

Summary of Water Court Application

This is an Application for water right, alternate point of diversion, plan of augmentation, and conditional rights of substitution and exchange.

Staff Recommendation

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

CWCB Instream Flow Water Rights

The CWCB holds instream flow water rights, including the following rights in Water Division 5 in the Colorado Headwaters Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
11CW0152^	Fraser River	confl of Jim Creek	confl of Colorado River	Varies	1922
90CW0302, 90CW0307, 90CW0308, 90CW0315	Fraser River	confl of Jim Creek	confl of Colorado River	8-30 (5/15 - 9/15) 3.5 -19 (9/16 - 5/14)	11/27/1990

^ Donated/Acquired Water Right

Potential for Injury

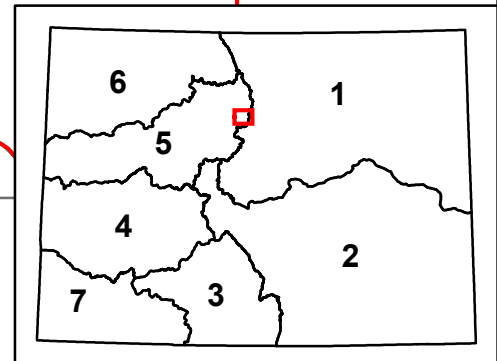
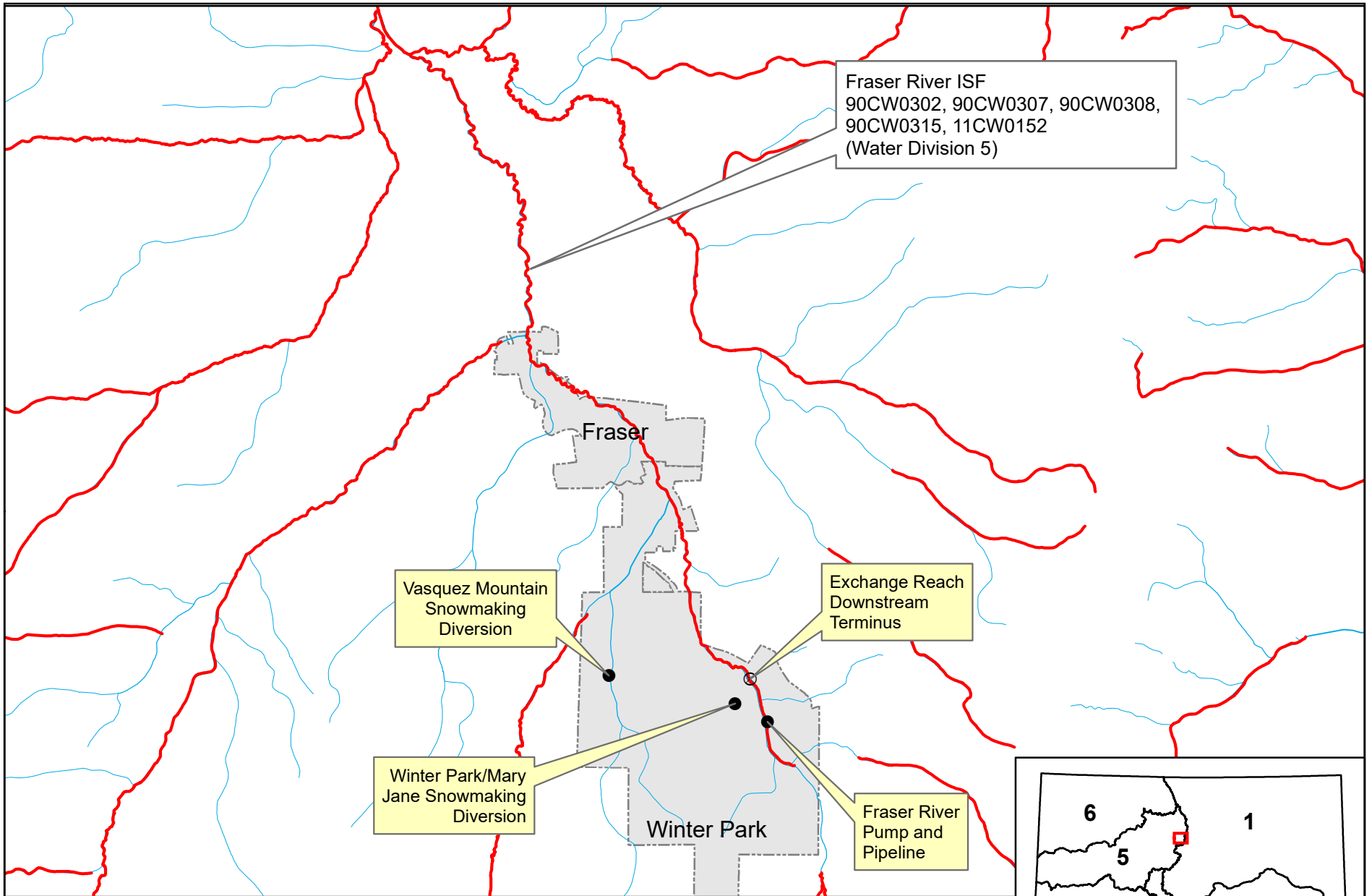
- The proposed appropriative right of exchange should be defined clearly with a reference to intervening instream flow water rights so that the CWCB's instream flow water rights are not injured.
- The requested upstream move of a point of diversion for Applicant's senior water right could injure the intervening instream flow water rights.
- 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.

