

Consent Agenda Item 1.n

March 20-21, 2019 Board Meeting  
Case No. 18CW3064 (Water Division 4); Double RL Company

Summary of Water Court Application

This is an Application to enlarge water storage right, make water storage right absolute, and amend plan for augmentation.

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 rights in Water Division 4 in the Uncompahgre Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
98CW0234	Dallas Creek	confl E & W Forks Dallas Cr	confl Ridgway Reservoir	9 (10/15 - 4/30) 20 (5/1 - 10/14)	07/13/1998
98CW0222	Uncompahgre River	Highway 62 bridge	confl Ridgway Res	20 (10/15 - 4/30) 65 (5/1 - 10/14)	07/13/1998
84CW0423	West Fork Dallas Creek	headwaters in vicinity	hdgt Burkhart Eddy div	2.5 (1/1 - 12/31)	05/04/1984

Potential for Injury

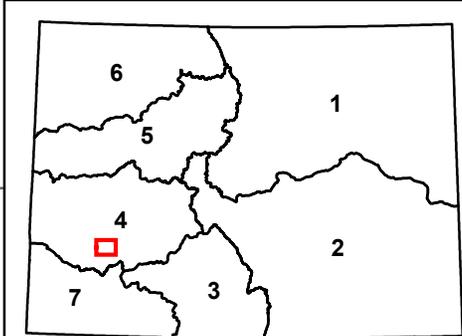
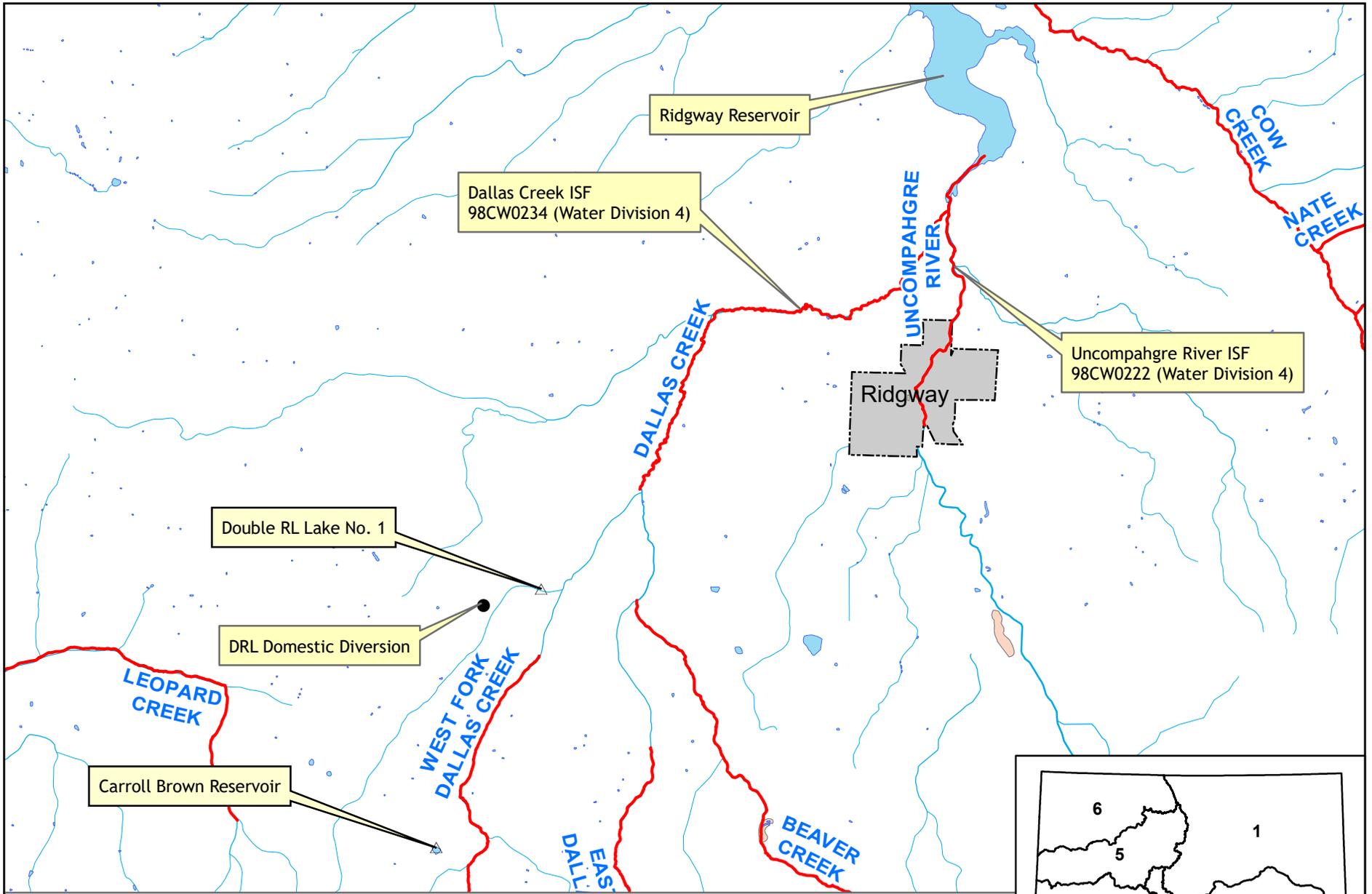
- The proposed plan for augmentation may not replace depletions in proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- Some of the water rights are claimed with senior appropriation dates. The instream flow water rights might be subject to these water rights under C.R.S. 37-92-102(3)(b) if the claimed senior uses are sufficiently documented.

