

Consent Agenda Item 1.i

March 10-11, 2021 Board Meeting

Case No. 20CW3138 (Water Division 5); Winter Park Water and Sanitation District

Summary of Water Court Application

Application for appropriative rights of exchange, conditional water storage right, and a plan for augmentation.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in January 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 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
80CW0446, 447, 448	Colorado River	hdgt Windy Gap Project div	confl Blue River	90, 135, 150 (1/1 - 12/31)	07/08/1980
90CW0302, 307, 308, 315	Fraser River	confl Jim Creek	confl Colorado River	8-30 (5/15 - 9/15) 3.5-19 (9/16 - 5/14)	11/27/1990

Potential for Injury

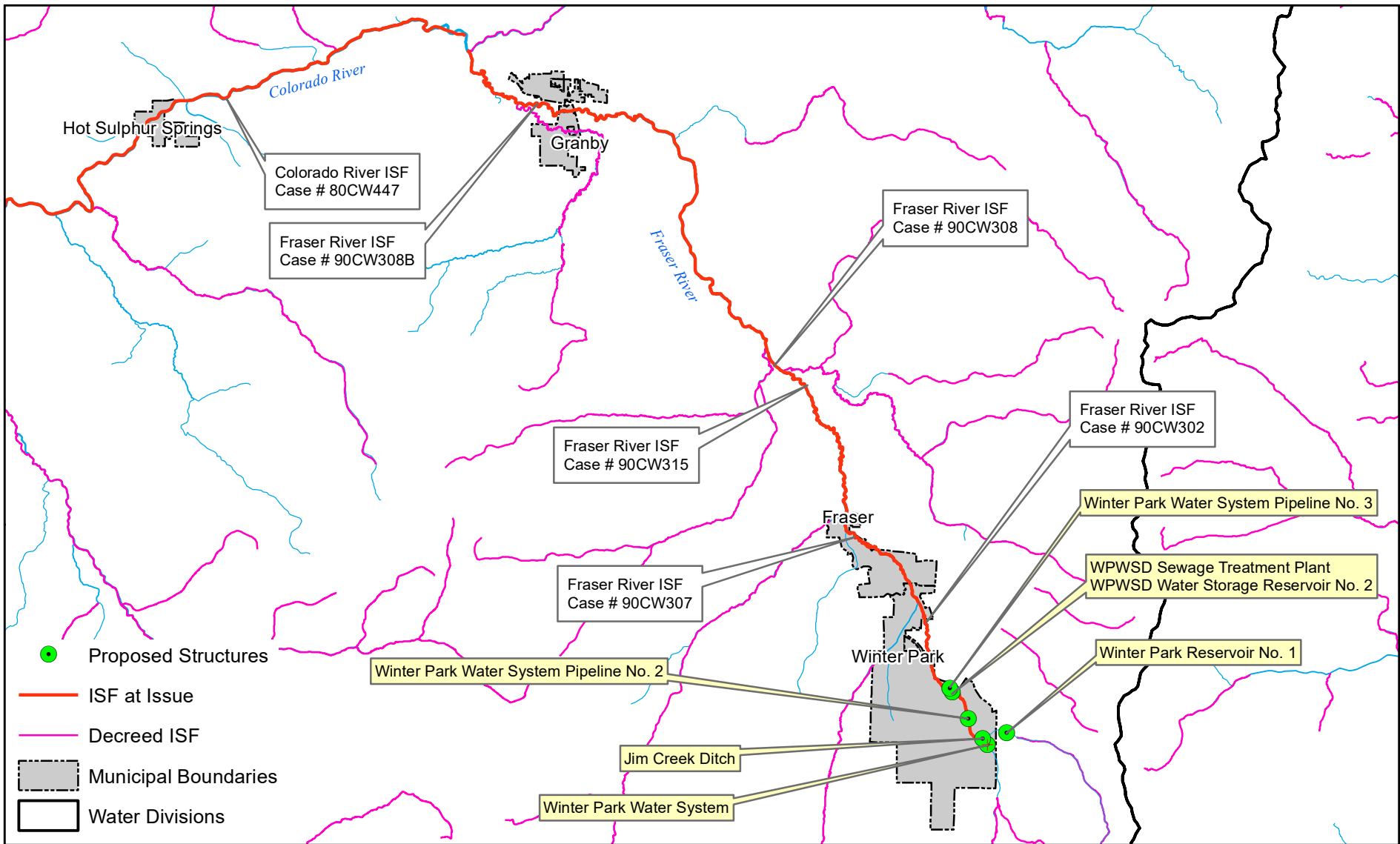
- The proposed appropriative right of exchange should be defined clearly with a reference to intervening instream flow water rights so that the CWCB's instream flow water rights are not injured.
- The proposed plan for augmentation may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- Terms and conditions should be included in the decree to ensure that the proposed decree will not injure the CWCB's instream flow water rights and flows protected under Case No. 11CW152 (CWCB, Denver Water, and Grand County's CRCA environmental flows decree).

