

Consent Agenda Item 1.c

November 20-21, 2019 Board Meeting

Case No. 19CW3112 (Water Division 5); Highland Investment Co., LLC

Water Court Application

Application for Groundwater Rights, Storage Right and Associated Diversion Right, Plan for Augmentation, and Appropriative Rights of Exchange.

Staff Recommendation

Staff recommends that the Board ratify the October 2019 filing of a Statement of Opposition filed on behalf of the Board 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
11CW159-161	Colorado River	confl Blue River	pt immed u/s of confl Eagle River	500 -900 (Dates Vary)	07/12/2011
80CW446-448	Colorado River	hdgt Windy Gap Project div	confl Blue River	135 (1/1 - 12/31) 90 -150 (1/1 - 12/31)	07/08/1980
90CW293	Pole Creek	confl Skunk Creek	confl Crooked Creek	2 (7/1 - 7/31) 1.5 (8/1 - 8/31) 3 (4/1 - 6/30) 1 (9/1 - 3/31)	11/27/1990
90CW296	Crooked Creek	confl Pole Creek	confl Fraser River	2.75 (10/1 - 4/14) 8 (4/15 - 8/14) 4 (8/15 - 9/30)	11/27/1990
90CW308 & 90CW315	Fraser River	confl St Louis Creek	confl Colorado River	17 & 30 (5/15 - 9/15) 11 & 19 (9/16 - 5/14)	11/27/1990

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.

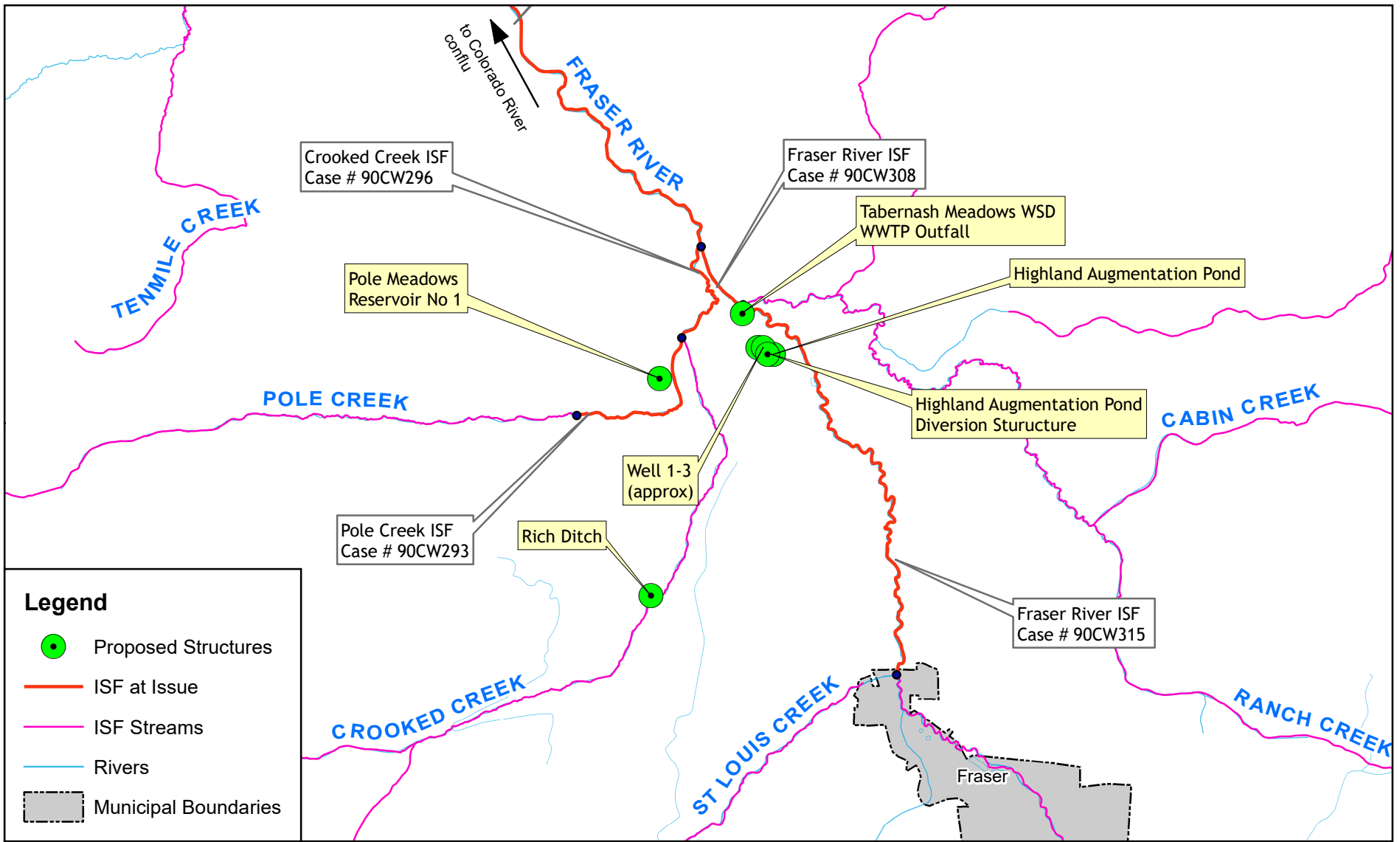
- The proposed appropriative right of exchange should be defined clearly with a reference to intervening instream flow water rights so that the CWCB's instream flow water rights are not injured.
- Some of the water rights are claimed with senior appropriation dates. The instream flow water right might be subject to these water rights under C.R.S. 37-92-102(3)(b) if the claimed pre-existing uses are sufficiently documented.