Other Objectors

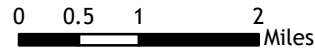
Statements of Opposition were also filed by the City and County of Denver Board of Water Commissioners, Cornerstone Winter Park Holdings, LLC , Granby Reality Holdings LLC, Grand County Water and Sanitation District, Town of Fraser, Winter Park Ranch Water & Sanitation District and, Winter Park Water and Sanitation District.

Attorney Representing CWCB

Jennifer L. Mele, First Assistant Attorney General, is assigned to this case and can be contacted at jennifer.mele@coag.gov, or 720-508-6282.



March 20-21, 2019 CWCB Board Meeting
 Consent Agenda Item 1.r: Statement of Opposition
 Case No. 18CW3223 (Water Division 5)
 Winter Park Recreational Association



DIVISION 5 WATER COURT- DECEMBER 2018 RESUME

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27. 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.*

18CW3223 IN GRAND COUNTY, COLORADO. Winter Park Recreational Association, c/o Bill Pruter, President, Nichols Partnership, Inc., 1644 Platte Street, #130, Denver, Colorado 80202, Telephone (303) 291-2205, Email: bpruter@nicholspartnership.com. Please address all correspondence to: Peggy E. Montañó and Michael A. Kopp, Trout Raley, 1120 Lincoln Street, Suite 1600, Denver, CO 80203, Telephone: (303) 861-1963.

APPLICATION FOR WATER RIGHT, ALTERNATE POINT OF DIVERSION, PLAN OF AUGMENTATION, AND CONDITIONAL RIGHTS OF SUBSTITUTION AND EXCHANGE

