

**Consent Agenda Item 1.c**

March 10-11, 2021 Board Meeting

Case No. 20CW3216 (Water Division 1); City and County of Broomfield

**Summary of Water Court Application**

Application for change of water rights, storage rights, underground water rights, and plan for augmentation including exchanges.

**Staff Recommendation**

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in February 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 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
W-7636(1974) (Div. 1)	Boulder Creek	PSC Hydro Plant outfall	75th Street bridge	15 (1/1 - 12/31)	10/01/1973
80CW0379 (Div. 1)	South Boulder Creek	USGS Gage 06729500	South Boulder Road bridge	2 (10/1 - 4/30) 15 (5/1 - 9/30)	12/02/1980

**Potential for Injury**

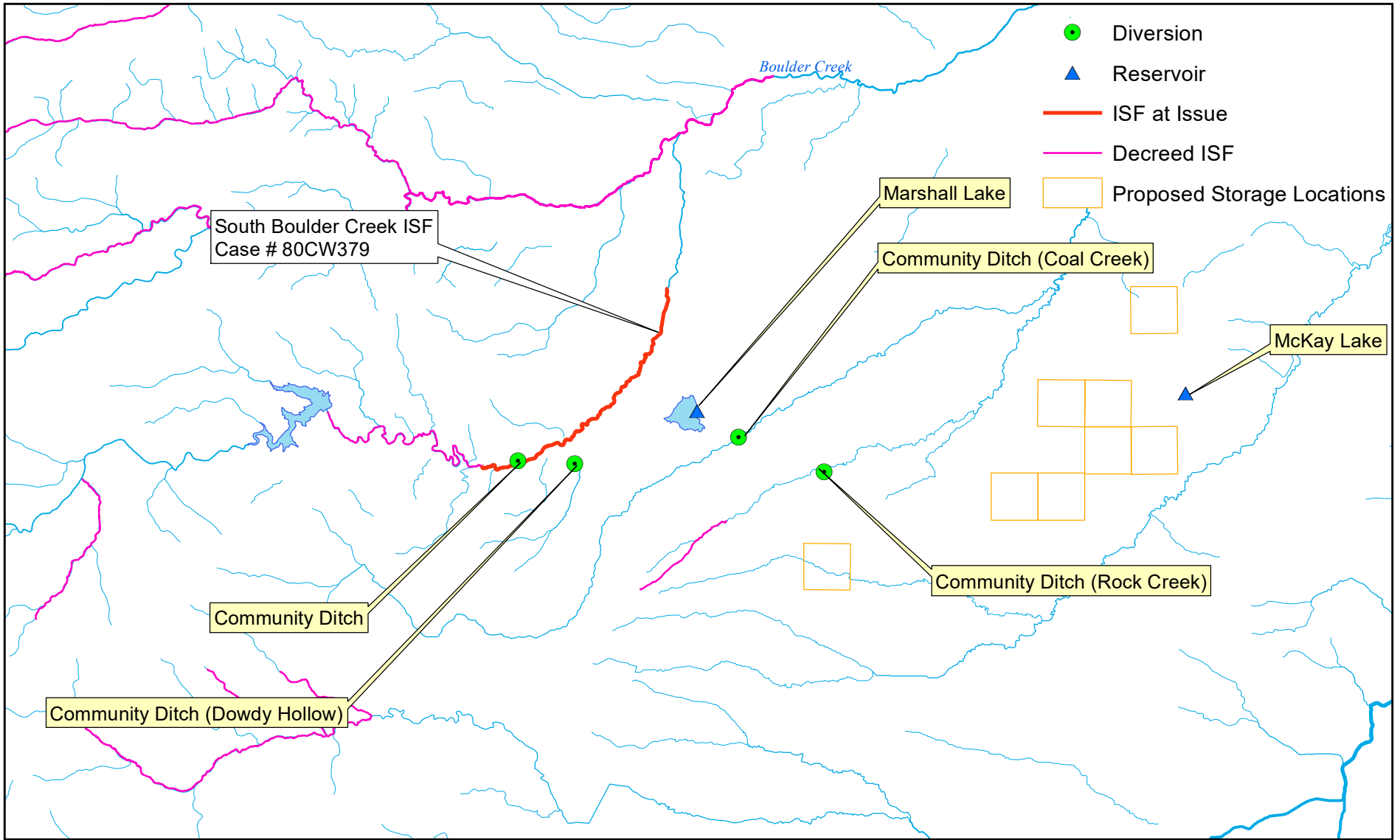
- The proposed change of water rights could cause an expansion of use at the Community Ditch headgate which could injure the CWCB's instream flow water rights.
- Applicant must establish all the elements of a new appropriation in order to support its claim to appropriate historical return flows.

**Other Objectors**

Statements of Opposition (as of February 24, 2021) were also filed by The Burlington Ditch, Reservoir and Land Company, Water Users Association of District No. 6, Public Service Company of Colorado, Platte Valley Irrigation Company, and South Adams County Water and Sanitation District.

**Attorney Representing CWCB**

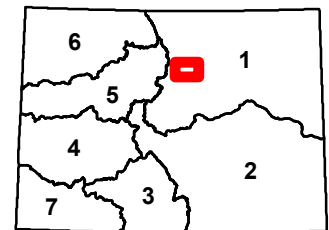
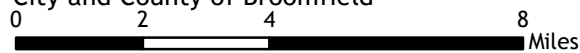
Christopher R. Stork, Assistant Attorney General, is assigned to this case and can be contacted at christopher.stork@coag.gov, or 720-508-6311.



