

Consent Agenda Item 1.b

May 20-21, 2020 Board Meeting

Case No. 20CW3015 (Water Division 5); Steven B. Knudson

Summary of Water Court Application

Application for water rights and approval for plan of augmentation including exchange.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in March 2020 to protect CWCB's instream flow water rights.

CWCB Instream Flow Water Rights ("ISF")

The CWCB holds water rights, including the following instream flow water rights 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
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 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
W-2943A(1976) (Div. 5)	Snowmass Creek	confl W Snowmass Creek	confl Capitol Creek	12 (4/1 - 10/15)	01/14/1976
92CW0280* (Div. 5)	Snowmass Creek	confl W Snowmass Creek	confl Capitol Creek	3 (4/1 - 10/15)	09/15/1992
92CW0281* (Div. 5)	Snowmass Creek	confl Capitol Creek	confl Roaring Fork River	10.5 (4/1 - 10/15)	09/15/1992
W-2943B(1976) (Div. 5)	Snowmass Creek	confl Capitol Creek	confl Roaring Fork River	12 (4/1 - 10/15) 11 (10/16 - 3/31)	01/14/1976

* Increased

^ Donated/Acquired Water Right

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 claim to fill and refill the Wapiti Ranch Ponds appears to present a claim for a flow-through water right which could injure the CWCB's instream flow water right because it is fully depletive to a stream segment containing an instream flow water right.

Potential Issue Regarding CWCB's Exclusive Authority to Hold ISF Water Rights

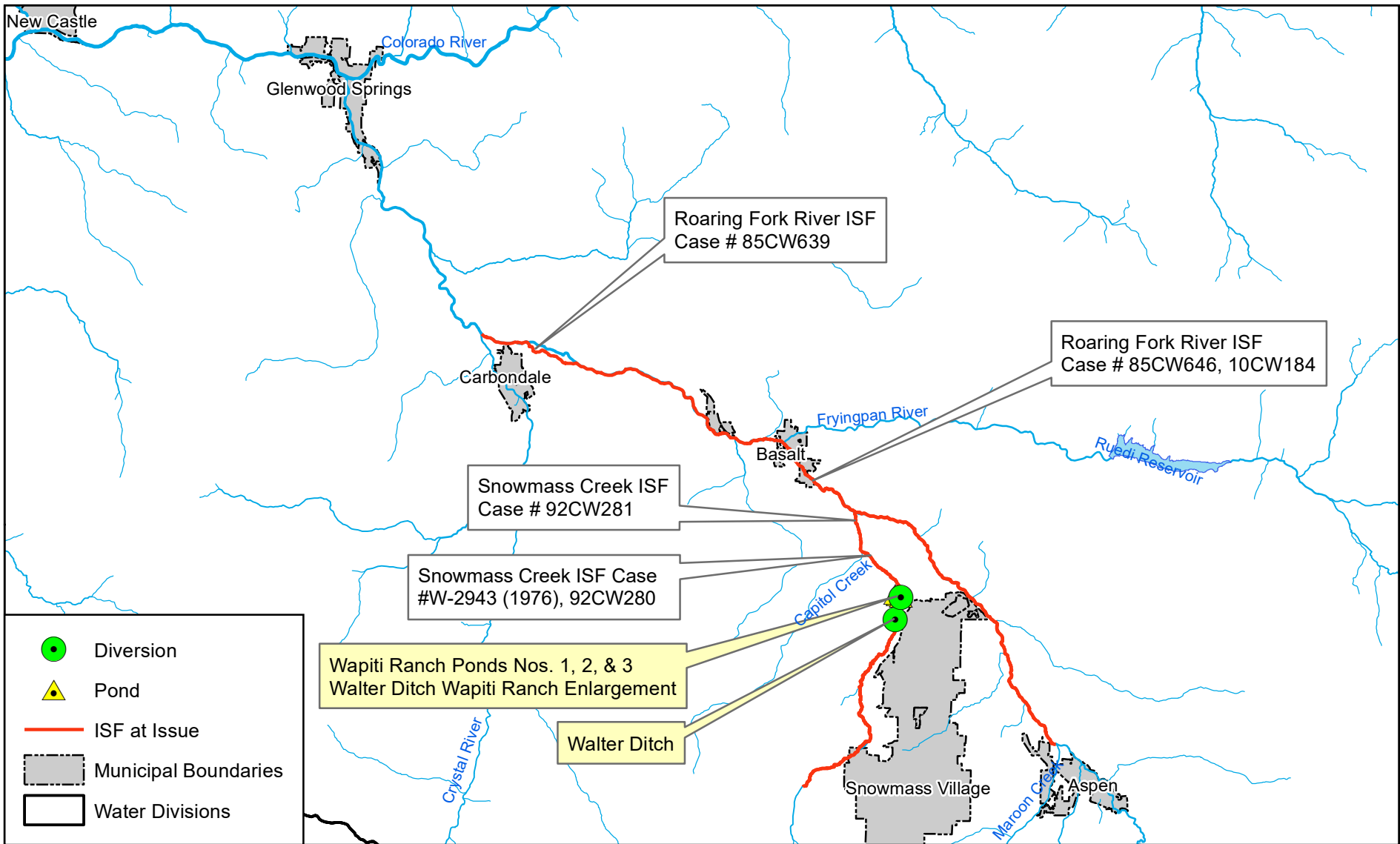
- The Applicant appears to be claiming piscatorial and other uses for the direct flow right, the Walter Ditch Wapiti Ranch Enlargement, that may be contrary to the Supreme Court's ruling in *St Jude's v. Roaring Fork Club*, 351 P.3d 442 (Colo. 2015).

