

**Consent Agenda Item 1.m**

March 11-12, 2020 Board Meeting

Case No. 19CW3161 (Water Division 5); Sun River Run Ranch RV, LLC and Town of Granby

**Summary of Water Court Application**

Application for change of conditional water rights and amendment to plan for augmentation.

**Staff Recommendation**

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in February 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 rights in Water Division 5 in the Colorado River Headwaters Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
11CW0159 (Div. 5)	Colorado River	confl Blue River	confl Piney River	500 (9/16 - 5/14) 600 (5/15 - 7/31) 750 (8/1 - 9/15)	07/12/2011
11CW0160 (Div. 5)	Colorado River	confl Piney River	confl Cabin Creek	525 (9/16 - 5/14) 650 (5/15 - 7/31) 800 (8/1 - 9/15)	07/12/2011
11CW0161 (Div. 5)	Colorado River	confl Cabin Creek	pt immed u/s of confl Eagle River	650 (9/16 - 5/14) 900 (5/15 - 6/15) 800 (6/16 - 9/15)	07/12/2011
90CW0300 (Div. 5)	Colorado River	outlet Granby Res	confl Fraser River	40 (5/1 - 8/31) 20 (9/1 - 4/30)	11/27/1990
80CW0447 (Div. 5)	Colorado River	hdgt Windy Gap Project div	confl Williams Fork River	90 (1/1 - 12/31)	07/08/1980
80CW0446 (Div. 5)	Colorado River	confl Williams Fork River	confl Troublesome Creek	135 (1/1 - 12/31)	07/08/1980
80CW0448 (Div. 5)	Colorado River	confl Troublesome Creek	confl Blue River	150 (1/1 - 12/31)	07/08/1980
90CW0308 (Div. 5)	Fraser River	confl Crooked Creek	confl Colorado River	30 (5/15 - 9/15) 19 (9/16 - 5/14)	11/27/1990