Other Objectors

Statements of Opposition were also filed by City and County of Denver Water Commissioners, City of Englewood, J. Scott Bradley, Tabernash Meadows Water and Sanitation District, and Valley at Winter Park Water District.

Attorney Representing CWCB

William D. Davidson, is assigned to this case and can be contacted at will.davidson@coag.gov, or 720-508-6280.



Legend

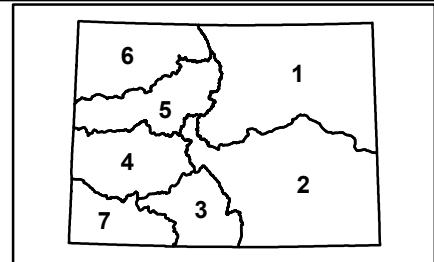
- Proposed Structures
- ISF at Issue
- ISF Streams
- Rivers
- Municipal Boundaries



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

November 20-21, 2019 CWCB Board Meeting
 Consent Agenda Item 1.c: Statement of Opposition
 Case No. 19CW3112 (Div 5)
 Highland Investment Co LLC



DIVISION 5 WATER COURT- AUGUST 2019 RESUME

24. 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 AUGUST 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.*

19CW3112 District Court, Water Division No. 5, State of Colorado, 109 Eighth Street, Suite 104, Glenwood Springs, CO 81601. CONCERNING THE APPLICATION FOR WATER RIGHTS OF HIGHLAND INVESTMENT CO., LLC, IN **GRAND COUNTY**, COLORADO. CONCERNING THE APPLICATION FOR WATER RIGHTS OF HIGHLAND INVESTMENT CO., LLC, IN **GRAND COUNTY**, COLORADO. **APPLICATION FOR GROUNDWATER RIGHTS, STORAGE RIGHT AND ASSOCIATED DIVERSION RIGHT, PLAN FOR AUGMENTATION, AND APPROPRIATIVE RIGHTS OF EXCHANGE.**

1. Name and address of Applicant: Highland Investment Co., LLC (“Highland”), P.O. Box 3228, Winter Park, Colorado 84082, Direct all pleadings to: Steve Bushong, Gunnar Paulsen, Porzak Browning & Bushong LLP, 2120 13th Street, Boulder, CO 80302. 2.