1. Names, mailing address, email address and telephone numbers of applicant(s): See above. 2. Description of Application: By this Application, the Applicant seeks to implement terms of the Clinton Reservoir-Fraser River Water Agreement (July 21, 1992), as amended (“Clinton Agreement”), the Colorado River Cooperative Agreement (Sept. 26, 2013), as amended (“CRCA”), and the 2012 Grand County Water Users’ Operating Plan (Oct. 9, 2013) (“2012 Operating Plan”). To that end, the Applicant makes the following claims: first, Applicant seeks the right to divert up to 289.85 acre feet annually for snowmaking purposes delivered via the Fraser River from the Fraser River and Williams Fork Collection System (“Moffat System”) of the City and County of Denver, acting by and through its Board of Water Commissioners (“Denver Water”), pursuant to existing agreements with Denver Water at a back-up or supplemental point of diversion known as the Fraser River Pump and Pipeline (“FRPPL”). Second, the Applicant seeks to add the FRPPL as a back-up or supplemental point of diversion to the water rights decreed in Case No. 92CW332, Water Division 5. Third, Applicant seeks to adjudicate a plan of augmentation by exchange to replace out-of-priority depletions associated with diversions of the snowmaking water in the first claim, again pursuant to existing agreements with Denver Water. Fourth, the Applicant seeks adjudication of a second exchange, which will allow Applicant to divert by exchange snowmaking return flows that drain to the Fraser River below Applicant’s planned point of diversion for the FRPPL. The FRPPL will be constructed at the location described in Paragraph 3, below. The FRPPL is already decreed to divert certain water, as described in Paragraph 7, below. **First Claim: Water Right** 3. Point of Diversion: The FRPPL will be a diversion structure or infiltration gallery located in or immediately adjacent to the Fraser River at a point in the NE1/4 of the SE1/4 of Section 10, T. 2 S, R. 76 W., of the 6th P.M., bearing S 9°15’W, a distance of 7,960 feet from the SE corner of Section 34, T. 1 S., R. 75 W. of the 6th P.M., also described as UTM coordinates (NAD83 datum, Zone 13, meters): 434866.56 Easting, 4415481.49 Northing. A pipeline will run from the diversion structure to Denver Water’s Moffat System and to the Discovery Park Pond. See map attached to the Application as **Exhibit A**. 4. Source: Applicant will divert water from Denver Water’s Moffat System delivered to Applicant at the FRPPL via the Fraser River. Applicant and/or Denver Water will maintain dominion and control over any water Denver Water releases or bypasses from the Moffat System from the point of release or bypass to the point of diversion at the FRPPL. 5. **Rate of Diversion:** 14 cfs. 6. Supplies: Applicant will divert up to 289.85 acre-feet annually (the “Additional Snowmaking Diversions”). The Additional Snowmaking Diversions are based upon Denver Water’s commitments in the Clinton Agreement, Articles III.C.4 and III.C.6 of the CRCA, and Articles 9.C and 11.C.2 of the 2012 Operating Plan to augment depletions of water Applicant diverts for snowmaking purposes at up to 5 times the amount of each of the following sources of water Applicant will use to compensate Denver Water for the consumptive use portion of the Additional Snowmaking Diversions: A. Clinton Reservoir Dead Pool Storage: An increase in the firm annual yield of Clinton Reservoir pursuant to Article III.C.4 of the CRCA, as decreed in Case No. 06CW252, Water Division No. 5, of which Applicant is entitled to 20.03 acre-feet annually, for a total snowmaking diversion of 100.15 acre-feet annually. B. Clinton Reservoir Converted Spillway Enlargement Yield: The yield from the spillway enlargement of Clinton Reservoir pursuant to Article III.C.6 of the CRCA, which allows a spillway enlargement of up to 500 acre-feet. The Clinton Ditch & Reservoir Company may allocate the supply from the spillway enlargement as either fourth year supply for Clinton Reservoir Yield or to increase Clinton Reservoir Yield on the current three-year basis, of which