### **Potential for Injury**

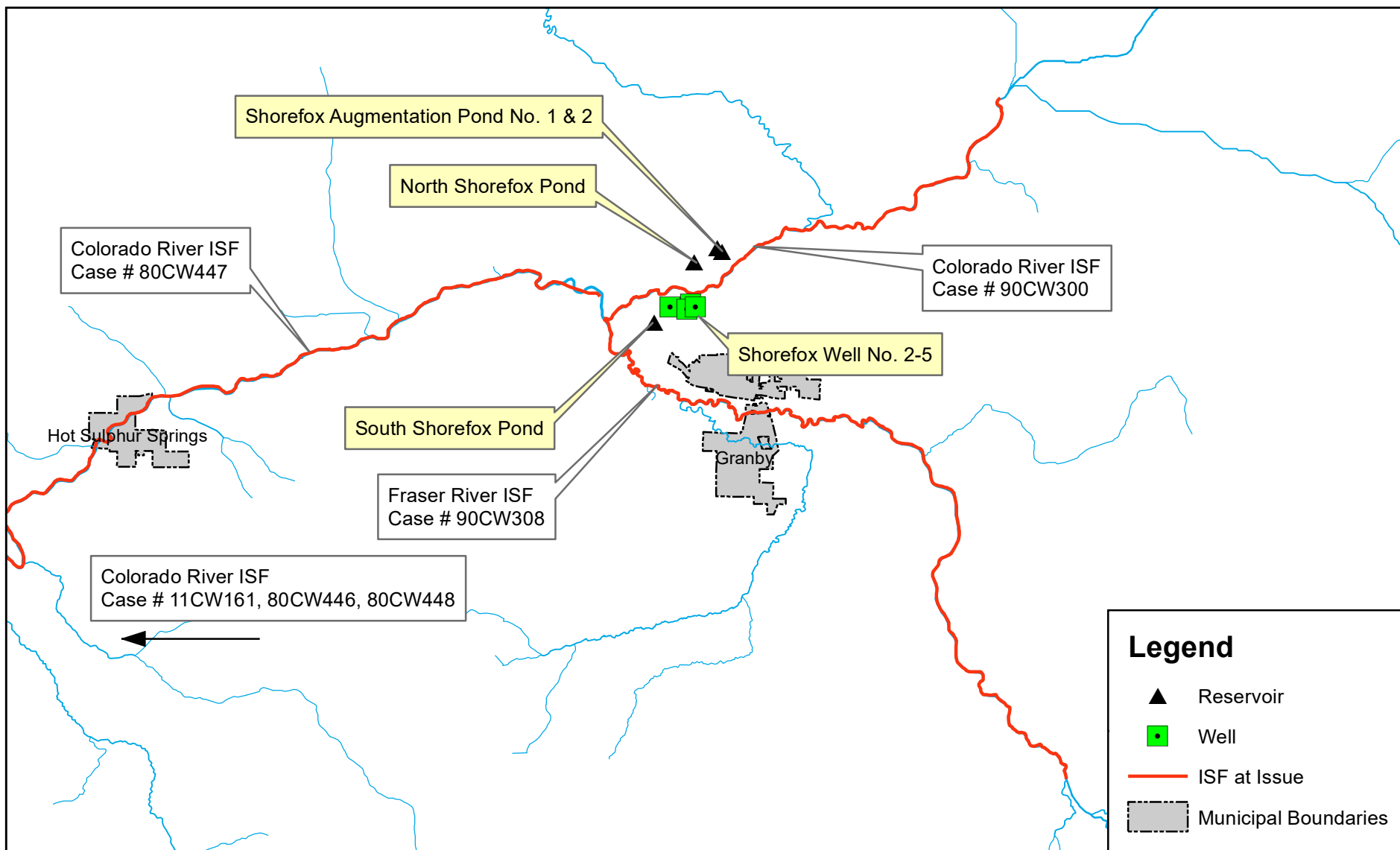
- The proposed change of water rights could cause an expansion of use and could alter the time, place and amount of historical return flows, which could injure the CWCB's instream flow water rights.
- The proposed plan for augmentation may not replace depletions in the proper time, place and amount, which could injure the CWCB's instream flow water rights.
- 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: C Lazy U Ranch Holdings, LLC; Grand County Water and Sanitation District No. 1; 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](mailto:jennifer.mele@coag.gov), or 720-508-6282.



## Legend

- ▲ Reservoir
- Well
- ISF at Issue
- ▭ Municipal Boundaries

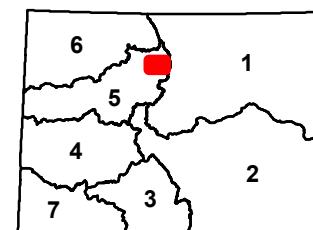


**COLORADO**  
**Colorado Water**  
**Conservation Board**

Department of Natural Resources

March 11-12, 2020 CWCB Board Meeting  
 Consent Agenda Item 1.m. Statement of Opposition  
 Case No. 19CW3161 (Division 5)  
 Sun River Run Ranch LV, LLC & Town of Granby

0 1.25 2.5 5 Miles



**DIVISION 5 WATER COURT- DECEMBER 2019 RESUME**

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**10. — 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.***

**19CW3161 GRAND, EAGLE AND GARFIELD COUNTIES. APPLICATION FOR CHANGE OF CONDITIONAL WATER RIGHTS AND AMENDMENT TO PLAN FOR AUGMENTATION. 1. Applicants: Sun River Run Ranch RV, LLC (“Sun”), c/o Jon Colman, 27777 Franklin Road, Suite 200, Southfield, MI 48034, (248) 208-2500, JColman@suncommunities.com and Town of Granby, Colorado (“Granby”), c/o Town Manager, P.O. Box 440, Granby, CO 80446, (970) 887-2501, dhess@townofgranby.com. Sun and**

