

Consent Agenda Item 1.j

March 10-11, 2021 Board Meeting
Case No. 20CW3139 (Water Division 5); Upper Midnight, LLC

Summary of Water Court Application

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

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 Roaring Fork River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
W-2947(1976)	Castle Creek	headwaters	confl Roaring Fork River	12 (1/1 - 12/31)	01/14/1976
W-2948(1976)	Roaring Fork River	confl Difficult Creek	confl Maroon Creek	32 (1/1 - 12/31)	01/14/1976
85CW0639 & 85CW646	Roaring Fork River	confl Maroon Creek	confl Crystal River	30 & 75 (10/1 - 3/31) 55 & 145 (4/1 - 9/30)	11/08/1985
95CW0289	Castle Creek	confl unnamed tributary	hdgt Castle Creek Ditch	0.5 (9/1 - 3/31) 1.75 (4/1 - 7/31) 1 (8/1 - 8/31)	11/06/1995

Potential for Injury

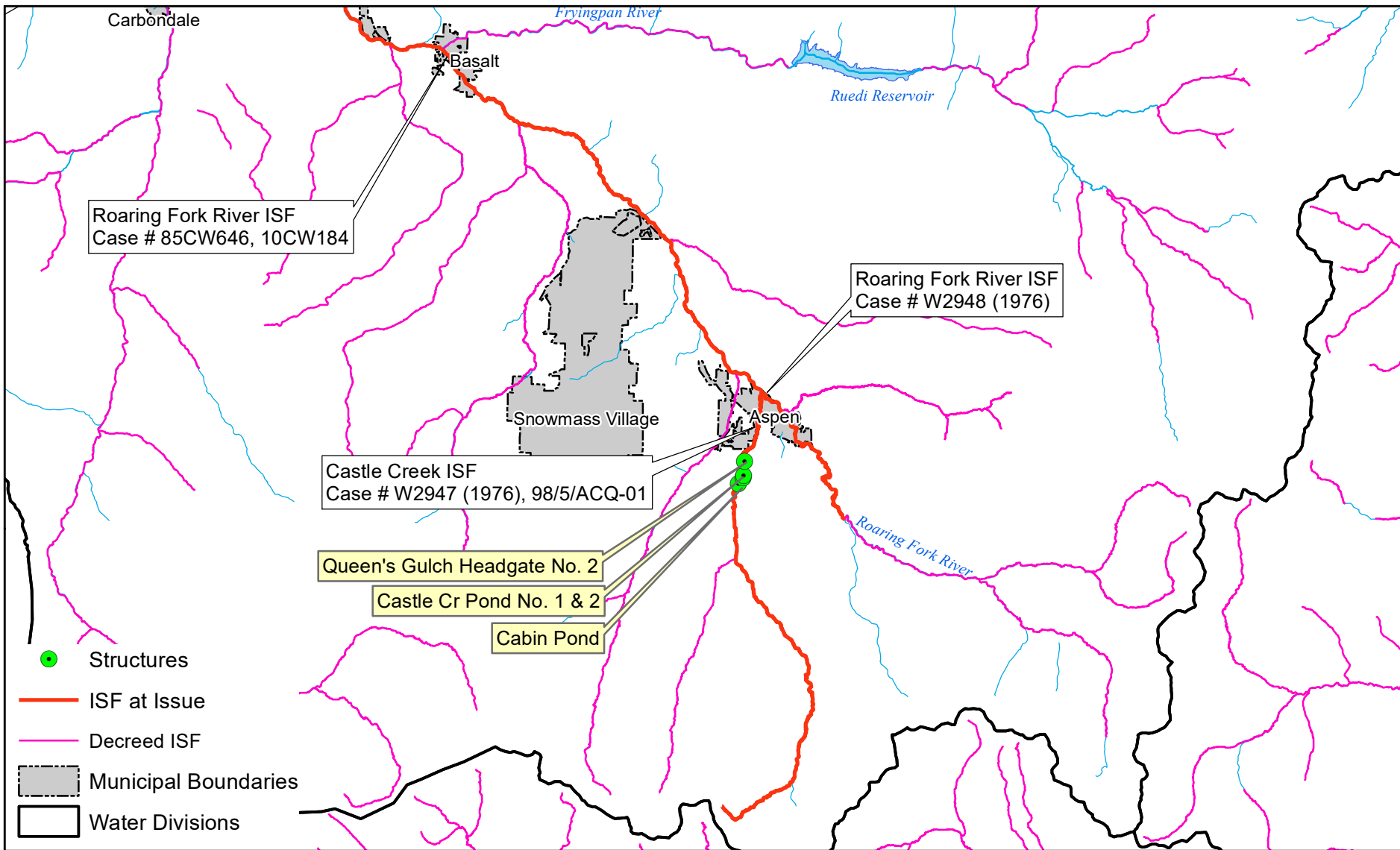
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- The proposed flow-through water right could injure the CWCB's Castle Creek instream flow water right because it may be fully depletive to a segment of this instream flow water right.
- 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. 10CW184 (CWCB's Stapleton Brother's Ditch water rights).