Applicant will be entitled to up to 12.5 acre-feet annually, for a total snowmaking diversion of 62.5 acre-feet annually. C. Additional 20% Water: This consists of 25.44 acre-feet of water made available annually from Denver Water's Moffat System, which contractual entitlement Applicant acquired from the City of Arvada by Special Warranty Deed dated August 19, 1996. It is currently administered pursuant to temporary delivery agreements between Applicant and Denver Water, the most recent of which is dated September 29, 2014. Pursuant to Article III.E.16 of the CRCA, Denver Water will permanently allocate the Additional 20% Water to Applicant upon completion of the snowmaking return flow recapture program described in Paragraph 9.D of the 2012 Operating Plan, namely construction of the FRPPL and related infrastructure. Applicant's 25.44 acre-feet allows for a total snowmaking diversion of up to 127.2 acre-feet annually. 7. Additional Supplies: The FRPPL is already decreed to divert the following: A. Snowmaking Return Flows: Return flows of water used for snowmaking pursuant to the following decrees: 1. Decree, Case No. 92CW332, District Court, Water Division No. 5 (Jan. 17, 1996): This decree approves Applicant's right to divert return flows of water applied to snowmaking pursuant to the July 21, 1992 Clinton Reservoir-Fraser River Water Agreement ("Clinton Agreement"), pursuant to the methodology decreed therein, and deliver said snowmaking return flows to Denver Water's Moffat System. 2. Decree, Case No. 16CW3159, District Court, Water Division No. 5 (November 25, 2018): This decree approves Applicant's right to divert return flows of water applied to snowmaking pursuant to Applicant's water right for the Discovery Park Pond and store said snowmaking return flows in the Discovery Park Pond. B. Discovery Park Pond: Pursuant to the decree in Case No. 16CW3159, Applicant will divert water at a rate of up to 6 cfs at the FRPPL to fill the Discovery Park Pond. The Discovery Park Pond will be a lined reservoir with a capacity of 40.4 acre-feet located in the N1/2 SW1/4 of Section 10, Township 2 South, Range 75 West, of the 6th P.M.; also described as UTM coordinates (NAD83 datum, Zone 13, meters): 434021.37 Easting, 4415717.98 Northing. See the map attached to the Application as **Exhibit A**. The Discovery Park Pond will be an off-channel reservoir. C. Additional Bypass Water: Article III.E.20 of the CRCA states: "Upon issuance and acceptance by Denver Water of permits necessary for the Moffat Project, Denver Water agrees to make an additional 375 acre-feet of water available to Grand County Water Users." Pursuant to the CRCA and the Article III Implementation Agreement between Denver Water and Applicant dated Sept. 26, 2013, Applicant's share of the Additional Bypass Water is 100 acre-feet. Denver Water adjudicated the right to deliver the Additional Bypass Water to Applicant at the FRPPL and other existing points of diversion in the decree in Case No. 11CW152 (Mar. 15, 2016), Water Division No. 5. 8. Use: Snowmaking within the boundaries of Winter Park Ski Area and Resort, with the right to recapture all snowmaking return flows attributable to diversions fully augmented at the time of diversion. 9. Date of Appropriation: A. 25.44 acre-feet: November 6, 2000, the date 25.44 acre-feet of Additional 20% Water was first used for snowmaking purposes pursuant to a substitute water supply plan approved by the State Engineer and annually renewed since that date. 1. How Appropriation Was Initiated: Execution of agreements with Denver Water providing for the use of 25.44 acre-feet of water from Denver Water's Moffat system for snowmaking purposes, application for and approval of a substitute water supply plan, and application of water to beneficial use. B. 264.41 acre-feet: The date of the filing of this Application for all Additional Snowmaking Diversions beyond 25.44 acre-feet annually. 1. How Appropriation Was Initiated: Filing of this Application, engineering and planning work associated with preparing this Application, together with the formation of intent to appropriate as evidenced by the filing of this Application. C. All diversions of the Additional Snowmaking Diversions will consist entirely of water Denver Water has historically diverted via its Moffat System and transported via the Moffat Tunnel for use on the East Slope. Pursuant to the agreements described in Paragraph 6, above, Denver Water will instead deliver a portion of this water to the Applicant via the Fraser River. These deliveries represent water that was or would have been diverted by Denver Water and would not be available for use by downstream water users regardless of the Applicant's receipt of such deliveries. 10. **Conditions:** A. Pursuant to Paragraph 9.D of the 2012 Operating Plan, the FRPPL is intended to be a supplemental or secondary point of diversion for snowmaking water. Diversions of snowmaking water at the FRPPL shall occur only when adequate snowmaking supplies from the points of diversion described in Paragraph 13, below, are not available. This limitation shall not be applicable to the recapture of snowmaking return flows. B. The Additional Snowmaking Diversions shall also be subject to all other provisions of the 2012 Operating Plan, including but not limited to, the shortage allocation provisions in Paragraph 3.B of the 2012 Operating Plan, as provided in Paragraph 9.D of the 2012 Operating Plan. Recapture of snowmaking return flows shall not be subject to the shortage allocation provisions of the 2012 Operating Plan, as provided therein. C. Diversions of water at the FRPPL will also be subject to the 2013 agreement between Applicant and Winter Park Water and Sanitation District ("WPWSD"). This limitation shall not be applicable to the recapture of snowmaking return flows. **Second Claim: Alternate Point of Diversion** 11. Alternate Point of Diversion: By this application, Applicant seeks to add the FRPPL as an alternate point of diversion for the water rights decreed in Case No. 92CW332. 12. Original Decree: Case No. 92CW332, Water Division No. 5 (Jan. 17, 1996). 13. Original Points of Diversion: A. Winter Park/Mary Jane Snowmaking Diversion: The originally decreed location of the point of diversion in Case No. 92CW332 was "a point in Denver