Other Objectors

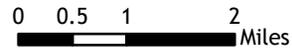
No other Statements of Opposition were filed.

Attorney Representing CWCB

Jeffrey N. Candrian, Senior Assistant Attorney General, is assigned to this case and can be contacted at jeffrey.candrian@coag.gov, or 720-508-6307.



March 20-21, 2019 CWCB Board Meeting  
 Consent Agenda Item 1.n: Statement of Opposition  
 Case No. 18CW3064 (Water Division 4)  
 Double RL Company



IN THE DISTRICT COURT IN AND FOR WATER DIVISION NO. 4  
STATE OF COLORADO  
TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER  
DIVISION NO. 4

Pursuant to C.R.S. 37-92-302, as amended, you are notified that the following is a resume of all applications filed in the Water Court during the month of December 2018. The names, address of applicant, source of water, description of water right or conditional water right involved, and description of the ruling sought are as follows: There has been filed in this proceeding a claim or claims which may affect in priority any water right claimed or heretofore adjudicated within this division and owners of affected rights must appear to object and protest as provided in the Water Right Determination and Administration Act of 1969, or be forever barred.

**CASE NUMBER: 18CW3064 (REF NO. 01CW185, 09CW31, 15CW3058).** Name, Address, Phone Number, and E-Mail Address of Applicant. Double RL Company, c/o Oakley Kelly, Ranch Manager, 5180 Highway 62, Ridgway, Colorado 81432, Phone: (970) 626-5485; Attorneys for Applicant: Richard A. Johnson, David F. Bower, Michael S. Davidson, Johnson & Repucci LLP, 850 W. South Boulder Road, Suite 100, Louisville, Colorado 80027. APPLICATION TO ENLARGE WATER STORAGE RIGHT, MAKE WATER STORAGE RIGHT ABSOLUTE, AND AMEND PLAN FOR AUGMENTATION, IN OURAY COUNTY, COLORADO. Overview. Applicant owns and operates approximately 17,000 acres of agricultural lands located in Townships 44 and 45 North, Range 9 West of the New Mexico Principal Meridian (the "Double RL Ranch"). The Double RL Ranch headquarters and main domestic facilities are located primarily in Sections 26 and 27 of Township 45 North. These ranch facilities are comprised of residential homes, cabins, and ancillary structures. The DRL Domestic Diversion, which collects water from seeps and springs in Section 27, provides the primary domestic water supply to these ranch facilities. This water is delivered to the ranch facilities via an existing water supply system, including storage cisterns, distribution piping, valves, and pumps. A plan for augmentation for the main ranch facilities was originally approved in Case No. 01CW185, Water Division 4. Under the plan for augmentation, out-of-priority evaporation and depletions from the DRL Domestic Diversion are replaced using water stored in Double RL Lake No. 1 and Carroll Brown Reservoir. Additionally, out-of-priority depletions from the Double RL Lake No. 1 can be replaced with water stored in Carroll Brown Reservoir, which allows Double RL Lake No. 1 to be kept full at all times. In order to operate the plan for augmentation, the decree in Case No. 01CW185 also granted a 1.75 acre-foot augmentation right to Carroll Brown Reservoir and a 6.0 acre-foot augmentation right to Double RL Lake No. 1. By this application, Applicant seeks to amend the plan for augmentation approved in Case No. 01CW185 to address greater estimated demands and depletions from the ranch facilities. In conjunction with this amendment, Applicant also requests an enlargement of the augmentation right decreed to the Carroll Brown Reservoir from 1.75 acre-feet to the full decreed capacity of the structure. Applicant also requests that the other previously decreed beneficial uses of Carroll Brown Reservoir (*i.e.* fire protection, recreational, wildlife, and piscatorial) be recognized as absolute for the full decreed capacity of the reservoir. This will allow Applicant to satisfy increased demand for augmentation water at the main ranch facilities and at the Double RL Ranch generally, while also simplifying the reservoir accounting. This enlargement claim only seeks to recognize and decree the beneficial uses of augmentation, replacement, fire protection, recreation, wildlife, and piscatorial purposes for the full decreed capacity of the structure – no physical expansion or enlargement of the Carroll Brown Reservoir itself is intended or will occur as a result of this application. Finally, the Double RL Lake No. 1 has now been built to its decreed capacity of 6.0 acre-feet and was filled with water in priority. As the right is already decreed absolute for 1.09 acre-feet, Applicant requests that the Double RL Lake No. 1 be confirmed as absolute in the additional amount of