Other Objectors

Statements of Opposition were also filed by the Board of County Commissioners of the County of Pitkin, Castle Creek Valley Ranch Lot 15 LLC, and the City of Aspen.

Attorney Representing CWCB

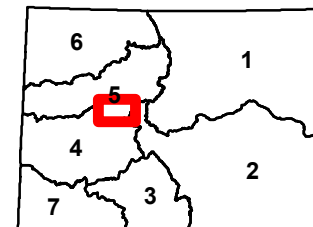
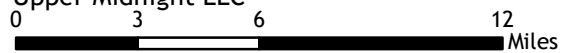
William D. Davidson, Assistant Attorney General, is assigned to this case and can be contacted at will.davidson@coag.gov, or 720-508-6280.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

March 10-11, 2021 CWCB Board Meeting
 Consent Agenda Item 1.j. Statement of Opposition
 Case No. 20CW3139 (Division 5)
 Upper Midnight LLC



DIVISION 5 WATER COURT-NOVEMBER 2020 RESUME

3. 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.*

20CW3139 DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO, 109 Eighth Street, Suite 104, Glenwood Springs, CO 81601. CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE UPPER MIDNIGHT, LLC, IN PITKIN COUNTY, COLORADO. APPLICATION FOR WATER RIGHTS AND APPROVAL OF PLAN FOR AUGMENTATION AND EXCHANGE. 1. Name and address of the Applicant: Upper Midnight, LLC, Managing Member, 565 Midnight Mine Road, Aspen, CO 81611. Copies of all pleadings to: Glenn E. Porzak, Gunnar J. Paulsen, Porzak Browning & Bushong LLP, 2120 13th Street, Boulder, Colorado 80302. 2. Description of the water rights to be adjudicated and/or augmented: The following water rights which are depicted on the attached Figure 1 (collectively the “Subject Water Rights”): (a) Queen’s Gulch Headgate No. 2, decreed by the District Court in and for Water Division No. 5, State of Colorado (“Water Court”) in Case No. 95CW316 for 1.2 cfs conditional for fire protection, piscatorial, stockwater uses and to fill the Cabin Pond and Castle Creek Pond Nos. 1 and 2, 0.1 cfs absolute and 1.1 cfs conditional for irrigation uses, and 0.5 cfs absolute and 0.7 cfs conditional for aesthetic uses, the source of which is Queen’s Gulch, tributary to Castle Creek, tributary to the Roaring Fork River, tributary to the Colorado River, with an appropriation date of October 20, 1995, the headgate being located in the NW1/4 NE1/4 of Section 26, Township 10 South, Range 85 West of the 6th P.M. at a point 1,105 feet south of the North section line and 1,402 feet west of the East section line, (b) Cabin Pond, decreed by the Water Court in Case No. 95CW316 for 1.2 acre feet conditional for irrigation, fire protection, piscatorial, aesthetic, and stockwater uses, the source of which is an unnamed tributary to Castle Creek, tributary to the Roaring Fork River, tributary to the Colorado River, with an appropriation date of October 20, 1995, the centerline of the dam being located in the SW1/4 SE1/4 of Section 23, Township 10 South, Range 85 West of the 6th P.M., at a point 512 feet north of the South section line and 1,400 feet west of the East section line, (c) Castle Creek Pond No. 1, decreed by the Water Court in Case No. 95CW316 for 1.8 acre feet conditional for irrigation, fire protection piscatorial, aesthetic and stockwater uses, the source of which is an unnamed tributary to Castle Creek, tributary to the Roaring Fork River, tributary to the Colorado River, and Queen’s Gulch, tributary to Castle Creek, tributary to the Roaring Fork River, tributary to the Colorado River, with an appropriation date of October 20, 1995, the centerline of the dam being located in the NE1/4 SE1/4 of Section 23, Township 10 South, Range 85 West of the 6th P.M., at a point 1,569 feet north of the South section line and 1,026 feet west of the East section line, (d) Castle Creek Pond No. 2, decreed by the Water Court in Case No. 95CW316, for 1.8 acre feet conditional for irrigation, fire protection, piscatorial, aesthetic and stockwater uses, the source of which is an unnamed tributary to Castle Creek, tributary to the Roaring Fork River, tributary to the Colorado River, and Queen’s Gulch, tributary to Castle Creek, tributary to the Roaring Fork River, tributary to the Colorado River with an appropriation date of October 20, 1995, the centerline of the dam is located in the NW1/4 SE1/4 of Section 23, Township 10 South, Range 85 West of the 6th P.M. at a point 1,978 feet north of the South section line, and 896 feet west of the East section line, (e) Queen’s Gulch Headgate No. 2 Refill Right, claimed for the right to fill and refill the Cabin Pond, and Castle Creek Ponds Nos. 1 and 2 at the rate of 1.2 cfs conditional, for