Other Objectors

Statements of Opposition were also filed by City and County of Denver, acting by and through its Board of Water Commissioners (Denver Water), City of Englewood, Cornerstone Winter Park Holdings, LLC, Byers Peak Properties, LLC, GP Granby Holdings, LLC, Grand Valley Water Users Association, Orchard Mesa Irrigation District, Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise, Town of Fraser, Winter Park Ranch Water and Sanitation District, and Winter Park Recreational Association.

Attorney Representing CWCB

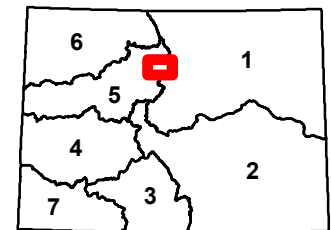
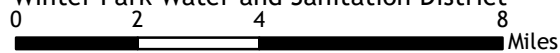
Jennifer L. Mele, First Assistant Attorney General, is assigned to this case and can be contacted at jennifer.mele@coag.gov, or 720-508-6282.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

March 10-11, 2020 CWCB Board Meeting
 Consent Agenda Item 1.i. Statement of Opposition
 Case No. 20CW3138 (Div 5)
 Winter Park Water and Sanitation District



DIVISION 5 WATER COURT-NOVEMBER 2020 RESUME

2. 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 NOVEMBER 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.*