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

Department of Natural Resources

March 10-11, 2021 CWCB Board Meeting  
 Consent Agenda Item 1.c. Statement of Opposition  
 Case No. 20CW3216 (Division 1)  
 City and County of Broomfield



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

**20CW3216 CITY AND COUNTY OF BROOMFIELD, c/o Director of Public Works, One DesCombes Drive, Broomfield, Colorado 80020-2495, Telephone No.: (303) 438-6348, e-mail: publicworks@broomfield.org. APPLICATION FOR CHANGE OF WATER RIGHTS, STORAGE RIGHTS, UNDERGROUND WATER RIGHTS, AND PLAN FOR AUGMENTATION INCLUDING EXCHANGES IN ADAMS, BOULDER, BROOMFIELD, JEFFERSON, AND WELD COUNTIES.** Attorneys for Applicant: Cynthia F. Covell, #10169, Andrea L. Benson, #33176, Gilbert Y. Marchand, Jr., #19870, Alperstein & Covell, P.C., 1600 Broadway, Suite 1070, Denver, CO 80202, cfc@alpersteincovell.com; alb@alpersteincovell.com; gym@alpersteincovell.com, Phone: (303) 894-8191; Fax (303) 861-0420. **1. Name, mailing address, email address and telephone number of applicant:** City and County of Broomfield (“Broomfield” or “Applicant”), c/o Director of Public Works, One DesCombes Drive, Broomfield, Colorado 80020-2495, Telephone No.: (303) 438-6348, e-mail: publicworks@broomfield.org. **2. Introduction and summary of application:** Broomfield is a Colorado municipal corporation and county. It owns and operates a municipal water and sewer utility system for the benefit of its citizens, and for the provision of water and sewer service to such extra-territorial customers as it may serve from time to time pursuant to its City and County Charter and contract. Broomfield seeks a change of shares of the Farmers Reservoir and Irrigation Company (“FRICO”), Marshall Lake Division (“FRICO Marshall Division”). FRICO is a Colorado mutual ditch company that distributes water to its stockholders. There are 1,273.97 outstanding shares of capital stock in the FRICO Marshall Division. To the extent that, in this proceeding, the number of outstanding shares is determined to be slightly more or slightly less than stated herein, the final decree will conform to such different number without the need for any amendment of the application. Broomfield seeks a change to allow storage or detention of the shares in the ponds and reservoirs listed herein and use within Broomfield’s municipal water system and other areas served by Broomfield, including use within Broomfield’s reuse system. Broomfield also seeks storage or underground water rights, as appropriate, for the lined and unlined ponds and reservoirs in which the shares will be directly stored or detained, and an augmentation plan including rights of substitution and exchange to replace out-of-priority stream depletions caused by the ponds and reservoirs. Broomfield is also appropriating the historical return flows associated with the changed shares in instances where the downstream call is junior to December 31, 2020. **CHANGE OF WATER RIGHTS, INCLUDING APPROPRIATION OF RETURN FLOWS** **3. Decreed names of water rights and structures for which change is sought:** 158.14 shares of the FRICO Marshall Division. The 158.14 shares are referred to herein as the “Subject Water Rights.” The structures involved are the Community Ditch, Marshall Lake Reservoir, and McKay Lake Reservoir. **4. Date of original and all relevant subsequent decrees and decree information for the Subject Water Rights.** All of the following decrees were entered in Boulder County District Court for irrigation and agricultural purposes: Table 1: Direct Flow Water Rights – FRICO Marshall Division

Date Entered	Case No.	Amount (in cfs)	Appropriation Date	Subject Water Rights (Broomfield’s pro-rata portion in cfs)	Name	Source
12/19/1900	CA 3944	83.3	6/6/1885	10.34	Community Ditch	South Boulder Creek

6/21/1926	CA 6672	319.1	8/26/1903	39.61	Community Ditch Second Enlargement	South Boulder Creek
6/21/1926	CA 6672	319.1	8/26/1903	39.61	Community Ditch Second Enlargement	Coal Creek and Rock Creek
6/21/1926	CA 6672	227.0	8/26/1903	28.18	Community Ditch Second Enlargement	Dowdy Hollow or Draw

The inclusion of pro-rata amounts in Tables 1 and 2 is merely descriptive and does not imply that actual historical usage was based on such amount. Table 2: Storage Rights – FRICO Marshall Division

Date Entered	Case No.	Amount (in cfs and acre-feet ("af"))	Appropriation Date	Subject Water Rights (Broomfield's pro rata portion)	Name	Source
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12/19/1900	CA 3944	83.3 cfs; 1,349.14 af	6/6/1885	10.34 cfs; 167.47 af	Marshall Lake Reservoir	South Boulder Creek
4/10/1905	CA 4735	45.6 cfs; 1,349.14 af	3/13/1901	5.66 cfs; 167.47 af	Marshall Lake Reservoir	South Boulder Creek
6/21/1926	CA 6672	448.0 cfs; 7,901.74 af	3/4/1902	55.61 cfs; 980.86 af	Marshall Lake Reservoir First Enlargement	South Boulder Creek
6/21/1926	CA 6672	1,545.01 af	9/20/1921	191.78 af	Marshall Lake Reservoir Second Enlargement	South Boulder Creek
1/9/1935	CA 6672 Supplemental	448 cfs; 9,400 af	3/4/1902	55.61 cfs; 1,166.84 af	Marshall Lake Reservoir Dowdy Hollow or Draw	Dowdy Hollow or Draw
9/28/1953	CA 12111	448 cfs; 9,053.14 af	12/31/1929	55.61 cfs; 1,123.78 af	Marshall Lake Reservoir Refill Right	South Boulder Creek and Dowdy Hollow or Draw
12/19/1900	CA 3944	83.3 cfs; 699.08 af	6/6/1885	10.34 cfs; 86.78 af	West Lake (transferred to Marshall Lake Reservoir in W8287-76)	South Boulder Creek
12/19/1900	CA 3944	10.0 cfs; 40.0 af	5/1/1888	1.24 cfs; 4.97 af	Section 19 Reservoir (transferred to Marshall Lake Reservoir in 85CW330)	South Boulder Creek
4/10/1905	CA 4735	45.6 cfs; 956.80 af	2/26/1900	5.66 cfs; 118.77 af	McKay Lake Reservoir	South Boulder Creek

