

**Consent Agenda Item 1.b**

May 19-20, 2021 Board Meeting

Case No. 21CW3013 (Water Division 5); The Robert and Cheryl Balgley Living Trust Dated February 3, 2017

**Summary of Water Court Application**

Application for surface water rights and amendment of plan of augmentation including appropriate right of exchange.

**Staff Recommendation**

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in March 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 Eagle River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
W-3625(1977) (Div. 5)	Brush Creek	confl E & W Brush Creeks	confl Eagle River	12 (1/1 - 12/31)	07/26/1977
80CW0124 (Div. 5)	Eagle River	confl Brush Creek	confl Colorado River	50 (10/1 - 4/30) 130 (5/1 - 9/30)	03/17/1980
03CW0265 (Div. 5)	Salt Creek	confl Kelly Creek	hdgt Hashberger Ditch	0.75 (1/1 - 12/31)	01/22/2003

**Potential for Injury**

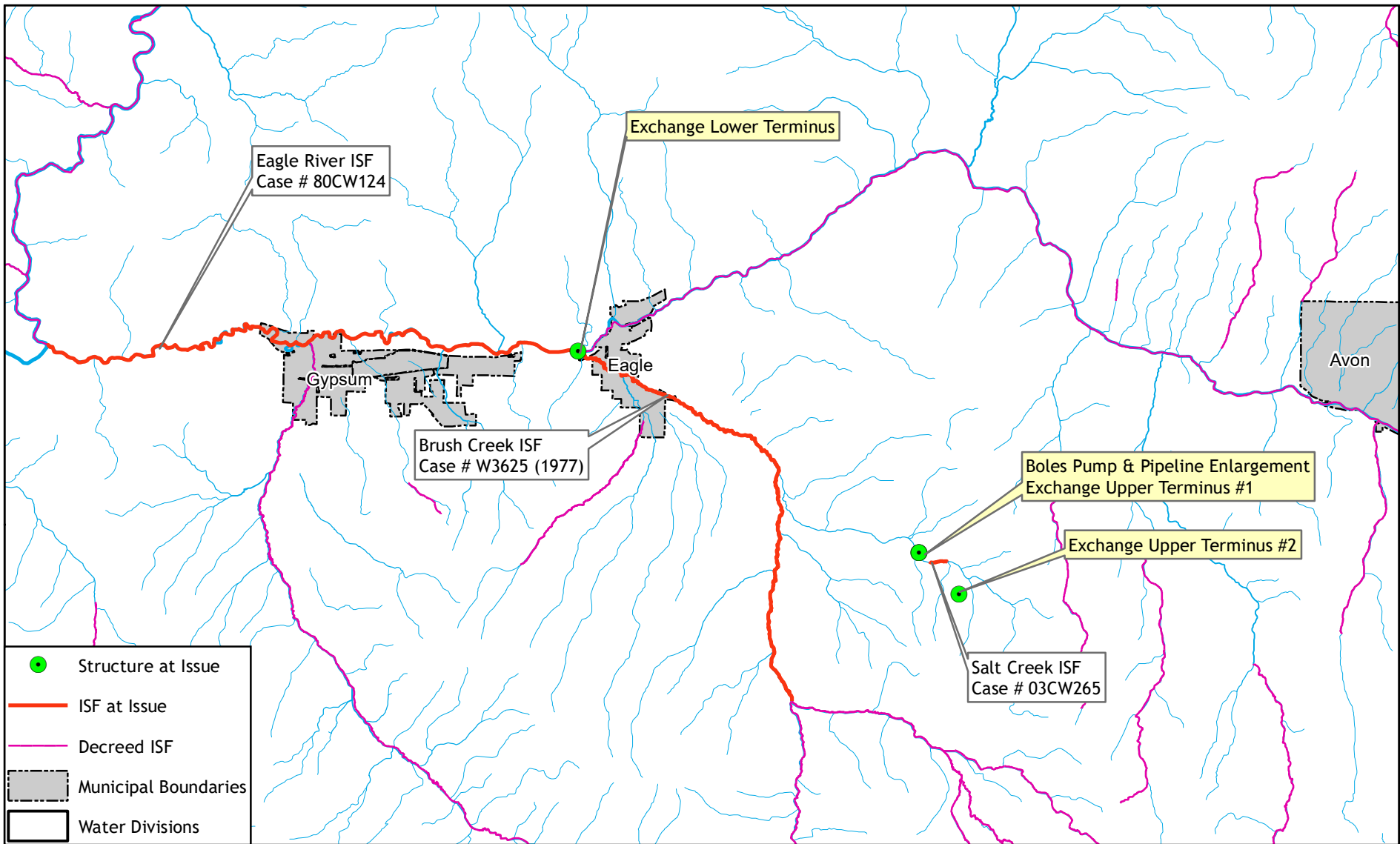
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place and amount, which could injure the CWCB's instream flow water rights.

