

Consent Agenda Item 1.c

March 11-12, 2020 Board Meeting

Case No. 19CW3089 (Water Division 2); Upper Arkansas Water Conservancy District

Summary of Water Court Application

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 2020 to protect CWCB's instream flow water rights.

CWCB Instream Flow Water Rights

The CWCB holds water rights, including the following instream flow water right in Water Division 2 in the Arkansas River Headwaters Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
79CW0115 (Div. 2)	Cottonwood Creek	confl M&S Cottonwood Creeks	confl Arkansas River	20 (1/1 - 12/31)	03/14/1979

Potential for Injury

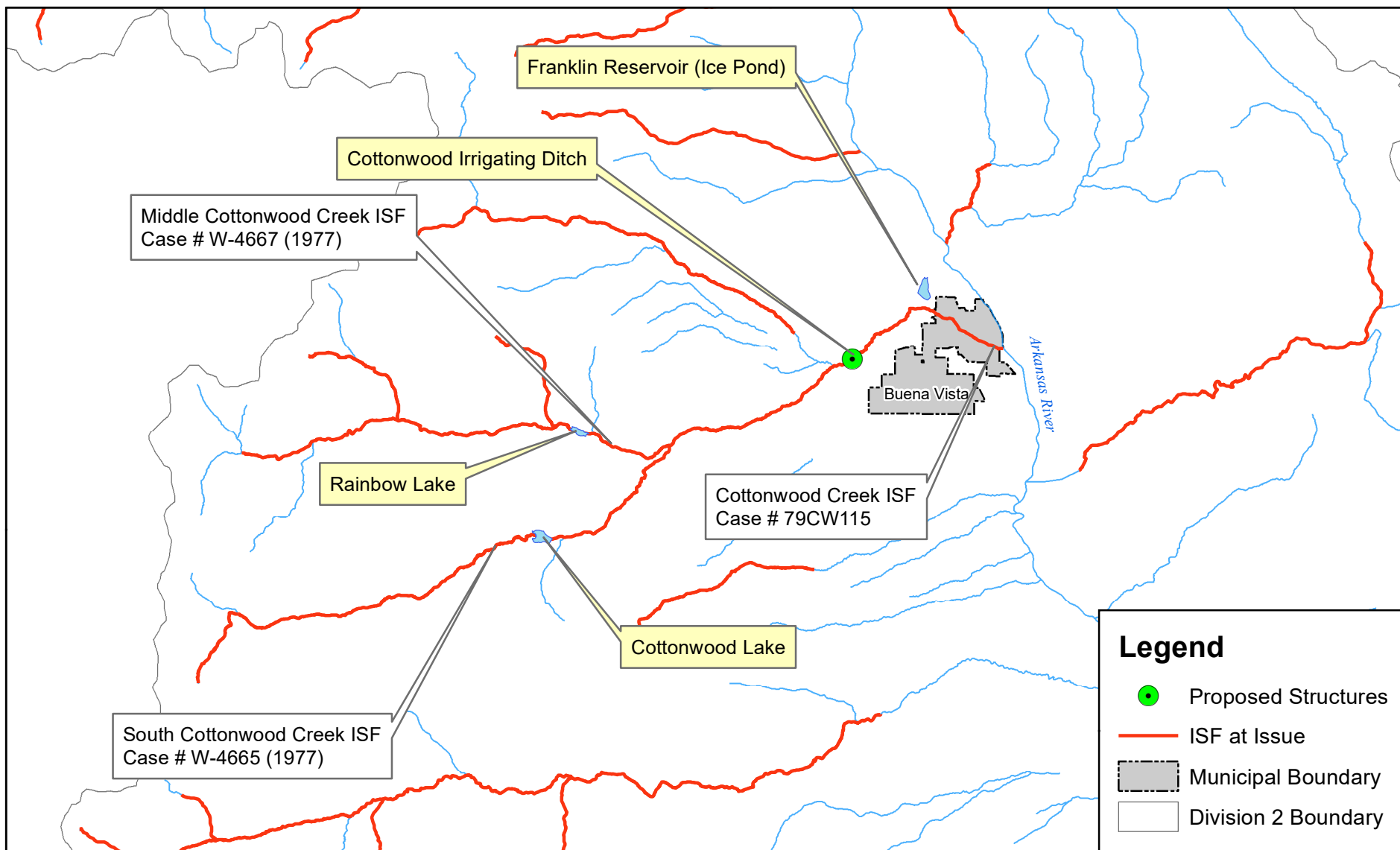
- To the extent Applicant seeks to rely on or incorporate operations from previously-decreed augmentation plans or exchanges, or use and store the water in undefined locations for unspecified uses, CWCB instream flow water rights in the Arkansas Headwaters Watershed not specifically listed above may be injured thereby.
- Use of the changed water rights in augmentation plans previously decreed to Applicant must be subject to any relevant terms and conditions from the decrees approving such augmentation plans, including but not limited to the terms and conditions from the decree entered in Case 06CW32.
- The proposed change of water rights could cause an expansion of use and could alter the time, place and amount of historical return flows, which could injure the CWCB's instream flow water rights.
- The proposed change in places of storage to upstream locations appear to involve administrative exchanges, which could injure the CWCB's instream flow water rights if not clearly defined in the decree.
- The proposed general use in other exchanges and plans for augmentation should be defined clearly with a reference to intervening instream flow water rights and relative priorities so that the CWCB's instream flow water rights are not injured.