Granby shall be referred to as “Applicants.” Direct all pleadings to: Madoline Wallace-Gross, Kara N. Godbehere, Carey S. Smith V; Lyons Gaddis, P.O. Box 978, Longmont, CO 80502-0978, (303) 776-9900 and Scotty P. Krob, Nathan Krob, Krob Law Office, LLC, 8400 E. Prentice Avenue Penthouse, Greenwood Village, CO 80111, (303) 694-0099. 2. Description of Application: Applicants are the owners of approximately 1,550 acre property located in Sections 19, 20, 29, 30, and 31, Township 2 North, Range 76 West of the 6<sup>th</sup> P.M. and Sections 24, 25, and 36 Township 2 North, Range 77 West of the 6<sup>th</sup> P.M., Grand County Colorado, as more particularly described in Exhibit A (the “Property”). A. Applicants seek to change a portion of junior conditional groundwater rights obtained in Case No. 03CW334, District Court, Water Division 5, entered June 2, 2014 so that, in addition to their current decreed place of use, the groundwater rights may be used within the Granby’s service area for indoor municipal use only. The contemplated draft for the junior conditional water rights included an amount necessary to serve up to 1200 EQRs on the Property. Water used in Granby’s service area and on Granby’s portions of the Property will be limited to 231 of the 1200 EQRs. Water used on Sun’s portions of the Property will be limited to 969 of the 1200 EQRs. As a result, the change of place of use will not cause an exceedance of the contemplated draft of the junior underground water rights. B. Applicants will continue to augment Shorefox Well Nos. 2 through 5 pursuant to the existing decree in Case No. 03CW334. Since this application does not request increased diversions from Well Nos. 2 through 5, the diversions and depletions attributable to well pumping are the same as in Case No. 03CW334. Moreover, since wastewater attributable to indoor use on the Property and wastewater attributable to indoor use within Granby’s service area are both treated at the Granby Sanitation District wastewater treatment plant, this application does not change the amount, timing or location of the sewer return flows as decreed in Case No. 03CW334. Applicants seek to amend the existing plan for augmentation to include an additional source of replacement water. The map attached hereto as Exhibit A depicts the locations of the augmentation sources. CHANGE OF JUNIOR CONDITIONAL WATER RIGHTS 3. Background. Shorefox Well Nos. 2 to 5 were decreed in Case No. 03CW334, entered June 2, 2014, District Court, Water Division 5. Shorefox Well Nos. 2 to 5 are decreed to provide a water supply for up to 1,200 equivalent residential units (“EQRs”) for residential and commercial uses on the Property. Each EQR is equal to 350 gallons of in-house demand and sufficient water to irrigate up to 1,000 square feet of lawn and garden. Pursuant to a Water Service Agreement (“Agreement”) with Granby, Sun has the right to utilize 969 of the 1,200 EQRs on Sun’s parcels on the Property. Sun’s 969 EQRs will be used in conformance with the limitations in the decree in Case No. 03CW334. Granby retained the right to utilize 231 EQRs of the 1,200 EQRs in the Agreement. Granby seeks to use its EQRs: i) on Granby’s parcels on the Property in conformance with the limitations in the decree in Case No. 03CW334; and within Granby’s existing municipal service area boundaries for in-door use residential use only. A map of Granby’s service area boundaries is attached hereto as Exhibit B. 4. Water Rights for Which Change is Sought. A. Shorefox Well No. 2. i. Legal description of point of diversion: in the NE ¼ SW ¼ of Section 30, Township 2 North, Range 76 West of the 6<sup>th</sup> P.M., at a point which is 1,690 feet from the west section line and 1,790 feet from the south section line of said Section 30, as depicted on Exhibit A, attached hereto. ii. Decreed source of water: Colorado River alluvium. iii. Appropriation date: August 11, 2003. iv. Total amount decreed to structure: 2.0 cfs conditional. The total combined rate of diversions from Shorefox Well Nos. 2 through 5 shall not exceed 2.0 cfs. The total annual out-of-priority diversions from Shorefox Wells 2 through 5 shall not exceed 519.6 acre feet per year. v. Decreed Uses: Domestic, commercial, municipal, irrigation and fire protection uses associated with Applicants’ proposed residential and commercial development. The irrigation use shall be on up to 27.55 acres of land within specified areas of the Property. B. Shorefox Well No. 3. i. Legal description of point of diversion: in the NW ¼ SW ¼ of Section 30, Township 2 North, Range 76 West of the 6<sup>th</sup> P.M., at a point which is 450 feet from the west section line and 1,450 feet from the south section line of said Section 30, as depicted Exhibit A, attached hereto. ii. Decreed source of water: Colorado River Alluvium. iii. Appropriation date: August 11, 2003. iv. Total amount decreed to structure: 2.0 cfs, conditional. The total combined rate of diversions from Shorefox Well Nos. 2 through 5 shall not exceed 2.0 cfs. The total annual out-of-priority diversions from Shorefox Wells 2 through 5 shall not exceed 519.6 acre feet per year. v. Decreed Uses: Domestic, commercial, municipal, irrigation and fire protection uses associated with Applicants’ proposed residential and commercial development. The irrigation use shall be on up to 27.55 acres of land within specified areas of the Property. C. Shorefox Well No. 4.

