

Consent Agenda Item 1.a

January 25-26, 2021 Board Meeting
Case No. 20CW3145 (Water Division 1);
Angling Aquatics

Summary of Water Court Application

Application for conditional water rights, change of water right, appropriative right of exchange and approval of augmentation plan.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in November 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 1 in the St. Vrain River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
80CW0379 (Div. 1)	South Boulder Creek	outlet Gross Res	USGS gage 06729500	15 (5/1 - 9/30) 6 (10/1 - 4/30)	12/02/1980
80CW0379 (Div. 1)	South Boulder Creek	USGS Gage 06729500	South Boulder Road bridge	15 (5/1-9/30) 2 (10/1 - 4/30)	12/02/1980

Potential for Injury

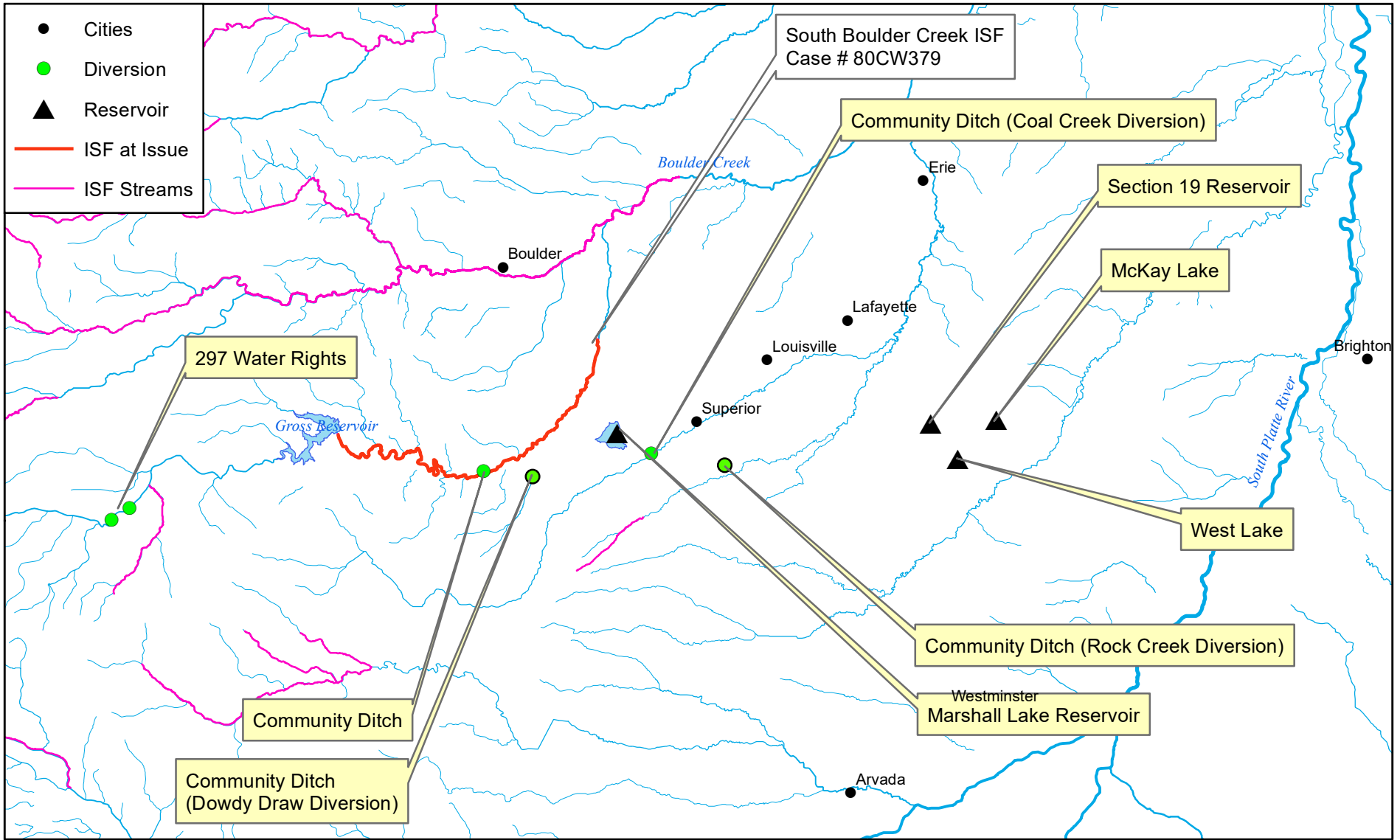
- The Applicant must prove that the proposed change of water right will not result in an expansion of use so as to prevent injury to the CWCB's instream flow water rights.
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place and amount, which could injure the CWCB's instream flow water rights.

