

Consent Agenda Item 1.g

March 20-21, 2019 Board Meeting

Case No. 18CW3211 (Water Division 5); Sunny Ranch, LLC

Summary of Water Court Application

This is an Application for enlargement of existing surface diversion right, enlargement of existing storage right, absolute storage right, and plan for augmentation and conditional right of exchange.

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 5 in the Roaring Fork Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
85CW0646	Roaring Fork River	confl Maroon Creek	confl Fryingpan River	30 (10/1 - 3/31) 55 (4/1 - 9/30)	11/08/1985
85CW0639	Roaring Fork River	confl Fryingpan River	confl Crystal River	75 (10/1 - 3/31) 145 (4/1 - 9/30)	11/08/1985

Potential for Injury

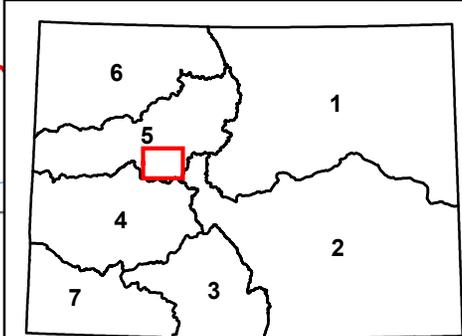
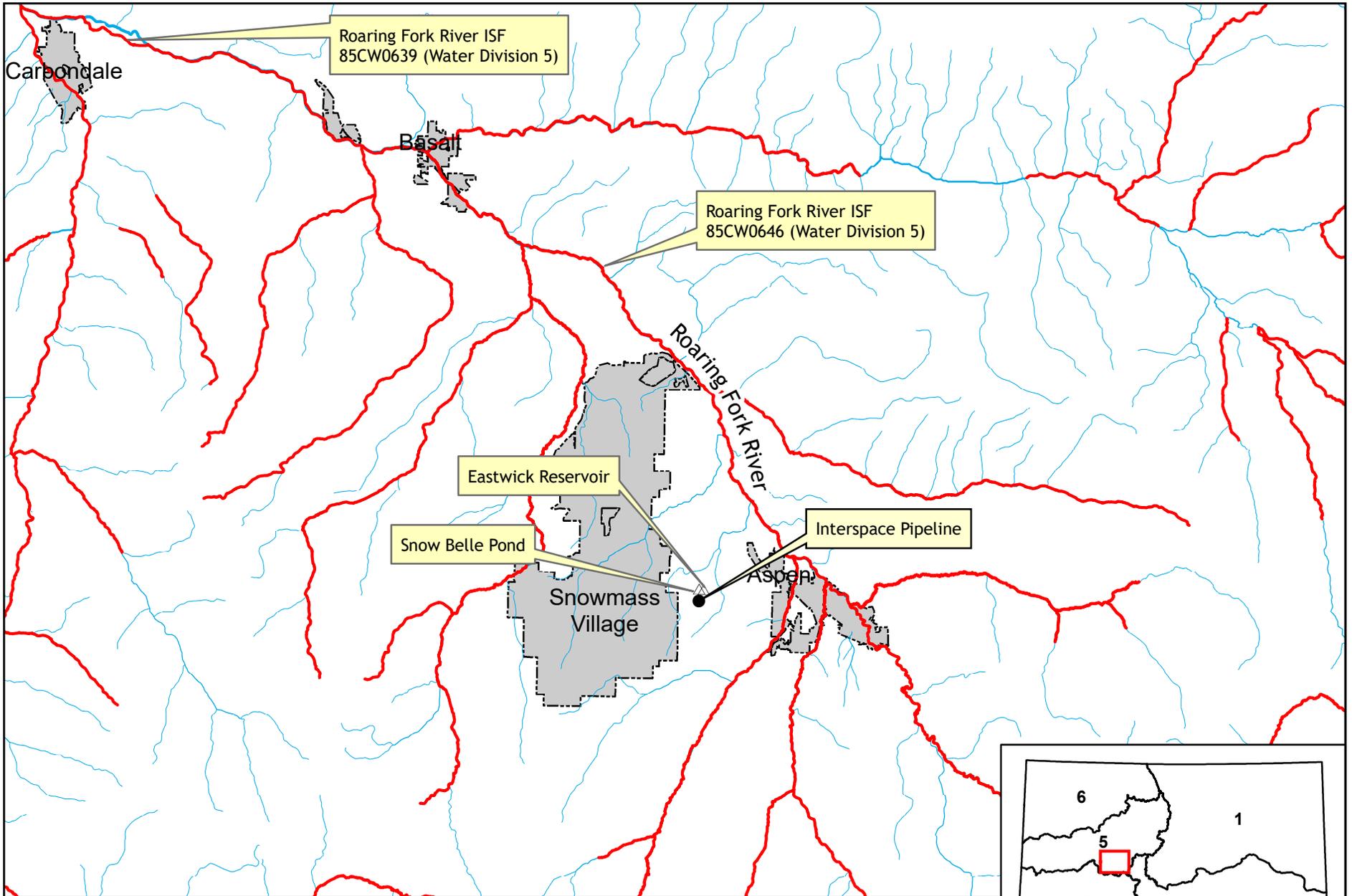
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place and amount, which could injure the CWCB's instream flow water rights.
- Terms and conditions should be included in the decree to ensure that the proposed decree will not injure the CWCB's instream flow water rights by expansion of use of water rights that are senior to the instream flow water rights.

