a land use authorization and the applicable public lands have been encumbered with a valid existing right, to prevent conflicting land use actions, the BLM may authorize land uses and make land use planning decisions that could negatively affect or prevent Applicant from exercising the conditional water rights decreed herein.

Applicant agrees that the conditional water rights decreed herein will be cancelled if Applicant has not submitted an application to the BLM for land use authorization within four diligence cycles (24 years) from the date a decree is entered in this case. Applicant agrees that if the proposed facility is constructed, any conditional water rights above and beyond the flow rates and water volumes needed to operate the constructed facilities will be cancelled within two years of the date when the constructed project commences operation. Alternatively, any unused water rights may be included in a change of water right application to be used by the Applicant elsewhere no later than two years of the date when the constructed project commences operation. If the Applicant determines that other water supply alternatives will be pursued in lieu of developing the conditional water rights decreed herein, the conditional water rights will be cancelled or included in a change of water rights application to be used by Applicant elsewhere no later than two years after such decision is made by Applicant.

7. **Replacement of BLM Water Sources.** If construction of the proposed facilities obliterates or inundates water sources relied upon by BLM for multiple use management, Applicant agrees to provide a continuously available, replacement water source that is acceptable to BLM. The BLM water sources and water rights that are subject to this agreement include, but are not limited to the sources in the following table.


Water Source Name	Location	Water Right Case Number., Permit Number, or Reservation Number	Volume or Flow Rate
Divide Creek Check Dam 1	SE/4 SW/4, Sec. 18, T3N R99W, Sixth P.M.	W-467, District Court, Water Division 5	10 acre feet
North Coal Reef Retention Reservoir	SW/4 SE/4, Sec. 22, T3N R99W, Sixth P.M.	W-467, District Court, Water Division 5	3 acre feet

Divide Creek Reservoir No. 4	SE/4 NW/4, Sec. 21, T3N R99W, Sixth P.M.	Livestock Tank Permit 13495	4 acre feet
Divide Creek Reservoir No. 3	SW/4 NW/4, Sec. 21, T3N R99W, Sixth P.M.	Livestock Tank Permit 13496	4 acre feet
Divide Creek Reservoir No. 2	SW/4, NW/4, Sec. 20, T3N R99W, Sixth P.M.	Livestock Tank Permit 13497	2 acre feet
Unnamed Reservoir	NE/4 NE/4, Sec. 19, T3N R99W, Sixth P.M.	None	2 acre feet
Lower Wolf Creek Reservoir No. 3	NW/4 SW/4, Sec. 17, T3N R99W, Sixth P.M.	Livestock Tank Permit 13491	2 acre feet
Coal Gulch Reservoir No. 3	NW/4 NW/4, Sec. 23, T3N R99W, Sixth P.M.	Livestock Tank Permit 13571	1 acre foot
Wolf Creek Reservoir #2	NW/4, SE/4, Sec. 4, T3N R99W	Public Water Reserve 107	2 acre feet

8. The parties hereto represent and warrant that they are authorized to bind themselves and their clients, respectively, to the terms of this Stipulation.
9. Each party shall bear its own costs and attorney fees associated with this case.
10. The parties desire that this Stipulation be approved by and entered as an Order of the Court.

Dated this 26<sup>th</sup> day of August, 2016.

OLSZEWSKI, MASSIH & MAURER, P.C.  
Attorneys for Applicant, Rio Blanco Water Conservancy District

By:   
Edward B. Olszewski, #24723  
P.O. Box 916, 1204 Grand Avenue  
Glenwood Springs, CO 81602  
Phone Number: (970) 928-9100  
Fax Number: (970) 928-9600  
E-mail: ed@ommpc.com

OFFICE OF THE REGIONAL SOLICITOR  
*Attorneys for United States of America Bureau of Land Management*

By: Kristen C. Guerriero  
Kristen C. Guerriero, Esq., #32663  
Special Assistant U.S. Attorney  
Office of the Regional Solicitor  
755 Parfet Street, Suite 151  
Lakewood, CO 80215

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **STIPULATION BETWEEN APPLICANT AND OPPOSER** was served on the following parties of record via ICCES on the 26<sup>th</sup> day of August, 2016:

Glenn E. Porzak, Esq.  
Karen L. Henderson, Esq.  
Kristin H. Moseley, Esq.  
Porzak, Browning & Bushong, LLP  
2120 13<sup>th</sup> Street  
Boulder, CO 80302

Barbara L. Clifton, Esq.  
Barbara L. Clifton, P.C.  
127 East 5<sup>th</sup> Street  
Rifle, CO 81650

Jefferson V. Houpt, Esq.  
Ryan M. Jarvis, Esq.  
Beattie, Chadwick & Houpt, LLP  
932 Cooper Avenue  
Glenwood Springs, CO 81601

John G. Nelson, Esq.  
Law Office of John G. Nelson  
1624 Market Street, Suite 202  
Denver, CO 80202

Kristen C. Guerriero, Esq.  
Special Assistant U.S. Attorney  
Office of the Regional Solicitor  
755 Parfet Street, Suite 151  
Lakewood, CO 80215

Jennifer Mele, Esq.  
Office of the Colorado Attorney General  
1300 Broadway, Seventh Floor  
Denver, CO 80203

  
\_\_\_\_\_  
/s/ Edward B. Olszewski

*In accordance with C.R.C.P. 121, §1-26(9), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.*

Attachment to Order - 2014CW3043



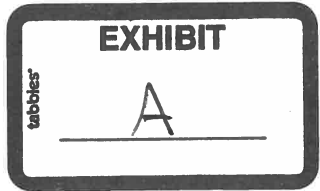
<p>DISTRICT COURT, WATER DIVISION NO. 6,          COLORADO          Court Address: 1955 Shield Drive          P.O. Box 773117          Steamboat Springs, CO 80477          (970) 879- 5020</p>	<p><b>COURT USE ONLY</b></p> <p>Case Number: 14CW003043</p> <p>Division:                      Courtroom:</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF</p> <p>The RIO BLANCO WATER CONSERVANCY DISTRICT,          a Colorado Water Conservancy District</p> <p>In the White River or its Tributaries</p> <p>In RIO BLANCO COUNTY, COLORADO</p>	
<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE, JUDGMENT AND DECREE</b></p>	

The above-entitled Application was filed on December 29, 2014 (referred to herein as the "Application"). This matter was referred to the undersigned as Water Referee for Water Division No. 6, State of Colorado, by the Water Judge of said Court in accordance with Article 92 of Chapter 37, C.R.S. 1973, known as The Water Right Determination and Administration Act of 1969.

The undersigned Referee, having made such investigations as are necessary to determine whether 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 determination and Ruling as the Referee in this matter, to-wit:

**FINDINGS OF FACT**

1. The statements in the Application are true.



2. Name and Address of Applicant:

Rio Blanco Water Conservancy District  
c/o Alden Vanden Brink, Manager  
2252 East Main Street  
Rangely, Colorado 81648  
E-mail: rbwcd@yahoo.com  
(970) 675-5055

3. Neither the subject water rights nor their sources are located within a designated ground water basin.
4. Timely and adequate notice of the filing of this Application was given as required by law.
5. Statements of Opposition were filed by John W. Savage, Joan L. Savage, Roy E. Savage, Marshall T. Savage and Daniel W. Savage on February 9, 2015; Exxon Mobil Corporation on February 25, 2015; United States of America, Department of the Interior, Bureau of Land Management, White River Field Office on February 26, 2015; TerraCarta Energy Resources, LLC on February 27, 2015 and Oscar S. Wyatt, Jr. on February 27, 2015. The Colorado Water Conservation Board intervened in the case and the court entered an order approving its intervention on July 13, 2015. The time for filing Statements of Opposition has expired.
6. The Division Engineer issued her Summary of Consultation Report in this matter on March 17, 2015. *See* C.R.S. § 37-92-302(4). The Referee has considered the Summary of Consultation.

**CLAIM FOR SURFACE WATER RIGHT**

7. Name of structure: Wolf Creek Reservoir Pump and Pipeline

8. Legal description:

The diversion point from the White River for the Wolf Creek Off-Channel reservoir is located in the NE¼ of the SE¼ of Section 27, Township 3 N., Range 99 W. 6<sup>th</sup> P.M., 480 feet west of the east section line of Section 27 and 2,620 feet north of the south section line of Section 27, in Rio Blanco County, Colorado. A map showing the location of the Wolf Creek Reservoir Pump and Pipeline is attached as Figure 1.