Introduction: Highland currently operates commercial facilities on property shown on **Exhibit A** hereto (“Subject Property”). Highland plans to expand its development on the Subject Property to include greenhouses and related support facilities, additional commercial space, manufacturing facilities, and residential dwelling units (collectively the “Development”). Highland’s existing facilities are currently supplied by an exempt commercial well. By this Application, Highland seeks to adjudicate an enlarged water supply, augmentation plan, and appropriative rights of exchange to allow for the Development of the Subject Property. **I. Claim for Tributary Groundwater Rights.**

3. Names of Structures: Highland Well Nos. 1-3, 4. Description of Groundwater Rights: a. Highland Well No. 1, i. Legal Description: located in the NE1/4 NE1/4 of Section 1, Township 1 South, Range 76 West of the 6th P.M. at a point 1,297 feet from the East section line and 2,695 feet from the North section line; or, Easting 428586, Northing 4427204, UTM, Zone 13N, NAD 83. The location of this structure in shown on the map attached as Exhibit A, ii. Source: Groundwater tributary to the Fraser River, tributary to the Colorado River, iii. Depth: 300 feet, iv. Well Permit No.: 186885-A, v. Appropriation Date: September 29, 2004, based on construction of well, vi. Amount: 0.1114 c.f.s. (50 g.p.m.), of which .022 c.f.s. (10 g.p.m.) is absolute for commercial uses, conditional for all other beneficial uses, vii. Use: Commercial, domestic, industrial, year-round irrigation including irrigation within greenhouse facilities and reuse of irrigation water, fill and refill of the Highland Augmentation Pond described below for any uses described in paragraph 6.a.iv, and any other uses incidental to the planned Development of the Subject Property, viii. Remarks: Highland Well No. 1 currently operates under an exempt commercial well permit and will continue to do so until the buildout of additional on-site facilities increases demand and exceeds the limits of the exempt permit, at which time Highland will obtain a new well permit and operate this well under the rights decreed in this case, b. Highland Well No. 2: i. Legal Description: The location of this structure shall be on the Subject Property attached as Exhibit A located in the NW1/4 NE1/4 of Section 1, Township 1 South, Range 76 West of the 6th P.M., with a more precise location provided at the time the Highland Well No. 2 is made absolute, ii. Source: Groundwater tributary to the Fraser River, tributary to the Colorado River, iii. Proposed Depth: Estimated 300 feet, iv. Well Permit No.: N/A, v. Appropriation Date: September 15, 2015, based on the intent to appropriate and actions consistent with that intent, including, but not limited to, engineering field work and planning in support of and in preparation of this Application, vi. Amount: 0.1114 c.f.s. (50 g.p.m.), conditional, vii. Use: Commercial, domestic, industrial, year-round irrigation including irrigation within greenhouse facilities and reuse of irrigation water, fill and refill of the Highland Augmentation Pond described below for any uses described in paragraph 6.a.iv, and any other uses incidental to the planned Development of the Subject Property, c. Highland Well No. 3: i. Legal Description: The location of this structure shall be on the Subject Property attached as Exhibit A located in the NW1/4 NE1/4 of Section 1, Township 1 South, Range 76 West of the 6th P.M., with a more precise location provided at the time the Highland Well No. 3 is made absolute, ii. Source: Groundwater tributary to the Fraser River, tributary to the Colorado River, iii. Proposed Depth: Estimated 300 feet, iv. Well Permit No.: N/A, v. Appropriation Date: September 15, 2015, based on the intent to appropriate and actions consistent with that intent, including, but not limited to, engineering field work and planning in support of and in preparation of this Application, vi. Amount: 0.1114 c.f.s. (50 g.p.m.), conditional, vii. Use: Commercial, domestic, industrial, year-round irrigation including irrigation within greenhouse facilities and reuse of irrigation water, fill and refill of the Highland Augmentation Pond described below for any uses described in paragraph 6.a.iv, and any other uses incidental to the planned Development of the Subject Property. **II. Claim for Water Storage Right and Associated Diversion Right.**