Other Objectors

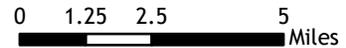
No other Statements of Opposition were filed.

Attorney Representing CWCB

Andrew B. Nicewicz, Assistant Attorney General, is assigned to this case and can be contacted at andy.nicewicz@coag.gov, or 720-508-6259



March 20-21, 2019 CWCB Board Meeting
 Consent Agenda Item 1.q: Statement of Opposition
 Case No. 18CW3211 (Water Division 5)
 Sunny Ranch, LLC



DIVISION 5 WATER COURT- DECEMBER 2018 RESUME

...

15. PURSUANT TO C.R.S., §37-92-302, AS AMENDED, YOU ARE NOTIFIED THAT THE FOLLOWING PAGES COMPRISE A RESUME OF THE APPLICATIONS AND AMENDED APPLICATIONS FILED WITH THE WATER CLERK FOR WATER DIVISION 5 DURING THE MONTH OF DECEMBER 2018. *The water right claimed by this application 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 within the time provided by statute or be forever barred.*

18CW3211 District Court, Water Division No. 5, State of Colorado, 109 Eighth Street, Suite 104, Glenwood Springs, CO 81601. CONCERNING THE APPLICATION FOR WATER RIGHTS OF SUNNY RANCH, LLC, IN PITKIN COUNTY, COLORADO. APPLICATION FOR ENLARGEMENT OF EXISTING SURFACE DIVERSION RIGHT, ENLARGEMENT OF EXISTING STORAGE RIGHT, ABSOLUTE STORAGE RIGHT, AND PLAN FOR AUGMENTATION AND CONDITIONAL RIGHT OF EXCHANGE. 1. Name and address of Applicant: Sunny Ranch, LLC (“Sunny Ranch”), P.O. Box 7877, Aspen, Colorado 81612. Direct all pleadings to: Kristin H. Moseley, Gunnar J. Paulsen, Porzak Browning & Bushong LLP, 2120 13th Street, Boulder, CO 80302, (303) 443-6800. 2. Summary of Application: With this application, Applicant makes four claims: (1) for a second enlargement to the Interspace Pipeline diversion structure, absolute (2) for a first enlargement to Eastwick Reservoir, a/k/a Becca’s Lake, absolute (3) for a finding of absolute water rights for the Snow Belle Pond, and (4) a plan for augmentation and conditional exchange to augment out of priority evaporative depletions from Snow Belle Pond. First Claim Interspace Pipeline, Second Enlargement, Absolute 3. Description of Water Right – Surface: A. Structure: Interspace Pipeline, Second Enlargement. B. Decrees: Interspace Pipeline was originally decreed by the Water Court in and for Water Division No. 5 (“Water Court”) in Case No. 87CW164. A subsequent decree by the Water Court awarded absolute and conditional rights to Interspace Pipeline, First Enlargement in Case No. 93CW226. The remaining conditional rights in Interspace Pipeline, First Enlargement were decreed absolute by the Water Court in Case No. 00CW047. C. Location: The point of diversion is in the SW 1/4, NW 1/4, Section 9, T. 10 South, Range 85 