

Consent Agenda Item 1.m

March 10-11, 2021 Board Meeting

Case No. 20CW3174 (Water Division 5); James Peak Ranch LLC

Summary of Water Court Application

Application for underground water rights, surface right, storage right, and approval of 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 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 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
90CW0306	Ranch Creek	confl Cabin Creek	confl Hurd Creek	7 (5/15 - 9/15) 1.5 (9/16 - 5/14)	11/27/1990
90CW0305	Ranch Creek	confl Hurd Creek	confl Fraser River	5 (9/16 - 5/14) 8 (5/15 - 9/15)	11/27/1990
90CW0308	Fraser River	confl Ranch Creek	confl Crooked Creek	17 (5/15 - 9/15) 11 (9/16 - 5/14)	11/27/1990
90CW0308	Fraser River	confl Crooked Creek	confl Colorado River	30 (5/15 - 9/15) 19 (9/16 - 5/14)	11/27/1990
80CW0446, 447, 448	Colorado River	hdgt Windy Gap Project div	confl Blue River	90, 135, 150 (1/1 - 12/31)	07/08/1980

Potential for Injury

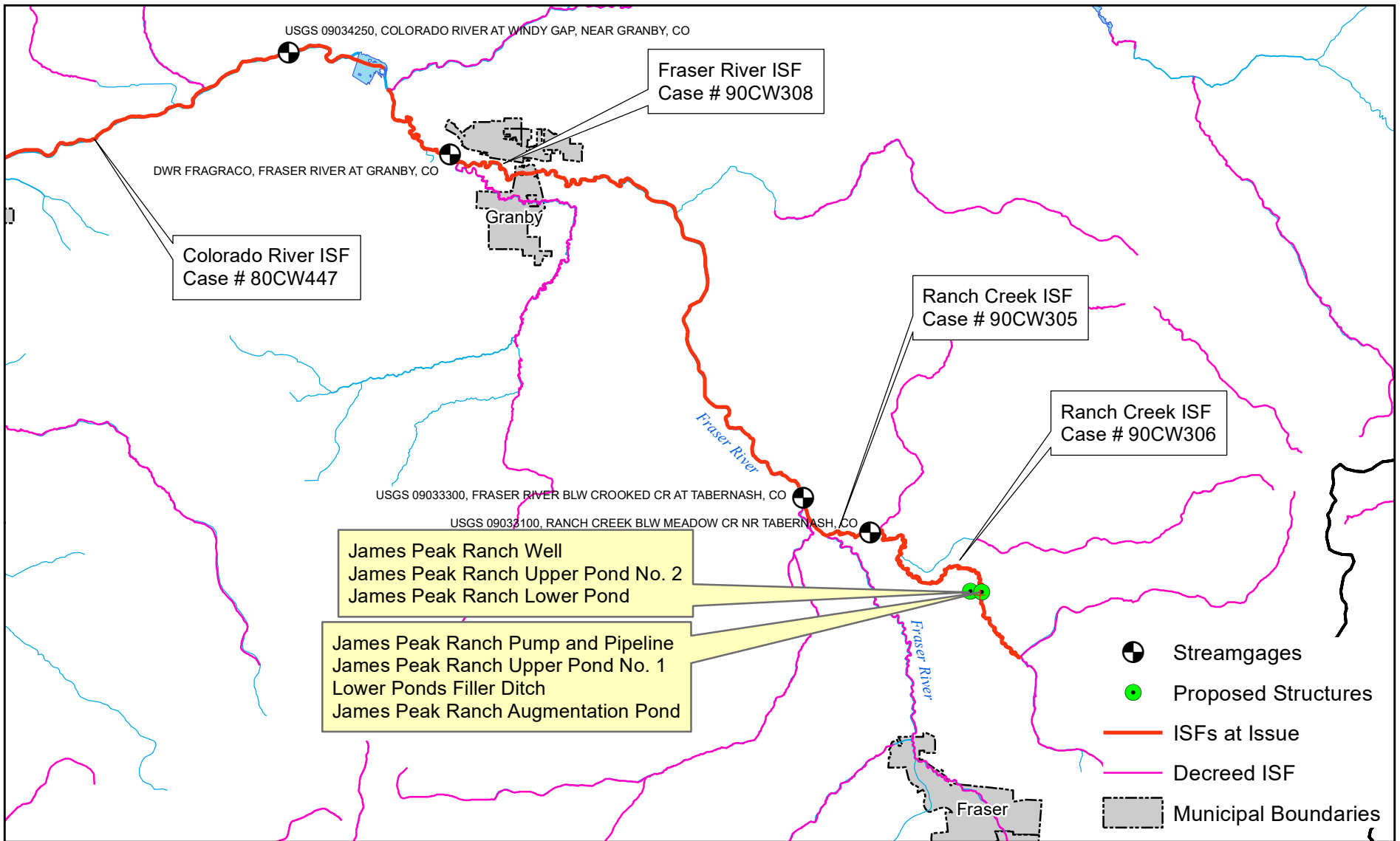
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- The apparent flow-through water right could injure the CWCB's instream flow water right because it would be fully depletive to a segment of the intervening instream flow.