5. Name of Pond: Highland Augmentation Pond. 6. Description of Storage Right and Associated Diversion Right. a.

Highland Augmentation Pond Storage Right: i. Location: This structure is located on or adjacent to an unnamed tributary of the Fraser River on the Subject Property as depicted on Exhibit A. The centroid of the pond is located in the NE1/4 NE1/4 of Section 1, Township 1 South, Range 76 West of the 6th P.M. at a point 1,165 feet from the East section line and 2,689 feet from the North section line; or, Easting 428626.4, Northing 4427205.1, UTM, Zone 13N, NAD 83, ii. Sources: The following sources of water will be used to fill and refill the Highland Augmentation Pond: (1) Unnamed tributary to the Fraser River shown on Exhibit A using the Highland Augmentation Pond Diversion Structure described below in paragraph 6.b as may be necessary; (2) Surface runoff, drainage and/or irrigation wastewater from neighboring lands; (3) underground water tributary to the Fraser River diverted at Highland Well Nos. 1-3 described in paragraph 4 above; and (4) trucked water from a source that may lawfully be used for augmentation, iii. Appropriation Date: September 15, 2015, based on the intent to appropriate and actions consistent with that intent, including, but not limited to, engineering field work and planning in support of and in preparation of this Application, iv. Uses: Storage, augmentation and replacement, aesthetic, recreation, fire protection, piscatorial, wildlife, and irrigation use on Subject Property, v. Amount Claimed: 4.0 acre-feet ("AF"), conditional, with the right to fill and refill when in priority, vi. Rate of Diversions into Pond: The rate of diversions into storage depends upon the source. The claimed rates are: (a) 2.0 cfs of water in the unnamed tributary with use of the Highland Augmentation Pond Diversion Structure if necessary; (b) 2.0 c.f.s. of surface runoff, drainage and/or irrigation wastewater from neighboring lands; and/or (c) decreed rates of Highland Well Nos 1 – 3 set forth in paragraph 4 above. No rate limits apply to using trucked water, vii. Surface Area of High-Water Line: 1.0 acre, viii. Remarks. The current pond is located off-channel but located immediately adjacent to an unnamed tributary. If improvements to the Highland Augmentation Pond cause it to be located on the unnamed tributary, that fact will be identified in making the water right absolute. The storage right sought herein is for either an off-channel pond or an on-channel pond,

b. Highland Augmentation Pond Diversion Structure. The Highland Augmentation Pond is currently located immediately adjacent to an unnamed tributary on which the following diversion structure will be constructed to fill the pond: i. Location. A diversion structure to be located on an unnamed tributary at a point in the NE1/4 NE1/4 of Section 1, Township 1 South, Range 76 West of the 6th P.M. at a point 1,172 feet from the East section line and 2,730 feet from the North section line; or, 428629 Easting, 4427192.6 Northing, UTM, Zone 13N, NAD 83, as shown in Exhibit A, ii. Source. Unnamed tributary to the Fraser River shown on Exhibit A, tributary to the Colorado River, iii. Uses. To fill and refill Highland Augmentation Pond for the uses described in paragraph 6.a.iv above, iv. Amount Claimed. 2.0 c.f.s., conditional, v. Appropriation Date. September 15, 2015, based on the intent to appropriate and actions consistent with that intent, including, but not limited to, engineering field work and planning in support of and in preparation of this Application.