9. Source: White River.

10. A. Date of appropriation: March 31, 2013.

B. How appropriation was initiated: formation of requisite intent to appropriate water coupled with actions manifesting such intent, including but not limited to public discussions and meetings, numerous engineering, planning and feasibility studies, site

visits, field surveying and formal District action to adjudicate water rights. Applicant has made expenditures in excess of \$378,440 for feasibility studies related to this Application.

C. Date water applied to beneficial use: N/A.

11. Amount claimed: 400 cfs, conditional

12. Use or Proposed Use: Water will be diverted, pumped and piped to fill Wolf Creek Reservoir, as claimed below, for municipal, industrial, commercial, irrigation, domestic, recreation, piscatorial, augmentation, wildlife habitat, maintenance and recovery of federally listed threatened and endangered species, hydroelectric power generation and all other beneficial uses.

### CLAIM FOR STORAGE WATER RIGHT

13. Name of structure: Wolf Creek Off-Channel Dam and Reservoir

14. Legal description:

The left abutment (looking downstream) of the Wolf Creek Off-Channel Dam is located in the NW<sup>1</sup>/<sub>4</sub> of the SW<sup>1</sup>/<sub>4</sub> of Section 23, Township 3N., Range 99 W. of the 6<sup>th</sup> P.M., at a point 1,007 feet east of the west section line of Section 23 and 1,450 feet north of the south section line of Section 23, in Rio Blanco County, Colorado. Maps showing the location of the Wolf Creek Off-Channel Reservoir are attached as Figures 1 and 2.

15. Sources:

A. White River, diverting at the Wolf Creek Reservoir Pump and Pipeline as described above.

B. Natural inflow from Divide Creek, Wolf Creek, Middle Fork Wolf Creek, East Fork Wolf Creek, and Coal Creek, all tributary to the White River.

16. A. Date of appropriation: March 31, 2013.

B. How appropriation was initiated: formation of requisite intent to appropriate water coupled with actions manifesting such intent, including but not limited to public discussions and meetings, numerous engineering, planning and feasibility studies, site visits, field surveying and formal District action to adjudicate water rights. Applicant has made expenditures in excess of \$378,440 for feasibility studies related to this Application.

C. Date water applied to beneficial use: N/A.

17. Amount claimed: 90,000 acre feet, conditional.

18. Use or Proposed Use: municipal, industrial, irrigation, commercial, domestic, recreation, piscatorial, augmentation, wildlife habitat, maintenance and recovery of federally

listed threatened and endangered species, hydroelectric power generation and all other beneficial uses.

**A.** If irrigation, complete the following:

Number of acres historically irrigated: N/A.

Legal description of acreage:

All lands capable of irrigation from the Wolf Creek Reservoir, yet to be determined.

**B.** If non-irrigation, describe purpose fully: municipal, industrial, commercial, irrigation, domestic, recreation, piscatorial, augmentation, wildlife habitat, maintenance and recovery of federally listed threatened and endangered species, hydroelectric power generation and all other beneficial uses.

19. Surface area of high water line: 3106 acres

**A.** Vertical height of dam in feet: 122 feet.

**B.** Length of dam in feet: 3300 feet.

20. Total capacity of reservoir in acre feet: 90,000

Active capacity: 90,000 acre feet                      Dead storage: 0

21. Remarks: This water right is an alternative to the Wolf Creek Mainstem Dam and Reservoir. Applicant does not intend to construct both reservoirs.

### **CLAIM FOR STORAGE WATER RIGHT**

22. Name of Reservoir: Wolf Creek Mainstem Dam and Reservoir

23. Legal description of location of dam centerline:

The left abutment (looking downstream) of the Wolf Creek Mainstem Dam is located in the SW<sup>1</sup>/<sub>4</sub> of the NW<sup>1</sup>/<sub>4</sub> of Section 34, Township 3N., Range 99 W. of the 6<sup>th</sup> P.M., at a point 390 feet east of the west section line of Section 34 and 3,730 feet north of the south section line of Section 34, in Rio Blanco County, Colorado. Maps showing the location of the Wolf Creek Off-Channel Reservoir are attached as Figures 3 and 4.

