

Consent Agenda Item 1.a

March 15-16, 2023 Board Meeting

Case No. 22CW3185 (Water Division 1); City of Aurora, Colorado,
acting by and through its Utility Enterprise

Summary of Water Court Application

Application for Change of Water Rights and Appropriative Right of Exchange.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in January 2023 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 1 in the South Platte Headwaters and Upper South Platte River Watersheds, that could be injured by this application:

| Case Number | Stream | Upper Terminus | Lower Terminus | CFS Rate (Dates) | Approp. Date |
|---------------|----------------|------------------------|--------------------------|-------------------|--------------|
| W-8229 (1976) | Tarryall Creek | headwaters in vicinity | confl Michigan Creek | 7 (01/01 - 12/31) | 01/14/1976 |
| W-8729 (1977) | Tarryall Creek | confl Michigan Creek | confl Tarryall Res | 14 (1/1 - 12/31) | 11/15/1977 |
| W-8730 (1977) | Tarryall Creek | Tarryall Res outlet | confl South Platte River | 20 (1/1 - 12/31) | 11/15/1977 |

Potential for Injury

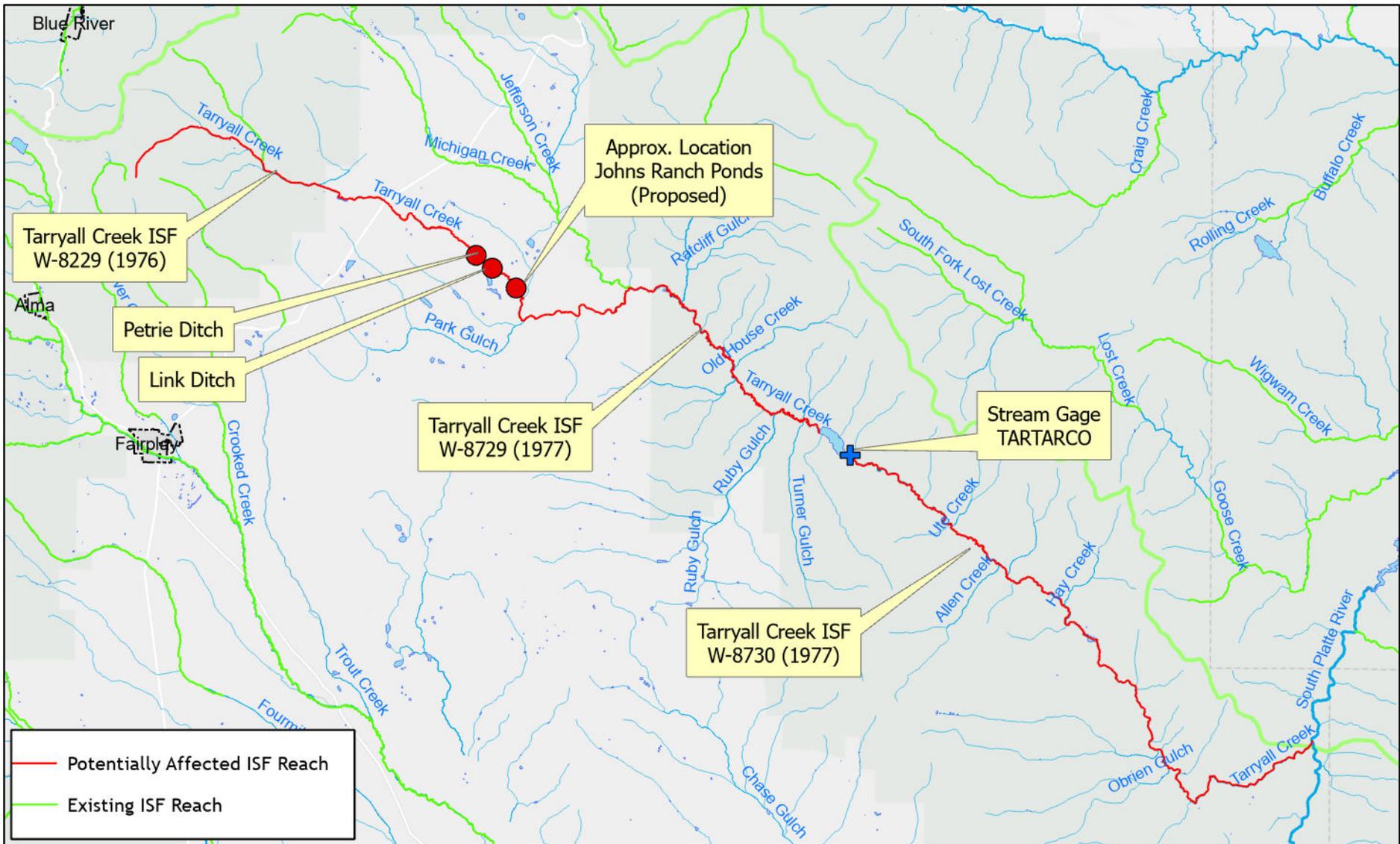
- The proposed change of water rights could cause an expansion of use and could alter the time, place, and amount of historical return flows, which could injure the CWCB’s instream flow water rights.
- The requested upstream move of a point of diversion for Applicant’s senior water right could injure the intervening instream flow water right.