III. Claim for Approval of Plan for Augmentation. 7. Structures to be Augmented: a. Highland Well Nos. 1-3, as described above in paragraph 4, b. Highland Augmentation Pond and Highland Augmentation Pond Diversion Structure, described above in paragraph 6. 8. Water Rights to be used for Augmentation: a. Rich Ditch: Up to 7.5 AF of previously quantified historical consumptive use ("HCU") credits in the Rich Ditch either directly or by release from storage in Pole Creek Meadows Reservoir No. 1 or Highland Augmentation Pond. Highland currently owns 5.0 AF of the previously quantified Rich Ditch HCU credits acquired from the Valley at Winter Park Water District ("VWPWD") and has the right to acquire an additional 2.5 acre-feet of Rich Ditch HCU credits from the VWPWD. A description of the Rich Ditch water right follows: i. Original Decree: The Rich Ditch was originally decreed in Grand County District Court in and for Water Division 5, State of Colorado ("Water Court") in Civil Action No. 183 on August 3, 1911, ii. Prior Change Decrees: In Case No. 80CW67 (consolidated with Case Nos. 80CW456 and 84CW175), and as amended by 95CW354, the Water Court quantified the historic annual consumptive use associated with .891 cfs of the Rich Ditch to be 30.58 acre-feet annually or 0.9 acre-feet per acre per year. In Case No. 16CW3036, VWPWD amended and restated the augmentation plan originally decreed in Case No. 80CW67, removing all Rich Ditch HCU credits from its augmentation plan. In Case No. 16CW3036, VWPWD abandoned 2.9 acre-feet of its Rich Ditch credits, resulting in a total of 27.68 acre-feet of Rich Ditch HCU credits. The prior quantification of HCU credits in the Rich Ditch may not be reconsidered or requantified in these circumstances pursuant to C.R.S. § 37-92-305(3)(e), iii. Original Legal Description: The headgate is located on the west bank of Crooked Creek at a point whence the NE corner, Section 4, Township 1 S., Range 76 W., of the 6th P.M., bears N. 15° E. 2600 feet. The location of this structure is shown on the map attached as Exhibit A, iv. Decreed Source: Crooked Creek, tributary to Fraser River, tributary to Colorado River, v. Appropriation Date: May 5, 1892, vi. Amount: 3.75 cfs, vii. Uses: Irrigation, fire, domestic, and augmentation and replacement, b. Highland Augmentation Pond: Highland plans to store the following water rights in the Highland Augmentation Pond: (1) in-priority storage or hauled water pursuant to the sources described in paragraph 6.a.ii, above, and (2) storage of Rich Ditch HCU credit by exchange described in paragraph 11.b, below, c. Pole Creek Meadows Reservoir No. 1: Highland has acquired 2.5 acre-feet of storage space in Pole Creek Meadows Reservoir No. 1 from VWPWD and has the right to acquire an additional 2.5 acre-feet of storage in Pole Creek Meadows Reservoir No. 1 from VWPWD. Although Highland does not have any interest in the Pole Creek Meadows Reservoir No. 1 water right described below, Highland will store Rich Ditch HCU credit water in Pole Creek Meadows Reservoir No. 1 for subsequent release pursuant to the provisions of the Water Storage Capacity Sale and Operating Agreement between Highland and VWPWD dated March 16, 2016 ("Storage Agreement"), i. Original Decree: Pole Creek Meadows Reservoir No. 1 was originally decreed in Water Court Case No. 85CW148 on October 30, 1985, ii. Original Legal Description: The right abutment of the dam is located in the NE1/4 SE1/4 of Section 2, Township 1 S, Range 76 W, of the 6th P.M. at a point whence the Southeast Corner of said Section 2 bears S24°00'E 1,740 feet. The location of this structure is shown on the map attached as Exhibit A, iii. Source: Pole Creek (via Pearl Ditch), tributary to the Fraser River, tributary to the Colorado River. 9. Return Flow Location: Return flows from use of Highland Well Nos. 1-3 will return to the river at the outfall of the Tabernash Meadows Water and Sanitation District's wastewater treatment facility ("Return Flows") and will reduce Highland's depletions at or below said outfall, which is located at a point in the NW1/4 NE1/4 of Section 1, Township 1 South, Range 76 West of the 6th P.M., at a location 2,499 feet from the East section line and 824 feet from the North section line; or, Easting 428224.7, Northing 4427779.4, UTM, Zone 13N, NAD 83. 10. Plan for Augmentation: The location and timing of depletions from