20CW3138 GRAND COUNTY. Applicant Winter Park Water and Sanitation District, c/o Kent Bosshard, District Manager, P.O. Box 7, Winter Park, CO 80482; kentb@wpwsd.com. Applicant is represented by Kent Whitmer and Katie Randall, The Whitmer Law Firm, LLC, P.O. Box 38, Hot Sulphur Springs, CO 80451; (970)725-3460; kent@whitmerlawfirm.com, katie@whitmerlawfirm.com. Please direct all inquiries, correspondence and pleadings regarding this matter to counsel for Applicant identified above. APPLICATION FOR APPROPRIATIVE RIGHTS OF EXCHANGE, CONDITIONAL WATER STORAGE RIGHT, AND A PLAN FOR AUGMENTATION. **2. Summary of Application.** Applicant is a Colorado special district that provides water and sanitary sewer service to customers within a 3,400 acre service area in and around a portion of the Town of Winter Park and the Winter Park ski area. This Application requests approval of an augmentation plan and use of water by exchange to cover diversions and depletions by water users within the District's service area, based on anticipated increased use attributable to future development in the area. **3. Name and Descriptions of Water Rights.** The water rights and agreements included in this Application are described below. This Application is limited to the claims for relief set forth below and does not seek to amend the existing decrees or agreements for any of these water rights. A map demonstrating the location of these structures is attached to the Application as Exhibit A. **A. Winter Park Water System, 0.75 c.f.s. Absolute.** Source: Fraser River, tributary to the Colorado River. Point of Diversion: Suspended Section 14, Township 2 South, Range 75 West, 6th P.M., Grand County, Colorado; UTM: NAD 83, Zone 13, Northing 4414542, Easting 435505. Date of Original Decree: June 21, 1977 (Case No. W-3145). Appropriation Date: February 13, 1975. Amount: 0.75 c.f.s. absolute. Uses: Municipal, industrial, and recreational. **B. Winter Park Water System, 2.25 c.f.s. Conditional.** Source: Fraser River, tributary to the Colorado River. Point of Diversion: Suspended Section 14, Township 2 South, Range 75 West, 6th P.M., Grand County, Colorado; UTM: NAD 83, Zone 13, Northing 4414542, Easting 435505. Date of Decree: August 13, 1986 *nunc pro tunc* July 14, 1986 (Case No. 82CW400). Appropriation Date: November 4, 1982. Amount: 2.25 c.f.s., conditional. Uses: All municipal uses, including industrial, recreational and snowmaking. **C. Winter Park Water System Pipeline Nos. 2 and 3.** Source: Fraser River. Points of diversion: Pipeline No. 2: Proposed point of diversion on Fraser River near Moffat Tunnel on property owned by Winter Park Recreational Association: Located on the west bank of the Fraser River, near the Moffat Tunnel and just south of the train trestle, in the SE1/4NE1/4 unsurveyed Section 10, Township 2 South, Range 75 West, 6th P.M. at a point approximately 7,880 feet south of the south section line of Section 34 Township 1 South Range 75 West of the 6th P.M., and approximately 3,890 feet east of a line extended south from the west section line of Section 34 Township 1 South Range 75 West of the 6th P.M. Pipeline No. 3: Proposed point of diversion on Fraser River above Cooper Creek: Located on the west bank of the Fraser River, just upstream of Cooper Creek, in the SE1/4SW1/4 unsurveyed Section 3, Township 2 South, Range 75 West, 6th P.M. at a point approximately 4,530 feet south of the south section line of Section 34 Township 1 South, Range 75 West of the 6th P.M., and 1,890 feet east of a line extended south from the west section line of Section 34 Township 1 South Range 75 West of the 6th P.M. Date of Decree: November 5, 2008 (Case No. 05CW269). Appropriation Date: December 14, 2005. Amount: 2.25 c.f.s. total for both points of diversion, conditional. Uses: All municipal uses including irrigation, industrial, recreational, snowmaking, domestic, commercial, augmentation and exchange. **D. Jim Creek Ditch.** Source: Jim Creek, tributary to the Fraser River, tributary to the Colorado River. Legal Description: Tract 44A, Township 2 South, Range 75 West, 6th P.M. beginning at Southwest Corner of said Tract 44A, thence N 33°08'18" W 1,240 feet to a point on Jim Creek. The point of diversion can also be described as being at a point in the SW1/4NW1/4, Section 14, T2S, R75W, 6th P.M., 3,900 feet from the South Section line and 4,050 feet from the East Section line. Date of Decree: December 17, 2001 (Case No. 00CW287). Appropriation Date: August 11, 1999. Amount: 1.0 c.f.s., conditional. Uses: All municipal uses including irrigation, fire protection, domestic and commercial. **E. Winter Park Reservoir No. 1.** Source: Jim Creek, tributary to the Fraser River, tributary to the Colorado River. Legal Description: The point of storage is on a parcel of land in Township 2 South, Range 75 West, 6th P.M., in unsurveyed portion of Arapahoe National Forest, Grand County, Colorado, described as follows: Commencing at SW Corner, Sec. 35, Township 1 South, Range 75 West, 6th P.M. thence East along Township Line 1725 feet; thence South 8850 feet to the point of beginning; thence East 2400 feet; thence South 1400 feet; thence West 2400 feet; thence North 1400 feet to point of beginning. Point of diversion: The location where the dam axis crosses Jim Creek would be approximately described as follows: A point in Township 2 South, Range 75 West, 6th P.M., in unsurveyed portion of Arapahoe National Forest, Grand County, Colorado, described as follows: Commencing at SW corner, Section 35, Township 1 South, Range 75 West, 6th P.M. thence East along Township Line 1,800 feet; thence South 9,250 feet to the point where the dam centerline intersects Jim Creek. Date of Decree: June 14, 1988 (Case No. 86CW365). Appropriation Date: December 11, 1986. Amount: 25 acre feet, conditional. Uses: piscatorial and municipal. **F. Winter Park Water & Sanitation District Water Storage Reservoir No. 2.** Sources: Cooper Creek and the Fraser River, Tributary to the Colorado River. Location: The structure is located in the unsurveyed portions of Section 3, Township