Other Objectors

One other Statement of Opposition (as of February 24, 2021) was filed by GP Granby Holdings, LLC.

Attorney Representing CWCB

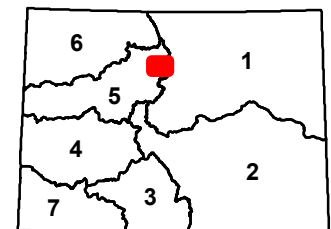
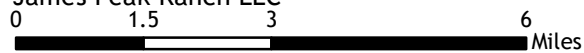
William D. Davidson, Assistant Attorney General, is assigned to this case and can be contacted at will.davidson@coag.gov, or 720-508-6280.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

March 10-11, 2021 CWCB Board Meeting
 Consent Agenda Item 1.m. Statement of Opposition
 Case No. 20CW3174 (Division 5)
 James Peak Ranch LLC



DIVISION 5 WATER COURT-DECEMBER 2020 RESUME

SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST

Section 37-92-308(6), C.R.S. directs the State Engineer to establish a notification list for each water division for the purpose of notifying interested parties of requests for the State Engineer's approval of substitute water supply plans ("SWSP") filed in that water division pursuant to section 37-92-308, C.R.S. The SWSP notification list is also used to provide notice of proposed water right loans to the Colorado Water Conservation Board for use as instream flows under section 37-83-105(2)(b)(II), C.R.S., notice of applications for the State Engineer's approval of interruptible water supply agreements under section 37-92-309(3)(a), C.R.S., notice of applications for fallowing-leasing pilot projects under section 37-60-115(8)(e)(II), C.R.S., and notice of storm water detention and infiltration facilities under section 37-92-602(8)(d), C.R.S.

This notice is an invitation to be included on the SWSP notification list. To receive this information by e-mail, provide your name, e-mail address, daytime telephone number, and the water divisions of interest. If you prefer to be noticed by first-class mail, specify that preference and provide your mailing address. Submit the information to: Substitute Water Supply Plan Notification List (c/o Laura Kalafus, Program Assistant), Colorado Division of Water Resources, 1313 Sherman Street, Room 818, Denver, Colorado 80203, Phone: (303) 866-3581, or e-mail to: Laura.kalafus@state.co.us, or sign up at: <https://dwr.colorado.gov/public-information/notification-lists>. Additional information regarding Substitute Water Supply Plans is available on the Division of Water Resources' website at: <https://dwr.colorado.gov/>.

