

**Consent Agenda Item 1.d**

January 24-25, 2022 Board Meeting

Case No. 21CW3132 (Water Division 5); Eagle-Vail Metropolitan District

**Summary of Water Court Application**

Application for water rights, changes of water right, and approval of plan for augmentation and exchange.

**Staff Recommendation**

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in December 2021 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 Eagle River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
80CW0124	Eagle River	confl Brush Creek	confl Colorado River	50 (10/1 - 4/30) 130 (5/1 - 9/30)	03/17/1980
80CW0126	Eagle River	confl Lake Creek	confl Brush Creek	45 (10/1 - 4/30) 110 (5/1 - 9/30)	03/17/1980
80CW0134	Eagle River	confl Gore Creek	confl Lake Creek	35 (10/1 - 4/30) 85 (5/1 - 9/30)	03/17/1980

**Potential for Injury**

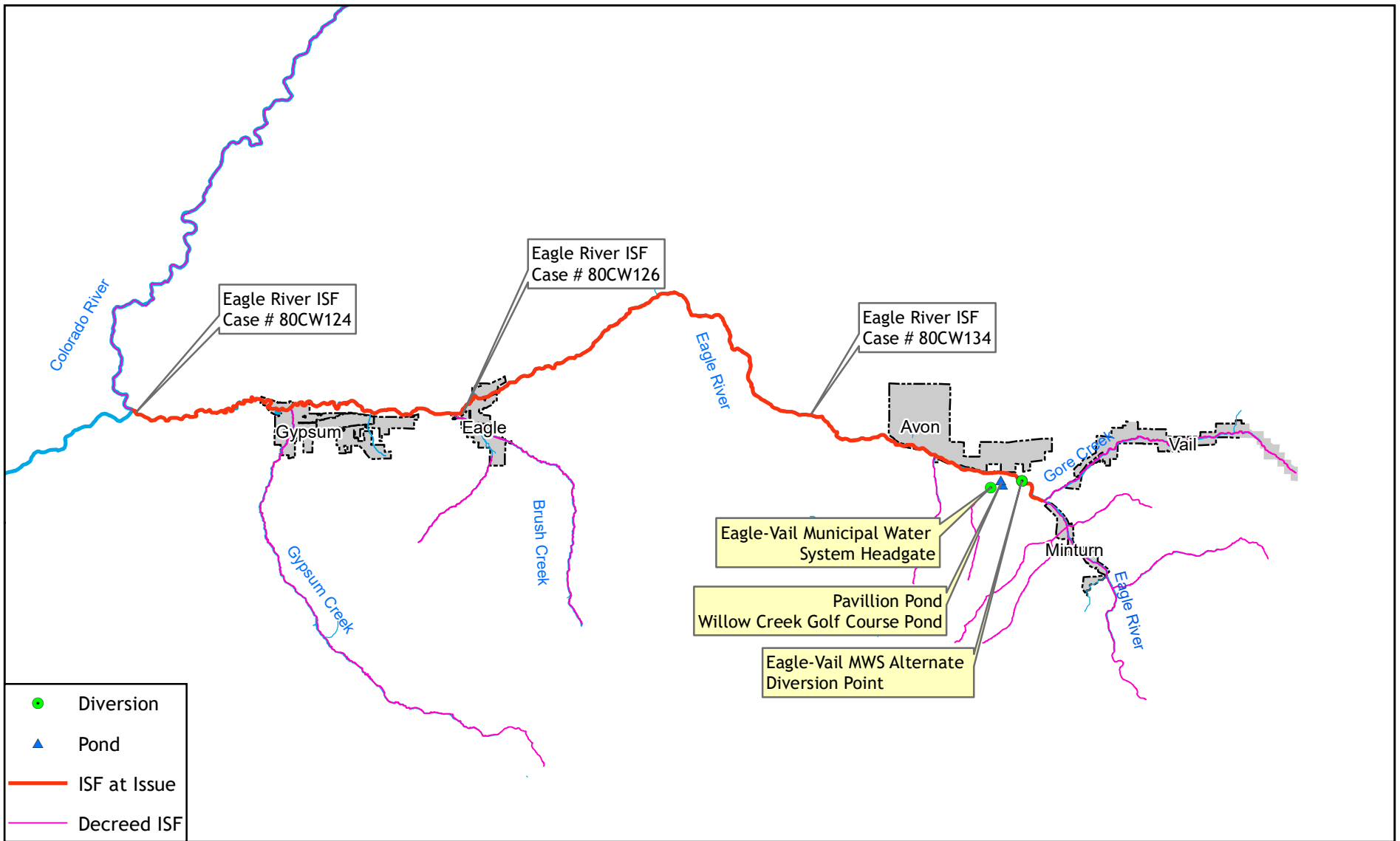
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- The proposed changes, including the changes in places of storage and the changes in points of diversion to upstream locations, could injure the CWCB's instream flow water rights.