Other Objectors

Statements of Opposition were also filed by the City and County of Broomfield, the City and County of Denver, the City of Boulder, the City of Lafayette, the City of Louisville, Eldora Enterprises LLC, Eldorado Artesian Springs, Inc., Public Service Company of Colorado, the State and Division Engineers, The Farmers Reservoir and Irrigation Company, and Water Users Association of District No. 6.

Attorney Representing CWCB

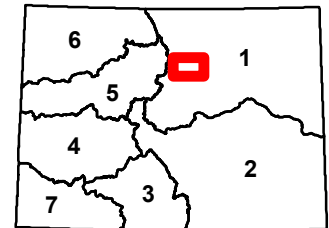
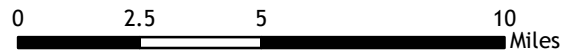
Christopher R. Stork, Assistant Attorney General, is assigned to this case and can be contacted at christopher.stork@coag.gov, or 720-508-6311.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

January 25-26, 2020 CWCB Board Meeting
 Consent Agenda Item 1.a. Statement of Opposition
 Case No. 20CW3145 (Division 1)
 Angling Aquatics



DISTRICT COURT, WATER DIVISION 1, COLORADO
SEPTEMBER 2020 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 **SEPTEMBER 2020** for each County affected.

2020CW3145 ANGLING AQUATICS, LLC P.O. Box 3053, Denver, CO 80201 c/o Panorama Law Practice, LLC P.O. Box 4986, Boulder, CO 80306. APPLICATION FOR CONDITIONAL WATER RIGHTS, CHANGE OF WATER RIGHT, APPROPRIATIVE RIGHT OF EXCHANGE, AND APPROVAL OF AUGMENTATION PLAN IN BOULDER AND GILPIN COUNTIES.

1. Summary of application: With this application, Angling Aquatics seeks to re-confirm previously decreed water rights and seeks approval of an augmentation plan to replace depletions resulting from out-of-priority diversions of those water rights. Replacements will be made using water from the Farmers Reservoir and Irrigation Company Marshall Lake Division, and the Applicant accordingly seeks to change water rights associated with 10.25 shares of Marshall Lake stock in the Farmers Reservoir and Irrigation Company. Because the Marshall Lake water rights are downstream of the Applicant's out-of-priority depletions, the Applicant further seeks to adjudicate an appropriate right of exchange on South Boulder Creek to upstream storage locations. When the exchange is in priority, the Applicant will exchange its changed pro rata Marshall Division water to upstream storage locations for release in time with out-of-priority depletions. The City of Louisville previously changed FRICO Marshall Division water rights in Case No. 1992CW79 and completed a ditch-wide analysis for its claim. This Court decreed Louisville's change by decree dated March 31, 1995. Later, Eldorado Artesian Springs, Inc. changed another portion of FRICO Marshall Division water rights in Case No. 2002CW292, relying on Louisville's prior analysis. This Court decreed Eldorado Springs' change by decree dated July 17, 2013. Similarly, the Applicant here has relied on Louisville's ditch-wide analysis from Case No. 1992CW79 while investigating the historical consumptive use of its pro rata water rights subject to this application as well as the historical return flow obligation associated with its pro rata water rights and seeks a decree applying the same historical consumptive use and subject to the same return flow obligations. **Absolute and Conditional Water Rights**

3. The Flyfisher Group, an entity managed by the Applicant, received a conditional water right decree from this Court on December 10, 2013 in Case No. 2011CW297. On failure to timely file an application for findings of reasonable diligence and to make a portion of the water rights absolute, this Court cancelled the 2011CW297 water rights on January 2, 2020. The water rights, as described below, are referred to as the "297 Water Rights". The Applicant seeks to re-confirm the 297 Water Rights subject to the same operating terms and conditions previously decreed. The 297 Water Rights are for use on property ("Property") owned by Lincoln Hills Holding Company, LLC and Boulder River Ranch Holding Company, LLC. Applicant manages the Property and related water rights.