Other Objectors

Statements of Opposition were also filed by: Bob Woolmington, Lee Rooks, Kelly Ranch, and Sailor Investments, L.L.P.; The City of Aurora, Colorado, a municipal corporation of the counties of Adams, Arapahoe, and Douglas, acting by and through its Utility Enterprise ("Aurora"); Colorado Division of Parks and Wildlife and Parks and Wildlife Commission ("CPW"); Lakeside Estates Preserve Homeowners Association; Town of Buena Vista, Colorado; and Southeastern Colorado Water Conservancy District.

Attorney Representing CWCB

Ema I. G. Schultz, Senior Assistant Attorney General, is assigned to this case and can be contacted at ema.schultz@coag.gov, or 720-508-6307.



Legend

- Proposed Structures
- ISF at Issue
- Municipal Boundary
- Division 2 Boundary



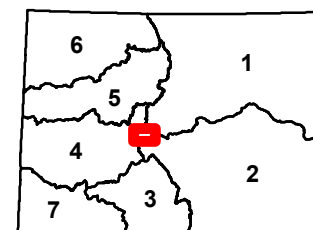
COLORADO

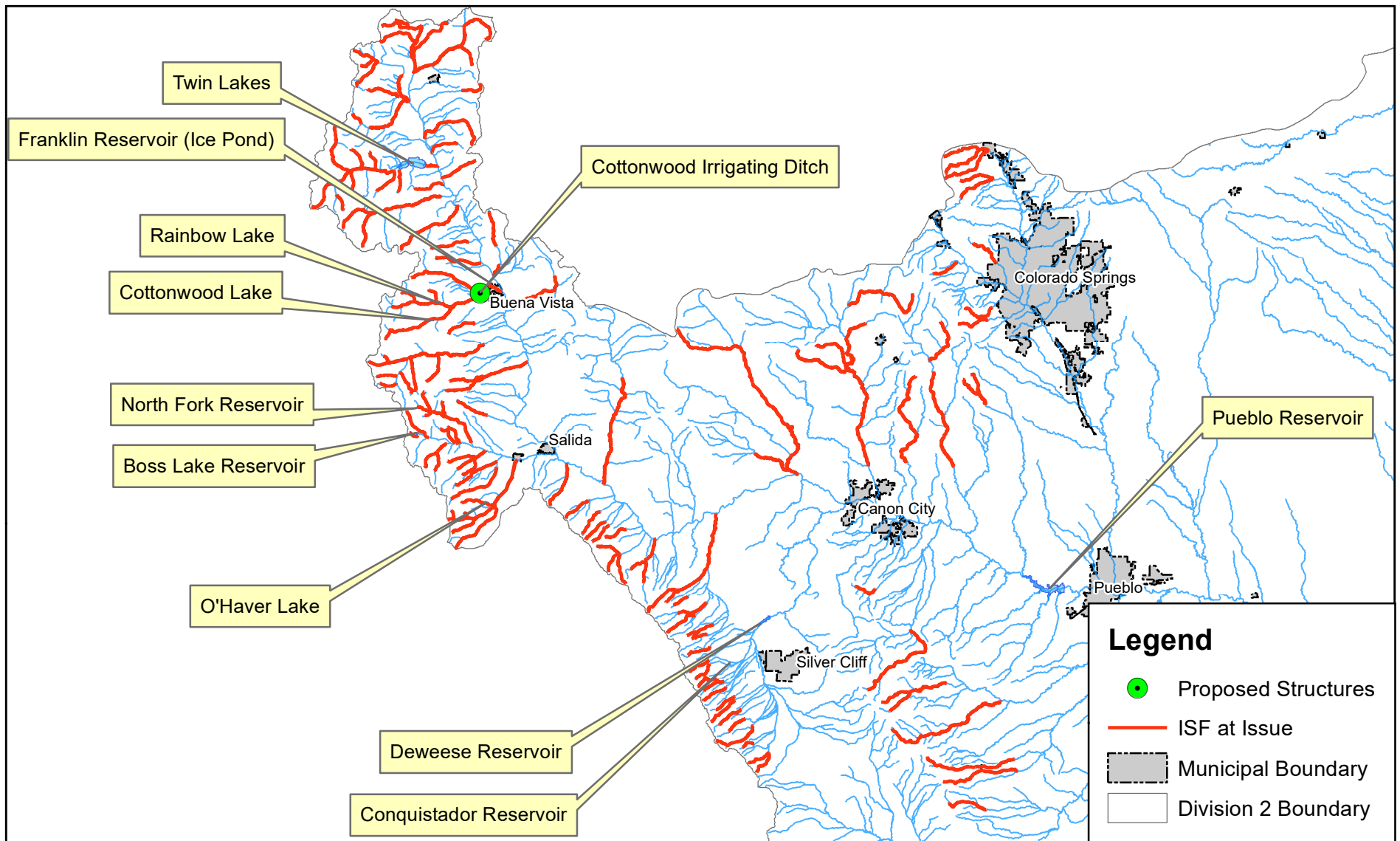
**Colorado Water
Conservation Board**

Department of Natural Resources

March 11-12, 2020 CWCB Board Meeting
Consent Agenda Item 1.c. Statement of Opposition
Case No. 19CW3089 (Division 2)
Upper Arkansas Water Conservancy District

0 1.75 3.5 7 Miles



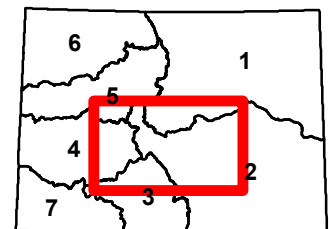


COLORADO
Colorado Water
Conservancy Board

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 Case No. 19CW3089 (Division 2)
 Upper Arkansas Water Conservancy District

0 12.5 25 50 Miles



DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING DECEMBER 2019 AND INVITATION TO JOIN STATE ENGINEER'S SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST AND/OR THE STATE ENGINEER'S PRODUCED NONTRIBUTARY GROUND WATER NOTIFICATION LIST

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during December 2019, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved, and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 2019CW3089; THE UPPER ARKANSAS WATER CONSERVANCY DISTRICT, ACTING THROUGH THE UPPER ARKANSAS WATER ACTIVITY

ENTERPRISE, P.O. Box 1090, Salida, Colorado 81201, (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: LAW OF THE ROCKIES, Kendall K. Burgemeister, Atty. Reg. #41593, 525 North Main Street, Gunnison, CO 81230, Phone: 970-641-1903).