22. 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 DECEMBER 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.*

20CW3174 GRAND COUNTY. James Peak Ranch LLC c/o David F. Bower, Alison M. Lipman, Johnson & Repucci LLP, 850 W. South Boulder Road, Suite 100, Louisville, Colorado 80027; Phone: (303) 442-1900, Fax: (303) 442-0191, E-mail: dfbower@j-r-law.com; amlipman@j-r-law.com. APPLICATION FOR UNDERGROUND WATER RIGHTS, SURFACE RIGHT, STORAGE RIGHTS, AND APPROVAL OF A PLAN FOR AUGMENTATION **1. Name, Address, Phone Number, and E-Mail Address of Applicant.** James Peak Ranch LLC, c/o Eric White, Manager, 4663 S. Elizabeth Court, Englewood, Colorado 80113, Phone: (303) 225-0060, E-mail: ewhite@mbheresources.com. **2. Overview.** Applicant is the owner of ~17 acres of land located east of Tabernash on Ranch Creek. By this application, Applicant is claiming conditional underground, surface, and storage rights for the property. The rights will be used for domestic, irrigation, and stockwatering purposes, as well as to create fish and wildlife habitat. Applicant also seeks approval of a plan for augmentation to replace out-of-priority depletions associated with the water rights. A map of the proposed structures is attached hereto as Figure 1. This application is being filed in conjunction with Mr. Kevin Mize, who owns the adjacent property to the north. Applicant and Mr. Mize will operate and account for their respective plans for augmentation separately but may share infrastructure and replacement supplies. **3. Claim for Conditional Underground Water Right.** (a) Name of Well Structure. James Peak Ranch Well. (b) Permit Information. The James Peak Ranch Well is currently permitted under Well Permit No. 314717, Receipt No. 3693180. (c) Location. NE1/4 of the SE1/4 of Section 5, Township 1 South, Range 75 West of the 6th P.M., at a point 1,620 feet from the south section line and 1,035 feet from the east section line (Zone 13, NAD83, Easting 431882 m, Northing 4426452.9 m). (d) Source. The Troublesome Aquifer underlying the subject property, tributary to Ranch Creek, tributary to the Fraser River, tributary to the Colorado River. (e) Depth of Well. 380 feet. (f) Appropriation Date. Date of application. (g) Amount. 0.5 cfs (225 gpm), conditional. (h) Uses. Domestic, irrigation, stock watering, and fire protection. Irrigation will be for landscaping anywhere on the subject property. In addition, the James Peak Ranch Well may be used to fill and refill the James Peak Ranch Ponds for fish and wildlife habitat, recreation, and augmentation purposes. (i) Remarks. The James Peak Ranch Well will be re-permitted after the plan for augmentation is approved in this matter. **4. Claim for Conditional Surface Right.** (a) Name of Diversion Structure. James Peak Ranch Pump and Pipeline. (b) Location. NE1/4 of the SE1/4 of Section 5, Township 1 South, Range 75 West of the 6th P.M., at a point 1,586 feet from the south section line and 159 feet from the east section line (Zone 13, NAD83, Easting 432149 m, Northing 4426441 m). (c) Source. Ranch Creek, tributary to the Fraser River, tributary to the Colorado River. (d) Appropriation Date. Date of application. (e) Amount. 1.5 cfs, conditional. (f) Uses. Irrigation, stock watering, and fire protection. Irrigation will be for landscaping anywhere on the subject property. In addition, the James Peak Ranch Pump and Pipeline may be used to fill and refill the James Peak Ranch Ponds for fish and wildlife habitat, recreation, and augmentation purposes. (g) Remarks. The James Peak Ranch Pump and Pipeline will be used to provide a direct water supply for landscape irrigation and livestock on the property. In addition, the pipeline may divert from Ranch Creek in order to fill the James Peak Ranch Ponds. Applicant reserves the right to locate the James Peak Ranch Pump and Pipeline intake