FRICO historically owned Church Ditch inches, which it used to supplement its water supply in the Marshall Division system. However, based on Broomfield's understanding that the Church Ditch inches are no longer part of the FRICO Marshall Division operations, no water rights associated with the Church Ditch are being changed by Broomfield in this case. Nevertheless, the following decree information associated with the Church Ditch inches is being provided in order to reflect historical use of the Subject Water Rights that was contributed by the Church Ditch inches. FRICO owned 475 inches in the Church

Ditch (a.k.a. Golden City Ralston Creek Ditch). In an October 4, 1884 adjudication by the Arapahoe County District Court, the following amounts and appropriation dates were decreed from Clear Creek at a point of diversion described as being on the north bank of Clear Creek in the NW 1/4 NE 1/4 of Section 32, Township 3 South, Range 70 West, 6th P.M., Jefferson County, Colorado: Table 3 – Church Ditch Original Decreed Water Rights

Amount (in cfs)	Appropriation Date
0.90	6/1/1892
1.43	2/28/1865
1.25	5/16/1865
18.26	11/18/1877
18.85	11/15/1878
32.34	11/20/1881

In a May 13, 1936 adjudication by the District Court for the City and County of Denver in CA60052, the following amounts and appropriation dates were decreed from Clear Creek and Ralston Creek at a point of diversion described as being at the Church Ditch headgate on the north bank of Clear Creek in the NW 1/4 NE 1/4 of Section 32, Township 3 South, Range 70 West, 6th P.M., Jefferson County, Colorado, and the Church Ditch headgate on Ralston Creek in the SE 1/4 NW 1/4 of Section 2, Township 3 South, Range 70 West, 6th P.M., Jefferson County, Colorado: Table 4: Church Ditch Supplemental Decreed Water Rights

Amount (cfs)	Appropriation Date	Source
100.12	3/16/1886	Clear Creek
185	11/18/1877	Ralston Creek

**5. Legal description of structures:** **5.1** Community Ditch diversion point on South Boulder Creek: on the south bank of South Boulder Creek in the NE 1/4 of the SE 1/4 of Section 25, Township 1 South, Range 71 West, 6th P.M., Boulder County, Colorado. **5.2** Community Ditch diversion point from Coal Creek: in the NW 1/4 of the NE 1/4 of Section 26, Township 1 South, Range 70 West, 6th P.M., Boulder County, Colorado. **5.3** Community Ditch diversion point from Rock Creek: in the SE 1/4 of the SW 1/4 of Section 30, Township 1 South, Range 69 West, 6th P.M., Boulder County, Colorado. **5.4** Community Ditch diversion point from Dowdy Hollow or Draw: in the SW 1/4 of the SW 1/4 of Section 29, Township 1 South, Range 70 West, 6th P.M., Boulder County, Colorado. **5.5** Marshall Lake Reservoir is located in Sections 22 and 27, Township 1 South, Range 70 West, 6th P.M., Boulder County, Colorado. **5.6** McKay Lake Reservoir is located in Sections 20 and 21, Township 1 South, Range 68 West, 6th P.M., Boulder County, Colorado. **6. Amount of water that Applicant intends to change:** The absolute water rights associated with 158.14 shares in the FRICO Marshall Division. See also tables in section 4, above. **7. Detailed description of proposed change:** **7.1** Historical Use: The Subject Water Rights were historically used to irrigate lands within the FRICO Marshall Division service area, including those lands set forth in the map attached as Exhibit A. Exhibit B describes the general locations of the various farms associated with the Subject Water Rights, which are located in Adams, Boulder, and Weld Counties, Colorado, in Townships 1 South and 1 North, and Ranges 68 and 69 West of the 6th Prime Meridian. A summary of diversion records is attached as Exhibit C. To quantify the historical consumptive use of the Subject Water Rights, Broomfield will rely on a ditch-wide analysis and the historical consumptive use quantification methodology that was the subject of previously decreed changes of FRICO Marshall Division shares, including the representative 1950 to 1970 study period that was used in the previous changes. See Case Nos. 92CW79 and 07CW310 (City of Louisville) and Case No. 02CW292 (Eldorado Artesian Springs, Inc.). **7.2** Proposed Change of Use and Location of Use: Broomfield seeks to change the Subject Water Rights to allow their use in Broomfield’s municipal water supply system as it currently exists or may exist in the future, in addition to the currently decreed places of use of the Subject Water Rights. Broomfield does not seek a change in point of diversion of the Subject Water Rights. They will continue to be diverted at the Community Ditch point of diversion described above. A map of the approximate boundaries of Broomfield’s current municipal service area is attached as Exhibit D. Broomfield seeks to change the use