24. Source: White River.

25. **A.** Date of appropriation: March 31, 2013

**B.** How appropriation was initiated: formation of requisite intent to appropriate water coupled with actions manifesting such intent, including but not limited to

public discussions and meetings, numerous engineering, planning and feasibility studies, site visits, field surveying and formal District action to adjudicate water rights. Applicant has made expenditures in excess of \$378,440 for feasibility studies related to this Application.

C. Date water applied to beneficial use: N/A

26. Amount claimed: 90,000 acre feet, conditional

27. Use or Proposed Use: municipal, industrial, commercial, irrigation, domestic, recreation, piscatorial, augmentation, wildlife habitat, maintenance and recovery of federally listed threatened and endangered species, hydroelectric power generation and all other beneficial uses.

A. If irrigation, complete the following:

Number of acres historically irrigated N/A;

Legal description of acreage:

All lands capable of irrigation from the Wolf Creek Reservoir, yet to be determined.

B. If non-irrigation, describe purpose fully: municipal, commercial, industrial, irrigation, domestic, recreation, piscatorial, augmentation, wildlife habitat, maintenance and recovery of federally listed threatened and endangered species, hydroelectric power generation and all other beneficial uses

28. Surface area of high water line: 4801 acres

A. Vertical height of dam in feet: 126 feet.

B. Length of dam in feet: 2500 feet.

29. Total capacity of reservoir in acre feet: 90,000 acre feet

Active capacity: 90,000 acre feet      Dead storage: 15,750 acre-feet

30. Remarks: This water right is an alternative to the Wolf Creek Off-Channel Dam and Reservoir. Applicant does not intend to construct both reservoirs.

### CONCLUSIONS OF LAW

31. The foregoing Findings of Fact are fully incorporated herein.

32. Notice of the Application was properly given. The Court has jurisdiction over the Applicant and over all persons or entities who had standing to appear, even though they did not do so.

33. The Application is complete, covering all applicable matters required pursuant to the Water Right Determination and Administration Act of 1969, C.R.S. §§ 37-92-101 through -602.
34. The subject Application is in accordance with Colorado law. Applicant has fulfilled all legal requirements for entry of a decree in this case.

**RULING OF THE REFEREE AND DECREE OF COURT**

35. The foregoing Findings of Fact and Conclusions of Law are incorporated herein by this reference.
36. The Applicant is hereby granted the conditional water rights claimed herein.
37. Should the Applicant desire to maintain the conditional water rights confirmed herein, an Application for Finding of Reasonable Diligence shall be filed in the same month of the sixth calendar year following entry of this decree, unless a determination has been made that such conditional rights have been made absolute by reason of the completion of the appropriation, or is otherwise disposed of.
38. Pursuant to Rule 9 of the Uniform Local Rules for All State Water Court Divisions, upon the sale or other transfer of the conditional water rights decreed herein, the transferee shall file with the Division 6 Water Court a notice of transfer which shall state:
  - a. The title and case number of this Case No. 14CW003043;
  - b. The description of the conditional water right transferred;
  - c. The name of the transferor;
  - d. The name and mailing address of the transferee; and
  - e. A copy of the recorded deed.

The owner of said conditional water rights shall also notify the Clerk of the Division 6 Water Court of any change in mailing address. The Clerk shall place any notice of transfer or change of address in the case file of this Case No. 14CW003043 and in the case file (if any) in which the Court first made a finding of reasonable diligence.

It is accordingly ordered that this Ruling of Referee and Judgment and Decree shall be filed with the Water Clerk and shall become effective upon such filing, subject to judicial review pursuant to C.R.S. § 37-92-304, as amended.

It is further ordered that a copy of this ruling of Referee and judgment and decree shall be filed with the State Engineer and the Division Engineer for Water Division No. 6.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2016.

BY THE REFEREE:

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Water Referee  
Water Division No. 6,  
State of Colorado

**JUDGMENT AND DECREE**

No protest was filed in this matter, and accordingly, the foregoing Ruling is confirmed and approved, and is made the Judgment and Decree of this Court. Should the Applicant desire to maintain the conditional water rights decreed herein, an application for finding of reasonable diligence shall be filed during the month of \_\_\_\_\_, 202\_\_ unless a determination has been made prior to that time that such conditional water rights have been made absolute by reason of completion of the appropriations.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2016.

BY THE WATER JUDGE:

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Water Judge