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anywhere on Ranch Creek as it flows through the James Peak Ranch property. The final as-built location will be identified at the time that the James Peak Ranch Pump and Pipeline right is made absolute. **5. Claim for Conditional Storage Right.** (a) Name of Storage Structure. James Peak Ranch Upper Pond No. 1. (b) Location. NE1/4 of the SE1/4 of Section 5, Township 1 South, Range 75 West of the 6th P.M., at a point 1,378 feet from the south section line and 671 feet from the east section line (Zone 13, NAD83, Easting 431992.8 m, Northing 4426378.7 m). (c) Source. Ranch Creek, tributary to the Fraser River, tributary to the Colorado River, including the Troublesome Aquifer tributary to Ranch Creek. (d) Name and Rate of Filler Structures. (i) James Peak Ranch Pump and Pipeline, at a diversion rate of 1.5 cfs. (ii) James Peak Ranch Well, at a pumping rate of 0.5 cfs. (e) Appropriation Date. Date of application. (f) Amount. 10.0 acre-feet, with the right to fill and refill in priority. (g) Uses. Fish and wildlife habitat, recreation, and augmentation. (h) Surface Area of the High Water Line. ~ 0.7 acre. (i) Height and Length of Dam. The James Peak Ranch Upper Pond No. 1 will be an excavated reservoir that is lined so that it does not intercept groundwater. In the event that a dam is also constructed as part of the pond, the dam will be less than 10 feet in height. (j) Remarks. The James Peak Ranch Upper Pond No. 1 is primarily intended to be used for fish and wildlife habitat and recreation. In the event that Applicant needs to augment out-of-priority depletions from other structures on the property, water can also be pumped out of or released from the pond for that purpose. The amount claimed is based on Applicant's estimate of the maximum amount of storage that will be achieved at this location; however, the final dimensions and capacity of the James Peak Ranch Upper Pond No. 1 are still being determined. Applicant reserves the right to locate the James Peak Ranch Upper Pond No. 1 anywhere on the James Peak Ranch property, including to combine the claimed right with the James Peak Ranch Upper Pond No. 2 for a storage right in a single structure that is no greater than 20.0 acre-feet in capacity and ~1.4 acre-feet in surface area. The final as-built location will be identified at the time that the James Peak Ranch Upper Pond No. 1 right is made absolute. **6. Claim for Conditional Storage Right.** (a) Name of Storage Structure. James Peak Ranch Upper Pond No. 2. (b) Location. NE1/4 of the SE1/4 of Section 5, Township 1 South, Range 75 West of the 6th P.M., at a point 1,769 feet from the south section line and 995 feet from the east section line (Zone 13, NAD83, Easting 431894.5 m, Northing 4426498.4 m). (c) Source. Ranch Creek, tributary to the Fraser River, tributary to the Colorado River, including the Troublesome Aquifer tributary to Ranch Creek. (d) Name and Rate of Filler Structures. (i) James Peak Ranch Pump and Pipeline, at a diversion rate of 1.5 cfs. (ii) James Peak Ranch Well, at a pumping rate of 0.5 cfs. (e) Appropriation Date. Date of application. (f) Amount. 10.0 acre-feet, with the right to fill and refill in priority. (g) Uses. Fish and wildlife habitat, recreation, and augmentation. (h) Surface Area of the High Water Line. ~ 0.7 acre. (i) Height and Length of Dam. The James Peak Ranch Upper Pond No. 2 will be an excavated reservoir that is lined so that it does not intercept groundwater. In the event that a dam is also constructed as part of the pond, the dam will be less than 10 feet in height. (j) Remarks. The James Peak Ranch Upper Pond No. 2 is primarily intended to be used for fish and wildlife habitat and recreation. In the event that Applicant needs to augment out-of-priority depletions from other structures on the property, water can also be pumped out of or released from the pond for that purpose. The amount claimed is based on Applicant's estimate of the maximum amount of storage that will be achieved at this location; however, the final dimensions and capacity of the James Peak Ranch Upper Pond No. 2 are still being determined. Applicant reserves the right to locate the James Peak Ranch Upper Pond No. 2 anywhere on the James Peak Ranch property, including to combine the claimed right with the James Peak Ranch Upper Pond No. 1 for a storage right in a single structure that is no greater than 20.0 acre-feet in capacity and ~1.4 acre-feet in surface area. The final as-built location will be identified at the time that the James Peak Ranch Upper Pond No. 2 right is made absolute. **7. Claim for Conditional Underground Pond Right.