Highland Well Nos. 1-3 will be determined in these proceedings. In the event of a valid enforceable call senior to Highland Well Nos. 1-3, Highland Augmentation Pond and/or Highland Augmentation Pond Diversion Structure, and if Highland continues to divert water for use at one or more of these structures during that call or otherwise has lagged depletions during that time, then Highland will use the augmentation sources identified in paragraph 8, above, to replace the out of priority depletions in time, location, and amount to prevent injury to senior water rights. Return Flows will reduce the out-of-priority depletions that need to be augmented unless there is an intervening valid call between the location of depletions and location of Return Flows. Return Flows for indoor uses will either be based upon measurements and/or based upon commonly used engineering assumptions. The maximum average anticipated diversions associated with the Development is estimated at approximately 13 AF per year, including diversions into the Highland Augmentation Pond. Total out-of-priority depletions associated with said diversions will not exceed available replacement sources under this augmentation plan. 11. Addition of New Sources of Augmentation Water. Applicant seeks the ability to add future sources of augmentation water to this augmentation plan that are lawfully available for augmentation subject to future administrative approval as may be required. **IV. Claim for Appropriative Rights of Exchange.** 12. Appropriative Rights of Exchange: Highland seeks appropriative rights of exchange to facilitate its use of water and augmentation plan as set forth below. The exchange reaches of the following appropriative rights of exchange are depicted on the attached **Exhibit B**, a. Pole Creek Meadows Reservoir No. 1 Exchange. Highland's Rich Ditch HCU Credits will be delivered for storage in Pole Creek Meadows Reservoir No. 1 pursuant to the Storage Agreement. Highland is entitled to share in VWPWD's rights to divert Rich Ditch water at the Pearl Ditch for storage in Pole Creek Meadows Reservoir No. 1 as decreed in Case No. 80CW67 and as described in the Storage Agreement. To the extent necessary, Highland seeks to decree an existing exchange for such storage, as follows: i. Downstream Terminus. The confluence of Crooked Creek and Pole Creek located at a point in the NE1/4 NE1/4 of Section 2, Township 1 South, Range 76 West of the 6th P.M. at a point 107 feet from the East section line and 2,015 feet from the North section line; or, 427352.5 Easting, 4427421 Northing, UTM, Zone 13N, NAD 83, ii. Upstream Terminus. Pearl Ditch, for diversion into storage at the Pole Creek Meadows Reservoir No. 1, 1. Pearl Ditch Decrees. Originally decreed in Civil Action No. 112 in the District Court of Grand County, entered August 11, 1906. Prior Pearl Ditch change decrees include Case No. 80CW67, consolidated with Case Nos. 80CW456 and 84CW175, Water Court, entered June 27, 1994. Case No. 16CW3036, Water Court, entered May 27, 2019, 2. Location of Pearl Ditch. Headgate located on the North bank of Pole Creek at a point whence the Southeast corner of Section 10, Township 1 South, Range 76 West of the 6th P.M. bears N35°15'W, 1311 feet; or, in the SE1/4 SE1/4 of Section 3, Township 1 South, Range 76 West of the 6th P.M., at a point 715.1 feet from the East section line and 1,076.2 feet from the South section line; or, 425559.5 Easting, 4426315 Northing, UTM, Zone 13N, NAD 83, 3. Pole Creek Meadows Reservoir No. 1. Described in paragraph 8.c, above, iii. Priority Date. March 31, 1980, based upon an existing exchange of water. See C.R.S. § 37-92-305(10). Said priority date was the date of the application in Case No. 80CW67, which was the original augmentation plan application submitted by VWPWD's predecessor in interest. The decree in Case No. 80CW67 changed a portion of Rich