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2 South, Range 75 West of the 6th P.M. The respective center points of the structure are located approximately 5,000 feet South of South line of Section 34, Township 1 South, Range 75 West of the 6th P.M. and 2,200 feet East from line extended South from West line of Section 34, Township 1 South, Range 75 West, 6th P.M. Points of Diversion: Alternate points of diversion for diversion structures and ditches to fill this storage structure with the District claiming the right to deliver water to Winter Park Water & Sanitation District Water Storage Reservoir No. 2 at a maximum combined rate of 2 c.f.s. and points of diversion are described as follows: (i) Said Reservoir may be filled by treated wastewater releases from Applicant's treatment plant, which in turn result from the diversion of water for its domestic water system as follows: The point of diversion is the Fraser River upstream of its confluence with Jim Creek, near a point the location of which is in the SW 1/4 of suspended Section 11, Township 2 South, Range 75 West, 6th P.M., Grand County, Colorado, more particularly described as follows: Beginning at Corner No. 10, ES367, Thence South 62°02' East a distance of 660.0 feet. The basis for bearings is the line between Corner Nos. 10 and 14, ES 367, which has a record bearing of South 66°12' East. (ii) The Fraser River upstream of its confluence with Cooper Creek, downstream of the Winter Park Water and Sanitation District sewage treatment plant aerated lagoon discharge, near a point the location of which is in the SW1/4 of suspended Section 3, Township 2 South, Range 75 West, 6th P.M., Grand County, Colorado, more particularly described as follows: Beginning at Corner No 1, HES 117, thence North 45° 15' West a distance of 1,073 feet. The basis for bearings is the line between Corner Nos. 1 and 2, HES 117, which has a record bearing of North 90° East. (iii) Cooper Creek upstream of its confluence with the Fraser River in unsurveyed or suspended Section 3, Township 2 South, Range 75 West, 6th P.M. at a point 5,100 feet from South line of Section 34, Township 1 South, Range 75 West, 6th P.M. and 1,800 feet from a line extended due South from the West Section line of Section 34, Township 1 South, Range 75 West, 6th P.M. Date of Decree: July 6, 2006 (Case No. 03CW291). Appropriation Date: November 12, 2003. Amount: 15 acre feet, conditional. Uses: Water stored in the Storage Reservoir will be used for all beneficial purposes including without limitation all municipal uses, augmentation, exchange, piscatorial, aesthetic and recreation. Water will be used within the District's service area and the return flows from such use shall occur above the USGS Fraser River measuring gauge located on the Fraser River just below where U.S. Highway 40 crosses the Fraser River in Winter Park. **G. GCWSD Water Storage Reservoir No. 2.** Source: the Fraser River, a tributary of the Colorado River, and all tributaries of the Fraser River upstream of the point of diversion. Legal Description: the GCWSD Water Storage Reservoir No. 2 is generally located northeasterly of U.S. Highway No. 40 within the S1/2SE1/4 of Section 20, Township 1 South, Range 75 West of the 6th P.M. The point of diversion for the GCWSD Water Storage Reservoir No. 2 is located in the NW1/4NW1/4 of Section 28, Township 1 South, Range 75 West, 6th P.M. at a point on the west bank of the Fraser River approximately 270 feet east of the west line of Section 28 and 195 feet south of the north line of Section 28. Date of Decree: February 23, 2005 (Case No. 02CW367). Appropriation Date: December 4, 2002. Amount: 70 acre-feet absolute and 10 acre-feet conditional. The total amount claimed for GCWSE Water Storage Reservoir No. 2 is 80 acre-feet, subject to the right to fill and refill the Reservoir. Of the 80 acre-feet total, 70 acre-feet have been made absolute for GCWSD Water Storage Reservoir No. 2. Of the 70 acre-feet absolute, 25 is owned by WPWSD. Uses: Municipal uses, irrigation, augmentation, piscatorial, aesthetic and recreation. The decree provides for the right to fill and refill the GCWSD Water Storage Reservoir No. 2 so long as it is in priority for the purposes of replacing water applied to the beneficial uses decreed herein and to replace evaporative losses. **H. Windy Gap Exchange and Augmentation.