4.91 acre-feet so that the 6.0 acre-foot right decreed to the Double RL Lake No. 1 is made absolute in its entirety. A map showing the general location of the ranch and the subject water rights structures is attached as Exhibit A. Name and Description of Water Storage Right Enlargement. *Name of Structure.* Carroll Brown Reservoir. *Original and Subsequent Decrees.* Carroll Brown Reservoir was originally decreed a storage right for 4,169,400 cubic feet (~95.7 acre-feet), absolute, for irrigation, with an appropriation date of April 24, 1902, and an adjudication date of May 11, 1942, in Case No. 1959, Water District 68, Priority No. R-1, Fourth General Adjudication. Carroll Brown Reservoir was subsequently decreed a storage right for 93.95 acre-feet, absolute, for fire protection, recreational, wildlife, and piscatorial purposes, and 1.75 acre-feet, conditional, for augmentation and replacement uses, with an appropriation date of September 28, 2001, by the decree entered on March 6, 2003, in Case No. 01CW185, Water Division 4. The conditional augmentation and replacement right was continued by the decree entered on August 12, 2009, in Case No. 09CW31, Water Division 4, and was made absolute in its entirety by the decree entered on January 4, 2016, in Case No. 15CW3058, Water Division 4. The decree in Case No. 15CW3058 also updated the legal description for the Carroll Brown Reservoir, including UTM coordinates. *Legal Description of Structure.* Carroll Brown Reservoir is located in the NW1/4 NE1/4 NW1/4 of Section 16, Township 44 North, Range 9 West of the N.M.P.M., at a point 592 feet from the north section line and 1,077 feet from the west section line of Section 16 (Zone 13, NAD83, Easting 248867.9m, Northing 4217572.5m). *Source.* West Fork of Dallas Creek, tributary to the Uncompahgre River, tributary to the Gunnison River. *Name and Legal Description of Points of Diversion.* Carroll Brown Reservoir fills from the Carroll Brown Ditch (a/k/a Carroll Brown Feeder Ditch), the headgate of which is located at a point on the west bank of the West Fork of Dallas Creek, whence the NW corner of Section 16, Township 44 North, Range 9 West of the N.M.P.M., bears North 18°8' East 11,715 feet (Zone 13, NAD83, Easting 247364.5m, Northing 4214505.5m). *Enlargement Amounts and Uses Claimed.* 93.95 acre-feet, absolute, for augmentation and replacement purposes, and 1.75 acre-feet, absolute, for fire protection, recreational, wildlife, and piscatorial purposes. *Dam Height and Capacity of Structure.* The Carroll Brown Reservoir dam is approximately 20 feet high and has a decreed capacity of 4,169,400 cubic feet (~95.7 acre-feet). *Date of Appropriation.* August 8, 2013. Applicant has captured, possessed, and controlled water in Carroll Brown Reservoir for its full capacity, in priority, for augmentation and replacement, fire protection, recreational, wildlife, and piscatorial purposes. Accordingly, Applicant is entitled to an absolute right for the full capacity of the reservoir for all claimed purposes, consistent with C.R.S. §§ 37-92-103(4)(a) and 37-92-301(4)(e). *Remarks.* By this claim, Applicant is only seeking to have the full decreed capacity of Carroll Brown Reservoir recognized as absolute for all of its decreed beneficial uses. Applicant is not seeking to enlarge or expand the physical capacity of the Carroll Brown Reservoir. Name and Description of Water Storage Right Claimed as Absolute. *Name of Structure.* Double RL Lake No. 1. *Original and Subsequent Decrees.* The original decree for the Double RL Lake No. 1 water right was entered on March 6, 2003, in Case No. 01CW185, Water Division 4. The conditional water right was continued by the decree entered on August 12, 2009, in Case No. 09CW31, Water Division 4. By the decree entered on January 5, 2015, in Case No. 15CW3058, Water Division 4, the Double RL Lake No. 1 right was made absolute for 1.09 acre-foot and continued for 4.91 acre-feet. The decree in Case No. 15CW3058 also updated the legal description for the Double RL Lake No. 1, including UTM coordinates. *Legal Description of Structure.* Double RL Lake No. 1 is located in the SE1/4 NE1/4 SE1/4 of Section 27, Township 45 North, Range 9 West of the N.M.P.M., at a point 1,735 feet from the south section line and 523 feet from the east section line of Section 27 (Zone 13, NAD83, Easting 251154.0m, Northing 4223012.5m). *Source.* The source of water for Double RL Lake No. 1 is (i) natural runoff tributary to Cottonwood Creek, (ii) Cottonwood Creek via the Cottonwood Diversion of the Litschke Ditch, and (iii) the West Fork of Dallas Creek, via the Litschke Ditch system, which releases water into Cottonwood Creek for rediversion by the Cottonwood Diversion of the

