

**Consent Agenda Item 1.I**

March 11-12, 2020 Board Meeting

Case No. 19CW3159 (Water Division 5); The City of Aurora

**Summary of Water Court Application**

Application for appropriative rights of exchange, including both “river flow exchange” and “contract exchange,” in which applicant would “instantaneously exchange a volume of its water already in storage” from one reservoir to another “notwithstanding the rate of stream flow” between the reservoirs.

**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 and to protect CWCB’s exclusive authority to hold instream flow water rights.

**CWCB Instream Flow Water Rights**

The CWCB holds water rights, including the following instream flow water right(s) 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
W-1948 (1973) (Div. 5)	Fryingpan River	confl Marten Creek	confl SF Fryingpan River	6 (10/1 - 3/31) 12 (4/1 - 9/30)	07/12/1973
W-1955 (1973) (Div. 5)	Fryingpan River	confl NF Fryingpan River	confl Ruedi Reservoir	30 (10/1 - 3/31) 200 (6/1 - 6/30) 150 (5/1 - 5/31) 100 (4/1 - 4/30) 100 (7/1 - 7/31) 75 (8/1 - 8/31) 65 (9/1 - 9/30)	07/12/1973
W-1945 (1973) (Div. 5)	Fryingpan River	confl Rocky Fork Creek	confl Roaring Fork River	39 (11/1 - 4/30) 110 (5/1 - 10/31)	07/12/1973
W-1952 (1973) (Div. 5)	Ivanhoe Creek	hdgt Fry-Ark Project div	confl Fryingpan River	1 (10/1 - 3/31) 2 (4/1 - 9/30)	07/12/1973
W-2936 (1976) (Div. 5)	Lincoln Creek	confl Galena Creek	confl Roaring Fork River	8 (1/1 - 12/31)	01/14/1976
W-2949 (1976) (Div. 5)	Roaring Fork River	confl Lincoln Creek	confl Difficult Creek	15 (1/1 - 12/31)	01/14/1976
W-2948 (1976) (Div. 5)	Roaring Fork River	confl Difficult Creek	confl Maroon Creek	32 (1/1 - 12/31)	01/14/1976
85CW0646 (Div. 5)	Roaring Fork River	confl Maroon Creek	confl Fryingpan River	30 (10/1 - 3/31) 55 (4/1 - 9/30)	11/08/1985

10CW0184^ (Div. 5)	Roaring Fork River	confl Maroon Creek	confl Owl Creek	3.54 (5/1 - 10/31)	06/30/1904
10CW0184^ (Div. 5)	Roaring Fork River	confl Owl Creek	confl Fryingpan River	0.89 (5/1 - 5/31) 0.59 (6/1 - 6/30) 0.64 (7/1 - 7/31) 0.5 (8/1 - 8/31) 0.4 (9/1 - 9/30) 0.15 (10/1 - 10/31)	06/30/1904
85CW0639 (Div. 5)	Roaring Fork River	confl Fryingpan River	confl Crystal River	75 (10/1 - 3/31) 145 (4/1 - 9/30)	11/08/1985