West, of the 6th P.M. at a point whence the NW corner of Section 9 bears N. 2 degrees W. 2,610 feet. For ease of reference, but without changing the decreed location, this location can also be described as the SW 1/4, NW 1/4, Section 9, Township 10 South, Range 85 West, of the 6th P.M. at a point 2,608 feet from the North section line and 142 feet from the West section line. A map depicting the location of Interspace Pipeline, Interspace Pipeline, First Enlargement and Interspace Pipeline, Second Enlargement is attached hereto as Exhibit A. D. Sources: Unnamed tributary of Owl Creek, tributary to the Roaring Fork River, tributary to the Colorado River. E. Appropriation Date: December 1, 2018. F. Amount Claimed: 0.033 c.f.s., absolute. G. Uses: Filling source for Snow Belle Pond, which structure is described in Applicant’s Third Claim, Paragraph 5 below. Second Claim First Enlargement of Eastwick Reservoir, a/k/a Becca’s Lake, Absolute 4. Description of Water Right – Storage: A. Structure: Eastwick Reservoir, a/k/a Becca’s Lake, an on-channel reservoir on an unnamed tributary of Owl Creek. B. Decrees: Eastwick Reservoir, a/k/a Becca’s Lake was decreed absolute by the Water Court in Case No. 87CW0165 on November 30, 1987. A subsequent decree for a plan for augmentation and appropriative rights of exchange was decreed to Eastwick Reservoir, a/k/a Becca’s Lake by the Water Court in Case No. 16CW3165. C. Location: The dam is located in the NW 1/4, NW 1/4, of Section 9, Township 10 South, Range 85 West of the 6th P.M. at a point whence the NW corner of said Section 9 bears N. 53 degrees W. 1,220 feet. For ease of reference, but without changing the decreed location, this location can also be described as the NW 1/4, NW 1/4 of Section 9, Township 10 South, Range 85 West of the 6th P.M. at a point 692 feet from the North section line and 992 feet from the West section line. A map depicting the location of Eastwick Reservoir a/k/a Becca’s Lake is attached hereto as Exhibit A. D. Sources: Unnamed tributary of Owl Creek, tributary to the Roaring Fork River, tributary to the Colorado River. E. Appropriation Date: July 16, 2016. F. Amount Claimed: 1.184 acre-feet, absolute. G. Uses: Supplemental filling source and as augmentation and exchange water to replace out of priority evaporative depletions in Snow Belle Pond, which structure is described in Applicant’s Third Claim, Paragraph 5 below. Third Claim Absolute Water Right for Snow Belle Pond 5. Description of Water Right – Storage: A. Structure: Snow Belle Pond. B. Location: The dam is located in the NW 1/4, NW 1/4, Section 9, Township 10 South, Range 85