irrigation, fire protection, piscatorial, aesthetic and stockwater uses with an appropriation date of November 18, 2020, the source and point of diversion being the same as described in paragraph 2(a) above, (f) Cabin Pond Refill Right, claimed for the right to continuously refill the 1.2 acre feet Cabin Pond at the rate of 1.2 cfs conditional for irrigation, fire protection, piscatorial, aesthetic, and stockwater uses, with an appropriation date of November 18, 2020, the sources and point of storage being the same as described in paragraph 2(b) above, (g) Castle Creek Pond No. 1 Refill Right, claimed for the right to continuously refill the 1.8 acre feet Castle Creek Pond No. 1 at the rate of 1.2 cfs conditional for irrigation, fire protection, piscatorial, aesthetic and stockwater uses, with an appropriation date of November 18, 2020, the sources and point of storage being the same as described in paragraph 2(c) above, (h) Castle Creek Pond No. 2 Refill Right claimed for the right to continuously refill the 1.8 acre feet Castle Creek Pond No. 2 at the rate of 1.2 cfs conditional for irrigation, fire protection piscatorial, aesthetic and stockwater uses, with an appropriation date of November 18, 2020, the sources and point of storage being the same as described in paragraph 2(d) above, (i) The places of irrigation of the Subject Water Rights are depicted on the attached Figure 2. 3. Description of the water rights to be used as the source of augmentation water: Up to 19.0 acre feet of water from the Basalt Water Conservancy District (“District”) consisting of water from the

**Attachment
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following structures and water rights: (a) **Ruedi Reservoir**: (1) Source: Fryingpan River, tributary of Colorado River, (2) Legal Description: An on-channel reservoir located in Sections 7, 8, 9, 11, and 14 through 18, Township 8 South, Range 84 West of the 6th P.M. The reservoir is located in portions of Eagle and Pitkin Counties, (3) Adjudication Date: June 20, 1958, (4) Appropriation Date: July 29, 1957, (5) Case No.: C.A. 4613, (6) Court: Garfield County District Court, (7) Decreed Amount: 102,369 acre feet (Originally decreed for 140,697.3 acre feet; reduced to 102,369 acre feet in Case No. W-789-76). The full amount was made absolute in Case No. 88CW85, (8) Decreed Uses: Generation of electric energy, domestic, municipal, piscatorial, industrial, and irrigation, (9) Refill: By decree of the Water Court in Case No. 81CW34, Ruedi Reservoir was decreed a refill right in the amount of 101,280 acre feet, conditional. In Water Court Case No. 95CW95, 44,509 acre feet of the refill right was made absolute. In Water Court Case 01CW269, an additional 25,257 acre feet of the refill right was made absolute, for a total of 69,766 acre feet absolute in the refill right, (10) District Interest: The District holds contract numbers 2-07-70-W0546, 009D6C0014, 039F6C0012 and 139D6C0099 with the United States Bureau of Reclamation. These four contracts collectively entitle the District to delivery of 1790 acre feet of water annually from the regulatory capacity of Ruedi Reservoir, subject to the terms and conditions of the contracts between the District and Bureau of Reclamation, (b) **Green Mountain Reservoir**: (1) Source: Blue River, tributary of Colorado River, (2) Legal Description: Located approximately 16 miles Southeast of the Town of Kremmling in Summit County, Colorado, and more particularly in all or parts of Sections 11, 12, 13, 14, 15, and 24 of Township 2 South, Range 80 West, and in Sections 17, 18, 19, 20, 21, 28, 29, and 34, Township 2 South, Range 79 West of the 6th P.M., (3) Adjudication Date: October 12, 1955, (4) Appropriation Date: August 1, 1935, (5) Case Nos.: 2782, 5016, and 5017, (6) Court: United States District Court, District of Colorado, (7) Decreed Amount: 154,645 acre-feet, (8) Decreed Uses: In accordance with paragraph 5(a), (b), and (c) of the section entitled "Manner of Operation of Project Facilities and Auxiliary Facilities" in Senate Document 80, (9) District Interest: The District holds Contract No. 8-07-60-W0727 with the United States Bureau of Reclamation. This contract entitles the District to delivery of 1000 acre feet of water annually from the marketable yield of Green Mountain Reservoir, subject to the terms and conditions of the contracts between the District and Bureau of Reclamation, (c)