**Other Objectors**

A Statement of Opposition was also filed by BCP-ARR Water, LLC.

**Attorney Representing CWCB**

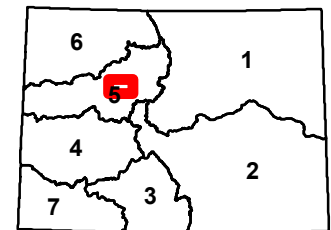
Marc D. Sarmiento, Assistant Attorney General, is assigned to this case and can be contacted at marc.sarmiento@coag.gov, or 720-508-6429.



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

Department of Natural Resources

May 19-20, 2021 CWCB Board Meeting  
 Consent Agenda Item 1.b Statement of Opposition  
 Case No. 21CW3013 (Water Division 5)  
 Application of The Robert and Cheryl Balgley Living Trust Dated February 3, 2017



**DIVISION 5 WATER COURT-JANUARY 2021 RESUME**

13. 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 JANUARY 2021. *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.*

**21CW3013 EAGLE AND PITKIN COUNTIES. KELLY CREEK, SALT CREEK, TRIB. TO BRUSH CREEK, TRIB. TO EAGLE RIVER, TRIB. TO COLORADO RIVER. Application for Surface Water Rights and Amendment of Plan of Aug. Including Approp. Right of Exchange. Applicant: The Robert and Cheryl Balgley Living Trust dated February 3, 2017, c/o Sara M. Dunn and Margaret L. Casey, Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602; 970-945-6546.** Summary of Application: Applicant requests absolute and conditional water rights for the Boles Pump and Pipeline to add irrigation as a beneficial use and approval of an amendment to the plan for aug. including appropriate right of exchange decreed in Case No. 06CW272, District Court, Water Division No. 5. First Claim: Surface Water Right. Structure: **Boles Pump and Pipeline Use Enlargement**, a surface diversion. Legal Description: NE1/4 SE1/4, Sec. 29, T. 5 S., R. 83 W., 6th P.M., 160 ft. W. of the E. Sec. Line and 2570 ft. N. of the Sec. Line of Sec. 29. See Figure 1, Location Map attached to application. Source: Salt Creek, trib. to Brush Creek, trib. to the Eagle River, trib. to the Colorado River. Date of Approp.: 5/1/2008. How Approp. was Initiated: By formation of requisite intent to appropriate water for the claimed beneficial uses and field investigations of site, installation of irrigation infrastructure and placing a portion of the water right to beneficial use. Date Water Applied to Beneficial Use: 5/15/2008. Amt.: 0.16 c.f.s. (72 g.p.m.) absolute; and 0.06 c.f.s. (28 g.p.m.) cond. Uses: Irr. of up to 5 acres of landscaping and native vegetation areas. Historically, Applicant and its predecessor have irrigated 0.52 acres of landscaped areas and areas critical for fire prot. purposes. Applicant and its predecessor have irrigated an additional 2.62 acres of natural vegetation areas when water was physically and legally available in priority. Legal description of irrigated acreage: E. 1/2 of the SE1/4 of Sec. 29, T. 5 S., R. 83 W., 6th P.M., as depicted on Figures 2 and 3, attached to application. Remarks: The Boles Pump and Pipeline was previously decreed for 0.22 c.f.s. for fire prot., and to fill and re-fill the Boles Pond for subsequent use for fish and wildlife and rec. in the Boles Pond. Applicant is requesting a use enlargement to add irr. to the uses previously decreed to the Boles Pump and Pipeline. Second Claim: Request to Amend Plan for Aug. Including Approp. Rights of Exchange. Structures to be Augmented: **Boles Pond, Boles Pump and Pipeline, Taylor Ditch Boles Enlargement and Boles Reservoir**. Statement of Plan for Aug. including Proposed Amendment Thereto: Applicant is the owner of the Boles Pond, Boles Pump and Pipeline and