

Consent Agenda Item 1.g

March 20-21, 2019 Board Meeting

Case No. 18CW3230 (Water Division 1); The Consolidated Mutual Water Company

Summary of Water Court Application

This is an Application for change of water rights.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in February 2019 to protect CWCB's instream flow water rights.

CWCB Instream Flow Water Rights

The CWCB holds instream flow water rights, including the following water right in Water Division 1 in the Clear Creek Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
95CW0256	Fall River	confl unnamed tributary	~ 200 yards u/s confl Clear Creek	5.25 (5/1 - 9/30) 2 (10/1 - 4/30)	07/24/1995

Potential for Injury

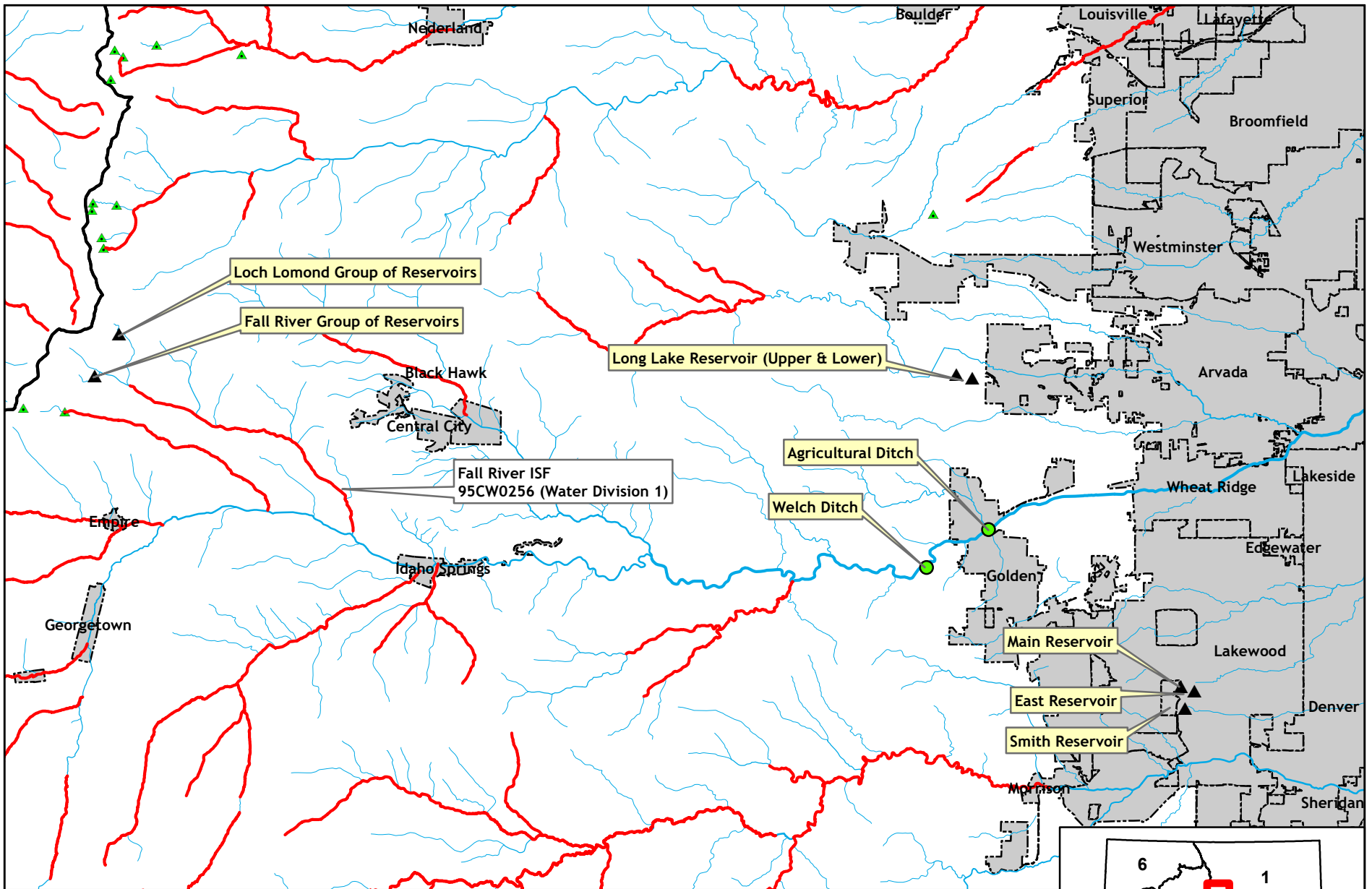
- The extraterritorial use for the changed water rights cannot be evaluated because the type of use and the place of use includes undefined locations including "by contract with others." Without protective terms and conditions, these uses could injure the CWCB's instream flow water rights.
- Applicant's claim to reuse or successively use to extinction requires proper quantification techniques to assure dominion and control of any water to be captured and reused after each successive use in time, place and amount. Re-diversion points for return flows include but are "not limited to" points and structures identified in the water court application.