Troy Ditch and Edith Ditch rights:

Structure	Priority	Case No.	Adj. Date	App. Date	Decreed Amount (CFS.)	Use (4)	AMOUNT SOLD, TRANSFERRED OR RESERVED					AMOUNT REMAINING FOR DISTRICT (10)	
							(5)	(6)	(7)	(8)	(9)	CFS	AF
Troy Ditch (1)	370	3082	08/25/1936	05/01/1906	5.10	I	0.000	0.000	0.095	0.064	0.035	4.906	N/A
Troy Ditch 1st Enlg	427	3082	08/25/1936	05/01/1928	10.80	I	0.000	0.000	0.200	0.134	0.073	10.393	N/A
Troy Ditch 2nd Enlg	669	4613	06/20/1958	06/01/1942	6.20	I	0.000	0.000	0.115	0.077	0.042	5.966	N/A

Structure	Priority	Case No.	Adj. Date	App. Date	Decreed Amount (CFS.)	Use (4)	AMOUNT SOLD, TRANSFERRED OR RESERVED					AMOUNT REMAINING FOR DISTRICT (10)	
							(5)	(6)	(7)	(8)	(9)	CFS	AF
Edith Ditch	353	3082	08/25/1936	05/01/1904	2.72	I	0.110	0.1320	0.050	0.000	0.018	2.410	N/A
Edith Ditch 1st Enlg	673	4613	06/20/1958	07/01/1946	3.23	I	0.000	0.000	0.060	0.000	0.022	3.148	N/A
Troy Ditch Water System a.k.a. Lower Headgate	(2)	W-2281			15.50(3)	I, D, M, C, P	0.110	0.1320	0.520	0.275	0.190	14.273	412.89

- (1) Originally diverted from Miller Creek. All others originally diverted from Fryingpan River.
- (2) Alternate point for all priorities of Troy and Edith Ditches.
- (3) Combined amount limited to 15.5 cfs. and 453 AF of consumptive use, 300 AF of which can be stored.
- (4) I = Irrigation, D = Domestic, M = Municipal, C = Industrial and P = Piscatorial.
- (5) Transferred to Edith Ditch Well in Case No. 80CW1 with 1.0 AF.
- (6) Transferred to three springs on Cap K Ranch in Case No. 82CW189 (1.29 AF assumed to be included).

- (7) Deeded to George Yates with 15.4 AF in 1983. 0.2 cfs and 10.60 cfs was included in Case No. 82CW357 for Ruedi South Shores plan for augmentation.
- (8) Deeded to Joan Wheeler in 1987 for diversion at the Troy Ditch 1st and 2nd Enlargement (16.9 AF assumed to be included).
- (9) Reserved for augmentation of Cap K Ponds with 5.52 AF. Case No. 91CW220.
- (10) A total of 40.11 AF of the original 453.00 AF has been sold or transferred.