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i. Legal description of point of diversion. in the NE ¼ SW ¼ of Section 30, Township 2 North, Range 76 West of the 6<sup>th</sup> P.M., at a point which is 1,589 feet from the west section line and 1,350 feet from the south section line of said Section 30, as depicted on Exhibit A attached hereto. ii. Decreed source of water: Alluvium. iii. Appropriation date: August 11, 2003. iv. Total amount decreed to structure: 2.0 cfs conditional. The total combined rate of diversions from Shorefox Well Nos. 2 through 5 shall not exceed 2.0 cfs. The total annual out-of-priority diversions from Shorefox Wells 2 through 5 shall not exceed 519.6 acre feet per year. v. Decreed Uses: Domestic, commercial, municipal, irrigation and fire protection uses associated with Applicants' proposed residential and commercial development. The irrigation use shall be on up to 27.55 acres of land within specified areas of the Property. D. Shorefox Well No. 5. i. Legal description of point of diversion: in the NW ¼ SW ¼ of Section 30, Township 2 North, Range 76 West of the 6<sup>th</sup> P.M., at a point which is 2,170 feet from the west section line and 1,540 feet from the south section line of said Section 30, as depicted on Exhibit A, attached hereto. ii. Decreed source of water: Colorado River Alluvium iii. Appropriation date: August 11, 2003. iv. Total amount decreed to structure: 2.0 cfs conditional. The total combined rate of diversions from Shorefox Well Nos. 2 through 5 shall not exceed 2.0 cfs. The total annual out-of- priority diversions from Shorefox Wells 2 through 5 shall not exceed 519.6 acre feet per year. v. Decreed Uses: Domestic, commercial, municipal, irrigation and fire protection uses associated with Applicants' proposed residential and commercial development. The irrigation use shall be on up to 27.55 acres of land within specified areas of the Property. 5. Proposed Changes of Water Rights. Granby seeks to change its 231 EQRs of the 1,200 EQRs in the following manner. A. Change of Place of Use. In addition to the decreed place on the Property, Granby seeks to use water diverted from Shorefox Well Nos. 2 through 5 within Granby's municipal service area boundaries, as such may change from time to time, and which is currently depicted in Exhibit B. Granby's current service area boundaries are located in: Sections 24, 25 and 36 of Township 2 North, Range 77 West; Sections 19, 20, 30, 31, 32 and 33 of Township 2 North, Range 76 West; and Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 20, 21, 22, 28, 29, 32 and 33, Township 1 North, Range 76 West; all of 6<sup>th</sup> PM in Grand County, Colorado. B. Limitation on Type of Use. When water diverted from Shorefox Well Nos. 2 through 5 is utilized within Granby's municipal service area boundaries, it shall only be used for in-door municipal use. C. Amount of Water Rights Changed: 0.385 cfs of the 2.0 cfs combined rate of diversions from Shorefox Well Nos. 2 through 5. D. Remarks: The contemplated draft for the junior conditional water rights included an amount necessary to serve up to 1200 EQRs on the Property. Water used in Granby's service area and on Granby's portions of the Property will be limited to 231 of the 1200 EQRs. Water used on Sun's portions of the Property will be limited to 969 of the 1200 EQRs. As a result, the change of place of use will not cause an exceedance of the contemplated draft of the junior underground water rights. APPLICATION FOR APPROVAL OF AMENDMENT TO PLAN FOR AUGMENTATION 6. Background. Applicants will continue to augment Shorefox Well Nos. 2 through 5 pursuant to the existing decree in Case No. 03CW334. Since this application does not request increased diversions from Well Nos. 2 through 5, the diversions and depletions attributable to well pumping are the same as in Case No. 03CW334. Moreover, since wastewater attributable to indoor use on the Property and wastewater attributable to indoor use within Granby's service area are both treated at the Granby Sanitation District wastewater treatment plant, this application will not change the amount, timing or location of the sewer return flows from Case No. 03CW334. By this application, Applicants seek to add an additional augmentation source to the plan for augmentation in Case No. 03CW334. The plan for augmentation will otherwise operate in conformance with the limitations in the decree in Case No. 03CW334. 7. Decreed Augmented Structures Pursuant to Case No. 03CW334. Shorefox Well Nos. 2 through 5, described in paragraph 4. 8. Decreed Augmentation Sources Pursuant to Case No. 03CW334. The augmentation sources are depicted on the map attached hereto as Exhibit A. A. Water diverted in priority and stored in the following structures to be located on the Property: i. Shorefox Augmentation Pond No. 1 decreed in Case No. 06CW257, District Court, Water Division 5. Legal Description: SW ¼ SE ¼ of Section 19, Township 2 North, Range 76 West of the 6<sup>th</sup> P.M., 540 feet north of the south section line and 1,720 feet west of the east section line. ii. Shorefox Augmentation Pond No. 2 decreed in Case No. 06CW257, District Court, Water Division 5. Legal Description: SE ¼ SE ¼ of Section 19, Township 2 North, Range 76 West of the 6<sup>th</sup> P.M., 340 feet north of the south section line and 1,270 feet west of the east section line. iii. North Shorefox Pond adjudicated in Case No. 03CW336, District Court, Water Division 5. Legal Description: NE ¼ NW ¼, Section 30 Township 2 North, Range 76 West, 6<sup>th</sup> P.M., Grand County, Colorado. iv. South Shorefox Pond adjudicated in Case No. 03CW336, District Court, Water Division 5. Legal Description: SW ¼ SE ¼, Section 25, Township 2 North, Range 77 West, 6<sup>th</sup> P.M., Grand County, Colorado. B. Consumptive use credits as described in Case No. 03CW336, District Court, Water Division No. 5, entered June 2, 2014. The following table summarizes the quantified historical consumptive use for each ditch.