Ditch from direct flow to HCU credits for storage in Pole Creek Meadow Reservoir No. 1 which has historically occurred by exchange, iv. Rate. Maximum rate of exchange 0.5 cfs, subject to terms of the Storage Agreement, absolute, b. Highland Augmentation Pond Exchange. Rich Ditch HCU Credits, either directly or after being released from storage in Pole Creek Meadows Reservoir No. 1, will be delivered to the Fraser River, then exchanged up the Fraser River and an unnamed tributary to the Fraser River to the Highland Augmentation Pond as follows: i. Downstream Terminus. The Rich Ditch HCU Credits will be delivered to the confluence of Crooked Creek and the Fraser River located at a point in the NW1/4 SE1/4 of Section 36, Township 1 North, Range 76 West of the 6th P.M. at a point 2,397 feet from the East section line and 2,219 feet from the South section line; or, 427628 Easting, 4428708 Northing, UTM, Zone 13N, NAD 83, ii. Upstream Terminus. The Rich Ditch HCU Credits will be exchanged up the Fraser River and an unnamed tributary to the Fraser River to the Highland Augmentation Pond using the Highland Augmentation Pond Diversion Structure as may be needed, all as described in paragraph 6, above, iii. Appropriation Date: September 15, 2015, based on the intent to appropriate and actions consistent with that intent, including, but not limited to, engineering field work and planning in support of and in preparation of this Application, iv. Rate: 2.0 cfs, conditional, c. Highland Augmentation Plan Exchange. At times when the augmentation plan is not relying upon releases from the Highland Augmentation Pond, then Rich Ditch HCU Credits, either directly or after being released from storage in Pole Creek Meadows Reservoir No. 1, will be delivered to the Fraser River and then exchanged up the Fraser River to cover out-of-priority depletions as follows: i. Downstream Terminus. The confluence of Crooked Creek and the Fraser River located at a point in the NW1/4 SE1/4 of Section 36, Township 1 North, Range 76 West of the 6th P.M. at a point 2,397 feet from the East section line and 2,219 feet from the South section line; or, 427628 Easting, 4428708 Northing, UTM, Zone 13N, NAD 83, ii. Upstream Terminus: The uppermost point that may be depleted under the Highland Augmentation Plan and requires augmentation is the confluence of the Fraser River and unnamed tributary of the Fraser River, located at a point in the NE1/4 NE1/4, Section 1, Township 1 South, Range 76 West of the 6th P.M. at a point 500 feet from the East section line and 1,768 feet from the North section line; or, 428832.9 Easting, 4427482.2 Northing, UTM, Zone 13, NAD 83, iii. Appropriation Date: September 15, 2015, based on the intent to appropriate and actions consistent with that intent, including, but not limited to, engineering field work and planning in support of and in preparation of this Application, iv. Rate: 0.34 c.f.s. 13. Name and address of the owner(s) of the land on which the subject water rights are located: Highland Well Nos. 1-3, Highland Augmentation Pond, and the Highland Augmentation Pond Diversion Structure are or will be located on land entirely owned by Highland. Pole Creek Meadows Reservoir No. 1 is located on land owned by Pole Creek Valley Owners Association whose address is P.O. Box 1758, Winter Park, CO 80482. WHEREFORE Highland respectfully requests that the Water Court issue a final decree granting the (1) claim for conditional tributary groundwater rights; (2) claim for conditional water storage right and associated diversion rights; (3) claim for approval of a plan for augmentation; (4) claim for conditional appropriative rights of exchange; and (5) granting such other and further relief as may be appropriate. (12 pages + exhibits)

YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of OCTOBER 2019 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