** Source: Fraser and Colorado Rivers. The Winter Park Water and Sanitation District, by virtue of its Water Allotment Contract executed with the Middle Park Water Conservancy District, is the owner of 125 acre feet of the 3,000 acre feet which the Municipal Subdistrict, Northern Colorado Water Conservancy District places annually in Granby Reservoir as outlined in the Agreement concerning the Windy Gap Project and the Azure Reservoir and Power Project, dated and signed April 30, 1980, and which was approved by the Water Court, Water Division No. 5, in Civil Action No. 1768, by Interlocutory Decree, dated October 27, 1980, and the Supplement to Agreement of April 30, 1980, which was duly decreed by the same Court in Case No. 85CW135. Pursuant to said Agreements, water will be released from Granby Reservoir, which is located on the Colorado River, for diversion by exchange or to replace depletions to the Fraser River caused by Winter Park Water and Sanitation District's diversions in amounts as determined by the Division Engineer, Water Division No. 5, when the diversions by Winter Park Water and Sanitation District would be curtailed due to the call of senior water rights downstream from the District's point of diversion. Legal Description: Upstream Terminus: The Winter Park Water System Diversion Point, located in Suspended Section 14, Township 2 South, Range 75 West, 6th P.M., Grand County, Colorado. UTM: NAD 83, Zone 13, Northing 4414542 Easting 435505. Downstream Terminus: The confluence of the Fraser and Colorado River in Section 25, Township 2 North, Range 77 West of the 6th P.M. Date of Decree: June 3, 1987 (Case No. 84CW444). Appropriation Date: August 30, 1984. Amount: 125 acre feet, conditional. Uses: All municipal uses, including industrial, recreational and snowmaking. **I. Water Allotment Contracts.** (i) Windy Gap: Pursuant to its Water Allotment Contract with the Middle Park Water Conservancy District, WPWSD is the owner of 125 acre feet of the 3,000 acre feet which the Municipal Subdistrict, Northern Colorado Water Conservancy District places annually in Granby Reservoir. (ii) Williams Fork Storage (Clinton Agreement): WPWSD has entered into a contract with the Denver Water for 8AF of water from Williams Fork Reservoir. (iii) Williams Fork Storage (Colorado River Cooperative Agreement): When the CRCA is fully operational, WPWS will have an additional 40AF in Williams Fork Reservoir. **4. FIRST CLAIM: APPROPRIATIVE RIGHT OF EXCHANGE.** Name of Exchange: WPWSD Windy Gap Exchange No. 2. Source: Fraser and Colorado Rivers. Upstream Termini of Exchange: The GCWSD Water Storage Reservoir No. 2, the Winter Park Reservoir No. 1, Winter Park Water and Sanitation District Water Storage Reservoir No. 2, Winter Park Water System Pipeline Nos. 2 and 3, and Jim Creek Ditch, all as more particularly described in the Application. Downstream Terminus of Exchange: The confluence of the Fraser and Colorado River in Section 25, Township 2 North, Range 77 West of the 6th P.M. Operation: The Winter Park Water and Sanitation District, by virtue of its Water Allotment Contract executed with the Middle Park Water Conservancy District, is the owner of 125 acre feet of the 3,000 acre feet which the Municipal Subdistrict, Northern Colorado Water Conservancy District places annually in Granby Reservoir as outlined in the Agreement concerning the Windy Gap Project and the Azure Reservoir and Power Project, dated and signed April 30, 1980, and which was approved by the Water Court, Water Division No. 5, in Civil Action No. 1768, by Interlocutory Decree, dated October 27, 1980, and the Supplement to Agreement of April 30, 1980, which was duly decreed by the same Court in Case No. 85CW135. Pursuant to said Agreements, water will be released from Granby Reservoir, which is located on the Colorado River, for diversion by exchange or to replace depletions to the Fraser River