^ Donated/Acquired Water Right

### Potential for Injury

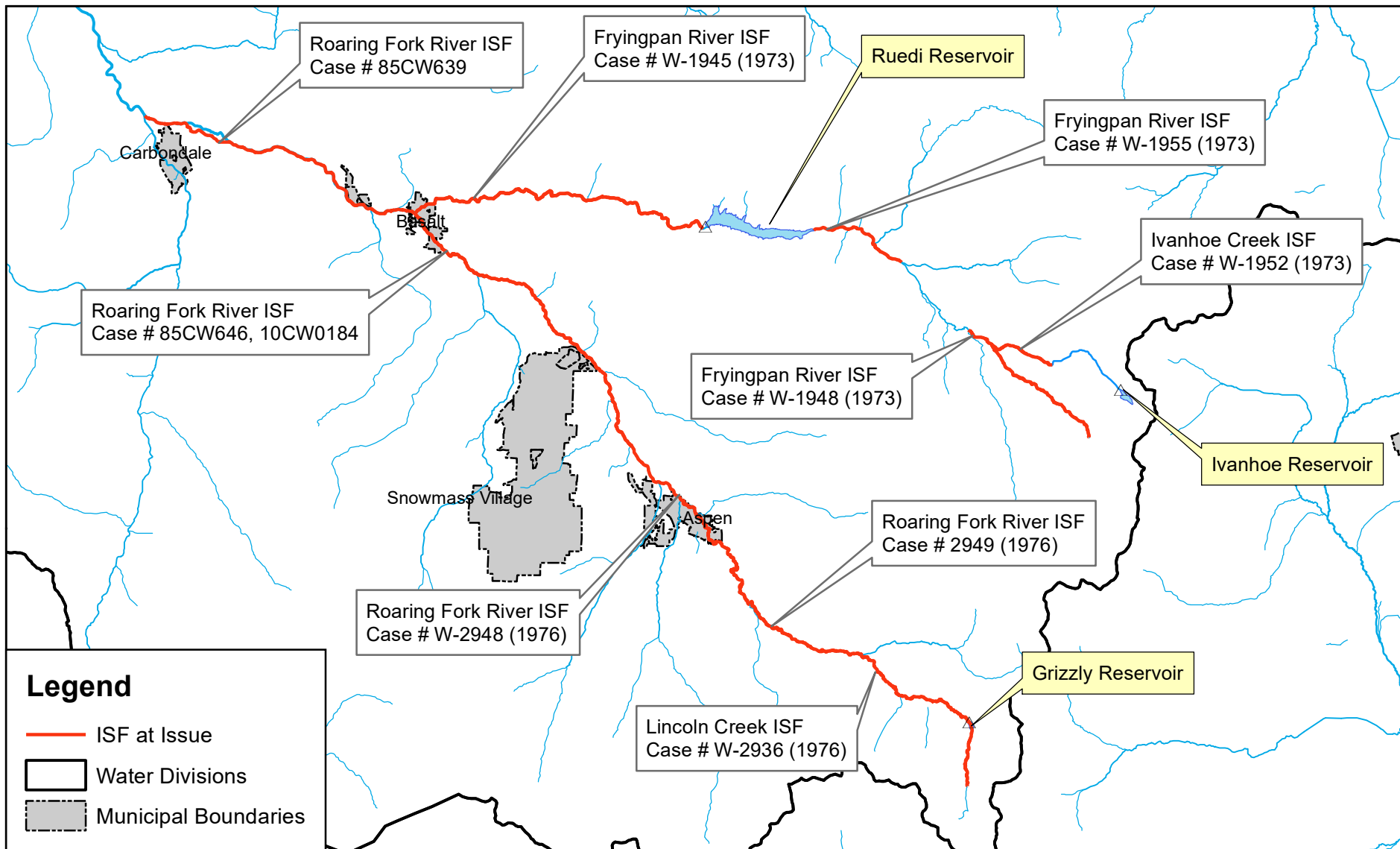
- The proposed claimed contract exchange may not be a valid appropriation under Colorado water law and may injure the CWCB's instream flow water rights.
- The proposed appropriative right of exchange should be defined clearly with a reference to intervening instream flow water rights so that the CWCB's instream flow water rights are not injured.
- The apparent extraterritorial use for the claimed appropriations cannot be evaluated because the type of use and the place of use are undefined. These uses could injure the CWCB's instream flow water rights.
- The claim for "instream flow purposes in the Roaring Fork River administered by CWCB pursuant to such agreements and water court or administrative approvals as are appropriate or necessary to implement such use," will require coordination with CWCB under ISF Rule 6, of the CWCB Rules Concerning the Colorado Instream Flow and Natural Lake Level Program (ISF Rules).
- The application does not present sufficient information to fully evaluate the extent to which the Board's instream flow rights may be injured.

### Other Objectors

Statements of Opposition were also filed by: Basalt Water Conservancy District; Board of Water Works of Pueblo; Colorado, Busk-Ivanhoe Water System Authority; City of Aspen; City of Colorado Springs, Colorado Springs Utilities; Colorado River Water Conservation District; and Southeastern Colorado Water Conservancy District.