Other Objectors

Statements of Opposition were also filed by City and County of Denver Board of Water Commissioners and Parks and Recreation, City of Arvada, City of Aurora, City of Englewood, City of Lakewood, City of Northglenn, City of Thornton, City of Westminster, Coors Brewing Company, Farmers' High Line Canal Reservoir Company, Public Service of Colorado, State and Division Engineers Office, The Agricultural Ditch and Reservoir Company and The Golden Canal and Reservoir Company, The Brighton Ditch Company, United Water and Sanitation District, West Lakeridge Farm Ltd., and Western Mutual Ditch Company.

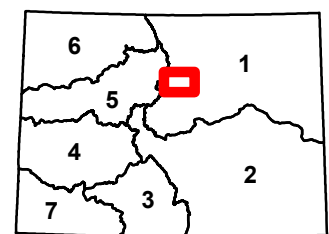
Attorney Representing CWCB

Marc D. Sarmiento, Assistant Attorney General, is assigned to this case and can be contacted at marc.sarmiento@coag.gov, or 720-508-6429.



March 20-21, 2019 CWCB Board Meeting
 Consent Agenda Item 1.g: Statement of Opposition
 Case No. 18CW3230 (Water Division 1)
 The Consolidated Mutual Water Company

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**DISTRICT COURT, WATER DIVISION 1, COLORADO
DECEMBER 2018 WATER RESUME PUBLICATION**

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN WATER DIV. 1

Pursuant to C.R.S. 37-92-302, you are notified that the following is a resume of all water right applications and certain amendments filed in the Office of the Water Clerk during the month of **DECEMBER 2018** for each County affected.

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18CW3230 The Consolidated Mutual Water Company, 12700 West 27th Avenue, Lakewood, CO 80215, (303) 238-0451, through counsel Evan D. Ela and Joseph W. Norris, Collins Cockrel & Cole, P.C., 390 Union Boulevard, Suite 400, Lakewood, CO 80215, (303) 986-1551, APPLICATION FOR CHANGE OF WATER RIGHTS in **WELD, CLEAR CREEK, JEFFERSON, AND ADAMS COUNTIES**. 2. Water Right Structures for which Changes are Sought. This application seeks to change the water rights associated with Consolidated Mutual's proportionate ownership interest in newly acquired shares of the Agricultural Ditch and Reservoir Company ("ADRC"). The structures utilized by the ADRC include the Agricultural Ditch, Welch Ditch, the Midway Reservoirs, the Loch Lomond Group of Reservoirs, the Fall River Group of Reservoirs and Long Lake Reservoirs. 3. Water Rights to be Changed. Consolidated Mutual seeks to change 7.125 shares (which is equal to water deliveries of 285