caused by Winter Park Water and Sanitation District's diversions in amounts as determined by the Division Engineer, Water Division No. 5, when the diversions by Winter Park Water and Sanitation District would be curtailed due to the call of senior water rights downstream from the District's points of diversion. Appropriation Date: Date of this Application. Amount Claimed: Conditional at the rates more particularly described in the exchange matrix attached to the Application as Exhibit B, which is incorporated herein by reference. Uses: municipal, irrigation, piscatorial, fish/wildlife, industrial, recreational, snowmaking, domestic, commercial, augmentation, replacement of evaporative losses and aesthetic. **5. SECOND CLAIM: APPROPRIATIVE RIGHT OF EXCHANGE.** Name of Exchange: WPWSD Williams Fork Exchange. Source: Williams Fork Reservoir. Upstream Termini of Exchange: The GCWSD Water Storage Reservoir No. 2, the Winter Park Reservoir No. 1, Winter Park Water and Sanitation District Water Storage Reservoir No. 2, Winter Park Water System Pipeline Nos. 2 and 3, the Winter Park Water System, and Jim Creek Ditch, all as more particularly described in the Application. Downstream Terminus of Exchange: The confluence of the Colorado River and Williams Fork. Operation: The District seeks a new appropriative right to exchange its Williams Fork water to additional exchange-to points under a 2020 priority for diversion, replacement of depletions, and for storage. Water stored by exchange will subsequently be released to the Fraser River to meet the District's augmentation requirements or delivered to the District's diversion facilities for direct delivery into the District's municipal system. Appropriation Date: Date of this Application. Amount Claimed: Conditional at the rates more particularly described in the exchange matrix attached to the Application as Exhibit B, which is incorporated herein by reference. Uses: municipal, irrigation, piscatorial, fish/wild, industrial, recreational, snowmaking, domestic, commercial, augmentation, replacement of evaporative losses and aesthetic. **6. THIRD CLAIM: CONDITIONAL WATER STORAGE RIGHT.** Name: Winter Park Reservoir No. 1 Use Enlargement. Source: Jim Creek. Summary: WPWSD holds a conditional water storage right for Winter Park Reservoir No. 1, as described in greater detail above. The decreed uses for Winter Park Reservoir No. 1 are piscatorial and municipal. WPWSD seeks a new conditional water right to be known as the "Winter Park Reservoir No. 1 Use Enlargement" to allow use of the reservoir for augmentation purposes. The Winter Park Reservoir No. 1 Use Enlargement is part of Applicant's integrated water supply system. Date of Appropriation: Date of this Application. Amount Claimed: 25 AF, conditional. No expansion in the size of the reservoir is sought herein. Use: Augmentation. **7. FOURTH CLAIM: PLAN FOR AUGMENTATION.** Structures to be Augmented: Winter Park Water System, Winter Park Water System Pipeline Nos. 2 and 3, Jim Creek Ditch, Winter Park Reservoir No. 1, Winter Park Water & Sanitation District Water Storage Reservoir No. 2, GCWSD Water Storage Reservoir No. 2, all as more particularly described in the Application. Water Rights to be Used for Augmentation: Winter Park Reservoir No. 1 Use Enlargement, Winter Park Water & Sanitation District Water Storage Reservoir No. 2, GCWSD Water Storage Reservoir No. 2, Snowmaking Return Flows, the water available to the District under its Water Allotment Contracts with the Middle Park