Other Objectors

Statements of Opposition were also filed by Centennial Water and Sanitation District; City and County of Denver, acting by and through its Board of Water Commissioners (Denver Water); City of Englewood; City of Longmont; Colorado Parks and Wildlife; Headwater Authority of the South Platte; Platte Valley Irrigation Company; Rangeview Metropolitan District; the State and Division Engineers; The Burlington Ditch, Reservoir and Land Company; The St. Vrain & Left Hand Water Conservancy District; and Western Mutual Ditch Company.

Attorney Representing CWCB

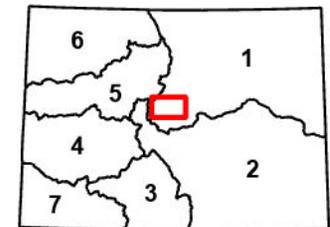
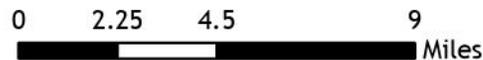
Christopher R. Stork, Assistant Attorney General, is assigned to this case and can be contacted at christopher.stork@coag.gov, or 720-508-6311.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

March 15-16, 2023 CWCB Board Meeting
 Consent Agenda Item 1.a: Statement of Opposition
 Case No. 22CW3185 (Water Division 1)
 City of Aurora, Colorado, acting by and through its
 Utility Enterprise



DISTRICT COURT, WATER DIVISION 1, COLORADO
NOVEMBER 2022 WATER RESUME PUBLICATION

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN WATER DIV. 1

Pursuant to C.R.S. 37-92-302, you are notified that the following is a resume of all water right applications, and certain amendments filed in the Office of the Water Clerk during the month of **NOVEMBER 2022** for each County affected.

2022CW3185 THE CITY OF AURORA, COLORADO, acting by and through its Utility Enterprise, 15151 E. Alameda Parkway, Suite 3600, Aurora, CO 80012-1555, 303-739-7370. Please direct all pleadings to: John M. Dingess, Austin Hamre, Teri L. Pettitt, Hamre, Rodriguez, Ostrander & Dingess, P.C., 3600 South Yosemite Street, Suite 500, Denver, Colorado 80237, 303-779-0200. **APPLICATION FOR A CHANGE OF WATER RIGHTS AND APPROPRIATIVE RIGHT OF EXCHANGE IN PARK, JEFFERSON, DOUGLAS, ARAPAHOE, DENVER, ADAMS, AND WELD COUNTIES.** 2.