**Other Objectors**

Two other Statements of Opposition were also filed by the City of Aurora, and The Homestake Partners, consisting of the City of Aurora, Colorado, acting through its Utility Enterprise, and the City of Colorado Springs, acting through Colorado Springs Utilities, collectively acting through the Homestake Steering Committee ("Homestake Partners").

**Attorney Representing CWCB**

Christopher R. Stork, Assistant Attorney General, is assigned to this case and can be contacted at christopher.stork@coag.gov or 720-508-6311.

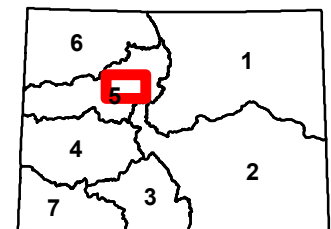


**COLORADO**  
**Colorado Water  
 Conservation Board**

Department of Natural Resources

January 24-25, 2022 CWCB Board Meeting  
 Consent Agenda Item 1.d Statement of Opposition  
 Case No. 21CW3132 (Division 5)  
 Eagle-Vail Metropolitan District

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 Miles



## DIVISION 5 WATER COURT-OCTOBER 2021 RESUME

3. 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 OCTOBER 2021. *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.*

**21CW3132 CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE EAGLE-VAILE METROPOLITAN DISTRICT, IN THE EAGLE RIVER AND ITS TRIBUTARIES, IN EAGLE, LAKE, AND SUMMIT COUNTIES, COLORADO. APPLICATION FOR WATER RIGHTS, CHANGES OF WATER RIGHT, AND APPROVAL OF PLAN FOR AUGMENTATION AND EXCHANGE.** 1. Name and Address of Applicant: Eagle-Vail Metropolitan District ("District") c/o District Manager, 431 Eagle Drive, P.O. Box 5660, Avon, Colorado 81620. Direct all pleadings to: Glenn E. Porzak, Porzak Law, LLC, 1111 Spruce Street, Suite 302, Boulder, Colorado 80302, (303) 589-0909. 2. Description of water rights to be adjudicated and/or augmented:

(a) Eagle-Vail Municipal Water System, decreed by the District Court in and for Water Division No. 5, State of Colorado ("Water Court") in Case No. W-3289, for 5.5 cfs, the sources of which are Stone Creek, a tributary of the Eagle River, and the Eagle River. The point of diversion and alternate point of diversion are described as follows: The headgate of the Eagle-Vail Municipal Water System is located on Stone Creek whence the Northwest Corner of Section 17, T. 5 S., R. 81 W. of the 6<sup>th</sup> P.M. bears North 38°58'22" West 3,996.53 feet. The alternate headgate and point of diversion is located on the west bank of the Eagle River, whence the Southeast corner of Section 16, T. 5 S., R. 81 W. of the 6<sup>th</sup> P.M. bears North 57°00' East 585 feet. The decreed uses are domestic, municipal, irrigation, mechanical, manufacturing, recreation, fire protection, sewage treatment, street sprinkling and the watering of parks, lawns and grounds, with an appropriation date of August 20, 1972, and an adjudication date as of December 30, 1976. (b) The Eagle Pond, decreed by the Water Court in Case No. W-3289 for 5.19 acre feet, the source of which is Stone Creek, a tributary of the Eagle River, the existing point of diversion being the point where Stone Creek Ditch enters the Eagle-Vail Golf Course from whence the Northwest section corner of Section 17, T. 5 S., R. 81 W. of the 6<sup>th</sup> P.M., bears N. 20°43'39" W. 4,804.38 feet. The Eagle Pond is located in the NE1/4 SW1/4 of Section 17, T. 5 S., R. 81 W. of the 6<sup>th</sup> P.M., as follows: The tie to the high water line at the outlet is a point from whence the Northwest section corner of Section 17, T. 5 S., R. 81 W. of the 6<sup>th</sup> P.M. bears N. 42°07'45" W. 3,568.03 feet. A point near the middle of the pond is located 2,630 feet from the West section line and 2,551 feet from the South section line. The decreed uses are irrigation, recreation and piscatorial with an appropriation date of August 18, 1972, with an adjudication date as of December 30, 1976. (c) Pavilion Pond, claimed for 3.19 acre feet absolute and 3.31 acre feet conditional for irrigation, recreation, and piscatorial uses, the source of which is the Eagle River, the point of diversion being the Eagle River point of diversion of the Eagle-Vail Municipal Water System, with an appropriation date of May 14, 2021. The Pavilion Pond is located in the SE1/4 NE1/4 of Section 17, T. 5 S., R. 81 W., of the 6<sup>th</sup> P.M. A point near the middle of the pond is located at 1,116 feet from the East section line and 1,534 feet from the North section line. (d)

Willow Creek Golf Course Pond, claimed for 0.51 acre feet for irrigation, recreation, and piscatorial uses, the source of which is the Eagle River, the point of diversion being the Eagle River point of diversion of the Eagle-Vail Municipal Water System, with an appropriation of date of May 14, 2021. This pond is located in the SE1/4 NE1/4 of Section 17, T. 5 S., R. 81 W., of the 6<sup>th</sup> P.M. A point near the middle of the pond is located 769 feet from the East section line and 2,120 feet from the North section line of said Section 17. All three of the above described ponds are excavated below grade, and a map of the water features is attached as Figure 1. 3. Description of the water rights to be used as the sources of augmentation: (a) An undivided 1.213% interest in the following water rights, as changed, quantified, exchanged, and/or augmented in Water Court Case Nos. W-3289, 83CW300, 85CW611, 93CW103, 93CW316, 00CW83, and 01CW15, which has been quantified to equal 10 consumptive acre feet per year: (1) Willow Creek Ditch, priority no. 276, decreed in the amount of 3.0 cfs on July 26, 1909, in Case. No. CA 430, Eagle County District Court. (2) Willow Creek Ditch (1<sup>st</sup> enlargement), priority no. 437, decreed in the amount of 5.17 cfs on October 3, 1936, in Case. No. CA 936, Eagle County District Court. (3) Graham #2 Ditch, priority no. 276a, decreed in the amount of 2.5 cfs on July 26, 1909, in Case No. CA 519, Eagle County District Court. (4) Graham #2 Ditch (1<sup>st</sup> enlargement), priority no. 428, decreed in the amount of 3.31 cfs on October 3, 1936, in Case No. CA 963, Eagle County District Court. (5) Mahoney Ditch, priority no. 469, decreed in the amount of 2.76 cfs on October 3, 1936, in Case No. CA 963, Eagle County District Court. (6) Eagle Ditch, priority no. 277, decreed in the amount of 2.5 cfs on July 26, 1909, in Case No. CA 430, Eagle County District Court. (7) Eagle Ditch (1<sup>st</sup> enlargement), priority no. 382, decreed in the amount of 7.524 cfs on October 3, 1936,