In Case No. W-2281, the Water Court decreed that 453 acre feet of annual consumptive-use credits were available to these ditches, and that 300 acre feet could be stored in an unnamed reservoir. The District owns 412.89 acre feet of the 453 acre feet and makes the water rights available to contract allottees for use pursuant to an approved substitute supply plan or decree of the Water Court. The Water Court changed the use of the 412.89 acre feet to include augmentation and exchange in Case Nos. 98CW26 and 98CW89 (Consolidated). The Troy and Edith augmentation water can be delivered to the Fryingpan, Roaring Fork or Colorado Rivers by bypassing water at the headgate on the Fryingpan River. (d) **Robinson Ditch** rights:

STRUCTURE	DECREED AMOUNT/ (CFS)	AMOUNT OWNED BY DISTRICT (CFS)(1)	ADJ. DATE	APP. DATE	PRIORITY	CAS E NO. (2)
ROBINSON DITCH	5.00	1.21	05/11/1889	06/15/1882	38	132
ROBINSON DITCH	2.50	0.60	05/11/1889	04/15/1886	140	132
ROBINSON DITCH	2.00	0.48	05/11/1889	11/15/1886	167	132
ROBINSON DITCH	10.70	2.59	12/29/1903	04/25/1899	212C	1061
ROBINSON DITCH	20.06	4.85	08/25/1936	04/25/1900	326	3082

(1) The District owns 441 shares of Class 1 stock issued by the Robinson Ditch Company. The said 441 shares equal 24.16% of the total shares and are associated with 9.73 cfs of the 40.26 cfs decreed to the Robinson Ditch.

(2) District Court in and for Garfield County

(1) Legal Description: The point of diversion, as decreed, is located on the North bank of the Roaring Fork River one-half mile below the mouth of Sopris Creek in Section 11, Township 8 South, Range 87 West, 6th P.M., (2) Historical Use: Irrigation of approximately 137.2 acres of hay and pasture under the District’s interest in the Robinson Ditch water rights. In Case No. 93CW319, the Water Court decreed that 360 acre feet of annual consumptive-use credits are associated with said irrigation. In that case, the Water Court also decreed a change of use of District’s Robinson Ditch rights to include augmentation. The District makes the credits available to contract allottees for use pursuant to an approved substitute supply plan or decree of the Water Court. The District applies the credits principally to the augmentation of Blue Creek and the Roaring Fork River. 4. Application for Water Rights: Applicant seeks conditional water rights for the Queen’s Gulch Headgate No. 2 Refill Right, Cabin Pond Refill Right, Cattle Creek Pond No. 1 Refill Right and the Castle Creek Pond No. 2 Refill Right described in paragraph 2 above. 5. Description of the Plan for Augmentation: By this Application, the Applicant seeks the right to divert water in connection with the water rights described in paragraph 2 above on a year round basis for use on the Applicant’s property described in the attached Exhibit A. At times when the stream depletions associated with such diversions are out of priority, the Applicant will replace such out of priority depletions in accordance with the following plan for augmentation and exchange: (a) Augmentation plan. To permit the requested out of priority depletions, the Applicant has applied for a long-term water supply contract from the District in the amount of 19.0 acre feet. During periods that an administrative call is placed on the main-stem of the Colorado and/or Roaring Fork Rivers originating from senior water rights located downstream of the confluence of the Roaring Fork and Fryingpan Rivers, the Applicant, in concert with the District, will provide augmentation supply to the river utilizing one or more of the water rights described in paragraph 3. above. The augmentation supply will offset the otherwise out-of-priority depletions associated with the Subject Water Rights as described in paragraph 2. The Applicant owns and operates an integrated water supply system that provides water to its property for a variety of beneficial uses. The described Queen’s Gulch Headgate No. 2 water right diverts water from Queen’s Gulch, tributary to Castle Creek, for direct use on the property and/or for storage in three ponds including Cabin Pond, Castle Creek Pond No. 1 and Castle Creek Pond No.2. The ponds are filled under the Queen’s Gulch Headgate No. 2 original direct flow right for subsequent uses including: irrigation, fire protection, aesthetic, piscatorial, and stock water. Once full, the direct flow right can be routed into and through the ponds for subsequent beneficial uses at various locations throughout the Applicant’s property. Upon entering the ponds, the direct flow rights pass directly through the ponds and/or are pumped to places of use via integrated booster pumping stations. The ponds provide a steady head depth for the pumping system thereby improving the operational efficiency of the direct flow delivery system. During periods of water level decline in the ponds due to beneficial use and/or evaporation loss from the water surface, the ponds will be refilled under the Cabin Pond, Castle Creek Pond No. 1 and Castle Creek Pond No. 2 Refill Rights with water supplies originating from the Queen’s Gulch Headgate No. 2 Refill Right as applied for herein and more fully described in paragraph 2., (1) Water Use and Stream Depletions. The stream depletions covered under this plan for augmentation include: irrigation consumptive use, evaporation from ponds and aesthetic water features and depletions associated with livestock watering. The ponds provide multiple beneficial uses as described above, (2) Irrigation. In total, 16.5 acres of irrigation are included in this plan for augmentation. The locations of existing and currently planned irrigated areas are shown in **Figure 2**. The irrigated area includes blue grass and hillslope lands consisting of an aspen forest ecosystem, intermixed with occasional spruce and fir. Most of the hillslope vegetation will be irrigated during portions of the growing season to supplement natural precipitation. It is anticipated that irrigation