Application for Change of Water Rights. 2.1. **Decreed water rights for which change is sought.** 2.1.1. **Name of Structure:** Petrie Ditch (WDID # 2300902¹). 2.1.1.1. *Original Decree:* CA 341, Park County District Court, entered on October 18, 1889, priority number 118. 2.1.1.2. *Relevant Subsequent Decrees:* None. 2.1.1.3. *Decreed Point of Diversion* (identified on **Exhibit A** hereto): 2.1.1.3.1. From CA 341 Decree: On Tarryall Creek whence the highest point of Mt. Silverheels bears W. 10°55' N. and the highest point of Congress Mt. bears N. 32°20' West, in Park County, Colorado. Handwritten on margin of the CA 341 Decree: NE 1/4 of Section 31, T8S, R75W of the 6th PM in Park County, Colorado. 2.1.1.3.2. From Colorado Division of Water Rights Website: NW 1/4 of SE 1/4 of Section 31, T8S, R75W of the 6th PM in Park County, Colorado. 2.1.1.4. *Source:* Tarryall Creek. 2.1.1.5. *Appropriation Date:* June 1, 1880. 2.1.1.6. *Rate of Diversion:* 27 c.f.s., absolute. 2.1.1.7. *Decreed Use:* Irrigation. 2.1.2. **Name of Structure:** Link Ditch (WDID # 2300904). 2.1.2.1. *Original Decree:* CA 341, Park County District Court, entered on October 18, 1889, priority number 200. 2.1.2.2. *Relevant Subsequent Decrees:* None. 2.1.2.3. *Decreed Point of Diversion:* On Tarryall Creek in the SW 1/4 of Section, 32, T8S, R75W, of the 6th P.M., in Park County, Colorado. This location is identified on **Exhibit A** hereto. 2.1.2.4. *Source:* Tarryall Creek. 2.1.2.5. *Appropriation Date:* May 20, 1885. 2.1.2.6. *Rate of Diversion:* 19 c.f.s., absolute. 2.1.2.7. *Decreed Use:* Irrigation. 2.2. **Description of proposed changes:** The Applicant requests the following changes of use for the subject water rights: 2.2.1. **Change to alternate types of use.** In addition to use for agricultural irrigation on the historically irrigated lands, Applicant seeks to add the following uses: Municipal, domestic, agricultural, energy production, manufacturing, mechanical and industrial purposes, such purposes include, but are not limited to, fire protection, irrigation, commercial, recreation, fish and wildlife propagation, onsite recharge, reservoir evaporation replacement, creation and maintenance of wetlands, maintenance of storage reserves, stock watering, reclamation, revegetation, dust suppression, water treatment and supply, wastewater treatment, storage for such uses, and use as a supply or substitute supply for augmentation, return flow replacement (by direct release or by recharge), replacement, exchanges decreed or to be decreed, and substitute supply plans. All uses include reuse and successive reuse to extinction and storage after initial and subsequent uses for the above purposes, or disposition of effluent for the above purposes. 2.2.2. **Change of place of use.** Use for irrigation purposes on the historically irrigated lands, which may continue for a time after the entry of this change Decree, and for replacement purposes at said lands. Additionally, Applicant seeks to change the place of use to Aurora's current and future service areas served by its

Attachment
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¹ The WDID numbers are accurate to the best of Aurora's knowledge and are included in this application for convenience only. If an inaccuracy occurs between a legal description provided herein and a WDID number, the legal description shall take precedence.