in Case No. CA 963, Eagle County District Court. (8) Eagle Ditch Nottingham Enlargement, priority no. 514, decreed in the amount of 3.176 cfs on February 7, 1956, in Case No. 1128, Eagle County District Court. (9) Graham No. 1 Ditch, priority no. 277a, decreed in the amount of 2.5 cfs on July 26, 1909, in Case No. CA 519, Eagle County District Court. (10) Graham No. 1 Ditch (1<sup>st</sup> enlargement), priority no. 440, decreed in the amount of 3.71 cfs on October 3, 1936, in Case No. CA 963, Eagle County District Court. (11) Graham No. 1 Ditch (2<sup>nd</sup> enlargement), priority no. 498, decreed in the amount of 8.59 cfs on February 7, 1956, in Case No. CA 1128, Eagle County District Court. (12) Grace Park Ditch, priority no. 278, decreed in the amount of 3.2 cfs on October 25, 1909, in Case No. CA 527, Eagle County District Court. (13) Grace Park Ditch (1<sup>st</sup> enlargement), priority no. 375, decreed in the amount of 3.32 cfs on October 3, 1936, in Case No. CA 963, Eagle County District Court. (14) Grace Park Ditch (2<sup>nd</sup> enlargement), priority no. 530, decreed in the amount of 12.48 cfs on July 23, 1958, in Case No. CA 1193, Eagle County District Court. (15) Fleck Ditch, priority no. 207, decreed in the amount of 1.1 cfs on June 4, 1907, in Case No. CA 446, Eagle County District Court. (16) C.A.C. No. 1 Ditch, priority no. 393, decreed in the amount of 2.13 cfs on October 3, 1936, in Case No. CA 963, Eagle County District Court. (17) C.A.C. No. 2 Ditch, priority no. 399, decreed in the amount of 1.4 cfs on October 3, 1936, in Case No. CA 963, Eagle County District Court. (18) C.A.C. No. 3 Ditch, priority no. 482, decreed in the amounts of 0.25 cfs and 6.15 cfs on October 3, 1936, in Case No. 963, Eagle County District Court; together with an interest in the augmentation plan decreed on January 30, 1980, in Water Court Case No. W-3289, Water Division No. 5, proportionate to the interest of the Eagle-Vail Metropolitan District in the 10 consumptive acre feet of the 824.4 consumptive acre feet quantified therein and associated with the water rights described above, and including a pro rata share of the other rights and benefits of the augmentation plan decreed therein. (b) Up to 5 acre feet per year from Green Mountain Reservoir, decreed by the United States District Court for the District of Colorado in Consolidated Case Nos. 2782, 5016, and 5017, for 154,645 acre feet, with an appropriation date of August 1, 1935. The Reservoir is located on the Blue River in Sections 11, 12, 13, 14, 15, and 24, T. 2 S., R. 80 W., and Sections 18, 19, 20, 21, 28, 29, and 34. T. 2 S., R. 79 W., 6<sup>th</sup> P.M., Summit County, Colorado. The Upper Eagle Regional Water Authority has a contract as amended issued by the U.S. Bureau of Reclamation (Contract No. 9-07-60-W0413) entitling it to the release of 475 acre feet annually from Green Mountain Reservoir. By decree of the Water Court in Case No. 92CW291, 42.4 acre feet were allocated to the District. (c) Up to 5 acre feet of Eagle Park Reservoir, the water right and exchange plan for which were decreed in the Water Court Case Nos. 92CW340, 93CW301 and 95CW348, for a capacity of 5,300.0 acre feet, with an appropriation date of March 16, 1991, and 22,300.0 acre feet with an appropriation date of May 18, 1993, together with the right to divert at the rate of 80.0 cfs under the August 10, 1956 appropriation date of the Pando Feeder Canal pursuant to the decree entered in Water Court Case No. 97CW288, all for mining, milling, industrial, snowmaking, municipal, domestic, stock watering, recreation, fish and wildlife, irrigation, agricultural, exchange, replacement, augmentation