### 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.

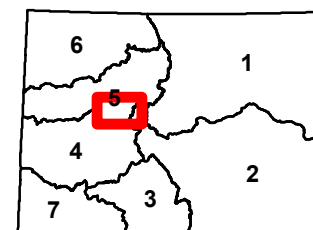


**COLORADO**  
**Colorado Water**  
**Conservation Board**

Department of Natural Resources

March 11-12, 2020 CWCB Board Meeting  
 Consent Agenda Item 1.I. Statement of Opposition  
 Case No. 19CW3159 (Division 5)  
 The City of Aurora

0 3.75 7.5 15 Miles



## DIVISION 5 WATER COURT- DECEMBER 2019 RESUME

8. 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 2019. *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.*

**19CW3159 EAGLE AND PITKIN COUNTIES. IVANHOE CREEK AND FRYING PAN RIVER TRIBUTARY TO COLORADO RIVER. Application for Appropriative Rights of Exchange by the City of Aurora, Colorado,** a municipal corporation of the counties of Adams, Arapahoe and Douglas, acting by and through its Utility Enterprise (“Aurora”): 15151 E Alameda Pkwy Ste 3600, Aurora, CO 80012-1555, Telephone: (303) 739-7370, Email: [AuroraWater@auroragov.org](mailto:AuroraWater@auroragov.org). Attorneys: John M. Dingess and Teri L. Petitt, Hamre, Rodriguez, Ostrander & Dingess, P.C., 3600 S. Yosemite Street, Suite 500, Denver, Colorado 80237-1829, phone (303) 779-0200, fax (303) 779-3662, [mail@hrodslaw.com](mailto:mail@hrodslaw.com), [jdiningess@hrodslaw.com](mailto:jdiningess@hrodslaw.com), [poolteri@hrodslaw.com](mailto:poolteri@hrodslaw.com). 2. Introduction. Aurora is a party to an

Agreement and Intergovernmental Agreement between Aurora, Colorado River Water Conservation District, Basalt Water Conservancy District, Board of County Commissioners of Eagle County, Board of County Commissioners of Pitkin County, Grand Valley Water Users Association, Orchard Mesa Irrigation District, and the Ute Water Conservancy District, Effective Date August 1, 2018 (the “Settlement Agreement”). As contemplated and limited by the terms of the Settlement Agreement, Aurora seeks judicial determination of appropriative rights of exchange by which 900 acre feet of water from Grizzly Reservoir, part of the Twin Lakes Reservoir and Canal Company (“Twin Lakes”), available to Aurora via its share ownership and over which Aurora has maintained dominion and control in any one year, will be placed from Grizzly Reservoir into Lincoln Gulch, a tributary of Lincoln Creek, or bypassed from the Twin Lakes system’s Roaring Fork River basin facilities into other tributaries of the Roaring Fork River, and then exchanged from the confluence of the Roaring Fork and Fryingpan Rivers upstream on the Fryingpan River to Ruedi Reservoir and an additional exchange, as a component subset of the 900 acre feet, up to 450 acre feet in any one year from Ruedi Reservoir upstream to Ivanhoe Reservoir located upon Ivanhoe Creek for subsequent movement into Water Division No. 2. Aurora currently owns 2,499.275 shares of Twin Lakes representing approximately five percent of the total issue of 49,588.965 shares. As a Twin Lakes shareholder, Aurora may call for deliveries and bypasses of its “in priority” water derived from the transbasin component of its Twin Lakes shares at or near the outlet of Grizzly Reservoir, located in Pitkin