Taylor Ditch Boles Enlargement. These structures are augmented by the Boles Plan for Aug. approved in Case No. 06CW272, District Court, Water Division No. 5. Applicant seeks to amend the plan for aug. to include replacement water for out of priority depletions associated with irr. of 0.52 acres of critical landscaping with the Boles Pump and Pipeline Use Enlargement and to add additional Eagle River sources of replacement water pursuant to a contract with the Colorado River Water Conservation District. The Boles Pond stores water for fire suppression and serves as a water feature on the property. The Boles Pond is filled and refilled by the Boles Reservoir, the Taylor Ditch Boles Enlargement and the Boles Pump and Pipeline. The plan for aug. provides replacement water for out of priority diversion by the Boles Pump and Pipeline and Taylor Ditch Boles Enlargement to fill the Boles Reservoir and the Boles Pond and to replace evap. losses from the surface of the Boles Pond. Replacement water is provided from Wolford Mountain Reservoir or Ruedi Reservoir via exchange and pursuant to a contract with the Colorado River Water Conservation District. Local calls on Salt Creek, Brush Creek and the Eagle River are satisfied by releases from the Boles Reservoir. The aug. plan further allows flow through water to occur from operation of the Boles Pump & Pipeline. Applicant currently does not allow water to flow through the pond, and uses the Boles Pump & Pipeline to replace evap. from the pond surface. If Applicant does begin to use the Boles Pump & Pipeline for flow through, the water will be returned to Salt Creek via pipeline to avoid transit losses. Applicant requests to amend the plan for aug. to include additional sources of replacement water on the Eagle River above its confluence with Brush Creek, including Eagle Park Reservoir and Homestake Reservoir as further described herein, pursuant to a contract with the Colorado River Water Conservation District for these additional replacement supplies. These additional sources of replacement water can be utilized by exchange. Therefore, Applicant is also requesting a cond. approp. right of exchange extending from the upstream pts. of depletion described above to the confluence of Brush Creek and the Eagle River for the Eagle Park Reservoir and Homestake Reservoir sources. Additional water rights to be used for aug.: Eagle River Supply Sources. Eagle Park Reservoir Company owns and operates the Eagle Park Reservoir Project located in the headwaters of the Eagle River. The River District is a shareholder in the Reservoir Company and is entitled to yield from the Eagle Park Reservoir Project and exchange supplies provided by Aurora and Colorado Springs. The water delivered to or for the benefit of the River District's contractors as "Eagle River Supplies" will be based upon the following water rights. Eagle Park Reservoir. The River District's current supply consists of 2,000 shares of Class A, Series 2 stock in the Eagle Park Reservoir Company, which entitle the River District to the annual release and/or diversion of up to 200 AF from Eagle Park Reservoir more particularly described as follows: Eagle Park Reservoir, decreed by the Water Court in Cases No. 92CW340 and 93CW301, for a combined total capacity of 27,600 AF, with an Approp. date of 3/16/1991, for 5,300 AF, and 5/18/1993, for 22,300 AF, together with the right to divert at the rate of 80 cfs under the 8/10/1956 Approp. date of the Pando