Other Objectors

Statements of Opposition were also filed by 3500 Creekside; LLC, Aspen Camp of the Deaf and Hard of Hearing; Charlie Mountain, LLC; and, Quad III Trust Under Agreement Dated June 16, 1997.

Attorney Representing CWCB

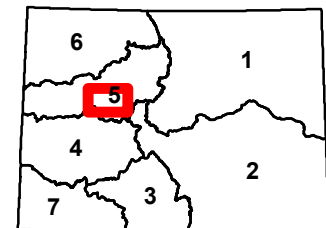
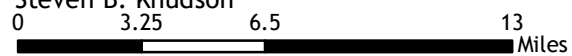
Christopher R. Stork, Assistant Attorney General, is assigned to this case and can be contacted at christopher.stork@coag.gov, or 720-508-6311.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

May 20-21, 2020 CWCB Board Meeting
 Consent Agenda Item 1.b Statement of Opposition
 Case No. 20CW3015 (Div 5)
 Steven B. Knudson



DIVISION 5 WATER COURT- JANUARY 2020 RESUME

18. 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 JANUARY 2020. *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.*

20CW3015 PITKIN COUNTY. SNOWMASS CREEK, TRIB. TO ROARING FORK RIVER, TRIB. TO COLORADO RIVER.

Applicant: Steven B. Knudson, 4643 S. Ulster St., Ste. 1400, Denver, CO 80237. Please direct all pleadings and correspondence to Applicant's counsel, William H. Caille, Esq., and Kylie J. Crandall, Esq., Holland & Hart LLP, 555 17th Street, Suite 3200, Denver CO 80202, telephone: (303) 295-8403, email: whcaille@hollandhart.com. APPLICATION FOR WATER RIGHTS AND APPROVAL OF PLAN FOR AUGMENTATION INCLUDING EXCHANGE. 2. Overview of Application. Applicant owns property with the address 3768 Snowmass Creek Road, Snowmass, Colorado, 81654. There is one existing pond on the property, and Applicant proposes to construct two additional ponds. The existing and proposed ponds are fed by water from the Walter Ditch. Applicant intends to use the ponds for piscatorial, wildlife, stock watering, aesthetic, recreational, and fire protection purposes. As well, the ponds will serve as forebay structures for irrigation use of Applicant's senior water rights in the Walter Ditch. This Application seeks conditional water storage rights for the three ponds and a junior surface water right in the Walter Ditch to deliver water to the ponds. As well, this Application seeks approval of a plan for augmentation including exchange to replace out-of-priority depletions associated with surface evaporation from the ponds. CLAIM FOR WATER STORAGE RIGHTS. 3. Name of Reservoirs: Wapiti Ranch Pond Nos. 1, 2 and 3 (collectively, "Wapiti Ranch Ponds"). 4. Description of Water Rights: A. Wapiti Ranch Pond No. 1. i. Legal description of dam centerline: UTM Zone 13, NAD83 coordinates 4350817.1 Northing and 331109.9 Easting measured by GPS device. Such location is also identified as NE 1/4 of NE 1/4 of Section 11, Township 9 South, Range 86 West of the 6th P.M, at a distance 600 feet from the North section line and 1,030 feet from the East section line. A map depicting the location of the Wapiti Ranch Ponds is attached hereto at Exhibit 1. ii. Source: Walter Ditch Wapiti Ranch Enlargement, see paragraph 7 below. iii. Appropriation date: January 31, 2020. iv. How appropriation was initiated: By formation of necessary intent and overt acts sufficient to put other parties on notice, including but not limited to the filing of the application herein. v. Date water applied to beneficial use: N/A. vi. Amount claimed: 1.2 acre feet, CONDITIONAL. vii. Use: Piscatorial, wildlife, stock watering, aesthetic, recreational, fire protection. viii. Surface area at high water line: 0.3 acres. ix. Approximate vertical height of dam: 6 feet. x. Length of dam: 250 feet. xi. Total capacity of reservoir: 1.2 acre feet. xii. Active storage: 1.2 acre feet. xiii. Dead storage: 0 acre feet. B. Wapiti Ranch Pond No. 2. i. Legal description of dam centerline: UTM Zone 13, NAD83 coordinates 4350791.9 Northing and 331131.7 Easting, measured using a GPS device. Such location is also identified as NE 1/4 of NE 1/4 of Section 11, Township 9 South, Range 86 West of the 6th P.M, at a distance 685 feet from the North section line and 965 feet from the east section line. i. Source: Walter Ditch Wapiti Ranch Enlargement, see paragraph 7 below. ii. Appropriation date: January 31, 2020. iii. How appropriation was initiated: By formation of necessary intent and overt acts sufficient to put other parties on notice, including but not limited to the filing of the application herein. iv. Date water applied to beneficial use: N/A. v. Amount claimed: 0.4 acre feet,