** (a) Name of Pond Structure. James Peak Ranch Lower Pond. (b) Permit Information. The James Peak Ranch Lower Pond is anticipated to be an excavated unlined storage structure that will expose groundwater and require a well permit. (c) Location. NE1/4 of the SE1/4 of Section 5, Township 1 South, Range 75 West of the 6th P.M., at a point 1,695 feet from the south section line and 638 feet from the east section line. (Zone 13, NAD83, Easting 432003.1 m, Northing 4426475.1 m). (d) Source. The alluvial aquifer underlying the subject property, tributary to Ranch Creek, tributary to the Fraser River, tributary to the Colorado River. (e) Depth of Pond. ~ 10 feet. (f) Appropriation Date. Date of application. (g) Amount. 3.0 acre-feet/year, conditional. The total amount currently estimated for the James Peak Ranch Lower Pond is 2.035 acre-feet/year, based on the maximum anticipated surface area of the pond of 0.7 acre \times an annual evaporation rate of 2.907 feet per exposed surface acre. Applicant has requested a higher amount in case the pond is constructed larger or the decreed annual evaporation rate is greater than currently anticipated. (h) Uses. Fish and wildlife habitat and recreation. (i) Surface Area of the High Water Line. ~ 0.7 acre. (j) Height and Length of Dam. The James Peak Ranch Lower Pond will be an excavated reservoir that is unlined. In the event that a dam is also constructed as part of the pond, the dam will be less than 10 feet in height. (k) Filler Ditch. The James Peak Ranch Lower Pond may also fill and refill from the Lower Ponds Filler Ditch. The Lower Ponds Filler Ditch will divert from Ranch Creek at a rate of 0.5 cfs. Diversions from the Filler Ditch will be limited to freshening flows through the James Peak Ranch Lower Pond and Mize Ranch Lower Pond as necessary to ensure viable fish and wildlife habitat in both ponds. In the event that there are additional depletions to the alluvium from the Lower Ponds Filler Ditch, out-of-priority depletions from the portion of the Lower Ponds Feeder Ditch on the James Peak Ranch property will be replaced under this plan for augmentation and out-of-priority depletions from the portion on the Mize Ranch property will be replaced under that plan for augmentation. The Lower Ponds Filler Ditch will divert from Ranch Creek at a location currently anticipated to be in the NE1/4 of the SE1/4 of Section 5, Township 1 South, Range 75 West of the 6th P.M., at a point 1,357 feet from the south section line and 228 feet from the east section line (Zone 13, NAD83, Easting 432127.9 m, Northing 4426371.5 m), on the James Peak Ranch property. The Lower Ponds Filler Ditch will return to Ranch Creek at a location currently anticipated to be in the NE1/4 of the SE1/4 of Section 5, Township 1 South, Range 75 West of the 6th P.M., at a point 2,474 feet from the south section line and 238 feet from the east section line (Zone 13, NAD83, Easting 432125.4 m, Northing 4426711.7 m), on the Mize Ranch property. (l) Remarks. The James Peak Ranch Lower Pond is intended to be used for fish and wildlife habitat and recreation. Applicant will replace all out-of-priority depletions from the other augmentation supplies described in this application. The amount claimed is based on Applicant's estimate of the maximum amount of surface area expected for the final pond; however, the final dimensions and capacity of the James Peak Ranch Lower Pond are still being determined. Applicant reserves the right to locate the James Peak Ranch Lower Pond and Lower Ponds Filler Ditch anywhere on the James Peak Ranch property. The final as-built location will be identified at the time that the James Peak Ranch Lower Pond right is made absolute. The James Peak Ranch Lower Pond will be permitted before it is