of the Subject Water Rights to add, in addition to the existing irrigation uses, decreed uses of direct flow and storage for all beneficial uses of the municipal water system of Broomfield, as it currently exists or may exist in the future, including, but not limited to, municipal, domestic, industrial, commercial, fire protection, stock watering, recreation, wetlands, irrigation, lake level maintenance, water features, fish and wildlife, gray water use, augmentation, replacement, substitution and exchange, and storage for these purposes, as well as the right to totally consume the water either by first use, reuse, successive use, or disposition to third parties, including, but not limited to, by existing or subsequent lease or agreement. Broomfield will maintain dominion and control over any such fully consumable water, including but not limited to, fully consumable lawn irrigation return flows and/or effluent associated with the Subject Water Rights that will be treated and released into the South Platte River Basin. Said use may include use for return flow obligations associated with Broomfield's municipal water supply system, and/or the re- diversion of any such fully consumable lawn irrigation return flows or effluent credits into storage in vessels owned or controlled by Broomfield, or in which Broomfield has a contractual right to store water, such as those structures, described below, for additional beneficial uses, and/or the use of any such fully consumable water in Broomfield's reuse water system, as that system currently exists or is expanded or modified in the future. In addition to the previously decreed locations identified in section 5, above, Broomfield also seeks the right to store or detain some or all of the Subject Water Rights at the locations described below, all in the 6th P.M., City and County of Broomfield, Colorado: **7.2.1** Tom Frost Pond located in the SE 1/4 of the SE 1/4, Section 30, Township 1 South, Range 68 West. **7.2.2** LeGault Pond located in the W 1/2 of the SW 1/4, Section 30, Township 1 South, Range 68 West. **7.2.3** Brunner Reservoir a.k.a. Harry Brown Reservoir located in the NE 1/4 of the SW 1/4 and the SE 1/4 of the NW 1/4, Section 36, Township 1 South, Range 69 West. **7.2.4** Midway Park Pond located in the SE 1/4 of the NW 1/4, Section 35, Township 1 South, Range 69 West. **7.2.5** Community Park Pond located in the NW 1/4 of the SW 1/4, Section 36, Township 1 South, Range 69 West. **7.2.6** Civic Center Pond proposed to be located in the W 1/2 of the SW 1/4, Section 36, Township 1 South, Range 69 West. **7.2.7** Wilde Pond proposed to be located in the W 1/2 of the NE 1/4, Section 24, Township 1 South, Range 69 West. **7.2.8** 3207 Ponds (a.k.a. 10th Ave. Ponds and/or Ellie's Pond) located in the NE 1/4 of the NW 1/4, Section 36, Township 1 South, Range 69 West. **7.2.9** Trails of Westlake Pond located in the S 1/2 of the NW 1/4, Section 29, Township 1 South, Range 68 West. **7.2.10** Zuni Detention Pond (a.k.a. Alexx and Michael's Pond) located in the SE 1/4 of the NE 1/4 and the NE 1/4 of the SE 1/4, Section 29, Township 1 South, Range 68 West. **7.2.11** Plaster Lake located in the SW 1/4, Section 20, Township 1 South, Range 68 West. **7.2.12** Markel's Pond located in the SW 1/4 of the SE 1/4, Section 24, Township 1 South, Range 69 West. **7.2.13** Siena Reservoir located in the S 1/2 of the NW 1/4, Section 8, Township 1 South, Range 68 West. **7.2.14** Sagar/Section 19 Pond located in the SE 1/4 of the NW 1/4, Section 19, Township 1 South, Range 68 West. **7.2.15** Great Western Reservoir located generally in the North 1/2 of Section 7 and the South 1/2 of Section 6, Township 2 South, Range 69 West. **7.3** Historical Return Flows: Under the change of water rights, municipal return flows attributable to the Subject Water Rights will be quantified, and at times of a South Platte River call senior to December 31, 2020, used to offset any required returns necessary to prevent injury from the change of water right. Moreover, Broomfield may use the Subject Water Rights, any other water rights owned or controlled by Broomfield that are or have been determined to be fully consumable or usable for replacement purposes by this or any other decree, and/or municipal return flows from other fully-consumable sources of water, to meet required historical return flow obligations. A list of the return flow replacement sources currently available to Broomfield is located in section 13, below. As with the claimed additional augmentation sources described in section 13, Broomfield seeks the right to add future return flow replacement sources - pursuant to procedures to be determined herein - without the necessity of amending this application or filing a new application. Water derived from the exercise of the Subject Water Rights upon which any required return flow obligations have been met or upon which municipal return flows exceed historical irrigation return flow obligations will be fully consumable by Broomfield, and may be used, reused, and successively used to extinction for all beneficial purposes identified herein, either by direct release or storage for later release with the right to totally consume the consumable portion of the water either by first use, successive use, or disposition to third parties. **7.4** Appropriation of return flows:

Broomfield claims the appropriation of historical return flows and will replace return flows associated with the historical use of the Subject Water Rights only for downstream calls senior to December 31, 2020. The name and point of diversion of the structure to be used to divert the claimed return flows is the Community Ditch, described in section 5.1, above. The sources of water for the claimed return flows are the sources described in the tables in section 4, above. The appropriated return flows will be used for the same uses as described in section 7.2, above. The date of appropriation of the claimed return flows is December 31, 2020, based on the formation of intent to divert and put the claimed return flows to beneficial use and the filing of the application in water court. Broomfield claims a conditional right to divert and use all the water delivered with the Subject Water Rights that is characterized as return flow water pursuant to this application and the final decree to be entered herein, subject to any limits that may be determined herein.