4. Absolute and Conditional Direct Flow A. Points of diversion i. Lake Pactolus Diversion: S 32, T 1 South, R 72 West of the 6th P.M. at a point represented by the following UTM Coordinates (NAD 83, Zone 13): 460141 E, 4418661 N. The Lake Pactolus Diversion is approximately depicted on Exhibit A. ii. Upper Diversion: A point in the SE1/4SW1/4 S32, T1S, R 72 W of the 6th P.M. with UTM Coordinates (NAD 83, Zone 13): 459322 E, 4418114 N. The Upper Diversion is approximately depicted on Exhibit A. B. Source: South Boulder Creek and its tributaries C. Date of appropriation: December 30, 2011 D. How appropriation was initiated: Planning, field work, engineering, and filing the application in Case No. 2011CW297. E. Date applied to beneficial use: June 2015 F. Amount: 12 cfs, ABSOLUTE through the Lake Pactolus Diversion 12 cfs, CONDITIONAL through the Upper Diversion The combined diversion rate is limited to 12 cfs through both points of diversion F. Uses: piscatorial, stock watering, recreation, fish and wildlife, freshening flows, irrigation, mine reclamation, and commercial. G. Place of use: On the Property, which is generally located adjacent to South Boulder Creek in Ss 28, 32 and 33, S32, T1S, R 72 W of the 6th P.M.