constructed. **8. Claim for Conditional Storage Right.** (a) Name of Storage Structure. James Peak Ranch Augmentation Pond. (b) Location. NE1/4 of the SE1/4 of Section 5, Township 1 South, Range 75 West of the 6th P.M., at a point 1,396 feet from the south section line and 1,136 feet from the east section line (Zone 13, NAD83, Easting 431851.1 m, Northing 4426385.0 m). (c) Source. Ranch Creek, tributary to the Fraser River, tributary to the Colorado River, including the Troublesome Aquifer tributary to Ranch Creek. (d) Name and Rate of Filler Structures. (i) James Peak Ranch Pump and Pipeline, at a diversion rate of 1.5 cfs. (ii) James Peak Ranch Well, at a pumping rate of 0.5 cfs. (e) Appropriation Date. Date of application. (f) Amount. 10.0 acre-feet, with the right to fill and refill in priority. (g) Use. Augmentation. (h) Surface Area of the High Water Line. ~ 1.2 acres. (i) Height and Length of Dam. The James Peak Ranch Augmentation Pond will be an excavated reservoir that is lined so that it does not intercept groundwater. In the event that a dam is also constructed as part of the pond, the dam will be less than 10 feet in height. (j) Remarks. The James Peak Ranch Augmentation Pond will be the primary on-site augmentation supply for when other replacement supplies are unavailable. The amount claimed is based on Applicant's estimate of the maximum amount of storage that will be achieved at this location and needed for replacement purposes on the James Peak Ranch property; however, the final dimensions and capacity of the James Peak Ranch Augmentation Pond are still being determined. Applicant reserves the right to locate the James Peak Ranch Augmentation Pond anywhere on the James Peak Ranch property. The final as-built location will be identified at the time that the James Peak Ranch Augmentation Pond right is made absolute.