**7.5** Broomfield seeks to change only the portion of the Subject Water Rights used to irrigate the farms described in section 7.1, above. Any water that would be otherwise available to Broomfield pursuant to its shares that Broomfield does not use may continue to be diverted at the decreed points of diversion and used by other FRICO stockholders, pursuant to the terms and conditions of the applicable decrees described in section 4, above, without counting against any historical consumptive use volumetric limits decreed in this proceeding for Broomfield’s shares. The diversion and use of water otherwise available to the Subject Water Rights by other FRICO stockholders may also occur after any historical consumptive use volumetric limits decreed in this proceeding for the Subject Water Rights have been fully exhausted by Broomfield’s uses. **STORAGE RIGHTS 8. Names of structures for which storage rights are sought:** Tom Frost Pond, Brunner Reservoir a.k.a. Harry Brown Reservoir, Civic Center Pond, Wilde Pond, Plaster Pond, and Sagar/Section 19 Pond. The locations of these structures are described in Sections 7.2.1 through 7.2.14, above. The date of appropriation for each storage right is summarized in Table 5 below. Each appropriation was initiated either by Broomfield’s acquisition of the structure upon the date listed for the structure in Table 5, and/or by commencement of planning and development of the land on which the structure is located. Overt acts in furtherance of the intent to appropriate the water right include the planning and development of the use of the land on which the structure is located, storage in and use of the structure for beneficial purposes and the filing of the application in this Court on December 31, 2020. The uses of the structures are all municipal purposes, including but not limited to aesthetic, scenic, recreation, fire protection, fish and wildlife, augmentation, replacement, and storm water management. **9.** The points of diversion of the storage rights are described in Sections 7.2.1 through 7.2.14 above, and the sources and amount of storage claimed for each structure are described in Table 5 below. Broomfield seeks the right to fill and refill the structures. For completeness, the described sources include all physical sources to fill the structures, whether already decreed or not. Storage rights are not being claimed for already decreed inflow. The claimed inflow rates for the structures are based on the capacity of the ditch from which those structures are primarily filled. The decreed inflow rate will be based on the capacity of the inlet structures and the physical sources of supply. All amounts are claimed as absolute, except as otherwise noted below. Table 5: Ponds and Lakes for Which Storage Rights are Sought

Pond Name	Filling Structure	Source	Date of Appropriation	Capacity (AF)	Inflow Rate (cfs)
Civic Center Pond	Community Ditch and Zang Draw	Zang Draw, natural runoff, drainage and precipitation, and Subject Water Rights	April 30, 2018	70 AF (Conditional)	85 cfs
Wilde Pond	Community Ditch and Church Ditch	Natural runoff, drainage and precipitation, Subject Water Rights	December 18, 2018	3.5 AF (Conditional)	85 cfs



Tom Frost	Community Ditch and Church Ditch	Natural runoff, drainage and precipitation, Subject Water Rights	April 27, 1998	75 AF	85 cfs
Brunner / Harry Brown Reservoir	Graves and Dollison Ditch and Zang Draw	Zang Draw, natural runoff, drainage and precipitation, Subject Water Rights	January 21, 1999	53 AF	50 cfs
Plaster Lake	Community Ditch and Church Ditch	Natural runoff, drainage and precipitation, Subject Water Rights	February 8, 2001	154 AF	85 cfs
Sagar Section 19 Pond	Community Ditch and Church	Natural runoff, drainage and precipitation, Subject Water Rights	December 31, 2020	80 AF (Conditional)	85 cfs

**UNDERGROUND WATER RIGHTS 10. Names of structures for which underground water rights are sought:** LeGault Pond, Midway Park Pond, Community Park Pond, 3207 Ponds (a.k.a. 10th Ave. Ponds and/or Ellie’s Pond), Trails of Westlake Pond, Zuni Detention Pond (a.k.a. Alexx and Michael’s Pond), Markel’s Pond, and Siena Reservoir. Well permits for each structure will be applied for if required. The locations of these structures are described in sections 7.2.1 through 7.2.14, above. The date of appropriation for the underground water rights is summarized in the table below. Each appropriation was initiated either by Broomfield’s acquisition of the structure upon the date listed for the structure in Table 6, below, and/or by commencement of planning and development of the land on which the structure is located. Overt acts in furtherance of the intent to appropriate the water right include the planning and development of the use of the land on which the structure is located, the use of the structure for beneficial purposes, and/or the filing of the application in this Court on December 31, 2020. The uses of the structures are all municipal purposes, including but not limited to aesthetic, scenic, recreation, fire protection, fish and wildlife, augmentation, replacement, and storm water management, and with respect to Siena Reservoir - regulation of summer peaking associated with Broomfield’s water treatment plant. **11.** The source and claimed rate and amount for each structure are described in Table 6 below. All amounts claimed are conditional. For completeness, the described sources include all physical sources used to fill the structures, whether already decreed or not. Underground water rights are not being claimed for already decreed inflow. The claimed inflow rates for the structures are based on the capacity of the ditch from which those structures are primarily filled. The decreed inflow rate will be based on the capacity of the inlet structures and the physical sources of supply, including rate of groundwater inflow.