Application for a Change of Water Rights

CHAFFEE, CUSTER, FREMONT, LAKE, AND PUEBLO COUNTIES.

2. Description of Changed Rights. In this case, UAWCD seeks to change a portion of the water rights decreed to the Cottonwood Irrigating Ditch that were previously quantified in Case No. 79CW172 (Div. 2), more particularly described as follows: Name of structure: Cottonwood Irrigating Ditch (WDID 1100648). Legal description: On the south bank of Cottonwood Creek, in the SW1/4NE1/4, Section 13, Township 14 South, Range 79 West, 6th P.M., in Chaffee County. Decreed source: Cottonwood Creek, tributary to the Arkansas River. Appropriation dates, amounts decreed, and amounts Applicant intends to change: Priority 15: July 31, 1866, 6cfs, 0.145 cfs; Priority 43: December 31, 1872, 13 cfs, 0.535 cfs. Original and all relevant subsequent decrees for all of the above water rights: CA-1127 (6/19/1890, District Court, Chaffee County). 79CW172 (January 9, 1981, Water Division 2). Other portions of the Cottonwood Irrigating Ditch that are not being changed in this case were the subject of Case Nos. CA-4396, CA-4738, and W-4411. Decreed uses: Irrigation. **3. Detailed description of proposed change:** UAWCD operates existing plans for augmentation that augment out-of-priority depletions from structures located within portions of UAWCD's territory (See, e.g., 92CW84, 94CW5, 06CW32). UAWCD also operates a Rule 14 replacement plan to replace depletions from wells located within UAWCD's boundaries. UAWCD may also obtain approval of additional plans for augmentation and/or substitute water supply plans (or similar administratively approved plans that may be authorized by statute in the future) to replace out-of-priority depletions from structures located within UAWCD's boundaries. In this case, UAWCD seeks to change the Changed Rights to allow their use as a source of

**Attachment
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augmentation or replacement water in all such plans (the “Changed Uses”). UAWCD’s use of the Changed Rights for the Changed Uses may occur by applying stream depletion credits from the Changed Rights as they accrue to the stream, or through storage in and subsequent release from the storage structures listed below: Pueblo Reservoir (WDID: 1403526): The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section bears North 61° 21’20” East, a distance of 2,511.05 feet, in Pueblo County (Division Engineer’s reported location: 524076E, 4235362N); O’Haver Reservoir (WDID: 1103921): Near the center of Section 12, Township 48 North, Range 7 East, NMPM., in Chaffee County (Division Engineer’s reported location: 399983E, 4253720N); North Fork Reservoir (WDID: 1103300): In Section 5, Township 50 North, Range 6 East, NMPM, more particularly described as: The northeasterly point of contact of the dam axis with the existing ground is at a point whence the Northwest corner of Section 21, T.50N., R.7E, NMPM, in Chaffee, County, Colorado bears South 68°50’ East a distance of 31,920 feet; said point being further described by bearing on the Peak of Granite Mountain of North 23°28’ West and by bearing on the Peak of Calico Mountain of North 37°03’ East, in Chaffee County (Division Engineer’s reported location: 384999E, 4274370N); Boss Lake Reservoir (WDID: 1103920): E½ of Sec. 25 and NE¼ Sec. 29, T. 50 N., R. 6 E. NMPM, in Chaffee County (Division Engineer’s reported location: 385004E, 4268662N); Cottonwood Lake (WDID: 1104005): Section 36, Township 14 South, Range 80 West, 6th P.M., in Chaffee County (Division Engineer’s reported location: 388969E, 4293209N); Rainbow Lake (WDID: 1103535): S½ Section 19 and N½ Section 30, T.14S., R.79W., 6th P.M. in Chaffee County (Division Engineer’s reported location: 390150E, 4296557N); DeWeese Reservoir (WDID: 1303613): The southeasterly corner of the dam of said reservoir is North 41°37’ East, and is distant 758.7 feet from the Northeast Corner of Section 20, T. 21 S., R. 72 W., 6th P.M., in Custer County (Division Engineer’s reported location: 460703E, 4229165N); Twin Lakes Reservoir (WDID: 1103503): Twin Lakes Reservoir is formed by a dam across Lake Creek in Lake County in Section 23, Township 11 South, Range 80 West of the 6th Principal Meridian, as described in the Decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980 (Division Engineer’s reported location: 387247E, 4326098N); and Conquistador Reservoir (WDID: 1303535): SE ¼ of Section 21, Township 22 South, Range 73 West of the 6th P.M., in Custer County (Division Engineer’s reported location: 452098E, 4219247N). Franklin Reservoir (a/k/a Ice Lake) (WDID 1103511): SWNW Section 8, Township 14 South, Range 78 West, 6th P.M., in Chaffee County (Division Engineer’s reported location: 400754E, 7300760N). The above described uses may be accomplished directly or by exchange, including by exchange pursuant to UAWCD’s exchange decreed in Case No. 04CW96. The historical consumptive use of the Changed Rights was determined in Case No. 79CW172. In that case, 1 cfs owned by the applicants was found to irrigate 26 acres, resulting in an average annual consumptive use of 34 acre-feet per year, or 1.31 acre-feet per acre per year. Those findings are not subject to re-litigation in this case. Williams v. Midway Ranches Prop. Owners Ass’n, 938 P.2d 515, 524-26 (Colo. 1997). UAWCD is the successor in interest to the applicants in Case No. 79CW172, and the Changed Rights are a portion of