West, of the 6th P.M., at a location 895 feet from the North section line and 669 feet from the West section line. A map depicting the location of Snow Belle Pond is attached hereto as Exhibit A. C. Sources: The sources for Snow Belle Pond are the following structures: i. Interspace Pipeline, Second Enlargement: Described above in Paragraph 3. ii. Eastwick Reservoir, a/k/a Becca's Lake, First Enlargement: Described above in Paragraph 4. D. Appropriation Information: i. Date of Appropriation: December 4, 2018. ii. How Appropriation was Initiated: Construction of Snow Belle Pond and by conducting an as-constructed survey. iii. Date Water Applied to Beneficial Use: December 20, 2018. E. Amount: 0.242 acre-feet, absolute. F. Use: Livestock watering, piscatorial and wildlife propagation, piscatorial, fire protection, and recreational. G. Surface Area: 0.11 surface acres, with a total of .16 surface areas to be augmented to include an allowance for the inlet and outlet (spillway) channels. H. Dam Dimensions: i. Vertical Height: Less than 10 feet. ii. Length: 180 feet. Fourth Claim Plan for Augmentation and Appropriative Right of Exchange in Snow Belle Pond 6. Description of Structure to be Augmented: Snow Belle Pond described above in Paragraph 5. 7. Water Right to be used as the Source of Augmentation Water: A Basalt Water Conservancy District ("BWCD") Allotment Contract for up to 0.4 acre-foot from the following water rights for augmentation purposes. A. Green Mountain Reservoir: i. Source: Blue River, tributary of Colorado River. ii. Legal Description: located approximately 16 miles Southeast of the Town of Kremmling in Summit County, Colorado, and more particularly in all or parts of Sections 11, 12, 13, 14, 15, and 24 of Township 2 South, Range 80 West, and in Sections 17, 18, 19, 20, 21, 28, 29, and 34, Township 2 South, Range 79 West of the 6th P.M. iii. Adjudication Date: October 12, 1955. iv. Appropriation Date: August 1, 1935. v. Case Nos.: 2782, 5016, and 5017, Court: United States District Court, District of Colorado and Case No. 88CW022, District Court, Water Division No. 5. vi. Decreed Amount: 154,645 acre feet and a refill right in the amount of 3,856 acre feet absolute and 150,789 acre feet, conditional. vii. Decreed Uses: In accordance with Paragraph 5(a), (b), and (c) of the section entitled "Manner of Operation of Project Facilities and Auxiliary Facilities" in Senate Document 80. B. Ruedi Reservoir: i. Source: Frying Pan River, tributary of Colorado River. ii. Legal Description: An on-channel reservoir located in Sections 7, 8, 9, 11, and 14 through 18, Township 8 South, Range 84 West of the 6th P.M. The reservoir is in portions of Eagle and Pitkin Counties. iii. Adjudication Date: June 20, 1958. iv. Appropriation Date: July 29, 1957. v. Case No.: C.A. 4613, Garfield County District Court. vi. Decreed Amount: 102,369 acre feet (Originally decreed for 140,697.3 acre feet; reduced to 102,369 acre feet in Case No. W-789-76). vii. Decreed Uses: generation of electric energy, domestic, municipal, industrial, irrigation, piscatorial, and stock watering. viii. Refill: By decree of the Water Court in Case No. 81CW34, Ruedi Reservoir was decreed a refill right in the amount of 101,280 acre feet, conditional. In Water Court Case No. 95CW95, 44,509 acre feet of the refill right was made absolute. In Water Court Case No. 01CW269, an additional 25,257 acre feet of the refill right was made absolute, for a total of 69,766 acre feet absolute in the refill right. C. Information from previous decrees for Troy Ditch and Edith Ditch rights:

STRUCTURE	PRIORITY	COURT CASE NO.	ADJ DATE	APP DATE	DECREE D AMOUNT (CFS)	USE (4)	AMOUNT SOLD, TRANSFERRED OR RESERVED					AMOUNT REMAINING (10)	
							(5)	(6)	(7)	(8)	(9)	CFS	AF
Troy Ditch (1)	370	3082	08/25/1936	05/01/1906	5.10	I	0.000	0.000	0.095	0.064	0.035	4.906	N/A

Troy Ditch 1st Enlg	427	3082	08/25/1936	05/01/1928	10.80	I	0.000	0.000	0.200	0.134	0.073	10.393	N/A
Troy Ditch 2nd Enlg	669	4613	06/20/1958	06/01/1942	6.20	I	0.000	0.000	0.115	0.077	0.042	5.966	N/A
Edith Ditch	353	3082	08/25/1936	05/01/1904	2.72	I	0.110	0.1320	0.050	0.000	0.018	2.410	N/A
Edith Ditch 1st Enlg	673	4613	06/20/1958	07/01/1946	3.23	I	0.000	0.000	0.060	0.000	0.022	3.148	N/A
Troy Ditch Water System aka Lower Headgate	(2)	W-2281			15.50 ⁽³⁾	I,D,M,C,P	0.110	0.1320	0.520	0.275	0.190	14.273	412.89