Table 6: Ponds and Lakes for Which Underground Water Rights are Sought

Pond Name	Filling Structure	Source	Date Appropriation of	Capacity (AF)	Inflow Rate (cfs)
LeGault	Community Ditch and Church Ditch	Groundwater tributary to Big Dry Creek, natural runoff, drainage and precipitation, Subject Water Rights	October 28, 2003	200 AF	85 cfs

Midway Park Pond	Zang Draw and Community Ditch	Groundwater tributary to Big Dry Creek, Zang Draw, natural runoff, drainage and precipitation, Subject Water Rights	June 3, 1955	1 AF	85 cfs
Community Park Pond	Zang Draw and Community Ditch	Groundwater tributary to Big Dry Creek, Zang Draw, natural runoff, drainage and precipitation, Subject Water Rights	May 25, 1972	5 AF	85 cfs
3207 / 10th Avenue / Ellie's Pond)	Drainage / Community Ditch	Groundwater tributary to Big Dry Creek, natural runoff, drainage and precipitation, Subject Water Rights	February 29, 1988	15 AF	85 cfs
Trails of Westlake Pond	Community Ditch and Church Ditch	Groundwater tributary to Big Dry Creek, natural runoff, drainage and precipitation, Subject Water Rights	July 27, 1987	20 AF	85 cfs
Zuni / Alexx and Michael's Pond	Community Ditch	Groundwater tributary to Big Dry Creek, natural runoff, drainage and precipitation, Subject Water Rights, fire hydrant	July 31, 1989	25 AF	85 cfs
Markel's Pond	Community Ditch	Groundwater tributary to Big Dry Creek, natural runoff, drainage and precipitation, Subject Water Rights	June 25, 2008	5.5 AF	85 cfs
Siena Reservoir	Community Ditch, Southern Pipeline	Groundwater tributary to Coal Creek, C-BT, Windy Gap, natural runoff, drainage and precipitation, Subject Water Rights	January 13, 2009	450 AF	85 cfs

**AUGMENTATION PLAN INCLUDING RIGHTS OF SUBSTITUTION AND EXCHANGE 12.**

**Names of structures to be augmented:** All structures listed in sections 7.2.1 through 7.2.14, above (“Augmented Structures”). Water rights for the Augmented Structures are being sought in this application. Information related to the location, appropriation date, amount, source, and uses of each Augmented Structure is described in sections 8 through 11, above. **13. Water rights to be used for augmentation:** **13.1** The Subject Water Rights described above. Water made available pursuant to the changed Subject Water Rights may augment depletions from the Augmented Structures in sections 7.2.1 through 7.2.14, above, by being diverted and detained or stored directly in the Augmented Structures; by being released and exchanged from Broomfield’s Wastewater Reclamation Facility outfall pursuant to the exchange(s) described below in section 15; by being released from Great Western Reservoir to Big Dry Creek via Walnut Creek, after having been pumped to the reservoir from the Wastewater Reclamation Facility; by

being delivered into and released to Coal Creek from an existing augmentation station off Community Ditch located in the NW 1/4 of the NE 1/4 of Sec 26, T1S, R70W, 6th .P.M., or in an alternative proposed augmentation station located in the N 1/2 of Section 8, T1S, R68W or the S 1/2 of Section 5, T1S, R68W; and/or by being released from Siena Reservoir to Coal Creek. The location of Broomfield's Wastewater Reclamation Facility outfall is NW 1/4 of the SE 1/4 of Section 32, T1S, R68W of the 6th P.M. **13.2** Heit Pit Storage Right decreed by this Court in Case No. 09CW96. Water made available pursuant to the Heit Pit Storage Right may augment depletions from the Augmented Structures by being released to Little Dry Creek and then to the South Platte River. The source of this Heit Pit Storage Right is the South Platte River, from the points and as described in the 09CW96 decree. The location of Heit Pit is: in the South Half of the Northeast Quarter, and the North Half of the Southeast Quarter of Section 13, Township 2 North, Range 67 West of the 6th P.M., Weld County, Colorado. **13.3** South Platte Wellfield/Wells water right decreed by this Court in Case No. 09CW96. The South Platte Wellfield/Wells will be comprised of SPR Well No. 1 and additional wells located on the west bank of the South Platte River in the Southwest 1/4 of Section 18 and part of the Northeast 1/4 of the Northwest 1/4 of Section 19, Township 2 North, Range 66 West of the 6th P.M., Weld County, Colorado. Water from the South Platte Wellfield/Wells may be pumped to and released from Heit Pit, or discharged directly to the South Platte River. **13.4** Consolidated Mutual Water Company effluent or other consumable water released to the South Platte River and its tributaries by The Consolidated Mutual Water Company ("Consolidated") pursuant to the December 16, 2002 Raw Water Service Agreement between Pulte Home Corporation and Consolidated (assigned to Broomfield on January 16, 2009) at the Perry Pit (the outfall of which is located in the NW 1/4 of the NW 1/4 of Section 30, Township 1 North, Range 66 West of the 6th P.M.) , the Heit Pit, the Metro Reclamation District Wastewater Treatment Plant (the outfall of which is located in the SE 1/4 of the SW 1/4, Section 1, Township 3 South, Range 68 West of the 6th P.M.), and/ or the proposed Northern Metro Treatment Plant (the outfall of which is located in the SE 1/4 of the SW 1/4 of Section 31, Township 1 North, Range 66 West, of the 6th P.M.) **13.5** Windy Gap effluent released at Broomfield's Wastewater Reclamation Facility and/or Great Western Reservoir into Big Dry Creek and/or Heit Pit or Koenig Pit released to Little Dry Creek and/or South Platte River; and/or Windy Gap raw water released to Coal Creek from Siena Reservoir, described above, or Matthew D. Glasser Reservoir located in the E 1/2 of the SW 1/4 and the W 1/2 of the SE 1/4 of Section 18, Township 1 South, Range 68 West. Koenig Pit is located in the S1/2 SE1/4 of Section 13, Township 2 North, Range 67 West, 6th P.M., in Weld County, Colorado. Broomfield owns 56 Windy Gap units. Windy Gap effluent results from Broomfield's use of Windy Gap Project water, a transmountain water diversion project that delivers water from the Colorado River Basin to the South Platte River Basin. Broomfield owns a Water Allotment Contract with the Municipal Subdistrict of the Northern Colorado Water Conservancy District, a political subdivision of the State of Colorado, for 56 units of Windy Gap Project water. The water rights for the Windy Gap Project consist of the Windy Gap Pump, Pipeline and Canal, Windy Gap Pump, Pipeline and Canal First Enlargement, Windy Gap Pump, Pipeline and Canal Second Enlargement, and Windy Gap Reservoir. These water rights were originally decreed in Civil Action No. 1768, Grand County District Court, on October 27, 1980, and in Case Nos. W-4001 and 80CW108, District Court, Water Division No. 5, on October 27, 1980. Windy Gap Project water is introduced, stored, carried and delivered in and through the components of the Colorado-Big Thompson Project. The sources of water for the Windy Gap Project are the Colorado River and Willow Creek, a tributary of the Colorado River. **13.6** Direct flow water rights (Broomfield Discharge Diversion Point and Broomfield Big Dry Creek Diversion Point) decreed by this Court in Case No. 98CW436 released and/or by-passed into Big Dry Creek and/or recaptured and stored in Heit Pit and/or Koenig Pit and subsequently released to Little Dry Creek and/or South Platte River. The source of the Broomfield Discharge Point water right is effluent from the Broomfield wastewater treatment plant, tributary to Big Dry Creek, tributary of the South Platte River. Its location is: commencing at the center of Section 32, Township 1 South, Range 68 West, of the Sixth Principal Meridian, County of Adams, State of Colorado, whence the East one-quarter corner of said Section 32 bears South 89 degrees 46 minutes 32 seconds East a distance of 2,646.68 feet, said line forming the basis of bearings for this description, thence South 69 degrees 9 minutes 23 seconds East, a distance of 1,006.42 feet to the Discharge Diversion Point, whence said East one-quarter corner bears North 78 degrees