inches of the total 8,000 inches) delivered by the ADRC, or approximately 3.56% of the total shares and inches. These shares have been acquired by Consolidated Mutual in addition to its ADRC shares changed in prior adjudications, Case Nos. 94CW197, 09CW107, and 13CW17 District Court, Water Division 1. The ADRC also owns a significant portion (62.228%) of the Golden Canal and Reservoir Company, originators of the Golden Canal (*aka* Welch Ditch). ADRC's ownership, as of the date of this Application, equals 775.38 inches of the total 1244.925 inches allocated in the Welch Ditch and includes 100% of the water right associated with Priority 75 decreed to the Welch Ditch. Consolidated Mutual's 3.56% of shares in the ADRC equates to ownership of approximately 27.623 inches of the Welch Ditch, which inches are also included for change in this Application. The water rights of the ADRC are absolute water rights originally decreed for irrigation, domestic and power purposes. The locations, priorities, uses, and amounts originally or currently decreed for the water rights relied upon by the ADRC are summarized below. (a) *Legal Description of the Structures*: Legal descriptions for the relevant structures are provided below. Locations for such structures are also shown on **Attachment A** to this application. (i) *Agricultural Ditch*. The headgate of the Agricultural Ditch is located on the south bank of Clear Creek in the City of Golden, in the southwest quarter, Section 27, Township 3 South, Range 70 West of the 6th P.M., Jefferson County, Colorado. (ii) *Welch Ditch* (*aka* the Golden Canal, or Golden Ditch); *and the Agricultural Reservoir Ditch* (an extension of the Welch Ditch). The headgate of the Welch Ditch is also the headgate of the Agricultural Reservoir Ditch. The headgate of these structures is located on the southeast bank of Clear Creek, at a point whence the quarter corner in the south boundary line of Section 32, Township 3 South, Range 70 West of the 6th P.M., Jefferson County, Colorado, bears South 28° East, a distance of 900 feet. (iii) *Midway Reservoirs*. Main Reservoir, East Reservoir, and Smith Reservoir are collectively known as the "Midway Reservoirs" and are located as described below. (1) Main Reservoir. Main Reservoir is located in Sections 16 and 21, Township 4 South, Range 69 West of the 6th P.M., Jefferson County, Colorado. The feeder ditch or supply ditch from Clear Creek, by means of which this reservoir is filled, is the Welch Ditch and its extension the Agricultural Reservoir Ditch. (2) East Reservoir. East Reservoir is located in Sections 21 and 22, Township 4 South, Range 60 West of the 6th P.M., Jefferson County, Colorado. The feeder ditch or supply ditch from Clear Creek, by means of which this reservoir is filled, is the Welch Ditch and its extension the Agricultural Reservoir Ditch. (3) Smith Reservoir. Smith Reservoir is located in Section 21, Township 4 South, Range 69 West of the 6th P.M., Jefferson County, Colorado. The feeder ditch or supply ditch from Clear Creek, by means of which this reservoir is filled, is the Welch Ditch and its extension the Agricultural Reservoir Ditch. (iv) *Loch Lomond Group of Reservoirs*. The Loch Lomond Group of Reservoirs, consisting of Loch Lomond Reservoir, Lake Caroline Reservoir, Twin Lakes Reservoir, Ice Lake Reservoir and Ohman Lake Reservoir, form a closely grouped, interconnected series of reservoirs, having a common source of supply and a common outlet through the outlet of Loch Lomond Reservoir and constitute a single reservoir unit. Said reservoirs are located in Sections 28, 29, and 33, Township 2 South, Range 74 West of the 6th P.M., Clear Creek County, Colorado; in the headwaters of the Fall River, and particularly the headwaters of the northerly or so-called Loch Lomond branch of the Fall River. The Fall River is a tributary of Clear Creek. (v) *Fall River Group of Reservoirs*. The Fall River Group of Reservoirs, consisting of Chinn's Lake Reservoir, Upper Chinn's Lake Reservoir (*aka* Sherwin Lake Reservoir), and Fall River Reservoir, form a closely grouped, interconnecting series of reservoirs, having a common source of supply and a common outlet and constitute a single reservoir unit. Said reservoirs are located in unsurveyed Section 5, Township 3 South, Range 74 West of the 6th P.M., Clear Creek County, Colorado; in the headwaters of Fall River, a tributary of Clear Creek, and particularly the headwaters of the southerly branch of Fall River, as distinguished from the northerly or so-called Loch Lomond branch of said Fall River. (vi) *Long Lake Reservoirs*. Long Lake Reservoirs consist of Long Lake Reservoir No. 1 (*aka* Campbell Reservoir No. 1) and Long Lake Reservoir No. 2 (*aka* Campbell Reservoir No. 2) and are located as described below. (1) Long Lake Reservoir No. 1. Long Lake Reservoir No. 1 is located in the Southwest quarter of the Southwest quarter (SW1/4 SW1/4) of Section 33, Township 2 South, Range 70 West of the 6th P.M., and the Northwest quarter (NW1/4) and the North half of the Southwest quarter (N1/2 SW1/4) of Section