Litschke Ditch. All of these sources are tributary to the West Fork of Dallas Creek, tributary to the Uncompahgre River, tributary to the Gunnison River. *Name and Legal Description of Points of Diversion.* The Double RL Lake No. 1 is on-channel and also fills from the Cottonwood Diversion of the Litschke Ditch. Pursuant to the decree entered on June 27, 1988, in Case No. 86CW224, Water Division 4, the Cottonwood Diversion of the Litschke Ditch is located at a point 960 feet from the east line and 1,245 feet from the south line of Section 27, Township 45 North, Range 9 West of the N.M.P.M. (Zone 13, NAD83, Easting 251018.8m, Northing 4222866.6m). *Date of Appropriation.* June 1, 1983. *Currently Decreed Amount and Uses.* Double RL Lake No. 1 is decreed for a total of 6.0 acre-feet, with 1.09 acre-feet, absolute, and 4.91 acre-feet, conditional, with the right to fill and refill, for augmentation and replacement purposes. *Claim to Make Absolute.* Applicant has made 4.91 acre-feet of the water right conditionally decreed to Double RL Lake No. 1 absolute and requests confirmation that the total right has been made absolute for its entire decreed amount of 6.0 acre-feet, with the right to fill and refill, for augmentation and replacement purposes. In November of 2018, Applicant completed an excavation project and coordinated with the water commissioner to divert water in priority to fill the Double RL Lake No. 1 to its full as-built and decreed capacity of 6.0 acre-feet and subsequently possessed and controlled the water for augmentation and replacement purposes. *Amendment to Plan for Augmentation. Original and Subsequent Decrees.* The plan for augmentation to be amended was originally approved in Case No. 01CW185, Water Division 4. *Description of Amendment to Plan for Augmentation.* The original plan for augmentation anticipated total water demand at the ranch facilities to be 5.06 acre-feet/year and projected consumptive use to be 1.75 acre-feet/year. Since the original plan for augmentation was approved, additional cabins have been constructed at the main ranch compound and more houses, cabins, and ancillary facilities are expected to be built in the future. All of these structures are served by the DRL Domestic Diversion via the same water supply system. Because of these increased demands at the ranch facilities, Applicant seeks to amend the existing plan for augmentation in order to recognize and allow for the estimated increase in depletions and to simplify accounting. *Complete Statement of Amended Plan for Augmentation. Name and Description of Structures to be Augmented. DRL Domestic Diversion.* The DRL Domestic Diversion (a/k/a the Double RL Domestic Diversion) is located at a point in the SW1/4 SW1/4 of Section 27, Township 45 North, Range 9 West of the N.M.P.M., approximately 450 feet east of the west section line and 50 feet north of the south section line of said Section 27. The DRL Domestic Diversion diverts water from a seep area tributary to the West Fork of Dallas Creek, tributary to the Uncompahgre River, tributary to the Gunnison River. The DRL Domestic Diversion was originally decreed on July 28, 1994, in Case No. 92CW17, Water Division 4, for 0.033 cfs, conditional, for domestic purposes, with an appropriation date of February 28, 1992, and confirmed as absolute in its entirety on November 27, 2002, in Case No. 01CW95, Water Division 4. *Double RL Lake No. 1.* The Double RL Lake No. 1 is described in paragraph 4 above. *Water Rights to be Used for Augmentation. Carroll Brown Reservoir.* As described in paragraph 3.b. above, Carroll Brown Reservoir is currently decreed for 1.75 acre-feet, absolute, for augmentation and replacement purposes, with an appropriation date of September 28, 2001. By this application, Applicant has also claimed an enlargement right of 93.95 acre-feet, absolute, for augmentation and replacement purposes, with an appropriation date of August 8, 2013, so that Carroll Brown Reservoir will be decreed as absolute for its entire decreed capacity of 95.7 acre-feet for augmentation and replacement purposes. *Double RL Lake No. 1.* As described in paragraph 4.b. above, the Double RL Lake No. 1 is currently decreed for 1.09 acre-feet, absolute, and 4.91 acre-feet, conditional, with an appropriation date of June 1, 1983. By this application, Applicant has also requested that the Double RL Lake No. 1 be confirmed as absolute for an additional 4.91 acre-feet so that Double RL Lake No. 1 will be decreed as absolute for its entire decreed capacity of 6.0 acre-feet for augmentation and replacement purposes. *Projected Demand and Depletions.* With the new cabins and other