the rights quantified in 79CW172. The Changed Rights are 68% of the water rights changed in 79CW172, therefore, the historical consumptive use of the Changed Rights is 23.12 acre-feet per year. In Civil Action No. 4396 (Chaffee County), the point of diversion of another portion of the Cottonwood Irrigating Ditch water rights was changed to a point on the southeast bank of Cottonwood Creek, in the W1/2E1/2 Section 13, Township 14 South, Range 79 West, 6th P.M., from whence the northwest corner of said Section 13 bears North 52°33' West a distance of 4425 feet. This new point of diversion is sometimes referred to as Cottonwood Irrigating 2 and is assigned WDID 1100936. Per the Decree entered in Case No. W-4411, Cottonwood Irrigating 2 is used as the point of diversion and measurement for the 3.8 cfs changed in Case No. W-4411. Cottonwood Irrigating 2 is located approximately 200 feet or less upstream of the Cottonwood Irrigating Ditch. Because the Cottonwood Irrigating 2 is already set-up divert and return water to Cottonwood Creek, UAWCD requests the flexibility to divert, measure, and administer the Changed Rights at the Cottonwood Irrigating 2 point of diversion. Return flows from the historical use of the Changed Rights accrued to the Arkansas River. UAWCD requests the right to use any fully consumable water rights in its portfolio, but not Fryingpan Arkansas Project Water, to comply with any obligation to maintain historical return flows from the Changed Rights in time, location, and amount. When return flows are replaced using water other than the Changed Rights, the corresponding diversion of the Changed Rights shall be a fully consumable depletion credit available for the Changed Uses. The other rights that UAWCD may use to replace return flows include fully consumable water attributable to: Water available pursuant to shares of Twin Lakes Reservoir and Canal Company owned, leased, or controlled by UAWCD ("Twin Lakes Water"). The water rights producing the pro rata interest of UAWCD are described in detail in the Application on file with the Court, and in Decrees entered in Civil Action No. 3082, District Court, Garfield County, August 25, 1936; Case No. W-1901, District Court, Water Division 5, May 12, 1976; 95CW321; Civil Action No. 2346, District Court, Chaffee County, July 14, 1913; Case No. W-3965, District Court, Water Division 2. North Fork Reservoir. Case Number, Date, and Court of Original Decree: 82CW204, May 23, 1983, nunc pro tunc April 14, 1983, District Court, Water Division 2. Case Number, Date, and Court of Subsequent decrees: 87CW23, May 10, 1988; 94CW17, November 22, 1994; 00CW121, September 20, 2006; 12CW97, February 9, 2013; 13CW3030, December 2, 2013; 19CW3014 (pending); all in District Court, Water Division 2. Location: SE¼ of Section 5, Township 50 North, Range 6 East, N.M.P.M., in Chaffee County, Colorado. Source: North Fork, South Arkansas River. Appropriation Date: September 9, 1982. Amount: 595 acre-feet (495 acre-feet absolute, 100 acre-feet conditional). Use: irrigation, municipal, industrial, recreational and augmentation uses. O'Haver Reservoir. Case Number, Date, and Court of Original Decree: 82CW205, June 28, 1985, District Court, Water Division No. 2, Colorado, Case Number, Date, and Court of Subsequent Decrees: 88CW75, September 6, 1989, amended July 13, 1990; 95CW207, December 10, 1996; 02CW178, November 25, 2003; 09CW128, March 31, 2011; 13CW3031, November 4, 2013, all in District Court, Water Division 2. Location: Near the center of Section 12, T.48 N. R.7E., N.M.P.M., Chaffee County, Colorado. Source: Gray's Creek by means of O'Haver filler Ditch. Appropriation Date: September 9, 1982. Amount: 193 acre-feet (absolute). Uses:

Irrigation, municipal, industrial, augmentation, and recreational. Water Leased from Board of Water Works of Pueblo, Colorado. UAWCD has entered into a lease with the Board of Water Works of Pueblo, Colorado (BWWP), for 202 acre-feet of fully consumable water per year, for a term of 40 years. With respect to the source of the water to be provided the lease provides in pertinent part that BWWP “will deliver water derived from the Board's shares in the Twin Lakes Reservoir and Canal Co. to the extent that such water is available to the Board. If Board does not have sufficient water from the Twin Lakes Reservoir and Canal Co. to satisfy its delivery obligations under this lease, then the Board may deliver water from other sources of fully consumable water available to the Board including, but not limited to, stored water at Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir, from direct flow transmountain water or transmountain return flows by exchange.” The leased water will be delivered at confluence of Lake Creek and the Arkansas River, or at Pueblo Reservoir. The Twin Lakes water rights are described above. On information and belief, other water rights that BWWP owns or has the right to use and that may also be used to deliver water under the lease include, but are not necessarily limited to: The Ewing Placer Ditch, the Warren E. Wurtz Ditch, the Wurtz Extension Ditch, the Busk-Ivanhoe System, and the Homestake Project, as each such right was changed in one or more of the following cases: 84CW177 (Div. 2); 84CW177(B) (Div. 2); and 90CW340 (Div. 5). The points of diversion of the foregoing water rights are located in the Colorado River drainage basin. Other water rights may include the Clear Creek Reservoir Second Enlargement, 04CW130 (Div. 2), and BWWP's interest in the West Pueblo Ditch, 90CW55 (Div. 2). HBL Water Rights. Name of Structure: Alfred Katzenstein Ditch No. 1 (aka A. Katzenstein Ditch No. 1) (Priority Nos. 51 and 207(B)). Date of Prior Decrees, Case Numbers, and Court: Original Decree: Decree of the Fremont County District Court dated March 12, 1896. Relevant subsequent decrees: 95CW10, August 4, 1998 (changed to augmentation use); 00CW42, February 12, 2001 (added alternate point of diversion); 10CW30, March 10, 2013 (change for use in Plan for Augmentation (the “06CW32 Plan”) approved by the decree entered in Case No. 06CW32 (the “06CW32 Decree”) and storage in Pueblo and DeWeese Reservoirs), all in District Court, Water Division 2. Conquistador Reservoir No. 1: Date of Prior Decrees, Case Numbers, and Court: Original decree: District Court, Water Division 2, August 1, 1978, Case No. W-4320. Relevant subsequent decrees: 86CW67, January 9, 1987 (change in place of storage); 95CW10, August 4, 1998 (changed to use in HBL augmentation plan); 00CW3, September 27, 2001 (decreed absolute storage right for 134.6 acre-feet, and the remaining conditional 15.4 acre-feet was declared to be abandoned); 10CW30 (change for use in 06CW32 Plan and storage in Pueblo and DeWeese Reservoirs), all in District Court, Water Division 2. The A. Katzenstein Ditch No. 1 and Conquistador Reservoir No. 1 water rights are more particularly described in the Application on file with the Water Court, and in the Decrees entered in Case Nos. 95CW10, 00CW42, and 10CW30. Friend Ranch Water Rights. Name of structures: Huntzicker Ditch (WDID: 1100600), Hensie Ditch No. 1 (WDID: 1100602), Boon Ditch No. 2 (WDID: 1100608), Hensie Ditch No. 2 (WDID: 1100609), Mundlein Ditch No. 2 (WDID:


1100597). Original and all relevant subsequent decrees for all of the above water rights (the "Friend Ranch Water Rights"): Civil Action No. 1127, District Court, Chaffee County (6/19/1890); W-294, District Court, Water Division 2 (October 18, 1978); 07CW111, District Court, Water Division 2 (June 13, 2012); 17CW3037, District Court, Water Division 2 (March 22, 2019). In Case No. 07CW111, the Friend Ranch Water Rights were changed from irrigation use to direct flow and storage for the Town of Poncha Springs's municipal uses in its existing and future service areas including the Friend Ranch, including, without limitation, domestic, commercial, industrial, irrigation, recreational, fire protection, augmentation, exchange and replacement purposes as provided in the 07CW111 Decree. In Case No. 17CW3037, UAWCD changed the Friend Ranch Water Rights to allow their use as a source of augmentation or replacement water in all existing and future plans for augmentation, Rule 14 replacement plan, substitute water supply plans, and other statutorily authorized plans, including but not limited to, such approval as authorized by C.R.S. §§ 37-92-308, 37-92-309, 37-60-115(8), or 37-83-101 et seq., operated by UAWCD to replace out-of-priority depletions from structures located within UAWCD's boundaries, in addition to the existing decreed uses by the Town of Poncha Springs. The Friend Ranch water rights are more fully described in the Application on file with the Water Court, and in the Decrees in Case Nos. 07CW111 and 17CW3037. A map showing the Cottonwood Irrigating Ditch and Cottonwood Irrigating 2 points of diversion, a map showing the location of UAWCD's boundaries and the proposed places of storage, and a table of diversion records for the Cottonwood Irrigating Ditch are attached as Exhibits to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). **4. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new 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:** Pueblo Reservoir, Twin Lakes Reservoir: U.S. Dep't of Interior, Bureau of Reclamation, 11056 West County Rd., 18-E, Loveland, CO, 805379711 ("Bureau of Reclamation"). O'Haver Reservoir, North Fork Reservoir, Cottonwood Lake: United States Department of Agricultural, Forest Service, 5575 Cleora Road, Salida, CO 81201 ("Forest Service"). Boss Lake Reservoir: SALCO ASSOCIATES, L.L.P., 225 G Street, Salida, CO 81201; and the Forest Service. Rainbow Lake: Rainbow Lake Resort, Inc., P.O. Box 17450, Oklahoma City, OK, 73136. DeWeese Reservoir: DeWeese-Dye Ditch and Reservoir Company, 1631 Chestnut Street, Canon City, CO 81212. UAWCD holds the right to store water in the lower bay of Conquistador Reservoir, which is on land owned by C. Jean Zeller, PO Box 25, Westcliffe, CO 81252. Franklin Reservoir: Lakeside Estates Preserve Homeowners Association, PO Box 4454, Buena Vista, CO 81211-4454. The Cottonwood Irrigating Ditch 1 and 2: Robert Orris, 13851 W County Road 270, Nathrop, CO 81236-8716.

THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS 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.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of February 2020, (forms available at Clerk's office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$192.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 8th day of January, 2020.



Michele M. Santistevan, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
501 N. Elizabeth Street, Suite 116
Pueblo, CO 81003; (719) 404-8832



(Court seal)
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