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CONDITIONAL. vi. Use: Piscatorial, wildlife, stock watering, aesthetic, recreational, fire protection. vii. Surface area at high water line: 0.1 acres. viii. Approximate vertical height of dam: 6 feet. ix. Length of dam: 110 feet. x. Total capacity of reservoir: 0.4 acre feet. xi. Active storage: 0.4 acre feet. ii. Dead storage: 0 acre feet. C. Wapiti Ranch Pond No. 3. i. Legal description of dam centerline: UTM Zone 13, NAD83 coordinates 4350612.0 Northing and 331451.9 Easting, measured using a GPS device. Such location is also identified as NW 1/4 of NW 1/4 of Section 12, Township 9 South, Range 86 West of the 6th P.M., at distance 1,260 feet from the North section line and 90 feet from the West section line. ii. Source: Walter Ditch Wapiti Ranch Enlargement, see paragraph 7 below. iii. Appropriation date: January 31, 2020. iv. How appropriation was initiated: By formation of necessary intent and overt acts sufficient to put other parties on notice, including but not limited to the filing of the application herein. v. Date water applied to beneficial use: N/A. vi. Amount claimed: 2.75 acre feet, CONDITIONAL. vii. Use: Piscatorial, wildlife, stock watering, aesthetic, recreational, fire protection. viii. Surface area at high water line: 0.4 acres. ix. Approximate vertical height of dam: 9 feet. x. Length of dam: 250 feet. xi. Total capacity of reservoir: 2.75 acre feet. xii. Active storage: 2.75 acre feet. iii. Dead storage: 0 acre feet. 5. Name and Address of Owner of Land Where Structures are Located: Applicant (see above). CLAIM FOR SURFACE WATER RIGHT. 6. Name of Structure: Walter Ditch Wapiti Ranch Enlargement. 7. Description of Water Right: A. Legal description of point of diversion: The decreed legal description for the point of diversion of the Walter Ditch is in the NE 1/4 of the NE 1/4 of Section 14, Township 9 South, Range 86 West of the 6th P.M., at a point approximately 900 feet from the East section line and 50 feet from the North section line. A more accurate location of the point of diversion for the Walter Ditch is UTM Zone 13, NAD83 coordinates 4350613.9 Northing and 331446.1 Easting, measured using a GPS device. A map depicting the location of the point of diversion of the Walter Ditch is on file with the Court as Exhibit 1. B. Source: Snowmass Creek, tributary to Roaring Fork River. C. Appropriation date: January 31, 2020. D. How appropriation was initiated: By formation of necessary intent and overt acts sufficient to put other parties on notice, including but not limited to the filing of the application herein. E. Date water applied to beneficial use: N/A. F. Amount claimed: 1.0 cfs, CONDITIONAL. G. Use: Piscatorial, wildlife, stock watering, aesthetic, recreational, fire protection. 