- (1) Originally diverted from Miller Creek. All others originally diverted from Frying Pan River.
- (2) Alternate point for all priorities of Troy and Edith Ditches.
- (3) Combined amount limited to 15.5 cfs and 453 AF of consumptive use, 300 AF of which can be stored.
- (4) I = Irrigation, D = Domestic, M = Municipal, C = Industrial and P = Piscatorial.
- (5) Transferred to Edith Ditch Well in Case No. 80CW1 with 1.0 AF.
- (6) Transferred to three springs on Cap K Ranch in Case No. 82CW189 (1.29 AF assumed to be included).
- (7) Deeded to George Yates with 15.4 AF in 1983. 0.2 cfs and 10.60 cfs was included in Case No. 82CW357 for Ruedi South Shores augmentation plan.
- (8) Deeded to Joan Wheeler in 1987 for diversion at the Troy Ditch 1st and 2nd Enlargement (16.9 AF assumed to be included).
- (9) Reserved for augmentation of Cap K Ponds with 5.52 AF. Case No. 91CW220.
- (10) A total of 40.11 AF of the original 453.00 AF has been sold or transferred.

i. In Case No. W-2281, Division 5, the Court decreed that 453 acre feet of annual consumptive-use credits were available to these ditches, and that 300 acre feet could be stored in an unnamed reservoir. The Basalt Water Conservancy District owns 412.89 acre feet of the 453 acre feet, and makes the water rights available to contract allottees for use pursuant to an approved substitute supply plan or decree of Court. ii. The Troy and Edith augmentation water can be delivered to the Frying Pan, Roaring Fork or Colorado Rivers by bypassing water at the headgate on the Frying Pan River. D. Information from previous decrees for Robinson Ditch rights:

STRUCTURE	DECREED AMOUNT/ cfs	AMOUNT OWNED BY BWCD (cfs) ⁽¹⁾	ADJ. DATE	APP. DATE	PRIORITY	CAS E NO. ⁽²⁾
ROBINSON DITCH	5.00	1.21	05/1 1/1889	06/1 5/1882	38	132
ROBINSON DITCH	2.50	0.60	05/1 1/1889	04/1 5/1886	140	132
ROBINSON DITCH	2.00	0.48	05/1 1/1889	11/1 5/1886	167	132
ROBINSON DITCH	10.70	2.59	12/2 9/1903	04/2 5/1899	212 C	1061
ROBINSON DITCH	20.06	4.85	08/2 5/1936	04/2 5/1900	326	3082

- (1) The BWCD owns 441 shares of Class 1 stock issued by the Robinson Ditch Company. The said 441 shares equal 24.16% of the total shares and are associated with 9.73 cfs of the 40.26 cfs decreed to the Robinson Ditch. (2) District Court in and for Garfield County i. Legal Description of Point of Diversion: The point of diversion as decreed is located on the North bank of the Roaring Fork River one-half mile below the mouth of Sopris Creek in Section 11, T. 8 S., R. 87 West, 6th P.M. ii. Historic Use: Irrigation of approximately 137.2 acres of hay and pasture under BWCD's interest in the Robinson Ditch water rights. In Case No. 93CW319, the