5. Conditional Storage Right: A. Points of diversion

i. Lake Pactolus Diversion: S 32, T 1 South, R 72 West of the 6th P.M. with UTM Coordinates (NAD 83, Zone 13): 460141 E, 4418661 N. The Lake Pactolus Diversion is approximately depicted on Exhibit A. ii. Upper Diversion: A point in the SE1/4 SW1/4 S 32, T 1 South, R 72 West of the 6th PM with UTM Coordinates (NAD 83, Zone 13): 459322 E, 4418114 N. The Upper Diversion is approximately depicted on Exhibit A. B. Source: South Boulder Creek and its tributaries C. Date of appropriation: December 30, 2011 D. How appropriation was initiated: Planning, field work, engineering, and filing the application in this matter. E. Date applied to beneficial use: n/a F. Amount: 25 acre-feet combined for the two storage structures CONDITIONAL to be filled and refilled once in priority at a rate of 12 cfs, cumulatively through the two diversion points. H. Uses: Storage for subsequent release for piscatorial, stock watering, recreation, fish and wildlife, freshening flows, irrigation, mine reclamation, commercial; and augmentation, replacement, and exchange uses associated with the foregoing uses on the Property. I. Places of Storage: i. Lake Pactolus, the approximate down-gradient boundary of which was decreed by this Court in Case No. W-979 to be located at a point whence the East quarter corner of S 32, T 1 South, R 72 West of the 6th P.M. bears 90° East 800 feet. ii. A lined off-channel reservoir to be constructed in the SE1/4SW1/4 and the SW1/4SE1/4 S 32, S32, T1S, R 72 W of the 6th P.M. **Change of Water Right** 6. Decreed water right for which change is sought: Water rights associated with 10.25 shares of stock in the Farmers Reservoir and Irrigation Company Marshall Division. The Marshall Division water rights are described below. 7. Name of structure: Community Ditch A. Original claim: i. Decree: December 19, 1900, Boulder County District Court, Case No. C.A.3944 ii. Point of diversion: On the south bank of South Boulder Creek in the NE1/4SE1/4 S 25, T 1 South, R 71 West of the 6th P.M. iii. Source: South Boulder Creek iv. Appropriation date: June 6, 1885 v. Amount: 83.3 cfs vi. Use: Irrigation of lands below Marshall Lake Reservoir and its distribution facilities, including the Community Ditch and other ditches and laterals. B. Enlargement i. Decree: April 10, 1905, Boulder County District Court, Case No. C.A.4735 ii. Point of Diversion: The Community Ditch headgate on South Boulder Creek iii. Source: South Boulder Creek iv. Appropriation date: March 13, 1901 v. Amount: 45.6 cfs vi. Use: Irrigation of lands below Marshall Lake Reservoir and its distribution facilities, including the Community Ditch and other ditches and laterals. C. Second Enlargement i. Decree: June 21, 1926, Boulder County District Court, Case No. C.A.6672 ii. Points of Diversion: a. On the south bank of South Boulder Creek in the NE1/4SE1/4 S 25, S32, T1S, R 72 W of the 6th P.M. b. From Coal Creek in the NW1/4NE1/4 S 26, S32, T1S, R 72 W of the 6th P.M. c. From Rock Creek in the SE1/4SW1/4 S 30, T 1 South, R 69 West of the 6th P.M. d. From Dowdy Draw in the SW1/4SW1/4 S 29, S32, T1S, R 72 W of the 6th P.M. iii. Sources: a. South Boulder Creek b. Coal Creek c. Rock Creek d. Dowdy Draw iv. Appropriation date: August 26, 1903 v. Amounts: a. South Boulder Creek: 319.1 cfs b. Coal Creek and Rock Creek: 319.1 cfs; 8,000 acre-feet c. Dowdy Draw: 227 cfs vi. Use: Irrigation of lands below Marshall Lake Reservoir and its distribution facilities, including the Community Ditch and other ditches and laterals. 8. Name of structure: Marshall Lake Reservoir A. Location: S 22, T 1 S., R 70 W. of the 6th P.M. B. Original claim: i. Decree: December 19, 1900, Boulder County District Court, Case No. C.A.3944 ii. Point of diversion: The Community Ditch headgate on South Boulder Creek iii. Source: South Boulder Creek iv. Appropriation date: June 6, 1885 v. Amount: 83.3 cfs, 1,349.14 acrefeet vi. Use: Irrigation of lands below Marshall Lake Reservoir and its distribution facilities, including the Community Ditch and other ditches and laterals. C. Fill Rate Enlargement i. Decree: April 10, 1905, Boulder County District Court, Case No. C.A.4735 ii. Point of Diversion: The Community Ditch headgate on South Boulder Creek iii. Source: South Boulder Creek iv. Appropriation date: March 13, 1901 v. Amount: 45.6 cfs vi. Use: Irrigation of lands below Marshall Lake Reservoir and its distribution facilities, including the Community Ditch and other ditches and laterals. D. First Lake Enlargement i. Decree: June 21, 1926, Boulder County District Court, Case No. C.A.6672 ii. Point of Diversion: Community Ditch headgate on South Boulder Creek iii. Source: South Boulder Creek iv. Appropriation date: March 4, 1902 v. Amount: 440 cfs, 7,901.74 acre-feet vi. Use: Irrigation of lands below Marshall Lake Reservoir and its distribution facilities, including the Community Ditch and other ditches and laterals. E. Second Lake Enlargement i. Decree: June 21, 1926, Boulder County District Court, Case No. C.A.6672 ii. Point of