County within Lincoln Gulch upon Lincoln Creek, a tributary of the Roaring Fork River approximately latitude – longitude 39° 04’ 48.13” N - 106° 36’ 59.35” W. Water released or bypassed by Twin Lakes into Lincoln Gulch or other tributaries of the Roaring Fork River pursuant to Aurora’s call for deliveries and bypasses as contemplated herein (including any such Twin Lakes water subsequently exchanged into Ruedi Reservoir or Ivanhoe Reservoir) shall be accounted toward the volumetric diversion limits applicable to Aurora’s pro rata share of the Twin Lakes’ Independence Pass Transmountain Diversion System. 3. Names and Locations of Points and Structures Defining Exchange Reaches. 3.1. Confluence of the Roaring Fork River and the Fryingpan River. The confluence of the Roaring Fork River and the Fryingpan River is located in Eagle County, Colorado, at a point that lies approximately latitude – longitude 39° 21’ 59.57” N - 107° 02’ 03.29” W. 3.2. Ruedi Reservoir. Ruedi Reservoir is located in Sections 7, 8, 9, 11 and 14 through 18, T. 8 S., R. 84 W., 6th P.M., in Eagle and Pitkin Counties. The dam axis intersects the right abutment at a point whence the SW corner of Section 7, T. 8 S., R. 84 W. of the 6th P.M. bears N. 82°10’W. a distance of 1,285 feet. 3.3. Confluence of the Fryingpan River and Ivanhoe Creek. The confluence of the Fryingpan River and Ivanhoe Creek is located in Pitkin County, Colorado, at a point that lies approximately at latitude – longitude 39° 17’ 50.58” N - 106° 36’ 14.40” W. 3.4. Ivanhoe Reservoir. Ivanhoe Reservoir is formed by a dam approximately 21 feet high across the natural bed of Ivanhoe Creek, a tributary of the Fryingpan River, and situated within the SE/4 of the SW/4 of Section 12, T9S, R82W, 6th P.M., Pitkin County, Colorado, with its northeasterly end located at or about a point from which the southeast corner of Section 13, T9S, R82W, 6th P.M., bears south 26°45’ east, 7,021.3, feet, which point is also described as a point in the SE/4 of the SW/4 of Section 12, T9S, R82W, 6th P.M. that lies 930 feet from the south line and 2,050 feet from the west line of Section 12, and by a bulkhead dam approximately 10 feet high at the upper end of said reservoir situated in the SE/4 of the NE/4 Section 13, T9S, R82W, 6th P.M., with its southerly end located at or about a point from which the southeast corner of Section 13 bears south 8°11’ east, 2,739.2 feet, which point is also described as a point in the SE/4 of the NE/4 of Section 13, T9S, R82W, 6th P.M. that lies 2,680 feet from the south line and 425 feet from the east line of Section 13, and overflows all or portions of the SE/4 of the SW/4 and SW/4 of the SE/4 of Section 12 and the NE/4 of the NW/4 and NE/4 of Section 13, all of T9S, R82W, 6th P.M. (WDID 3803732, UTM X 369871, UTM Y 4348153). 4. Applicant requests the following Appropriative Rights of Exchange. 4.1. From the confluence of the Roaring Fork and Fryingpan Rivers to Ruedi Reservoir. 4.1.1. Rate of Exchange: 31.25 cfs total, conditional. (900 acre feet) 4.2. From Ruedi Reservoir to Ivanhoe Reservoir. 4.2.1. Rate of Exchange: 50.0 cfs total,