Court decreed that 360 acre feet of annual consumptive-use credits are associated with said irrigation. In that case, the Court also decreed a change of use of BWCD's Robinson Ditch rights to include augmentation. BWCD makes the credits available to contract allottees for use pursuant to an approved substitute supply plan or decree of Court. 8. Description of the Plan for Augmentation and Appropriate Rights of Exchange: By this application, Sunny Ranch seeks to augment, either directly or by exchange, out-of-priority evaporative depletions from Snow Belle Pond, described in Paragraph 5 above. A. Augmentation Plan. To permit the requested out-of-priority evaporative depletions, Sunny Ranch proposes to cause the release of or otherwise commit to the Roaring Fork and Colorado Rivers from the BWCD contract water described in Paragraph 7 above. The replacement water will be provided upstream of the location of the calling water right. The precise timing and amount of releases from the BWCD contract water shall be subject to administration by the Division Engineer and/or the Water Commissioner. B. Depletion Assumption. It is assumed that all evaporative depletions from Snow Belle Pond are 100% consumptive. As denoted on the tables attached hereto as Table 1, total annual losses from Snow Belle Pond have been estimated to be 0.52 acre feet (0.16 surface acres). The total out-of-priority dry-year evaporative losses are anticipated to total 0.347 acre feet over the .16 surface acres as shown on Table 1. C. Exchange Plan Reach. When an exchange is necessary to augment its out-of-priority depletions, Sunny Ranch seeks the right to operate the following appropriate right of exchange: Sunny Ranch seeks approval of a plan to augment by exchange out-of-priority depletions from Snow Belle Pond pursuant to its contractual right to the delivery of the BWCD contract water described in Paragraph 7 above. Downstream Termini: The points of replacement on the Roaring Fork and/or Colorado Rivers of the BWCD's water rights listed in Paragraph 7 above and described with particularity as follows: For the exchange of Green Mountain Reservoir water: The confluence of the Roaring Fork and Colorado Rivers, located in the SE ¼ of the NW ¼ of Section 9, Township 6 South, Range 89 West of the 6th P.M., at a point approximately 2,200 feet from the North Section line and 2,350 feet from the West Section line; For the exchange of Ruedi Reservoir and/or Troy and Edith Ditch water: The confluence of the Roaring Fork and Frying Pan Rivers located in the SW ¼ of the SE ¼ of Section 7, Township 8 South, Range 86 West of the 6th P.M., at a point 750 feet from the South Section line and 1,500 feet from the East Section line; and For the exchange of Robinson Ditch water: The headgate of the Robinson Ditch on the Roaring Fork River as described above. Upstream Terminus: The inlet of Interspace Pipeline in the SW 1/4, NW 1/4, Section 9, Township 10 South, Range 85 West, of the 6th P.M. at a point 2,608 feet from the North section line and 142 feet from the West section line. A map of the BWCD's augmentation supplies is attached as Exhibit B. D. Rate of Exchange: The maximum rate of exchange is .005 c.f.s. up to 0.347 acre feet per year. E. Priority Date: A December 20, 2018 priority date is sought in connection with the subject plan for exchange, which is the date of filing of this application. F. Administration. In the event of a call that cannot be augmented by the above described plan for augmentation, Sunny Ranch shall allow the water level of Snow Belle Pond to fall commensurate with evaporation. The exchange or any portion thereof described herein shall only operate in priority and only at such times as there is a live flow of water in the exchange reaches on the Roaring Fork River and Owl Creek. 9. Measurement Devices: So as to ensure the operation of the augmentation and exchange plan, Sunny Ranch will install and maintain such water measuring devices and implement such accounting procedures as may be required to verify that the amount of augmentation and exchange water equals or exceeds the amount of out-of-priority depletions resulting from the use of water under the claimed plan for augmentation and exchange. 10. Names and addresses of owners of land upon which structures are located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use: Applicant. WHEREFORE, Sunny Ranch requests that this Court enter a decree that: 1. Finds that as a result of appropriation and beneficial use, Sunny Ranch has an absolute water right for the Interspace Pipeline, Second Enlargement as described in Paragraph 3 above; and 2. Finds that as a result of appropriation and beneficial use, Sunny Ranch has an absolute water right for Eastwick Reservoir, a/k/a Becca's Lake, First Enlargement as described in Paragraph 4 above; and 3. Finds that as a result of appropriation and beneficial use, Sunny Ranch has an absolute water right for Snow Belle Pond as described in Paragraph 5 above; and 4. Approves the plan for augmentation and conditional right of exchange to replace out of priority evaporative depletions in Snow Belle Pond as described in Paragraph 8 above; and 5. Finds that as a result of the finding of absolute water rights and plan for augmentation and conditional exchange, there will be no injury to any owner of or persons entitled to use water under a vested water right or decreed conditional right. (14 Pages including exhibits)

YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of FEBRUARY 2019 to file with the Water Clerk a verified Statement of Opposition setting forth facts as to why this application should not be granted or why it should be granted in part or on certain conditions. A copy of such statement of opposition must also be served upon the applicant or the applicant's attorney and an affidavit or certificate of such service shall be filed with the Water Clerk, as prescribed by Rule 5, CRCP. (Filing Fee: \$158.00) KATHY POWERS, Water Clerk, Water Division 5; 109 8th Street, Suite 104 Glenwood Springs, CO 81601.