Diversion: Community Ditch headgate on South Boulder Creek iii. Source: South Boulder Creek iv. Appropriation date: September 20, 1921 v. Amount: 1,545.01 acre-feet vi. Use: Irrigation of lands below Marshall Lake Reservoir and its distribution facilities, including the Community Ditch and other ditches and laterals. F. Dowdy Draw Claim i. Decree: June 21, 1926, Boulder County District Court, Case No. C.A.6672 ii. Point of Diversion: The interS of the Community Ditch with Dowdy Draw, described in paragraph 7.C.ii.d., above iii. Source: Dowdy Draw iv. Appropriation date: March 4, 1902 v. Amount: 448 cfs, 10,000.07 acre-feet vi. Use: Irrigation of lands below Marshall Lake Reservoir and its distribution facilities, including the Community Ditch and other ditches and laterals. G. Refill Right i. Decree: September 28, 1953, Boulder County District Court, Case No. C.A.12111 ii. Points of Diversion: a. Community Ditch headgate on South Boulder Creek b. The interS of Community Ditch with Dowdy Draw iii. Sources: a. South Boulder Creek b. Dowdy Draw iv. Appropriation date: December 31, 1929 v. Amount: 9,053.14 acre-feet vi. Use: Irrigation of lands below Marshall Lake Reservoir and its distribution facilities, including the Community Ditch and other ditches and laterals. 9. Name of structure: West Lake Reservoir A. Location: NW1/4 S 29, T. 1 South, R. 68 W. of the 6th P.M. B. Decree: i. Original Decree: December 19, 1900, Boulder County District Court, Case No. C.A.3944 ii. Change Decree: District Court, Water Division No. 1, Case W-8287-76 (transferred water right to Marshall Lake) A. Point of Diversion: Community Ditch headgate on South Boulder Creek B. Source: South Boulder Creek C. Appropriation date: March 4, 1902 D. Amount: 699.08 acre-feet E. Use: Irrigation of lands below Marshall Lake Reservoir and its distribution facilities, including the Community Ditch and other ditches and laterals. 10. Name of structure: S 19 Reservoir A. Location: NW1/4 S 19, T 1 S, R 68 W of the 6th P.M. B. Decree: i. Original Decree: December 19, 1900, Boulder County District Court, Case No. C.A.3944 ii. Change Decree: District Court, Water Division No. 1, Case No. 1988CW330 (transferred water right to Marshall Lake) A. Point of Diversion: Community Ditch headgate on South Boulder Creek B. Source: South Boulder Creek C. Appropriation date: May 1, 1888 D. Amount: 80.8 acre-feet E. Use: Irrigation of lands below Marshall Lake Reservoir and its distribution facilities, including the Community Ditch and other ditches and laterals. 11. Name of structure: McKay Lake A. Location: Portions of Ss 20 and 21, T 1 S, R 68 W of the 6th P.M. B. Decree: Original Decree: April 10, 1905, Boulder County District Court, Case No. C.A.4735 C. Point of Diversion: Community Ditch headgate on South Boulder Creek D. Source: South Boulder Creek E. Appropriation dates: i. February 26, 1900 ii. March 13, 1901 F. Amount: 956.81 acrefeet G. Rates: i. 83.3 cfs ii. 45.6 cfs H. Use: Irrigation of lands below Marshall Lake Reservoir and its distribution facilities, including the Community Ditch and other ditches and laterals. 12. Amount applicant is changing: Pro rata rights associated with ownership of 10.25 shares of company stock. 13. Description of proposed change: Applicant will use the changed water rights as a replacement source in the augmentation plan described below, for storage, and piscatorial, stock watering, recreation, fish and wildlife, freshening flows, irrigation, mine reclamation, commercial uses. To facilitate operation of its augmentation plan, the Applicant also proposes to change the place of storage of its pro rata Marshall Division water rights to include storage in the Valmont Reservoir Complex, downstream on South Boulder Creek, and, by exchange, in Gross Reservoir, upstream on South Boulder Creek, in addition to the historical places of storage described above. To the extent that the water rights represented by the subject Marshall Shares are not needed or committed in any year to replace depletions or return flow obligations under the plan for augmentation described below, they may continue to be used for agricultural irrigation under the Marshall Lake system as originally decreed. **Right of Exchange** 14. Name: Lincoln Hills Exchange 15. Location: A. Downstream termini/exchange from locations: i. Community Ditch headgate on South Boulder Creek ii. Valmont Outfall: Approximately located in S 27, T 1 North, R 70 West of the 6th P.M. iii. Gross Reservoir: Approximately located in Ss 19, 20, 21, and 30, T 1 South, R 71 West of the 6th P.M. B. Upstream termini/exchange to locations: i. Gross Reservoir ii. Lake Pactolus Diversion, described above, for storage in Lake Pactolus iii. Upper Diversion, described above, for storage on the Property 16. Appropriation date: September 30, 2020 17. Amount: A. Exchange Rate: 5.0 cfs B. Volume: 74 acre-feet **Plan for Augmentation** 18. Water rights to be augmented: 297 Water Rights, described above 19. Water rights to