Water's Moffat System located in the NE1/4 SW1/4 of Section 10, Township 2 South, Range 75 West of the 6th P.M., which bears S. 26°00' W. a distance of 7,480 feet from the NE corner of Section 3, Township 2 South, Range 75 West of the 6th P.M. The basis of bearing is the East section line of said Section 3 which bears more or less due south." This description was based upon available mapping at the time, which included complete surveyed sections only for Township 1 South, Range 75 West of the 6th PM. Based on current mapping, the description of the point of diversion is a point in Denver Water's Moffat System located in the NE 1/4 SW1/4 of Section 10, Township 2 South, Range 75 West of the 6th P.M., which bears S. 26°00' W. a distance of 7,480 feet from the SE corner of Section 34, Township 1 South, Range 75 West of the 6th P.M, or, at UTM Coordinates (NAD83 datum, Zone 13, meters): Northing: 4415821, Easting: 434266. B. Vasquez Mountain Snowmaking Diversion: The originally decreed location of the point of diversion in Case No. 92CW332 was "a point in Denver Water's Moffat System located in the NW1/4 NW1/4 of Section 9, Township 2 South, Range 75 West of the 6th P.M., which bears S. 65°15' W. a distance of 12,100 feet from the NE corner of Section 3, Township 2 South, Range 75 West of the 6th P.M. The basis of bearing is the East section line of said Section 3, which bears more or less due south." This description was based upon available mapping at the time, which included complete surveyed sections only for Township 1 South, Range 75 West of the 6th PM. Based on current mapping, the description of the point of diversion is a point in Denver Water's Moffat System located in the NW 1/4 NW1/4 of Section 9, Township 2 South, Range 75 West of the 6th P.M., which bears S. 65°15' W. a distance of 12,100 feet from the SE corner of Section 34, Township 1 South, Range 75 West of the 6th P.M., or, at UTM Coordinates (NAD83 datum, Zone 13, meters): Northing: 4416339, Easting: 431920. 14. Proposed Alternate Point of Diversion: The FRPPL, located at the point described in Paragraph 3, above. 15. Priority Date: July 21, 1992, as decreed in Case No. 92CW332. 16. Amount: 14 cfs. As provided in paragraph 7.C of the decree in Case No. 92CW332, diversions of snowmaking water under the augmentation plan approved in that decree may not exceed 14 cfs, collectively, for all diversion points. 17. Conditions: Diversions of water at the FRPPL pursuant to Case No. 92CW332 will be subject to all terms and conditions approved in that decree, as well as the following: A. As provided in Paragraph 9.D of the 2012 Operating Plan, the FRPPL is intended to be a supplemental or secondary point of diversion for snowmaking water, and diversions of snowmaking water shall occur only when adequate snowmaking supplies from the points of diversion in Paragraph 13, above, are not available. This limitation shall not be applicable to the recapture of snowmaking return flows. B. As also provided in 9.D of the 2012 Operating Plan, diversions of water at the FRPPL shall also be subject to the shortage allocation provisions in Paragraph 3.B of the 2012 Operating Plan. This limitation shall not be applicable to the recapture of snowmaking return flows. C. Diversions of water at the FRPPL will also be subject to the 2013 agreement between Applicant and Winter Park Water and Sanitation District ("WPWSD"). This limitation shall not be applicable to the recapture of snowmaking return flows. **Third Claim: Augmentation Plan, Including Exchange** 18. Overview: In Case No. 92CW332, Water Division 5, Applicant adjudicated a right of substitution and exchange to augment snowmaking diversions of up to 450 acre-feet per year, which Applicant acquired the right to divert via the Clinton Agreement, and which Denver Water also agreed in the Clinton Agreement to augment. The Applicant has since acquired the right to divert the Additional Snowmaking Diversions in the amount of up to 289.85 acre-feet per year, as described in Paragraph 6, above, and Denver Water has agreed to augment these diversions. The Applicant now seeks to adjudicate an additional plan of augmentation, including exchange, to replace out-of-priority depletions associated with 289.85 acre-feet per year of Additional Snowmaking Diversions described in Paragraph 6 consistent with and complementary to Applicant's original augmentation plan and exchange approved in Case No. 92CW332. Applicant's diversions for snowmaking purposes pursuant to both the augmentation plan approved in Case No. 92CW332, up to 450 acre-feet annually, and the augmentation plan sought herein, up to 289.85 acre-feet annually, will total up to 739.85 acre-feet annually. As described in Paragraph 9.C, above, the Additional Snowmaking diversions are water Denver Water has historically diverted as part of its Moffat System and transported through the Moffat Tunnel for use on the eastern slope. Denver Water will now, under and subject to the terms of the Clinton Agreement, the CRCA, and the 2012 Operating Plan, deliver to the Applicant or allow the Applicant to divert from the Moffat System such water for snowmaking purposes, will augment the Additional Snowmaking Diversions one for one by releases from the reservoirs described in Paragraph 20 below, and will recapture the snowmaking return flows as described in Paragraph 24 below. 19. Structures to Be Augmented by Exchange: A. Winter Park/Mary Jane Snowmaking Diversion: As described in Paragraph 13.A, above. B. Vasquez Mountain Snowmaking Diversion: As described in Paragraph 13.B, above. C. FRPPL: As described in Paragraph 3, above. 20. Water Rights to Be Used for Augmentation by Exchange: A. Williams Fork Reservoir: 1. Date Entered: November 5, 1937; 2. Case: Case No. CA-657; 3. Court: District Court; 4. Type of Water Right: Storage; 5. Legal description of point(s) of diversion or place of storage: The decreed location of the reservoir is in Sections 23, 25, 26, 27, 34, 35, and 36, T. 1 N., and Sections 1 and 2, T. 1 S., all in R. 79 W., 6th P.M.; 6. Source: Williams Fork River; 7. Amount: 93,637 acre-feet; and 8. Appropriation Date: November 10, 1935. B. Williams Fork Reservoir: 1. Date Entered: November 7, 1974, nunc pro tunc May 30, 1972; 2. Case: Case No.