8. Name and Address of Owners of Land Upon Which Structures are Located: A. Applicant (see above). B. Aspen Camp School for the Deaf, 4862 Snowmass Creek Road, Snowmass, CO 81654. REQUEST FOR APPROVAL OF PLAN FOR AUGMENTATION INCLUDING EXCHANGE. 9. Structures to be Augmented: Wapiti Ranch Ponds (see paragraph 4, above) and Walter Ditch Wapiti Ranch Enlargement (see paragraph 7, above). 10. Water Rights to Be Used for Augmentation: Basalt Water Conservancy District ("BWCD") water rights, to be supplied pursuant to a water allotment contract between BWCD and Applicant. A. Green Mountain Reservoir: i. Source: Blue River, tributary of Colorado River. ii. Legal description: Located approximately 16 miles Southeast of the Town of Kremmling in Summit County, Colorado, and more particularly in all or parts of Sections 11, 12, 13, 14, 15, and 24 of Township 2 South, Range 80 West, and in Sections 17, 18, 19, 20, 21, 28, 29, and 34, Township 2 South, Range 79 West of the 6th P.M. iii. Adjudication Date: October 12, 1955. iv. Appropriation Date: August 1, 1935. v. Case Nos.: 2782, 5016, and 5017, United States District Court, District of Colorado; and Case No. 88CW022, District Court, Water Division No. 5. vi. Decreed Amount: 154,645 acre-feet and a refill right in the amount of 3,856 acre-feet absolute and 150,789 acre-feet, conditional. vii. Decreed Uses: In accordance with paragraph 5(a), (b), and (c) of the section entitled "Manner of Operation of Project Facilities and Auxiliary Facilities" in Senate Document 80. B. Ruedi Reservoir: i. Source: Frying Pan River, tributary of Colorado River. ii. Legal description: An on-channel reservoir located in Sections 7, 8, 9, 11, and 14 through 18, Township 8 South, Range 84 West of the 6th P.M. The reservoir is located in portions of Eagle and Pitkin Counties. iii. Adjudication Date: June 20, 1958. iv. Appropriation Date: July 29, 1957. v. Case No.: C.A. 4613, Garfield County District Court. vi. Decreed Amount: 102,369 acre-feet (Originally decreed for 140,697.3 acre-feet; reduced to 102,369 acre-feet in Case No. W-789-76). vii. Decreed Uses: Generation of electric energy, domestic, municipal, industrial, irrigation, piscatorial, and stock watering. viii. Refill: By decree of the Water Court in Case No. 81CW34, Ruedi Reservoir was decreed a refill right in the amount of 101,280 acre-feet, conditional. In Water Court Case No. 95CW95, 44,509 acre-feet of the refill right was made absolute. In Water Court Case No. 01CW269, an additional 25,257 acre-feet of the refill right was made absolute, for a total of 69,766 acre-feet absolute in the refill right. C. Information from previous decrees for Troy Ditch and Edith Ditch rights:

Structure	Priority	Court Case No.	Adj. Date	App. Date	Decreed Amount (c.f.s.)	Use	Amount Sold, Transferred or Reserved					Amount Remaining ⁽¹⁰⁾	
							(5)	(6)	(7)	(8)	(9)	C.F.S.	AF
Troy Ditch ⁽¹⁾	370	3082	08/25/1936	05/01/1906	5.10	I	0.000	0.000	0.095	0.064	0.035	4.906	N/A
Troy Ditch 1st Enlg	427	3082	08/25/1936	05/01/1928	10.80	I	0.000	0.000	0.200	0.134	0.073	10.393	N/A
Troy Ditch 2nd Enlg	669	4613	06/20/1958	06/01/1942	6.20	I	0.000	0.000	0.115	0.077	0.042	5.966	N/A
Edith Ditch	353	3082	08/25/1936	05/01/1904	2.72	I	0.110	0.1320	0.050	0.000	0.018	2.410	N/A
Edith Ditch 1st Enlg	673	4613	06/20/1958	07/01/1946	3.23	I	0.000	0.000	0.060	0.000	0.022	3.148	N/A
Troy Ditch Water System aka Lower Headgate	(2)	W-2281			15.50 ⁽³⁾	I,D,M,C,P	0.110	0.1320	0.520	0.275	0.190	14.273	412.89

- (1) Originally diverted from Miller Creek. All others originally diverted from Frying Pan River.
- (2) Alternate point for all priorities of Troy and Edith Ditches.
- (3) Combined amount limited to 15.5 c.f.s. and 453 AF of consumptive use, 300 AF of which can be stored.
- (4) I = Irrigation, D = Domestic, M = Municipal, C = Industrial and P = Piscatorial.
- (5) Transferred to Edith Ditch Well in Case No. 80CW1 with 1.0 AF.
- (6) Transferred to three springs on Cap K Ranch in Case No. 82CW189 (1.29 AF assumed to be included).
- (7) Deeded to George Yates with 15.4 AF in 1983. 0.2 c.f.s. and 10.60 c.f.s. was included in Case No. 82CW357 for Ruedi South Shores augmentation plan.
- (8) Deeded to Joan Wheeler in 1987 for diversion at the Troy Ditch 1st and 2nd Enlargement (16.9 AF assumed to be included).
- (9) Reserved for augmentation of Cap K Ponds with 5.52 AF. Case No. 91CW220.
- (10) A total of 40.11 AF of the original 453.00 AF has been sold or transferred.

In Case No. W-2281, Division 5, the Court decreed that 453 acre-feet of annual consumptive-use credits were available to these ditches, and that 300 acre-feet could be stored in an unnamed reservoir. The Basalt Water Conservancy District owns 412.89 acre-feet of the 453 acre-feet, and makes the water rights available to contract allottees for use pursuant to an approved substitute supply plan or decree of Court. The Troy and Edith augmentation water can be delivered to the Frying Pan, Roaring Fork or Colorado Rivers by bypassing water at the headgate on the Frying Pan River. D. Information from previous decrees for Robinson Ditch rights:

Structure	Decreed Amount (cfs)	Amount Owned by BWCD (c.f.s.) ⁽¹⁾	Adj. Date	App. Date	Priority	Case No. ⁽²⁾
ROBINSON DITCH	5.00	1.21	05/11/1889	06/15/1882	38	1 32