28 minutes 47 seconds East, a distance of 1,741.17 feet. The source of the Broomfield Big Dry Creek Diversion Point is Big Dry Creek. Its location is: commencing at the Center of Section 32, Township 1 South, Range 68 West, of the Sixth Principal Meridian, County of Adams, State of Colorado, whence the East one-quarter corner of said Section 32 bears South 89 degrees 46 minutes 32 seconds East a distance of 2,646.68 feet, said line forming the basis of bearings for this description, thence South 70 degrees 46 minutes 39 seconds East, a distance of 1,020.11 feet to the Big Dry Creek Diversion Point, whence said East one-quarter corner bears North 79 degrees 03 minutes 25 seconds East, a distance of 1,714.60 feet.

**13.7** Direct flow water rights (Broomfield Discharge Diversion Point Enlargement, Broomfield Big Dry Creek Diversion Point Enlargement, and Bull Canal Diversion Point) decreed by this Court in Case No. 2004CW310 on June 30, 2009, released and/or by-passed into Big Dry Creek and/or recaptured and stored in Heit Pit or Koenig Pit and subsequently released to Little Dry Creek and/or the South Platte River. The sources and locations of the Broomfield Discharge Diversion Point Enlargement and the Broomfield Big Dry Creek Diversion Point Enlargement water rights are described above in section 13.6. The source of the Bull Canal Diversion Point is Big Dry Creek. Its location is a point on Big Dry Creek in the NW1/4 of the SE1/4 of Section 28, Township 1 South, Range 68 West, of the 6th Principal Meridian, in Adams County, Colorado.

**13.8** Storage rights, decreed by this Court in Case No. 2006CW288, released from the Heit Pit to the South Platte River and/ or Little Dry Creek. The source of the storage rights is the South Platte River and its tributaries, including Little Dry Creek and Big Dry Creek, diverted through the Lupton Bottom Ditch, Meadow Island No. 1 Ditch, or the Little Dry Creek Diversion, described in the 2006CW288 decree.

**13.9** Fully consumable water from the water rights represented by 0.5 shares of the Lupton Bottom Ditch Company and 116 shares of the Lupton Meadows Ditch Company that were changed by the decree entered by this Court in Case No. 2005CW290 dated June 9, 2009. Water made available by the changed shares may augment depletions from the Augmented Structures via release to the South Platte River and/or Little Dry Creek directly or from storage in Koenig Pit and/or Heit Pit and/or from existing or to-be-constructed augmentation stations as described in paragraph 10.c. of the 05CW290 decree.

**13.10** Fully consumable water from Walnut Creek, decreed by this Court in Case No. 2008CW02, released to Great Western Reservoir by the Department of Energy, and subsequently delivered to Big Dry Creek via Walnut Creek.

**13.11** Broomfield lawn irrigation return flows returning to Big Dry Creek and Boulder Creek, once the same are quantified and decreed in a separate proceeding.