CA-1430; 3. Court: District Court; 4. Type of Water Right: Storage; 5. Legal description of point(s) of diversion or place of storage: Located in the channel of the Williams Fork River upstream from a dam located thereon, said dam more particularly described, to-wit: The initial point of survey for said dam is located at the southeast end thereof whence the Southeast Corner of Section 23, T. 1 N., R. 79 W., of the 6th P.M. bears South 24°53' E. a distance of 2,175 feet; 6. Source: Williams Fork River and the streams and tributary drainage entering said reservoir at and above and below its high water line; 7. Amount: 93,637 acre-feet; and 8. Appropriation Date: October 9, 1956 C.

Wolford Mountain Reservoir: 1. Date Entered: November 20, 1989; 2. Case: Case No. 87CW284; 3. Court: District Court; 4. Type of Water Right: Storage; 5. Legal description of point(s) of diversion or place of storage: The dam is located in the SW1/4 of the NE1/4 of Section 25, T. 2 N., R. 81 W. of the 6th P.M. The intersection of the dam axis with the right abutment will occur at a point which bears S. 54°54'20" E. a distance of 3,716.46 feet from the NW Corner of said Section 25; 6. Source: Muddy Creek and its tributaries, all tributary to the Colorado River; 7. Amount: 59,993 acre-feet; and 8. Appropriation Date: December 14, 1987. 21. Maximum Rate of Exchange: 14 cfs