Feeder Canal pursuant to the decree of the Water Court entered in Case No. 97CW288, for mining, milling, ind., snowmaking, mun., dom., stock watering, rec., fish and wildlife, irr., agricultural, exchange, replacement, aug. and all other beneficial purposes. Eagle Park Reservoir is augmented by exchange by decree of the Water Court entered in Case No. 95CW348. The N. abutment of the dam crest is located approx 160 ft. N. of the S. Sec. line and 650 ft. E. of the W. Sec. line of Sec. 28, T. 7 S., R. 79 W., 6th P.M., Eagle County, Colorado. The source of Eagle Park Reservoir is the E. Fork of the Eagle River including runoff, surface flow and seepage from the area above the reservoir and trib. thereto, and water trib. to Tenmile Creek a trib. of the Blue River. In addition to the trib. area upstream of the reservoir, the specific pts. of diversion into storage for Eagle Park Reservoir are as follows: The E. Fork Interceptor Ditch, which has a capacity of 48 cfs and diverts from unnamed tributaries of the E. Fork of the Eagle River at the following pts., all of which are located in Eagle County, Colorado: 900 ft. S. of the N. Sec. line and 1100 ft. W. of the E. Sec. line of Sec. 5, T. 8 S., R. 79 W., 6th P.M.; 1250 ft. S. of the N. Sec. line and 700 ft. E. of the W. Sec. line of Sec. 4, 8 S., R. 79 W., 6th P.M.; 1200 ft. N. of the S. Sec. line and 800 ft. E. of the W. Sec. line of Sec. 33, T. 7 S., R. 79 W., 6th P.M. Runoff, surface flow, and seepage from the area above the E. Fork Interceptor Ditch as it runs between the above- described pts. of diversion and Eagle Park Reservoir. The Chalk Mountain Interceptor Ditch, which has a capacity of 12 cfs and diverts runoff and seepage as it runs a distance of approx. 3.4 miles from Fremont Pass, located in the W1/2 of Sec. 11, T. 8 S., R. 79 W., 6th P.M., northwesterly along State Highway 91 and the S. side of Robinson Tailing Pond, thence westerly to the S. of Chalk Mountain Reservoir and Robinson Reservoir, thence Northwesterly to Eagle Park Reservoir. The Chalk Mountain Interceptor Ditch diverts water from the headwaters of Tenmile Creek in Summit County and from the headwaters of the E. Fork of the Eagle River in Eagle County. The E. Interceptor Ditch, which has a capacity of 20 cfs and runs Northeasterly from a pt. whence the N.E. corner of Sec. 2, T. 8 S., R. 79 W., 6th P.M. bears N. 77°20' E. a distance of 850 ft. at the N. fork of McNulty Creek, thence along the E. side of Robinson and Tenmile Tailing Ponds into Supply Canal No.1 described herein. The E. Interceptor Ditch diverts water from the N. fork of McNulty Creek and surface flow, seepage, and runoff from watersheds above it that are trib. to Tenmile Creek. The Supply Canal No. 1, which has a capacity of 10 cfs and diverts water from the following tributaries of Tenmile Creek at the following pts.: On the W. bank of Humbug Creek at a pt. whence the S.W. corner of Sec. 18, T. 7 S., R. 78 W. bears S. 71°35' W. a distance of 3,250 ft. On the S. bank of Mayflower Creek at a pt. whence the N.E. corner of Sec. 24, T. 7 S., R. 79 W., 6th P.M. bears N. 16°55' E. a distance of 2,250 ft. Runoff, surface flow, and seepage from the area above the Supply Canal No. 1 as it runs between the above-described pts. of diversion and the Climax Mill. The Supply Canal No. 2, which has a capacity of 10 cfs and diverts water from the following tributaries of Tenmile Creek at the following pts.: On the W. bank of Searle Creek at a pt. whence U.S.L.M. Kokomo bears S. 45°58' E. 3740 ft. (located in the NW1/4 of the SE1/4 of Sec. 13, T. 7 S., R. 79 W., 6th P.M.). On the S. bank of Kokomo Creek at a pt. whence U.S.L.M. Kokomo bears N. 39°36' E. 2635 ft. (located in the SE1/4 of Sec. 22, T. 7 S., R. 79 W., 6th P.M.). Runoff, surface flow, and seepage from the area above the Supply Canal No. 2 as it runs between the above-described pts. of diversion and the Climax Mill. The E. Fork Pumping Plant, which has a capacity of 6 cfs and diverts from the E. Fork of the Eagle River at a pt. in the SE1/4 