**Attachment  
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conditional. (450 acre feet) 5. Initiation of Appropriations. 5.1. The foregoing appropriations were initiated by: 1) the adoption of Aurora City Council Resolution No. R 2019-117; 2) the filing of this Application; and 3) field surveys and the posting of signs at the Exchange-From and Exchange-To Points. 5.1.1. Date of Appropriation: December 19, 2019. 5.2. Date water applied to beneficial use. Not applicable. 6. Source of Substitute Supply. The source of substitute supply for these exchanges will be Aurora's share of Twin Lakes water delivered at Grizzly Reservoir, located in Pitkin County within Lincoln Gulch upon Lincoln Creek, a tributary of the Roaring Fork River, pursuant to the decrees entered in Garfield County, District Court Case No. CA 3082 and Water Division 5, Case No. W-1901. 7. Proposed Uses. All uses for which the water given as substitute supply is decreed, and which can be made by Aurora, which will include the following: Direct flow and storage for irrigation, domestic, commercial, industrial, municipal and all beneficial uses. No change of use is sought by this Application. 8. Places of Use. The water rights that are the subject of this Application are intended for use in or for the benefit of Aurora's current and future service areas served by its municipal water supply and water reuse systems and any areas within the South Platte River Basin including areas served by its connections with other systems, and by any current or future water supply contracts or obligations of Aurora. Currently, Aurora is located in Township 3 South, Ranges 64, 65, 66 and 67 West, 6th P.M. in Adams County; Township 4 South, Ranges 64, 65, 66 and 67 West and Township 5 South, Ranges 65, 66 and 67 West, 6th P.M. in Arapahoe County; and Township 6 South, Ranges 65 and 66 West, 6th P.M. in Douglas County. Aurora's service area has changed from time to time and will continue to do so. Aurora may also use the water to meet its replacement or delivery obligations in Water Division 5. As provided in the Settlement Agreement, the water rights that are the subject of this Application are also intended for use in the Roaring River Basin below the confluence of the Roaring Fork River and Maroon Creek for beneficial uses as may be allowed consistent with the uses described in paragraph 7, above, including but not limited to the following purposes: (1) for instream flow purposes in the Roaring Fork River administered by the Colorado Water Conservation Board, pursuant to such agreements with and water court or administrative approvals as are appropriate and necessary to implement such use; (2) for delivery to the Pitkin County Recreational In-channel Diversion water right decreed in Case No. 10CW305, Water Division No. 5; and (3) pursuant to future Water Court approval, other uses including but not limited to use in the current and future augmentation plans of the Basalt Water Conservancy District within its boundaries, as those boundaries may change from time to time or as may be allowed by intergovernmental agreement and for use in any future Colorado River demand management purposes. These Roaring Fork Basin uses will be the subject to prospective further agreement(s) to be made among the West Slope Parties to the Settlement Agreement in regard to their sequence and implementation. 9. Names And Addresses Of Owners Of The Land Upon Which New Diversion Structures Will Be Built, and Upon Which Water Is Or Will Be Stored. To the best of Aurora's knowledge, the owners of the underlying land on which the structures listed above are located are as set forth below. Pursuant to C.R.S. § 37-92-302(2)(b), Aurora shall supplement this Application with evidence that Aurora has, within fourteen days of filing this Application, given notice of the Application by registered or certified mail, return receipt requested, to the following owners of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored. 9.1. Ruedi Reservoir is located on land owned by the United States Bureau of Reclamation, 11056 W. County Rd 18E, Loveland, CO 80537-9711. 9.2. Ivanhoe Reservoir is owned by Board of Water Works of Pueblo, Colorado, Attn: Alan C. Hamel, Executive Director, 319 West Fourth Street, Pueblo, Colorado 81003. The land on which Ivanhoe Reservoir is located is owned by the United States Forest Service, White River National Forest, 900 Grand Ave. P.O. Box 948, Glenwood Springs, Colorado 81602. 10. Contract Exchange Request. In addition to the river flow exchange requested hereinabove, Aurora also claims the ability to instantaneously exchange a volume of its water already in storage in Ruedi Reservoir for an equal volume of water belonging to Aurora or another owner (having first obtained the permission of said owner) in storage within Ivanhoe Reservoir notwithstanding the rate of stream flow between Ivanhoe and Ruedi Reservoir ("Contract Exchange"). However, Aurora would not operate the said Contract Exchange when the Colorado Water Conservation Board's instream flow right adjudicated in WD-5, Case No. W-1955 if said instream flow right is calling and not fully satisfied. Aurora shall notify the Division Engineer of the volume of water exchanged by each Contract Exchange. 11. Proposed Terms and Conditions. Aurora proposes the following terms and conditions. 11.1. The water diverted by exchange shall take on all the legal characteristics of the water provided as substitute supply, and the water provided as substitute supply shall take on the legal characteristics of the water that was diverted by exchange. 11.2. Aurora will use appropriate measuring devices and accounting forms as required by the office of the Division Engineer for Water Division 5. Aurora's release of substitute supplies and diversions by exchange will be balanced on a daily basis. 11.3. Aurora will store water in the facilities identified as Exchange-To Points only when, and to the extent, it possesses a contractual right or property right that allows it to do so. 11.4. Any river flow exchange requested above will not be operated unless and until Fryingpan-Arkansas Project diversions from Ivanhoe Creek are being fully met. 11.5. The exchanges claimed herein will be limited and subject to the terms of the Settlement Agreement. 12. Remarks. 12.1. Attached hereto as Exhibit A is a map illustrating the location of the Exchange-From and Exchange-To Points described herein. 12.2. The appropriative rights of exchange for which confirmation is sought herein are necessary to allow Aurora to most efficiently use the water rights that will be used as substitute supply. The reservoirs into which water will be exchanged are used for the storage of numerous other water rights owned by Aurora and/or others. These exchange appropriations are one component of Aurora's extensive unified system for gathering, treatment and distribution of water for the benefit of its citizens or to satisfy its water supply contractual obligations. The use and operation of these exchange appropriations is not only dependent upon Aurora's system demand and stream exchange potential, but is also affected by the yield of other water rights and exchanges currently operated by Aurora. For the purposes

of showing diligence and completion of the claimed rights of exchange, diligence as to any part of Aurora's water rights system which is used to operate or benefits from the exchange water rights herein requested shall be considered in finding that reasonable diligence has been shown in the development of the appropriate rights herein requested. (Application and attachments are 8 pages)

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**YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of FEBRUARY 2020 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: \$192.00) KATHY POWERS, Water Clerk, Water Division 5; 109 8th Street, Suite 104 Glenwood Springs, CO 81601.**