be used for augmentation: Water rights associated with ownership of 10.25 shares of stock in the Farmers Reservoir and Irrigation Company Marshall Division, described above 20. Statement of plan for augmentation: A. Depletions: Applicant will calculate the out-of-priority depletions resulting from out-of-priority diversions of the 297 Water Rights. The channels through which the 297 Water Rights are diverted and carried through the property, including Lake Pactolus, are the result of historical sand and gravel mining operations prior to 1981. Aerial photography indicates that there has been some increase in the surface area of groundwater exposed by the historical sand and gravel mining. This surface area further increases with diversions of the 297 Water Rights, and the Applicant will replace out-of-priority evaporative losses from the water surface in excess of the pre-1981 exposed ground water together with other consumptive uses from out-of-priority diversions of the 297 Water Rights. Total out-of-priority depletions for the Property, including out-of-priority depletions resulting from the exposed water surface area, is 3.59 acre-feet annually. B. Replacement of out-of-priority depletions: Applicant may use the historical consumptive use component of its changed pro rata Marshall Division water rights in any of the following methods: i. When the Community Ditch is diverting water from South Boulder Creek in accordance with any of the priorities described above, the Applicant may divert water back into South Boulder Creek at an augmentation station near the Community Ditch headgate for exchange to the upstream exchange termini for later release in amounts and at times required to replace Applicant's out-of-priority depletions; ii. The Applicant may store any or all of its changed pro rata Marshall Division water rights in the Valmont Reservoir Complex by diversion from South Boulder Creek through the Valmont Reservoir Complex's points of diversion. Any such changed amounts will be made in coordination with and deducted from the Farmers Reservoir and Irrigation Company's diversions on the Marshall Division water rights described above, using the Community Ditch augmentation station as necessary. The Applicant's changed pro rata Marshall Division water rights stored in the Valmont Reservoir Complex may be later released at the Valmont Outfall for exchange to the upstream exchange termini for later release in amounts and at times required to replace Applicant's out-of-priority depletions. iii. The Applicant may release water stored in priority under the 297 Water rights in amounts and at times required to replace Applicant's out-of-priority depletions. C. Maintenance of return flows. The Applicant recognizes the obligation to maintain historical return flows associated with its changed pro rata Marshall Division water rights. The Applicant will release the portion of its changed pro rata Marshall Division water rights attributable to historical return flows from storage in one of the Marshall Division reservoirs to maintain historical return flow patterns. The Applicant will not be obligated to maintain return flows then the downstream calling water right is junior to September 30, 2020. 21. This Application includes claims to use structures in which the Applicant does not have an ownership interest. To the extent the Applicant does not have ownership or other rights of use for structures named in this Application, the Applicant acknowledges it may utilize existing water diversion and carriage structures only to the extent that it has acquired the right to use such structures from the appropriate parties or by other lawful means. 22. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool. Boulder River Ranch Holding Company, LLC P.O. Box 3053 Denver, Colorado, 80201 Lincoln Hills Holding Company, LLC P.O. Box 3053 Denver, Colorado 80201 The Farmers Reservoir and Irrigation Company 80 S. 27th Avenue Brighton, Colorado 80601 The City and County of Denver Board of Water Commissioners 1600 W. 12th Avenue Denver, Colorado 80204 Public Service Company of Colorado 1800 Larimer Street, Suite 1100 Denver, Colorado 80202 13 pp.

WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED THE WATER RIGHTS CLAIMED BY THESE APPLICATIONS MAY AFFECT IN PRIORITY ANY 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 **NOVEMBER 2020** (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.