structures that have been built or are anticipated to be built, total projected water demands at the main ranch served by the DRL Domestic Diversion are estimated to be 5.94 acre-feet/year and total estimated depletions are estimated to be 2.35 acre-feet/year based on the assumptions set forth below. *Demand.* Total projected water demands are estimated to be as much as 5.94 acre-feet/year. Indoor domestic use is expected to require diversions of up to 3.99 acre-feet/year based upon an assumption of year-round occupancy. An additional 1.95 acre-feet/year will be required to replace evaporative losses based upon a combined total of 1.027 exposed surface acres of water in the newly enlarged Double RL Lake No. 1 and the swimming pool. *Depletions.* Total consumptive use is estimated to be 2.35 acre-feet/year. The indoor domestic consumptive use is projected to be 0.40 acre-feet/year, assuming 10% of the indoor water demand would be consumed based on the use of a non-evaporative septic disposal system. An additional 1.95 acre-feet/year will be consumed by evaporation based upon a combined total of 1.027 exposed surface acres of water in the newly enlarged Double RL Lake No. 1 and the swimming pool. *Future Additional Demand and Depletions.* The demands and depletions set forth above are based off the current and anticipated water usage at the Double RL main ranch facilities that will be served by the DRL Domestic Diversion. Applicant requests the right to operate this plan for augmentation under greater demands and depletions based off the approved operations and under the same terms and conditions that will be approved herein, so long as sufficient augmentation supplies are available. *Operation of Plan for Augmentation.* All out-of-priority depletions resulting from diversions at the DRL Domestic Diversion shall be replaced by storage releases from Double RL Lake No. 1 and/or Carroll Brown Reservoir. Applicant shall also replace out-of-priority evaporative depletions from and inflows into Double RL Lake No. 1 with releases of water from Carroll Brown Reservoir. *Remarks.* As provided for in paragraph 7.E. of the decree entered in Case No. 01CW185, Applicant requests the right to continue to change the mix in uses under the plan for augmentation in the future so long as (i) the total consumptive use does not exceed available augmentation water, (ii) Applicant notifies the Division Engineer of such change in mix of uses and in such notice provides an accounting that supports Applicant's claim that the change in mix of use does not cause the total consumptive use to exceed the amount of available augmentation water, and (iii) the Division Engineer approves such change in the mix of use. All other terms and conditions decreed in Case No. 01CW185, except as expressly modified by the decree entered in this matter, are not amended by this application and shall remain in full force and effect. Pursuant to C.R.S. § 37-92-305(8), the Division Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights. Applicant shall install and maintain such meters, gauges, or other measuring and recording devices as may be reasonably required by the State or Division Engineer to administer the amended plan for augmentation. (9 pages, plus exhibit). **OURAY COUNTY.**