NE1/4 of Sec. 32, T. 7 S., R. 79 W., 6th P.M. at a pt. whence the NE corner of said Sec. 32 bears N. 31°53' E. a distance of 2,414 ft. The Eagle Park Reservoir Company must first receive the permission of Climax Molybdenum Company to use the E. Fork Interceptor Ditch, Supply Canal No. 1 and Supply Canal No. 2 described above to divert water into Eagle Park Reservoir. Nevertheless, the firm yield of the River District's supply is not dependent on the use of those facilities. Exchange Supply. Pursuant to a Memorandum of Understanding dated effective as of 4/21/1998 (the "MOU") among the City of Aurora, the City of Colorado Springs, the River District, Climax Molybdenum Company, Vail Associates, Inc., the Upper Eagle Regional Water Authority, and the Eagle River Water & Sanitation District; and the Water Exchange Agreement dated 6/17/1998 among Aurora, Colorado Springs, and the Eagle Park Reservoir Company, Aurora and Colorado Springs agreed to make up to 500 AF of water available for W. Slope use from facilities owned and operated by Aurora and Colorado Springs in exchange for up to 800 AF of replacement water from the W. Slope participants. The River District's 100 shares of Class B stock in the Eagle Park Reservoir Company entitle the River District to up to 100 AF per year of consumptive beneficial use water to be derived from fully consumable water annually diverted by and/or stored in the following structures owned and controlled by Aurora and Colorado Springs: Homestake Project. Homestake Reservoir, also known as Elliott-Weers Reservoir, was decreed by the Eagle County District Court in Civil Action No. 1193 for 83,338.98 AF cond., 43,504.7 AF of which is now absolute. This reservoir is located on Homestake Creek with a dam being located whence the NW Corner of Sec. 31, T. 7 S., R. 80 W., 6th P.M. bears N. 58°30.6' E. 24,659 ft. from the E. dam abutment and N. 62°25.8' E. 25,746 ft. from the W. dam abutment. The sources of supply of said Reservoir are the E. Fork of Homestake Creek, the Middle Fork of Homestake Creek and Homestake Creek. Camp Hale Project. Aurora and Colorado Springs may provide to the River District water released from those surface and ground water storage rights sought by Aurora and Colorado Springs in Cases No. 88CW449 and 95CW272, District Court for Colorado Water Division No. 5. River District Contractors' use of aug. water from Homestake Reservoir made available through contract or other arrangement with the Eagle Park Reservoir Company shall be dependent upon the continued existence of, and conditions set forth in, the Water Exchange Agreement dated 6/17/1998 between the Cities of Aurora and Colorado Springs and the Eagle Park Reservoir Company, together with any modifications thereto, or constraints thereon, as may be necessitated by the decree entered in Case No. 98CW270, Water Division No. 5. Additional Information for Homestake Project. The detailed descriptions of the structures decreed by the Eagle County District Court in Civil Action No. 1193 for the Homestake Project are set forth herein. French Creek Intake: 60.1 cfs, S. 82°18.3' E. 20988 ft. to NW corner Sec. 31, T. 7 S., R. 80 W. Fancy Creek Intake: 38.6 cfs, N. 85°10.5' E. 25280 ft. to NW corner Sec. 31, T. 7 S., R. 80 W.; Missouri Creek Intake: 39.8 cfs, N. 77°12.4' E. 28800 ft. to NW corner Sec. 31, T. 7 S., R. 80 W.; Sopris Creek Intake: 41.3 cfs, N. 74°7.6' E. 29848 ft. to NW corner Sec. 31, T. 7 S., R. 80 W. E. Fork Conduit. The E. Fork Conduit diverts water from the E. Fork of Homestake Creek pursuant to its Approp. of 70.8 c.f.s. absolute and 189.2 c.f.s. cond. therefrom and conveys these waters to Homestake Reservoir for conveyance to Homestake Tunnel or storage in the reservoir, said E. Fork Conduit having a capacity of 260 c.f.s. and total length of approx 3,093 ft. The pt. of diversion of said conduit is on E. Fork Homestake Creek at a pt. whence the N.W. corner of Sec. 31, T. 7 S., R. 80 W. bears N. 55°40.5' E., 22,917 ft. Homestake Tunnel. Homestake Tunnel under the