municipal water supply and water reuse systems, 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 replacement or delivery obligations in Water Division 1. 2.2.3. Change from Direct Flow to Direct Flow or Storage. After diversion and prior to initial use by Aurora, water diverted pursuant to the subject water rights may be stored at any of the locations set forth below in paragraphs 2.2.3.1. to 2.2.3.21. Such water may be delivered to storage by means of the use of natural stream channels, component facilities of Aurora's South Platte diversion and conveyance system in which Aurora is the owner or in privity with the owner, component facilities of Aurora's Prairie Waters System, and/or any points of diversion authorized in the respective decrees for those storage structures including, but not limited to, the City of Aurora Intake Structure, Brighton Ditch, the Lupton Bottom Ditch, and the Western Mutual Ditch, described below in paragraphs 2.2.3.2. to 2.2.3.5. All storage facilities other than those located on the Johns Ranch will be filled by diversions from the South Platte River. Reusable effluent resulting from the initial use for the changed uses of the historical consumptive use component of the water diverted pursuant to the subject water rights may be stored in any reservoir Aurora is authorized to use. See **Exhibits B-1, B-2, B-3, and B4**, attached hereto. 2.2.3.1. *On-Site Storage and Recharge Locations*. 2.2.3.1.1. Johns Ranch Pond(s). One or more storage sites to be generally located on the Johns Ranch in Sections 32 & 33, Township 8 South, and Sections 4, 5, 8 and 9, Township 9 South, Range 75 West of the 6th P.M., in Park County, Colorado. See **Exhibit A**. 2.2.3.1.2. Petrie Ditch. See paragraph 2.1.1, above. 2.2.3.2. *City of Aurora Intake Structure (WDID #801001)*. For direct flow into the existing intake tower and tunnel at the Strontia Springs Diversion Dam, in Douglas County, Colorado and across the channel of the South Platte River. The Dam is located on the South Platte River in the NW/4 of the NW/4 of Section 21, T7S, R69W, 6th P.M. This structure is filled by the pool in Strontia Springs Reservoir and then conveys water to Quincy Reservoir, Aurora Reservoir, and the East Reservoir Complex. 2.2.3.3. *The Brighton Ditch (WDID #200810)*. The headgate of the Brighton Ditch is on the west bank of the South Platte River in the SE/4 SE/4, Section 11, T1S, R67W, 6th P.M. in Adams County, Colorado, at a point approximately 780 feet north and 1,120 feet west of the SE corner of Section 11. 2.2.3.4. *Lupton Bottom Ditch (WDID #200812)*. The headgate of the Lupton Bottom Ditch is generally located on the west bank of the South Platte River in the NW/4 of the SW/4 of Section 19, T1N, R66W, 6th P.M., in Weld County, Colorado. 2.2.3.5. *Western Mutual Ditch (a.k.a. Hewes Cook Ditch) (WDID #2000825)*. The headgate of the Western Mutual Ditch is on the east bank of the South Platte River in the SE/4 of the SW/4 of Section 11, T3N, R67W of the 6th P.M., in Weld County, Colorado, approximately 230 feet north and 2,510 feet east of the SW corner of Section 11. 2.2.3.6. *Spinney Mountain Reservoir (WDID #2304013)*. The Spinney Mountain Reservoir dam is located in the South ½ of Section 25, Township 12 South, Range 74 West of the 6th P.M., in Park County, Colorado, on the Middle Fork of the South Platte River. 2.2.3.7. *Strontia Springs Dam and Reservoir (WDID #803983)*. The Strontia Springs Dam is constructed on the South Platte River in Douglas County, Colorado, with the east-end of dam (right) abutment located at a point from whence the NW corner of Section 21, T7S, R69W, 6th P.M., bears North 52 degrees West a distance of 1,300 feet. The approximate (right) abutment latitude is 39°25'56" North and longitude is 105°07'31" West. Decreed in Water Division 1, Case No. 04CW218. 2.2.3.8. *Quincy Reservoir (WDID #203375)*. Quincy Reservoir is an off-channel reservoir located in the NE/4, E/2 of the NW/4, and N/2 of the SE/4 of Section 9, and the S/2 of the NW/4, N/2 of the SW/4 of Section 10, T5S, R66W, 6th P.M., in Arapahoe County, Colorado. The approximate (right) abutment is latitude 39°38'15" north, and longitude 104°46'36" west, which point is also described as a point in the NE/4 of the NE/4 of Section 9, T5S, R66W, 6th P.M. that lies 370 feet from the north line and 1,145 feet from the east line of Section 9. Decreed in Water Division 1, Case No. 03CW415. 2.2.3.9. *Aurora Reservoir (WDID #203379)*.