Ditch Name	Appropriation Date	Source	Decreed Flow Rate	Granby's Ownership
Peterson No. 1 Ditch	May 15, 1885	Fraser River	6.9 cfs	5.15 cfs
Griffith Ditch	August 31, 1883	Fraser River	9.75 cfs	9.75 cfs
Selak-Larabee Ditch	May 15, 1888	Colorado River	7.75 cfs	3.875 cfs

Selak-Larabee Ditch, Enlargement	May 15, 1888	Colorado River	7.75 cfs	3.5 cfs
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i. Decreed point of diversion for Peterson No. 1 Ditch: Right bank of the Fraser River at a point whence the SE corner, Sec. 31, Township 2 N, Range 76 W of the 6th P.M. bears N 63° 45' W 1,519 feet. ii. Decreed point of diversion for Griffith Ditch: Right bank of Fraser River at a point whence the South Quarter Corner, Section 31, Township 2 North, Range 76 West of the 6th P.M. Bears North 77° 10' West, 413 feet. iii. Decreed point of diversion for Selak-Larabee Ditch: See ¶ 10.D. iv. Original Decree for all Ditches except Selak-Larabee Ditch Enlargement: Case No. 183, District Court, Grand County, State of Colorado, entered August 3, 1911. v. Original decree for Selak-Larabee Ditch Enlargement: CA. 795, District Court, Grand County, State of Colorado, entered October 1, 1943. vi. The following table summarizes the quantified historical consumptive use for each ditch in Case No. 03CW336.