4, Township 3 South, Range 70 West of the 6th P.M., Jefferson County, Colorado. The headgate of the filler ditch, known as the Long Lake Ditch (or Campbell Ditch) is located on the west bank of Ralston Creek at a point in Section 31, Township 2 South, Range 70 West of the 6th P.M., whence the Southeast corner of Section 6, Township 3 South, Range 70 West, bears South 15 degrees East 5,525 feet. (2) Long Lake Reservoir No. 2. Long Lake Reservoir No. 2 is located in the East Half of the Northwest Quarter (E1/2 NW1/4) and the Northeast Quarter of the Southwest Quarter (NE1/4 SW1/4) and the Southwest Quarter of the Northeast Quarter (SW1/4 NE1/4) and the Northwest Quarter of the Southeast Quarter (NW1/4 SE1/4) of Section 4, Township 3 South, Range 70 West of the 6th P.M., Jefferson County, Colorado. Long Lake Reservoir No. 2 receives water from Ralston Creek via the same filler ditch as Long Lake Reservoir No. 1 and from Long Lake Reservoir No. 1 itself. Long Lake Reservoir No. 2 is connected with Long Lake Reservoir No. 1 by a ditch. 4. Appropriation Dates, Uses and Amounts of the Water Rights: (i) *Agricultural Ditch.* Direct flow water rights decreed to the Agricultural Ditch divert from Clear Creek and are listed below.

Priority	Date of Appropriation	Date of Adjudication	Decreed Use	Amount (cfs)
2	5/15/1860	10/4/1884	I,D	1.64
4	5/19/1860	10/4/1884	I,D	0.675
5	5/31/1860	10/4/1884	I,D	3.83
7	6/14/1860	10/4/1884	I,D	1.12
13	5/14/1861	10/4/1884	I,D	0.098
14	6/2/1861	10/4/1884	I,D	1.12
15	6/11/1861	10/4/1884	I,D	0.39
21	6/1/1862	10/4/1884	I,D	0.15
44	5/16/1865	10/4/1884	I,D	0.163
61	12/21/1874	10/4/1884	I,D	101.54
67	3/24/1883	10/4/1884	I,D	48.46
75	3/27/1888	5/13/1936	I,D	55.00

Notes: I = Irrigation Use; D = Domestic Use.

(i) *Welch Ditch.* Direct flow water rights decreed to the Welch Ditch and owned by the ADRC divert from Clear Creek and are listed below.