The Aurora Reservoir is an off-channel reservoir located upon Senac Creek, an intermittent stream, in Sections 15, 16, 20, 21 and 22, T5S, R65W, 6th P.M., in Arapahoe County, Colorado. The east-end of the dam (right) abutment is located at a point from whence the northwest corner of Section 15, T5S, R65W, 6th P.M. bears north 45° west a distance of 2,970 feet, which point is also described as a point in the SE/4 of the NW/4 of Section 15, T5S, R65W, 6th P.M. that lies 2,110 feet from the north line and 2,105 feet from the west line of Section 15. The approximate (right) abutment is latitude 39°37'06" north, and longitude 104°39'11" west. Decreed in Water Division 1, Case No. 03CW415. 2.2.3.10. *Gravel Pit Reservoir A and Aquifer Recharge and Recovery Facility A ("ARR-A")* (WDID #203043 and #203042) located on all or portions of the following quarter-sections, all located in T1N, R67W, 6th P.M.; the S/2 of Section 13, and the N/2 of the NW/4 of Section 24, in Weld County, Colorado. Decreed in Water Division 1, Case No. 06CW104. 2.2.3.11. *Aurora-Everist (Fort Lupton) Reservoir Complex No. 1* (WDID #203087). This reservoir complex is a group of interconnected gravel pits that are located on a portion of the NE/4 of Section 25, T2N, R67W, 6th P.M., and portions of the NW/4 and portions of the SW/4 of the NE/4, Section 30, T2N, R66W, 6th P.M., in Weld County, Colorado. Decreed in Water Division 1, Case No. 02CW330. 2.2.3.12. *Aurora-Everist (Fort Lupton) Reservoir Complex No. 2* (WDID #203086). This reservoir complex is a group of interconnected gravel pits located on portions of the SE/4 and SE/4 of the SW/4 of Section 25, T2N, R67W, 6th P.M., and portions of the SW/4, Section 30, T2N, R66W, 6th P.M., in Weld County, Colorado. Decreed in Water Division 1, Case No. 13CW3080. 2.2.3.13. *Stillwater Ranch Reservoir ("Walker North")*. Walker North is located in the S/2 NE/4 of Section 36, T1N, R67W of the 6th P.M., in Weld County, Colorado. Decreed in Water Division 1, Case No. 97CW392. 2.2.3.14. *Robert W. Walker Reservoir ("Walker South")*. Walker South is located on portions of the SE/4 of Section 36, T1N, R67W, 6th P.M., in Weld County, Colorado. Decreed in Water Division 1, Case No. 97CW272. 2.2.3.15. *KirbyDersham Gravel Pit Reservoir*. The Kirby-Dersham Gravel Pit Reservoir is located on portions of the NW/4 of the SE/4, the SW/4 of the SE/4, and the NE/4 of the SE/4, of Section 36, T1N, R67W, 6th P.M., in Weld County, Colorado. 2.2.3.16. *Challenger Gravel Pit Reservoir*. The Challenger Gravel Pit Reservoir is located on a portion of the E/2 of the NW/4 of Section 1, T1S, R67W, 6th P.M., in Adams County Colorado. 2.2.3.17. *Aurora Tucson South Storage Facility ("Tucson South") and Aquifer Recharge and Recovery Facility B ("ARR-B")*. These facilities will occupy all or portions of the N/2 of the SE/4, the SW/4 of the SE/4, and the SW/4, all in Section 1, T1S, R67W, 6th P.M., in Adams County, Colorado. Decreed in Water Division 1, Case No. 03CW414. 2.2.3.18. *Gilcrest Reservoir*. An off-channel reservoir to be constructed within part of Section 2, T3N, R67W and parts of Sections 23, 26, 34, and 35, T4N, R67W of the 6th P.M., in Weld County, Colorado. Decreed in Water Division 1, Case No. 16CW3058. 2.2.3.19. *Bennett Gravel Pit Reservoir*. An off-channel reservoir expected to be located within portions of the E1/2 of the NW1/4 and W1/2 of the NE/4 of Section 12 and portions of the SW1/4 SE1/4 of Section 1, Township 2 North, Range 67 West of the 6th P.M., Weld County, Colorado. 2.2.3.20. *Everist St. Vrain Gravel Pit Reservoir*. An off-channel reservoir expected to be located within portions of W1/2 of Section 32, Township 3 North, Range 67 West of the 6th P.M., Weld County, Colorado. 2.2.3.21. *Sorin Reservoir*. An offchannel reservoir expected to be located within portions of NE1/4 of Section 2, Township 4 North, Range 66 West of the 6th P.M., NW1/4 of the SW1/4 of Section 3, Township 4 North, Range 66 West of the 6th P.M., SE1/4 and E1/2 of the SW1/4 of Section 4, Township 4 North, Range 66 West of the 6th P.M., S1/2 of the SE1/4 of Section 34, Township 5 North, Range 66 West of the 6th P.M., and the SW1/4 and SE1/4 of Section 35, Township 5 North, Range 66 West of the 6th P.M., all in Weld County, Colorado. 2.2.4. Change in point of diversion. In addition to the originally decreed point of diversion for the Link Ditch (described above in paragraph 2.1.2.3.), the Applicant seeks to add the Petrie Ditch (described above in paragraph 2.1.1.3.) as an alternate point of diversion for the Link Ditch water right. 2.3. **Historical use information**. The subject water rights were used for the irrigation of grass hay and pasture lands in support of cattle operations located generally in the Sections 32 & 33, Township 8 South, and Sections 4, 5, 8 and 9, Township 9 South, Range 75 West of the 6th P.M., in Park County, Colorado. 2.3.1. The water rights have been used to irrigate approximately 295 acres of land as shown on **Exhibit A**. 2.3.2. Summaries of records