Water Conservancy District for 125AF from Granby Reservoir and with Denver Water for 8AF and 40AF from Williams Fork Reservoir, and the WPWSD Windy Gap Exchange No. 2, and the WPWSD Williams Fork Exchange, all as more particularly described in the Application. Complete Statement of Plan for Augmentation: The purpose of this plan for augmentation is to permit WPWSD to continue diversions of water under the water rights and for the purposes identified above when curtailment would otherwise be required to meet a valid senior call for water. At the target level of development established by the Town of Winter Park and WPRRA, WPWSD's maximum annual diversions would total an estimated 736 AF. Out-of-priority depletions from diversions in the amount of up to 56 AF shall be replaced to prevent injury to vested water rights. Indoor water use is assumed to be 5% consumptive; water delivered for outdoor use is assumed to be 83% consumptive. WPWSD has augmentation supplies available to meet its expected augmentation demand. A portion of WPWSD's water supply system is, and will continue to be, applied to irrigation purposes within the WPWSD service area. Return flows, including delayed return flows, from irrigation diversions are returned to the Fraser River within Applicant's service boundaries. This Application seeks to quantify these irrigation return flows to offset a portion of WPWSD's depletions. Pursuant to C.R.S. § 37-92-305(8)(c), WPWSD may use additional or alternative sources of water for augmentation, substitution, replacement, and exchange pursuant to the decree entered upon this Application in the manner allowed by statute in place at the time WPWSD seeks to use such additional or alternate replacement supplies. WPWSD shall comply with all procedures required by such statute before using such additional or alternate supplies in this plan for augmentation. **8. Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool.** A. The Winter Park Water System Pipeline No. 2 and Jim Creek Ditch are located on land owned by Winter Park Recreational Association, whose address is c/o Westside Investment Partners, Attn: Kenneth Ho, 4100 East Mississippi Avenue, Suite 500, Denver, CO 80246. B. Winter Park Reservoir No. 1 and Granby Reservoir Outlet are located on land owned by the United States Forest Service. The address for the United States Forest Service is Jon Morrissey, District Ranger, U.S. Forest Sulphur Ranger District, 9 Ten Mile Drive, P.O. Box 10, Granby, CO 80446. C. GCWSD Water Storage Reservoir No. 2 is located on land owned by Grand County Water and Sanitation District No. 1, whose address is Bruce Hutchins, District Manager, Grand County Water and Sanitation District No. 1, 50 Vasquez Rd, P.O Box 3327, Winter Park, CO 80482. D. The Williams Fork Reservoir Outlet is located on land owned by the City and County of Denver. The address for the City and County of Denver, Board of Water Commissioners is 1600 W. 12th Ave, Denver, CO 80204. E. The Wolford Mountain Reservoir Outlet is located on land owned by the United States Bureau of Land Management, whose address is Bill Mills, Field Manager, BLM Kremmling Field Office, 2103 E. Park Ave., Kremmling, CO 80459. F. The Winter Park Water System, Winter Park Water System Pipeline No. 3, and the Winter Park Water & Sanitation District Water Storage Reservoir No. 2 are located on land

owned by the Applicant.

YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of **JANUARY 2021** 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.