will most often occur during late summer periods and during dry years. During these periods, natural vegetation can come under stress due to low precipitation and high temperatures. Accordingly, the total consumptive use associated with the hillslope irrigation is expected to be less per unit area than that which is necessary to sustain more commonly irrigated crops such as bluegrass lawn. Nevertheless, during periods of an administrative call, this plan requires the release of augmentation supply to the rivers in amounts sufficient to offset depletions as might be attributed to irrigation of bluegrass. The bluegrass lawn and landscape evapotranspiration calculations are based on the Modified Blaney-Criddle Method as outlined by the Soil Conservation Service in Technical Release No. 21 (TR-21). The Blaney-Criddle growth stage and temperature coefficients were modified according to the Pochop Method. This methodology requires the user to input data regarding the temperature and precipitation regimes, and elevation, of the irrigated land. The elevation of the irrigated land was determined from a United States Geologic Survey topographic quadrangle. The Blaney-Criddle Method indicates that the net irrigation requirement at the property is 1.61 feet per acre. As such, the total annual evapotranspiration demand for the Applicant's 16.5 acres of irrigated land is 26.61 acre feet. Assuming an irrigation application efficiency of 70% (30% returns to the stream as return flows), the total annual irrigation diversion requirement will be approximately 38.0 acre feet. The calculated depletions will occur over the period May through early October. The 30% calculated return flows are delayed in reaching nearby streams as much of the water must travel through the groundwater system. A Glover groundwater analysis was utilized to define the location and timing of irrigation return flows originating from the property. The Glover analysis indicates that irrigation return flows are delayed and require approximately two months to fully arrive at the stream, (3) Water Surface Evaporation. Evaporative depletions will occur from the existing and proposed ponds, and water features. The gross evaporation rate at this location was calculated using the SEO method outlined in the General Guidelines for Substitute Water Supply Plans for Sand and Gravel Pits and SEO Policy 2004-