and all other beneficial purposes. The north abutment of the dam crest is located approximately 160 feet north of the south Section line and 650 feet east of the west section line of Section 28, T. 7 S., R. 79 W., 6<sup>th</sup> P.M., Eagle County, Colorado. The source of Eagle Park Reservoir in the East Fork of the Eagle River including runoff, surface flow and seepage from the area above the reservoir and tributary thereto, and water tributary to Tenmile Creek a tributary of the Blue River. In addition to the tributary area upstream of the Reservoir, the specific points of diversion into storage for Eagle Park Reservoir are as follows: (1) The East Fork Interceptor Ditch, which has a capacity of 48 cfs and diverts from unnamed tributaries of the East Fork of the Eagle River at the following points, all of which are located in Eagle County, Colorado: (i) 900 feet south of the north section line and 1100 feet west of the east section line of Section 5, T. 8 S., R. 79 W., 6<sup>th</sup> P.M. (ii) 1250 feet south of the north section line and 700 feet east of the west section line of Section 4, T. 8 S., R. 79 W., 6<sup>th</sup> P.M. (iii) 1200 feet north of the south section line and 800 feet east of the west section line of Section 33, T. 7 S., R. 79 W., 6<sup>th</sup> P.M. (iv) Runoff, surface flow, and seepage from the area above the East Fork Interceptor Ditch as it runs between the above-described points of diversion and Eagle Park Reservoir. (2) The Chalk Mountain Interceptor Ditch, which has a capacity of 12 cfs and diverts runoff and seepage as it runs a distance of approximately 3.4 miles from Fremont Pass, located in the W/2 of Section 11, T. 8 S., R. 79 W., 6<sup>th</sup> P.M., northwesterly along State Highway 91 and the South side of Robinson Tailing Pond, thence westerly to the south of Chalk Mountain Reservoir and Robinson Reservoir, thence northwesterly to Eagle Park Reservoir. The Chalk Mountain Interceptor Ditch diverts water from the headwaters of the Tenmile Creek in Lake and Summit Counties and from the headwaters of the East Fork of the Eagle River in Eagle County. (3) The East Interceptor Ditch, which has a capacity of 20 cfs and runs northeasterly from a point whence the northeast corner of Section 2, T. 8 S., R. 79 W., 6<sup>th</sup> P.M. bears North 77°20' East a distance of 850 feet at the north fork of McNulty Creek, thence along the east side of Robinson and Tenmile Tailing Ponds into Supply Canal No. 1 described below. The East Interceptor Ditch diverts water from the north fork of McNulty Creek and surface flow, seepage, and runoff from watersheds above it that are tributary to Tenmile Creek. (4) The Supply Canal No. 1, which has a capacity of 10 cfs and diverts water from the following tributaries of Tenmile Creek at the following points: (i) On the west bank of Humbug Creek at a point whence the southwest corner of Section 18, T. 7 S., R. 79 W., bears South 71°35' West a distance of 3250 feet. (ii) On the south bank of Mayflower Creek at a point whence the northeast corner of Section 24, T. 7 S., R. 79 W., 6<sup>th</sup> P.M. bears North 16°55' East a distance of 2250 feet. (iii) Runoff, surface flow, and seepage from the area above to Supply Canal No. 1 as it runs between the above-described points of diversion and the Climax Mill. (5) The Supply Canal No. 2, which has a capacity of 10 cfs and diverts water from the following tributaries of Tenmile Creek at the following points: (i) On the west bank of Searle Creek at a point whence U.S.L.M. Kokomo bears South 45°25' East 3740 feet (located in the NW1/4 of the SE1/4 of Section 13, T. 7 S., R. 79 W., 6<sup>th</sup> P.M.). (ii) On the south bank of