Month	Consumptive Use (af/acre)	Griffith 94 acres	Peterson No. 128 acres	Selak-Larabee 126 acres	Consumptive Use (AF)
May	0.12	11.28	15.36	15.12	41.76
June	0.24	22.56	30.72	30.24	83.52
July	0.31	29.14	39.68	39.06	107.88
Annual	0.67	62.98	85.76	84.42	233.16

C. Water released from Wolford Mountain Reservoir and/or Reudi Reservoir owned by the Colorado River Water Projects Enterprise ("CRWCD") as described in Case No. 03CW344. 9. Additional Augmentation Source Pursuant To The Application In This Case. Releases from Granby Reservoir: Granby has the right to use water stored in Granby Reservoir pursuant to a water allotment contract for 200 acre-feet per year with Middle Park Water Conservancy District. This water is a portion of the 3,000 acre-feet which the Municipal Subdistrict, Northern Colorado Water Conservancy District has agreed to annually place in storage in Granby Reservoir. The legal description of the place of storage is: NW ¼ NW ¼ Section 18, Township 8 South, Range 84 West of the 6th P.M. Additional provisions of this agreement are outlined in the Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Project, dated and signed April 30, 1980 and approved by Water Court, Water Division No. 5, Civil Action 1768, by Interlocutory Decree dated October 27, 1980, and Supplement to Agreement of April 30, 1980, dated March 29, 1985, and duly decreed in Case No. 85CW135, and further described in the Windy Gap Firing Project Intergovernmental Agreement dated January 2, 2013. 10. Owners of structures involved in this application: A. Co-Applicant Granby owns the land on which Shorefox Pond, Shorefox Augmentation Pond No. 1, Shorefox Augmentation Pond No. 2 and the headgate of the Peterson No. 1 Ditch are located. B. CoApplicant Sun owns the land on which Shorefox Well Nos. 2 to 5 and North Shorefox Pond are located. C. The Alice Marie Nordloh Family, whose address is P.O. Box 194, Granby, CO 80446-0194 owns the land on which the headgate of the Griffith Ditch is located. D. Dines Family Holdings, LLLC whose address is c/o Katherine Dines, 2595 E. Cedar Ave., Denver, CO 80209, owns the land on which land on which the headgate of the Selak-Larabee Ditch is located. E. The United States of America owns the land on which Granby Reservoir and Ruedi Reservoir is located. Notice will be sent to Shadow Mountain National Recreation Area, USDA Forest Service, 1400 Independence Ave SW, Washington DC 20250; Arapaho National Forest, 2150 Centre Ave. Bldg E, Fort Collins, CO 80526-8119; US Forest Service, Rocky Mountain Regional Office, 1617 Cole Blvd. #17, Lakewood, CO 80401; and White River National Forest, Supervisor's Office, 900 Grand Ave., Glenwood Spring, CO 81601-3602. F. Colorado River Water Conservation District, whose address is PO Box 1120, Glenwood Springs, 81602-1120, owns the land on which Wolford Mountain Reservoir is located. WHEREFORE, Applicants respectfully request that this Court: A) approve Applicants' change of water rights for the Shorefox Well Nos. 2 to 5; and B) approve Applicants' addition of a source to the plan for augmentation in Case No. 03CW334. DATED: \_\_\_\_\_ EXHIBIT LIST A. Map of Property, Wells and Augmentation Sources B. Map of Granby's Service Area

**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.**