of actual diversions of the Petrie Ditch and Link Ditch water rights are attached as **Exhibit C**, attached hereto. 3. **Application for Appropriative Right of Exchange.** 3.1. **Names and locations of point or structure defining exchange reach** (see **Exhibit D**, attached hereto). 3.1.1. **Exchange From Point:** Confluence of Tarryall Creek and the South Platte River (WDID #2301901). The Confluence of Tarryall Creek and the South Platte River is located in the Northeast quarter of the Northwest quarter of Section 16, Township 11 South, Range 71 West, 6th P.M., in Park County, Colorado. 3.1.2. **Exchange To Point:** Spinney Mountain Reservoir. See paragraph 2.2.3.6, above. 3.2. **Applicant requests the following appropriative right of exchange.** 3.2.1. From the confluence of Tarryall Creek and the South Platte River to Spinney Mountain Reservoir using the points described above. 3.2.2. **Rate of Exchange.** 35.5 cfs, conditional. 3.2.3. **Initiation of Appropriation.** 3.2.3.1. The foregoing appropriations were initiated by: 1) decision by Aurora to appropriate the exchange; 2) the filing of this Application; and 3) field surveys and the posting of signs at the Exchange-From and Exchange-To Points. 3.2.4. **Date of Appropriation.** The date of filing this Application with the Water Court. 3.2.4.1. *Date when water was placed to beneficial use:* Not applicable. 3.2.5. **Sources of Substitute Supply.** The water rights to be changed under this Application. 3.2.6. **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: Municipal, domestic, agricultural, energy production, manufacturing, mechanical and industrial purposes, such purposes include, but are not limited to, fire protection, irrigation, commercial, recreation, fish and wildlife propagation, on-site recharge, reservoir evaporation replacement, creation and maintenance of wetlands, maintenance of storage reserves, stock watering, reclamation, revegetation, dust suppression, water treatment and supply, wastewater treatment, storage for such uses, and use as a supply or substitute supply for augmentation, return flow replacement, replacement, exchanges decreed or to be decreed, and substitute supply plans. All uses include reuse and successive reuse to extinction and storage after initial and subsequent uses for the above purposes, or disposition of effluent for the above purposes. 3.2.7. **Place of Use.** The water right that is the subject of the appropriative right of exchange is 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 capable of being served by the Aurora municipal water supply system, including areas served by its connections with other systems, for any 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 1. 4. **Names and addresses of owners or reputed 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.** 4.1. Aurora is the owner of each of the storage structures identified in paragraph 2.2.3., except those identified below. On information and belief, additional owners of the lands on which storage structures are located or will be constructed are those set forth below. 4.2. **Strontia Springs Dam and Reservoir Complex.** The Strontia Springs Dam and Reservoir Complex is owned by the City and County of Denver, acting by and through its Board of Water Commissioners, 1600 West 12th Avenue, Denver, CO 80204-3412. Aurora has contract rights to use the complex. 4.3. **Walker North Reservoir.** Carl F. Eiberger, 303 S. Broadway Ste 200, Denver, CO 80209, and Holcim - WCR, Inc., 1687 Cole Blvd, Suite 300, Golden, CO 80401. 4.4. **Walker South Reservoir.** HIBE, LLC, 32706 Stagecoach Rd., Windsor, CO 80550. 4.5. **Tucson South and ARR-B site.** Holcim - WCR, Inc., 1687 Cole Blvd, Suite 300, Golden, CO 80401. 4.6. **Bennett Gravel Pit Reservoir.** Pioneer Land Company LLC, 4409 Coriolis Way, Frederick, CO 80504. 4.7. **Everist St. Vrain Gravel Pit Reservoir.** L.G. Everist Inc., 7321 E. 88th Avenue, Suite 200, Henderson, CO 80640 and Owens Brothers Concrete, 32186 Castle Court #220, Suite 201, Evergreen, CO 80439. (Total of 19 pages, including exhibits)

THE WATER RIGHTS CLAIMED BY THESE APPLICATIONS MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT WITHIN THE TIME PROVIDED BY STATUTE OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or an amended application, may file with the Water Clerk, P. O. Box 2038, Greeley, CO 80632, 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 **JANUARY 2023** (forms available on www.courts.state.co.us or in the Clerk's office), and must be filed as an Original and include **\$192.00** filing fee. A copy of each Statement of Opposition must also be served upon the Applicant or Applicant's Attorney and an affidavit or certificate of such service of mailing shall be filed with the Water Clerk.