3. The annual gross free water surface evaporation is 37.60 (3.13 feet) inches based on NOAA technical Report NWS 33. Effective precipitation was not considered since all the ponds and water features are off-channel. According to the PRISM Weather data, snow and ice cover occurs from November 7th through April 7th. The total surface area of all ponds and water features is 0.952 surface acres (0.86 acres ponds & 0.092 acre stream feature). The maximum annual evaporation from open water associated with this acreage is calculated to be 2.486 acre feet, (4) Stockwater. The Applicant plans to board up to 10 horses or llamas on the property. The animals would water from tanks filled by the pipeline system. Livestock water use is assumed to require 11 gallons of water per day; a total annual requirement of 0.123 acre feet. This water use is considered 100 % consumptive, (5) Total Depletions and Augmentation Requirements. The calculated potential stream depletions associated with all irrigation, evaporation, and livestock uses on the Applicant's property totals 29.2 acre feet annually. Most of the depletions will occur over the summer, May through September period. However, there are months within this period when it is unlikely that administrative calls will be placed on the river. This plan covers full depletions as might occur over the July through October period. During this extended period, approximately 19.0 acre feet of water will be required to augment the described stream depletions. This amount includes a 10% stream transit loss as required with all District water supply contracts, (b) Exchange plan reach and rate: The Applicant seeks approval of a plan to augment by exchange out of priority diversions of the Subject Water Rights described in paragraph 2 above, when augmented by the water rights described in paragraph 3 above. The maximum rate of exchange to the Subject Water Rights identified in paragraph 2 above is 0.4 cfs conditional. A map showing the subject exchange reaches is attached hereto as Figure 3 and are described as follows: (1) Downstream Termini: The points of replacement on the Roaring Fork and/or Colorado Rivers of the District's water rights described as follows: • Lower Terminus 1 (Exchange of Green Mountain Reservoir water): The confluence of the Roaring Fork and Colorado Rivers, located in the SE1/4 NW1/4 of Section 9, Township 6 South, Range 89 West of the 6th P.M., at a point approximately 2,200 feet from the North section line and 2,350 feet from the West section line (Garfield County; UTM NAD83 Zone 13 X = 299776m E; Y = 4380346m N); • Lower Terminus 2 (Exchange of Ruedi Reservoir and/or Troy and Edith Ditch water): The confluence of the Roaring Fork and Frying Pan Rivers located in the SW1/4 SE1/4 of Section 7, Township 8 South, Range 86 West of the 6th P.M., at a point 647 feet from the South section line and 1,475 feet from the East section line (Eagle and Pitkin Counties; UTM NAD83 Zone 13 X = 324739m E; Y = 4359437m N); and • Lower Terminus 3 (Exchange of Robinson Ditch water): The point of diversion is located on the North bank of the Roaring Fork River one-half mile below the mouth of Sopris Creek in Section 11, Township 8 South, Range 87 West, 6th P.M. (Eagle County; UTM NAD83 Zone 13 X = 321622m E; Y = 4359863m N), (2) Upstream Terminus: Queen's Gulch Headgate No. 2 located in the NW1/4 NE1/4 of Section 26, Township 10 South, Range 85 West of the 6th P.M. at a point 512 feet North of the South section line and 1,400 feet West of the East section line in Pitkin County, (c) Priority date: The Applicant seeks a November 18, 2020 priority date in connection with the subject plan for exchange, (d) In priority diversions: The Applicant shall have the right to divert the Subject Water Rights described in paragraph 2 whenever they are in priority. The sources of augmentation water described in paragraph 3 need only be utilized when the Subject Water Rights described in paragraph 2 are out of priority, irrespective of the relative priorities of the water rights to be augmented and the source of augmentation water. 6. Terms and Conditions: (a) So as to ensure proper operation of the subject plan for augmentation and exchange, the Applicant will install and maintain such measuring devices and implement such accounting procedures as may be required by the State of Division Engineers to administer the terms of any decree entered in this case, (b) The proposed exchanges will only operate when in priority and will not operate when any intervening water right within the exchange reach that is senior to the priority of the exchanges places a call that is recognized and administered by the Division Engineer. The Division Engineer's administration of a call is a water matter subject to review by the Water Court. Nothing herein will change any measurement obligation, if any, of any other water user, (c) Should a senior administrative call originate from the Roaring Fork River within its reach extending from its confluence with the Fryingpan River upstream to its confluence with Castle Creek, the Applicant will curtail use under its water rights. Similarly, if a senior administrative call is placed on the mainstem of Castle Creek located within the reach beginning at its confluence with the Roaring Fork River and extending upstream to its confluence with Queen's Gulch, the Applicant will curtail use under the Subject Water Rights. During these periods, the Applicant can continue to beneficially use water that was previously placed into storage when in priority or, under operation of this plan for augmentation. 7. Remarks: The property on which the Queen's Gulch Headgate No. 2 and the Queen's

Gulch Headgate No. 2 Refill Right is located is owned by Castle Creek Valley Ranch Lot 15, LLC, 4400 Post Oak Parkway, #2150, Houston, Texas 77027-3431. Ruedi Reservoir and Green Mountain Reservoir described in paragraphs 3(a) and 3(b) are owned by the United States of America. The District owns the Robinson, Troy and Edith Ditches. The Applicant owns the land on which the other water rights are located. The addresses of the foregoing property owners are set forth on the attached Exhibit B. WHEREFORE, Applicant requests that this Court enter a decree which: 1. Confirms the water right described in paragraph 2 above for the Queen's Gulch Headgate No. 2 Refill Right, Cabin Pond Refill Right, Castle Creek Pond No. 1 Refill Right and Castle Pond No. 2 Refill Right, 2. Approves the plan for augmentation and exchange described in paragraph 5 above; and 3. Finds that as a result of the subject plan for augmentation and exchange, there will be no injury to any owner of or persons entitled to use water under a vested water right or decreed conditional water right.

(13 pages + Exhibits)

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.