Priority	Date of Appropriation	Date of Adjudication	Decreed Use	Amount (cfs)	ADRC Interest (62.228%) (cfs)
4	05/19/1860	10/04/1884	I	0.225	0.140
12	05/13/1861	10/04/1884	I	1.30	0.809
55	02/11/1871	10/04/1884	I	26.00	16.179
75*	06/02/1900	05/13/1936	I	24.00	24.00

Notes: I = Irrigation Use

* The Agricultural Ditch and Reservoir Company owns this priority in its entirety.

(ii) *Midway Reservoirs.* Storage water rights decreed to the Midway Reservoirs divert from Clear Creek and are listed below.

Reservoir System	Priority	Date of Appropriation	Date of Adjudication	Decreed Use ¹	Amount (ac-ft)
Main	70	2/1/1901	5/13/1936	I	606.51

East	71	2/1/1901	5/13/1936	I	102.02
Smith	71	2/1/1901	5/13/1936	I	93.25
	86	9/29/1906	5/13/1936	I	292.79
	9 ² (Bear Cr)	12/6/1882	2/4/1884	I, R	68.54
Notes: 1. I = Irrigation use; R = Recreational use. 2. Consolidated Mutual is not seeking a change decree, at this time, for its interest in the Bear Creek portion of the Smith Reservoir storage right.					

(iii) *Mountain Reservoirs.* Storage water rights decreed to the mountain reservoirs of the ADRC divert from the Fall River and its tributaries and are listed below.

Reservoir System	Priority	Date of Appropriation	Date of Adjudication	Decreed Use	Amount (ac-ft)
Loch Lomond Group	1	9/21/1900	5/13/1936	I,D	596.9
	1a	9/21/1900	5/13/1936	I,D	499.6
	3	7/16/1906	5/13/1936	I,D	206.8
Fall River Group	3	9/21/1900	5/13/1936	I,D	127.1
	3	7/16/1906	5/13/1936	I,D	304
	4	9/21/1900	5/13/1936	I,D	44.81
	4	9/21/1900	5/13/1936	I,D	112.81
	81	8/1/1905	5/13/1936	I,P	101.8
	3a	7/16/1906	5/13/1936	I,D	262.98
	6 & 6a	7/16/1906	5/13/1936	I,D	30.58
	1a	9/21/1900	5/13/1936	I,D	88.6
Notes: I = Irrigation Use; D = Domestic Use; P = Power Use.					

(iv) *Long Lake Reservoirs.* Storage water rights decreed to Long Lake Reservoirs, and to which the ADRC has an annual right to the first 200 acre-feet, divert from Ralston Creek, a tributary of Clear Creek, and are listed below.

Reservoir System	Date of Appropriation	Date of Adjudication	Decreed Use	Amount (ac-ft)
Long Lake Reservoir No. 1	5/29/1873	10/4/1884	I	890
	6/6/1909	5/13/1936	I	557
	6/6/1909	5/13/1936	I	574.8 (conditional)
Long Lake Reservoir No. 2	6/6/1909	5/13/1936	I	292
	6/6/1909	5/13/1936	I	716.3 (conditional)
Notes: I = Irrigation Use.				

(v) Source of the Water for the Water Rights: Clear Creek and tributaries thereto. 5. Historical Use. Water yielded by the subject ADRC shares has historically irrigated lands below the Agricultural and Welch ditches as shown on **Attachment A** hereto. Total historical diversions through the Agricultural Ditch headgate during the study period from 1929 through 1956 are shown on **Attachment B** hereto. Total historical diversions through the Welch Ditch headgate during the study period from 1929 through