ROBINSON DITCH	2.50	0.60	05/11/188 9	04/15/188 6	140	1 32
ROBINSON DITCH	2.00	0.48	05/11/188 9	11/15/188 6	167	1 32
ROBINSON DITCH	10.70	2.59	12/29/190 3	04/25/189 9	212C	1 061
ROBINSON DITCH	20.06	4.85	08/25/193 6	04/25/190 0	326	3 082

- (1) The BWCD owns 441 shares of Class 1 stock issued by the Robinson Ditch Company. The said 441 shares equal 24.16% of the total shares and are associated with 9.73 c.f.s. of the 40.26 c.f.s. decreed to the Robinson Ditch.
- (2) District Court in and for Garfield County.

ii. Legal Description of Point of Diversion: The point of diversion as decreed is located on the North bank of the Roaring Fork River one-half mile below the mouth of Sopris Creek in Section 11, T. 8 S., R. 87 West, 6th P.M.

iii. Historic Use: Irrigation of approximately 137.2 acres of hay and pasture under BWCD's interest in the Robinson Ditch water rights. In Case No. 93CW319, the Court decreed that 360 acre-feet of annual consumptive-use credits are associated with said irrigation. In that case, the Court also decreed a change of use of BWCD's Robinson Ditch rights to include augmentation. BWCD makes the credits available to contract allottees for use pursuant to an approved substitute supply plan or decree of Court.

11. Statement of Plan for Augmentation:

A. The Wapiti Ranch Ponds will be filled and refilled in priority with water diverted from Snowmass Creek through the Walter Ditch. The net evaporative loss from the Wapiti Ranch Ponds is estimated to be approximately 2.7 acre feet annually.

B. When there is a valid senior call on the Roaring Fork River or Colorado River, downstream of the confluence of the Roaring Fork River and Fryingpan River, but no corresponding call above the confluence, Applicant proposes to replace out-of-priority depletions caused by surface evaporation from the Wapiti Ranch Ponds using BWCD water rights described above pursuant to a water allotment contract between Applicant and BWCD.

C. When there is a valid senior call on Snowmass Creek, downstream of the Walter Ditch headgate, or downstream on the Roaring Fork River above the confluence with the Fryingpan River, Applicant proposes to lower water levels in the Wapiti Ranch Ponds commensurate with depletions caused by surface evaporation from the ponds to ensure that there is no out-of-priority storage.

D. Applicant will install and maintain such measuring devices and implement such accounting procedures as may be required to verify that the amount of augmentation water provided is sufficient to replace out-of-priority depletions pursuant to the plan approved herein. Releases of augmentation water will be measured and recorded in a manner acceptable to the Division Engineer.

12. Appropriative Right of Exchange: Applicant claims a conditional appropriative right of exchange to augment depletions associated with the Wapiti Ranch Ponds and Walter Ditch Wapiti Ranch Enlargement by exchange from the downstream location where the BWCD water rights are delivered.

A. Exchange reach: i. Upstream points: Walter Ditch headgate, as described in paragraph 7.A above. ii. Downstream point: The confluence of the Roaring Fork River and the Colorado River. iii. A map depicting the approximate extent of the exchange reach is on file with the Court as Exhibit 2.

B. Appropriation: i. Appropriation date: January 31, 2020. ii. How appropriation was initiated: By formation of necessary intent and overt acts sufficient to put other parties on notice, including but not limited to the filing of the application herein. C. Rate of exchange: 0.008 cfs, CONDITIONAL. D. Use: Augmentation in the plan for augmentation described herein.

13. Name and Address of Owners of Land Upon Which Structures are Located: A. Applicant (see above). B. Aspen Camp School for the Deaf, 4862 Snowmass Creek Road, Snowmass, CO 81654.

YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of MARCH 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.