**13.12** The Church Ditch Broomfield filing AKA Golden City Ralston Creek and Church Ditch direct flow water right decreed by this Court in Case No. 81CW460 for replacement or augmentation purposes. The source is Clear Creek. The decreed location is a point located on the North Bank of Clear Creek in the Northeast 1/4 of Section 32, Township 3 South, Range 70 West of the 6th Principal Meridian, County of Jefferson, State of Colorado, more particularly described in paragraph 3 of the 81CW460 decree.

**13.13** The Great Western Reservoir, Broomfield Enlargement, water storage right decreed by this Court in Case No. 81CW463 for replacement or augmentation purposes. The source of water is Clear Creek. The location is described above in section 7.2.15.

**13.14** Fully consumable effluent released or delivered to the South Platte River and its tributaries by the City of Aurora pursuant to the 2009 Water Delivery Contract between Broomfield and Aurora. The delivery point is the outfall of the Metro Wastewater Reclamation District treatment facility or any other delivery point on the South Platte River provided that any such other delivery point is within a reach of the South Platte River beginning at or below Metro and continuing downstream to a point at or above the headgate of Meadow Island No. 1 Ditch.

**13.15** Fully consumable water delivered by the City of Aurora into Little Dry Creek out of the Brantner Ditch at an augmentation station located in the NW 1/4 of the SW 1/4 of Section 3, Township 1 North, Range 67 West, of the 6th P.M.

**13.16** Effluent delivered by the City of Arvada to the South Platte River at the Metro Wastewater Reclamation District treatment facility, subject to the provisions of paragraph 29.a. of the decree in Case No. 09CW96 (“[Broomfield] shall not use Arvada effluent as a source of substitute supply in this plan for augmentation until such time as it has obtained the legal right to the use of said effluent from Arvada. Use of Arvada effluent shall be governed by the terms and conditions of any agreement with Arvada permitting the use of said effluent”).

**13.17** Pursuant to C.R.S. § 37-92-305(8), Broomfield also proposes to use in the future as augmentation supplies or return flow replacement supplies other water rights or sources of water that Broomfield then owns or controls,

provided that they are decreed for, or otherwise available for, augmentation or replacement purposes or may be used for augmentation or replacement purposes pursuant to a State Engineer-approved substitute water supply plan pursuant to C.R.S. § 37-92-308 or interruptible supply plan pursuant to C.R.S. § 37-92-309, or any amendment thereof, and provided that Broomfield can make such supplies available at the locations, at the time, and in the amount required for such augmentation or replacement. Pursuant to C.R.S. § 37-92-305(8), required procedures to allow Broomfield's use of such additional sources will be determined in this proceeding. Broomfield also claims the right to use such other water in one or more substitute water supply plans that may be approved for operations prior to entry of a final decree. **14. Complete statement of plan for augmentation:** Under this plan for augmentation, Broomfield will replace injurious out-of-priority depletions caused by the structures described in sections 7.2.1 through 7.2.14, above. The depletions may be caused by storage or detention of runoff and precipitation in the structures or by evaporation from the unlined ponds. The injurious out-of-priority depletions will be replaced with water from the sources described in section 13, above, at the locations described in that above section. **APPROPRIATIVE RIGHTS OF SUBSTITUTION AND EXCHANGE 15.** When a valid call is being administered from a water right senior to December 31, 2020, and when all or part of the augmentation or required historical return flow replacement water is provided below the location of the depletion from an Augmented Structure or below the location where the historical return flow replacement is required to be made, Broomfield will augment injurious out-of-priority depletions and/or replace required historical return flows via one or more of the following appropriative rights of substitution and exchange: **15.1 Exchange reach: 15.1.1 Downstream Terminus:** Confluence of Little Dry Creek and the South Platte River, in the S ½ NE ¼ , Section 12, Township 2 North, Range 67 West of the 6th P.M. **15.1.2 Upstream Terminus:** in the NE ¼ of Section 12, Township 2 South, Range 69 West of the 6th P.M., at the location of the most upstream point where depletions from the Augmented Structures accrue to Big Dry Creek. The Exchange Reach is depicted on Exhibit D attached hereto. Within the Exchange Reach, other exchange-from points are claimed for the delivery or release point of each structure and source described in section 13, above, and other exchange-to points are claimed for the point of depletion for each Augmented Structure and at each required return flow replacement location. Matrices of all the exchange-from and exchange-to points claimed herein will be developed during the proceeding. **15.2** The date of appropriation of the substitutions and exchanges is December 31, 2020. The appropriations were initiated by formation of the intent to utilize the substitutions and exchanges to replace depletions caused by the structures described herein and the filing of the application in water court on December 31, 2020. **15.3** The maximum rate of the exchanges is estimated not to exceed 10 cfs. Broomfield seeks a decree for whatever exchange rate(s) are determined in this proceeding, even if higher than the estimated rate described in this section. **15.4** The sources of substitute supply for the exchange are the sources described in section 13, above. **15.5** The proposed uses are augmentation and replacement. Broomfield acknowledges that the State and Division Engineers may refer to all or portions of these exchange rights as an "exchange project" or an "exchange project right." **16. Name(s) and address(es) of owner(s) or reputed owners 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:** Aspen Street Land, LLC % Ryan Aweida, Member, 14100 Aspen Street, Broomfield, CO 80020, is the owner of the structure referred to as Wilde Pond in section 7.2.7, above. Broomfield is the owner of land on which any other new diversion or storage structures will be located. No other new diversion or storage structures, or modifications to any existing diversion or storage structures, are involved. **17.** Broomfield agrees that it will not use water rights or structures owned by others if it has not first acquired a lawful right to do so.