1956 are shown on **Attachment C** hereto. 6. Description of the Proposed Changes of Water Rights. Consolidated Mutual seeks changes of the water rights described in paragraph 3, above. The changes are described in the paragraphs below. The changes in type, manner and places of use in this application are no different than the changes adjudicated by Consolidated Mutual in its prior change Case Nos. 94CW197, 09CW107, and 13CW17. However, a significant update in the administration of historical return flows was decreed most recently in Case No. 13CW17. Consolidated Mutual intends to operate this change of water rights under terms and conditions identical to those recently adjudicated in Case No. 13CW17. (a) Change in type of use: Applicant operates a municipal water system in suburban Jefferson County for the mutual benefit of its stockholders. It seeks to change the subject ownership interest in the water rights to all beneficial purposes including municipal, irrigation, domestic, mechanical, commercial, industrial, recreation, fish and wildlife, augmentation, exchange, replacement and any other use necessary, or incidental to the operation of its municipal water system. Consolidated Mutual will use the changed water rights by direct flow or after storage for the above-described purposes, except for the purposes of recreation, fish and wildlife, which can only occur in reservoirs. Return flow from Applicant's use of the subject water rights will be quantified and used to offset any historical return flow required by this change of water rights and Applicant's prior changes of water rights. Water derived from the exercise of the water rights for which required return flows have been made, and to the extent that municipal returns exceed historical irrigation return flow obligations, shall be fully consumable by Consolidated Mutual. Such reusable water shall be used, reused, successively used and disposed of by sale, exchange or otherwise to extinction for all beneficial purposes described herein. Until such reusable water is used, reused, or disposed of to extinction, Consolidated Mutual will retain dominion and control of such reusable water through its physical structures, by conveyance in public streams and by its water use accounting procedures. (b) Change in manner of use: Consolidated Mutual will divert from Clear Creek by exercise of the direct flow water rights for direct use or for storage and subsequent use after storage in the alternate places of storage described below. Consolidated Mutual will also utilize any releases from storage as such releases are delivered by the ADRC for direct use or for storage and subsequent use in the alternate places of storage described below. Locations for such alternate places of storage are also shown on **Attachment A** to this application. (i) *Maple Grove Reservoir*. Maple Grove Reservoir is located in the South 1/2, Section 29, and the North 1/2, Section 32, Township 3 South, Range 69 West of the 6th P.M., Jefferson County, Colorado. (ii) *Fairmount Reservoir*. Fairmount Reservoir is located in the Northeast 1/4 of Section 24, Township 3 South, Range 70 West of the 6th P.M., Jefferson County, Colorado. (iii) *Walter S. Welton Reservoir*. Walter S. Welton Reservoir (formerly known as Fortune Reservoir) is located in the South 1/2 of Section 24 and the North 1/2 of Section 25, Township 2 South, Range 70 West of the 6th P.M. Jefferson County, Colorado. (iv) *Midway Reservoirs*. The Midway Reservoirs (Main, East and Smith) are located as described in paragraph 3(a)(iii) above. (c) Change in place of use: Consolidated Mutual's use of water derived from the changed water rights shall include any location in Consolidated Mutual's present or future treated or raw water service area, including locations and places of use by contract with others. (d) Alternate points of diversion: In addition to the points of diversion already decreed for the water rights, Consolidated Mutual shall divert the changed Welch Ditch water rights, but not the Agricultural Ditch inches, at the following described alternate points of diversion. (i) *Lee, Stewart and Eskins Ditch*. The headgate of the Lee, Stewart and Eskins Ditch on Clear Creek, located on the south bank of Clear Creek at a point whence the south quarter corner of Section 32, Township 3 South, Range 70 West of the 6th P.M., Jefferson County, Colorado, bears South 28° East a distance of 900 feet, more or less. (ii) *Rocky Mountain Ditch*. The headgate of the Rocky Mountain Ditch on Clear Creek, located on the south side of the Croke Dam in the NE1/4 NE1/4 NW1/4 of Section 26, Township 3 South, Range 70 West of the 6th P.M., Jefferson County, Colorado, at a point on the south side of Clear Creek which bears South 18°12'25" West, a distance of 401.11 feet from the North 1/4 corner of said Section 26. (e) Reuse and successive use: Applicant intends reuse and successive use of any fully-consumable return flow that results from initial use of the changed water rights by re-diversion or relinquishment at points utilized by Consolidated Mutual or its current and future water lessees,