Continental Divide for the conveyance of water into the Arkansas River Basin with its intake located at a pt. under Homestake Reservoir whence the N.W. corner of Sec. 10, T. 9 S., R. 81 W., 6th P.M. bears S. 15°27'08" E. 26,173.03 ft. appropriates a max. amt. of 10 c.f.s. cond. of water seeping and percolating into Homestake tunnel from former Water District No. 37 areas and 300 c.f.s. absolute from Middle Fork of Homestake Creek, at its said northerly portal, its pt. of diversion; said tunnel has a length of 27,400 ft. and a capacity of 700 cubic ft. per second of time. The tunnel will convey out of former Water District No. 37 up to 700 c.f.s. of waters appropriated by the tunnel from the Middle Fork of Homestake Creek, together with water appropriated by the tunnel from the Homestake Creek and E. Fork Conduits and Homestake Reservoir, to an outlet at a pt. from where the N.W. corner of Sec. 10, T. 9 S., R. 81 W., 6th P.M. bears N. 6°40'52" E., a distance of 2,173.54 ft. Homestake Reservoir. Homestake Reservoir, also known as Elliott-Weers Reservoir, has a capacity of 83,338.98 AF cond., is located on Homestake Creek with a dam whence Homestake Peak bears S. 73°26' E. 10,477 ft. from the Easterly end thereof and S. 74°57' E. 13,347 ft. from the westerly end thereof, said dam having a max. height of 411.5 ft. and a length of 3,380 ft. The sources of supply of said reservoir are Homestake Conduit (the sources of this conduit as herein above set forth), E. Fork Conduit (the source of this conduit as herein above set forth), the Middle Fork of Homestakes Creek and Homestake Creek, and said reservoir has appropriated for storage 83,338.98 AF annually from said sources. Homestake Reservoir also conveys water from Homestake Conduit and E. Fork Conduit to Homestake Tunnel. Existing Homestake Reservoir has a storage capacity of 43,504.7 AF absolute and is located on Homestake Creek with a dam whence the NW Corner of Sec. 31 T. 7 S., R. 80 W., 6th P.M. bears N. 58°30.6' E. 24,659 ft. from the E. dam abutment and N. 62°25.8' E. 25,746 ft. from the W. dam abutment, said dam has a max. height of 265.0 ft. and a length of 1996 ft. The sources of supply of said existing Homestake Reservoir are Homestake Conduit, E. Fork Conduit, the Middle Fork of Homestake Creek and Homestake Creek. Existing Homestake Reservoir has appropriated 43,504.7 AF annually from said sources and also conveys water from Homestake Conduit and E. Fork Conduit to Homestake Tunnel. Operation of Amended Plan for Aug. including Approp. Right of Exchange: The water demands requiring aug. include the filling of the Boles Pond and replacement of evap. losses from the Boles Pond and irr. of 0.52 acres of landscaping as set forth in Table 1, attached to application. Boles Reservoir will be filed in priority pursuant to the decree in Case No. 06CW272 or by exchange when the Boles Exchange is in priority. The Boles Exchange reach decreed in Case No. 06CW272 extends from the confluence of the Roaring Fork River and the Colorado River (downstream terminus) up to the pt. of diversion for the Taylor Ditch Boles Enlargement and the pt. of diversion for the Boles Pump and Pipeline (upstream termini). The Boles Exchange is decreed for a max. rate of 1.0 c.f.s. with a date of Approp. of 12/29/2006. The Boles Exchange will be operated when the exchange is in priority and the augmented water rights are subject to a downstream call that can be satisfied by releases from Wolford Reservoir, or Ruedi Reservoir. The Boles Eagle River Exchange, described in full herein, will be operated when the exchange is in priority and the augmented water rights are subject to a downstream call that can be satisfied by releases from the Eagle Park Reservoir or Homestake Reservoir pursuant to a contract with the Colorado River Water Conservation District. In the event of local calls on Salt Creek or Brush Creek, or when the Boles Exchange and Boles Eagle River Exchange are out of priority, Applicant will curtail all out of priority diversions from the Taylor Ditch Boles Enlargement and will release water stored in the Boles Reservoir to replace out of priority diversions from the Boles Pump and Pipeline and satisfy said calls. Applicant will augment 100% of the out-of-priority diversions rather than out-of-priority depletions associated with the Boles Pump and Pipeline for all of its uses, including irr. of the 0.52 acres of critical landscaping. Boles Eagle River Exchange, an Approp. right of exchange as a component of an aug. plan. Lower Terminus: The confluence of the Eagle River and Brush Creek; SE/4, NE/4 of Sec. 6, T. 5 S., R. 84 W., 6th P.M. Upper Termini: The pt. of diversion for the Taylor Creek Ditch Boles Enlargement in the SE1/4 NE1/4, Sec. 33, T. 5 S., R. 83 W., 6th P.M. at a pt. 2,800 ft. E. of the W. Sec. Line and 1000 ft. S. of the N. Sec. Line of Sec. 33; and the pt. of diversion for the Boles Pump and Pipeline in the NE1/4 NE1/4, Sec. 29, T. 5 S., R. 83 W., 6th P.M. at a pt. 360 ft. W. of the E. Sec. Line and 2570 ft. N. of the S. Sec. Line of Sec. 29. Date of Approp.: 6/30/2019. Amt.: 1.0 c.f.s., cond. Remarks: See Figure 1, attached to application depicting the exchange reaches. Names and addresses of owners or reputed owners of the land upon which any new or existing 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: Applicant.

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