9. Request for Approval of Plan for Augmentation. (a) Name of Structures to be Augmented. (i) James Peak Ranch Well, as claimed in paragraph 3 above. (ii) James Peak Ranch Pump and Pipeline, as claimed in paragraph 4 above. (iii) James Peak Ranch Upper Pond No. 1, as claimed in paragraph 5 above. (iv) James Peak Ranch Upper Pond No. 2, as claimed in paragraph 6 above. (v) James Peak Ranch Lower Pond, as claimed in paragraph 7 above. (b) Water Rights to be Used for Augmentation. (i) James Peak Ranch Upper Ponds Nos. 1 and 2, as claimed in paragraphs 5 and 6 above. (ii) James Peak Ranch Augmentation Pond, as claimed in paragraph 8 above. (iii) Middle Park Contract Water, which may be provided from Granby Reservoir, Wolford Mountain Reservoir, the Sunset Ridge Pond, and/or alternative storage structures pursuant to a contract with the Middle Park Water Conservancy District ("Middle Park"). Applicant's application for a Middle Park contract is pending. (iv) Colorado River District Contract Water, which may be provided from Wolford Mountain Reservoir or Ruedi Reservoir pursuant to a contract with the Colorado River Water Conservation District ("Colorado River District"). At the time of this application, Applicant has not applied for a Colorado River District contract. In the event that Applicant's Middle Park contract is not sufficient to cover all anticipated depletions, Applicant will apply for a Colorado River District contract to cover any shortfall. If Applicant's Middle Park contract is sufficient, Applicant will drop its claim to use Colorado River District Contract Water in this plan for augmentation. (v) Additional or Alternative Sources. Pursuant to C.R.S. § 37-92-305(8), Applicant reserves the right to use additional or alternative sources of water for replacement on a temporary or permanent basis, subject to approval by the Water Court and/or the State Engineer's Office. (c) Detailed Description of Plan for Augmentation. Applicant will replace all out-of-priority depletions resulting from the augmented structures described above. To the extent possible, depletions will be replaced with Middle Park Contract Water and/or Colorado River District Contract Water. If depletions cannot be replaced using contract water because of a call on Ranch Creek or for some other reason, they will be replaced from water stored in priority under the James Peak Ranch Augmentation Pond storage right applied for in this case, and if insufficient water is available in the James Peak Ranch Augmentation Pond, from the James Peak Ranch Upper Pond Nos. 1 and 2. Total current demands are estimated to be 7.77 acre-feet/year and total depletions are estimated to be 6.66 acre-feet/year. A detailed description of Applicant's demands and depletions are set forth below. For the purpose of evaluating the amount of replacement water needed to operate the plan for augmentation, 100% of the depletions are assumed to be out-of-priority. (i) Projected Demands. Total indoor domestic demands for the main house and barn are estimated to be 1.01 acre-feet/year. The outdoor domestic demands (e.g. a hot tub and pool) are assumed to be 0.08 acre-feet/year. Livestock is anticipated to need 0.06 acre-feet/year. Landscape drip irrigation demand is estimated to be 0.12 acre-feet/year for approximately 0.3 acre of irrigated area. Lawn and garden sprinkler irrigation demand is estimated to be 1.0 acre-feet/year for approximately 0.6 acre of irrigated area. Evaporative depletions from the James Peak Ranch Ponds are estimated to total 5.5 acre-feet/year. (ii) Projected Depletions. Indoor domestic uses are expected to be 10% consumptive, resulting in an estimated depletion of 0.10 acre-feet/year. Outdoor domestic use, stock watering, and landscape drip irrigation is all assumed to be 100% consumptive. Lawn and garden sprinkler irrigation is 80% consumptive, resulting in an anticipated depletion of 0.8 acre-feet/year. Evaporative depletions from the James Peak Ranch Ponds are 100% consumptive. (d) Exchange Reach. Because Middle Park Contract Water and Colorado River District Contract Water supplies are downstream of the points of depletion, the proposed plan for augmentation will at times operate by substitution and/or exchange. Therefore, to the extent necessary in order to properly operate this plan for augmentation, Applicant claims an appropriate right of exchange and/or exchange project right from the furthest downstream point where replacement water may be released into the Colorado River up to the James Peak Ranch property. The components of this exchange right are as follows: (i) Downstream Terminus. The confluence of the Roaring Fork and the Colorado River, which is located in the SE1/4 of the NW1/4 of Section 9, Township 6 South, Range 89 West of the 6th P.M. (Zone 13, NAD 83, Easting 299753.7 m, Northing 4380367.2 m). (ii) Upstream Terminus. Either the Lower Ponds Filler Ditch, as described in paragraph 7(k) above, or the James Peak Ranch Pump and Pipeline, as described in paragraph 4(b) above. The upstream terminus will depend on the final as-built location of both diversion structures. (iii) Exchange Rate. 2.5 cfs. (iv) Date of Appropriation. Date of application. (v) Uses or Proposed Uses. Water will be exchanged to augment and replace out-of-priority depletions from the domestic, irrigation, stock watering, fire protection, fish and wildlife habitat, and recreation uses of the augmented structures. (vi) Remarks. Applicant will only operate the requested exchange at such times when deliveries of the replacement water at the downstream exchange terminus will satisfy the downstream calling water right. **10. Integrated System.** All of the water rights and structures included in this application, along with the structures described in the companion application from Mr. Kevin Mize, may be components of an integrated water system. Applicant reserves the right to connect the wells, pumps, pipelines, ponds, and other associated structures for the purposes of maintaining fish and wildlife habitat, including to recirculate water for freshening flows. Applicant claims the right to continue to use and reuse all water rights claimed in this case for these purposes. For the purposes of future diligence applications, work on one of the subject structures may be evidence of reasonable diligence on other structures in the system. **11. Name and Address of Landowner Upon which any New or Modified**

Diversion or Storage Structure is Located, Including Any Modification to the Storage Pool. All of the subject structures are on land owned by Applicant or land owned by Mr. Kevin Mize, who has been provided a copy of this application. WHEREFORE, Applicant respectfully requests that the Court (1) grant the claim for underground, surface, and water storage rights claimed in paragraphs 3–8 above; (2) find that there will be no injury to any owner of, or person entitled to use, water under a vested water right or conditionally decreed water right as a result of Applicant’s requested plan for augmentation and exchange as described in paragraph 9 above; and (3) approve the plan for augmentation and exchange described in paragraph 9 above. (12 pages)

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