including but not limited to, the following points and structures. (i) *Well No. 1*. Well No. 1 (Permit No. 62953-F) on the South Platte River, located on the west bank of the South Platte River in the NW1/4 NW1/4 of Section 30, Township 1 North, Range 66 West of the 6th P.M., Weld County, Colorado, approximately 120 feet south of the north line and 975 feet east of the west line of said section. (ii) *Well No. 2*. Well No. 2 (Permit No. 62954-F) on the South Platte River, located on the west bank of the South Platte River in the NW1/4 NW1/4 of Section 30, Township 1 North, Range 66 West of the 6th P.M., Weld County, Colorado, approximately 710 feet south of the north line and 920 feet east of the west line of said section. (iii) *Well No. 3*. Well No. 3 (Permit No. 62955-F) on the South Platte River, located on the west bank of the South Platte River in the NW1/4 NW1/4 of Section 30, Township 1 North, Range 66 West of the 6th P.M., Weld County, Colorado, approximately 710 feet south of the north line and 920 feet east of the west line of said section. (iv) *Brighton Ditch*. The headgate of the Brighton Ditch on the South Platte River, located on the west bank of the South Platte River in the SE1/4 SE1/4 of Section 11, Township 1 South, Range 67 West of the 6th P.M., Adams County, Colorado. (v) *Wattenburg Reservoir Pump Station*. On the west bank of the South Platte River in the NW1/4 of Section 30, Township 1 North, Range 66 West of the 6th P.M., Weld County, Colorado. The approximate location of the point of diversion is 1,075 feet east of the west section line and 875 feet south of the north section line of said Section 30. (vi) *Metro Wastewater Reclamation District Plant (n.k.a. Robert W. Hite Treatment Plant) Outfall*. The outfall of the Metro treatment plant ("Metro Outfall") is located at a point on the east bank of the South Platte River in Section 1, Township 3 South, Range 68 West, which lies 1,400 feet east of the SW corner of said Section 1, Adams County, Colorado (NAC83), Zone 13 North: (503898 E, 4406978 N). 7. Name and address of potentially affected landowners. (a) Agricultural Ditch: Coors Brewing Company, West 32nd Avenue, Golden, CO 80401. (b) Welch Ditch: Jefferson County Open Space Department, 700 Jefferson County Parkway, Golden, CO 80401. (c) The Lee Stewart & Eskins Ditch: Lee Stewart & Eskins Ditch Company, c/o Peter Acker, President, 16173 W. 32nd Ave., Golden, CO 80401 and/or Coors Brewing Company, W. 32nd Ave., Golden, CO 80401. (d) Rocky Mountain Ditch: Coors Brewing Company, West 32nd Avenue, Golden, CO 80401. (e) Maple Grove Reservoir: Applicant. (f) Fairmount Reservoir: Applicant. (g) Walter S. Welton Reservoir: Applicant. (h) Metro Outfall: Metro Wastewater Reclamation District, 6450 York Street, Denver, CO 80229. (i) Well Nos. 1, 2, and 3: Applicant. (j) Wattenburg Reservoir Pump Station: Applicant. (k) Brighton Ditch: Brighton Ditch Company, 3286 WCR 23, Fort Lupton, CO 80621. (l) Midway Reservoirs (Main, East, and Smith): The Agricultural Ditch and Reservoir Company, 2130 Kipling Street, Lakewood, CO 80215. (m) Mountain Reservoirs (Loch Lomond Group and Fall River Group): The Agricultural Ditch and Reservoir Company, 2130 Kipling Street, Lakewood, CO 80215 and/or USDA Forest Service, P.O. Box 25127, Lakewood, CO 80225. (n) Long Lake Reservoirs Nos. 1 and 2: Denver Water, 1600 West 12th Avenue, Denver, CO 80204-3412. (10 pages)