A. The Additional Snowmaking Diversions will be limited to the period from September 15 to April 1. B. The Additional Snowmaking Diversions will not exceed the rate of 7 cfs at each of the Diversion Points described in Paragraphs 19.A and 19.B, above, 14 cfs at the Diversion Point described in Paragraph 19.C, and 14 cfs, collectively, at all Diversion Points described in Paragraph 19. C. The Winter Park Second Snowmaking Exchange will be subject to an annual volumetric limit of 289.85 acre-feet. 22. Appropriation Date: The date of the filing of this Application. A. How Appropriation Was Initiated: Filing of this Application, engineering and planning work associated with preparing this Application, together with the formation of intent to appropriate as evidenced by the filing of this Application. B. The Additional Snowmaking Diversions shall be subject to the shortage allocation and other provisions of the 2012 Operating Plan. 23. Operation of Plan for Augmentation by Exchange: A. During each period September 15 through April 1 (the "Snowmaking Season"), Applicant will record daily and report to the Clinton Ditch and Reservoir Company ("CDRC") the amount of Additional Snowmaking Diversions. The CDRC will report to the State Engineer and Denver Water on the same day each week the amount of Additional Snowmaking Diversions during the prior seven days. B. Denver Water will release or cause to be released water from Williams Fork Reservoir or, if legally available, Wolford Mountain Reservoir in the amount of the Additional Snowmaking Diversions. For Additional Snowmaking Diversions made between September 15 and January 1, such releases will be made by the 15th day of the month following the month of Additional Snowmaking Diversions, or as otherwise may be agreed to between Denver Water and the Division Engineer. For Additional Snowmaking Diversions made after January 1, the releases will be made in the week following such Additional Snowmaking Diversions, or as otherwise may be agreed to between Denver Water and the Division Engineer. C. Applicant will install and maintain such measuring devices as deemed necessary by the State Engineer pursuant to C.R.S. § 37-92-502(5) to administer this exchange. Applicant will also implement such accounting and reporting procedures as may be reasonably required by the State Engineer or Division Engineer to administer this exchange. 24. Snowmaking Return Flows: 100% of the Additional Snowmaking Diversions will be replaced as provided above. Moreover, the Additional Snowmaking Diversions are water Denver Water would otherwise have diverted through the Moffat System to the eastern slope and thus were historically fully consumptive to the Fraser and Williams Fork River systems. Under the Clinton Agreement and as decreed in Case No. 92CW332 and herein, Denver Water has the right to recapture, reuse, and dispose of or otherwise receive credit for all return flows attributable to the Additional Snowmaking Diversions (the "Additional Snowmaking Return Flows"). Pursuant to the decree in Case No. 92CW332, the Additional Snowmaking Return Flows will be accounted for as 80% of the amount of the Additional Snowmaking Diversions, except as provided in Paragraph 24.H below. A. Additional Snowmaking Return Flows from areas naturally tributary to Denver Water's Moffat System will be captured directly by Denver Water. B. Additional Snowmaking Return Flows from areas not naturally captured by Denver Water's existing Moffat System will return to the Fraser River above the FRPPL, except as provided in Paragraph 24.C, below. Additional Snowmaking Return Flows from these areas will be captured by the FRPPL and pumped back to Denver Water's Moffat System. C. Additional Snowmaking Return Flows from the Turnpike and Sorensen Park runs also are not naturally captured by Denver Water's existing Moffat System but return to the Fraser River downstream of the FRPPL. Additional Snowmaking Return Flows from this area will be exchanged back to the FRPPL, pursuant to the right of substitution and exchange described in Paragraphs 25-31, below, where they will be captured and pumped back to Denver Water's Moffat System. D. Applicant will separately measure and record the amount of Additional Snowmaking Diversions applied to tributary areas, nontributary areas, and the Turnpike and Sorensen Park runs. During the ensuing spring runoff, Applicant will divert on behalf of Denver Water at the FRPPL, described in Paragraph 3, above, an amount equal to 80% of the Additional Snowmaking Diversions applied to the nontributary area and may divert by exchange 80% of the amount applied to the Turnpike and Sorensen Park runs, consistent with the terms of that exchange. All nontributary return flows diverted at the FRPPL either directly or by exchange were fully replaced at the time of diversion and will belong to Denver Water. They can be diverted at the FRPPL