Kokomo Creek at a point whence U.S.L.M. Kokomo bears North 39°36' East 2635 feet (located in the SE1/4 of Section 22, T. 7. S., R. 79 W., 6<sup>th</sup> P.M.). (iii) Runoff, surface flow, and seepage from the area above the Supply Canal No. 2 as it runs between the abovedescribed points of diversion and the Climax Mill. (6) The East Fork Pumping Plant, which has a capacity of 6 cfs and diverts from the East Fork of the Eagle River at a point in the SE1/4 NE1/4 of Section 32, T. 7 S., R. 79 W., 6<sup>th</sup> P.M. at a point whence the NE corner of said Section 32 bears N. 31°53' E. a distance of 2,414 feet. By Eagle Park Reservoir Agreement dated October 23, 1996, the District was allocated 85 acre feet, and still has the right to 55 acre feet, of the Eagle Park Reservoir water owned by the Upper Eagle Regional Water Authority. 4. Application for Water Rights: The District seeks absolute and conditional water rights for the Pavilion Pond and the absolute right for the Willow Creek Golf Course Pond described in paragraphs 2(c) and 2(d) above. 5. Changes of Water Right: The District seeks to change the Eagle Pond to include the Eagle River as an additional source and to add an additional point of diversion being the Eagle River point of diversion of the Eagle-Vail Municipal Water System. In addition, the District seeks to change the existing Stone Creek point of diversion of the Eagle Pond to the Stone Creek point of diversion of the Eagle-Vail Municipal Water System. This is a downstream move of approximately 1,500 feet from the decreed location, (See Figure 1). 6. Description of the Plan for Augmentation: By this Application, the District seeks the right to divert and store water out of the priority in connection with the water rights decreed in paragraph 2. While the irrigation use of the water rights described in paragraph 2(a) and 2(b) is already augmented by the decree in Case No. W-3289, the District seeks augment the out of priority diversions of the Eagle-Vail Metropolitan Water System that are stored in the Pavilion Pond and Willow Creek Golf Course Pond and to replace the evaporation losses of all of the water storage facilities and the open channel ditch that diverts water into these storage facilities. The District will replace such out of priority depletions in accordance with the following plan for augmentation and exchange: (a) Augmentation Plan. The ponds described in paragraph 2 will have a total surface area of 2.63 acres and the open channel ditch will have a surface area of 0.04 acres for a total surface area of 2.67 acres. The evaporation losses from these facilities will be 5.57 acre feet during the May 13<sup>th</sup> through October 10<sup>th</sup> historic season of use of the water rights described in paragraph 3(a) above, and 1.59 acre feet during the period from October 11<sup>th</sup> until May 12<sup>th</sup> for each year. The consumptive use of water resulting from the foregoing evaporation losses will be augmented by the historic consumptive use credits of the water rights described in paragraph 3(a) during the historic season of use of these water rights, and by the releases of water from Green Mountain Reservoir and Eagle Park Reservoir described in paragraphs 3(b) and 3(c) above outside that historic season of use. (b) Exchange Plan. The replacement of the evaporation losses described above will be augmented by exchange by water from Green Mountain Reservoir and Eagle Park Reservoir at the rate of 0.25 cfs. The upper termini of the exchange reaches will be Green Mountain Reservoir and Eagle Park Reservoir, and the lower termini of Green Mountain Reservoir will be the Eagle River and Stone Creek points of diversion of the Eagle-Vail Metropolitan Water System described in paragraph 3(a) above. The lower terminus of the exchange of the Eagle Park Reservoir will be the Stone Creek diversion point of the Eagle-Vail Municipal Water System described above. A map of the exchange reaches is set forth in Figure 2. 7. Land Ownership. The District owns the water storage facilities described in paragraph 2 above, and the land on which the Stone Creek point of diversion of the Eagle-Vail Municipal Water System is located. The District has a special use permit from the U.S. Forest Service for the Eagle River point of diversion of the Eagle-Vail Municipal Water System. The address of the Forest Service is White River National Forest, Supervisor's Office, 900 Grand Avenue, Glenwood Springs, CO 81601. The owner of Eagle Park Reservoir is the Eagle Park Reservoir Company, 846 Forest Road, Vail, CO 81657. The owner of the Green Mountain Reservoir is the United States Bureau of Reclamation, East Colorado Area Office, whose address is 11056 West County Road 18E, Loveland, CO 80537. WHEREFORE, the District seeks (i) a decree for the absolute and conditional water rights for the Willow Creek Golf Course Pond and the Pavilion Pond detailed above; (ii) approval of the changes of water right described in paragraph 5 above; (iii) approval of the plan for augmentation and exchange set forth in paragraphs 6(a) and (b) above; and (iv) such other relief as the Court may grant.

**YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of DECEMBER 2021 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.**