and used by Denver Water as part of its Moffat System. E. Pursuant to the methodology for recapture of snowmaking return flows detailed in Paragraphs 9.D and 9.E of the decree in Case No. 92CW332, diversion of snowmaking return flows will be timed to be directly proportional to the melting snowpack. For example, if a total snow depth of 48 inches is recorded on April 1 and a depth of 40 inches is recorded on April 8, the snowpack depth would have been reduced by 16.7% (8 inch loss/48 inch total) during the week. During this week, water could be diverted in the amount of 16.7% of the total calculated Additional Snowmaking Return Flows. Thus, if 20 acre-feet had been used for snowmaking, there would be 16 acre-feet of total snowmaking return flows (20 x 80%). Of this 16 acre-feet, 2.672 (16 x 16.7%) could be diverted during April 1 to April 8. During a week when snowpack increased due to a late season storm, no snowmaking return flows would be available for diversion. F. Snowpack depth measurements will be taken weekly beginning April 1 of each year and continuing until all snowpack is gone. Snowpack depth measurements will be taken in the same place, and in the same manner, approved for snowpack depth measurements pursuant to the decree in Case No. 92CW332. G. Applicant shall only divert nontributary return flows attributable to the Turnpike and Sorensen Park runs, pursuant to the right of substitution and exchange claimed below. H. Until such time as the snowmaking return flow studies (“Snowmaking Return Flow Studies”) contemplated by Article III.B.14.a of the CRCA and Paragraph 9.C of the 2012 Operating Plan have been completed, the Applicant may account for snowmaking return flows from the Additional 20% Water using the 80% return flow factor approved in Case No. 92CW332. Once the Snowmaking Return Flow Studies for Winter Park Ski Area and Resort have been completed, the Applicant shall, beginning the first full snowmaking season following the completion of the studies, account for snowmaking return flows from the Additional 20% Water using a return flow ratio derived from the Winter Park Snowmaking Return Flow Studies (the “Snowmaking Return Flow Studies Ratio”). The Snowmaking Return Flow Studies Ratio shall be not more than 5 to 1 (or such other ratio based on the amount of credited snowmaking return flows established by subsequent decrees). Denver Water and Applicant agree to cooperate in maximizing the amount of snowmaking return flows in any Water Court proceeding. During the spring runoff, the Applicant may divert 80%, or the Snowmaking Return Flow Studies Ratio, as appropriate, of water applied to snowmaking from the Additional 20% Water. Snowmaking return flows attributable to the Clinton Reservoir Dead Pool Storage and the Clinton Reservoir Converted Spillway Enlargement Yield will continue to be accounted for using the 80% return flow factor pursuant to paragraph 2(b) of the Clinton Agreement and will not be accounted for using the Snowmaking Return Flow Studies Ratio. **Fourth Claim: Substitution and Exchange** 25. Name of Exchange: Snowmaking Return Flow Exchange 26. Overview: Return flows from water applied to snowmaking on the Turnpike and Sorensen Park runs drain to the Fraser River below the FRPPL point of diversion. Applicant will divert such return flows by exchange to the FRPPL as described herein. 27. Upstream Terminus: The upstream terminus of the exchange reach is the FRPPL, whose location is specified in Paragraph 3, above. 28. Downstream Terminus: The downstream terminus of the exchange reach is a point in the NW1/4 NE1/4 of Section 10, Township 2 South, Range 75 West, of the 6th P.M. in Grand County, Colorado, at UTM coordinates (NAD83 datum, Zone 13, meters): 434545.00 Easting, 4416276.00 Northing. 29. Maximum Rate of Exchange: 0.3 cfs A. The amount, availability, and timing of return flows from the Turnpike and Sorensen Park runs will be determined using the methodology described in Paragraph 24, above; the decree in Case No. 92CW332; or the decree in Case No. 16CW3159, as applicable to each source of return flows identified in Paragraph 30, below. 30. Sources of Water to Be Exchanged: Snowmaking return flows applied to the Turnpike and Sorensen Park areas attributable to water applied to snowmaking pursuant to the decrees in Case Nos. 92CW332, 11CW152, 16CW3159, the decree entered in this case, and any other source of water legally available to the Applicant for snowmaking purposes, the return flows of which may be lawfully diverted pursuant to the decree(s) governing the use of such water. 31. Appropriation: A. Appropriation Date: The date of the filing of this application. B. How Appropriation Was Initiated: Filing of this Application, engineering and planning work associated with preparing this Application, together with the formation of intent to appropriate as evidenced by the filing of this Application. 32. General Terms and Conditions: A. Applicant’s use of water pursuant to the rights sought in this Application will be subject to all existing decrees and agreements governing the use of such water, including but not limited to the CRCA, the 2012 Operating Plan, and the Clinton Agreement, as amended. 33. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new or existing diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: A. Applicant. B. United States Forest Service Forest Supervisor’s Office 2150 Centre Avenue, Building E Fort Collins, Colorado 80526. (15 pages)

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.