

**Consent Agenda Item 1.c**

May 19-20, 2021 Board Meeting

Case No. 21CW3014 (Water Division 5); Q4 Snowmass Ranch LLC

**Summary of Water Court Application**

Application for water storage right, surface water right, and 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 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 Roaring River Fork Watershed, that could be injured by this application:

| Case Number       | Stream                | Upper Terminus               | Lower Terminus              | CFS Rate (Dates)                      | Approp. Date |
|-------------------|-----------------------|------------------------------|-----------------------------|---------------------------------------|--------------|
| W-2943A<br>(1976) | Snowmass<br>Creek     | confl West<br>Snowmass Creek | confl Capitol<br>Creek      | 12 (4/1 - 10/15)<br>** (10/16 - 3/31) | 01/14/1976   |
| W-2943B<br>(1976) | Snowmass<br>Creek     | confl Capitol<br>Creek       | confl Roaring<br>Fork River | 12 (4/1 - 10/15)<br>11 (10/16 - 3/31) | 01/14/1976   |
| 85CW0639          | Roaring Fork<br>River | confl Fryingpan<br>River     | confl Crystal<br>River      | 75 (10/1 - 3/31)<br>145 (4/1 - 9/30)  | 11/08/1985   |
| 85CW0646          | Roaring Fork<br>River | confl Maroon<br>Creek        | confl Fryingpan<br>River    | 30 (10/1 - 3/31)<br>55 (4/1 - 9/30)   | 11/08/1985   |
| 92CW0280*         | Snowmass<br>Creek     | confl West<br>Snowmass Creek | confl Capitol<br>Creek      | 3 (4/1 - 10/15)                       | 09/15/1992   |
| 92CW0281*         | Snowmass<br>Creek     | confl Capitol<br>Creek       | confl Roaring<br>Fork River | 10.5 (4/1 - 10/15)                    | 09/15/1992   |

\* Increased

\*\* 4 Multi-Stage Flows

**Potential for Injury**

- The proposed “freshening flows” claim could injure the CWCB’s instream flow water right because it may be fully depletive to a segment of the intervening instream flow.
- Some of the water rights are claimed with senior appropriation dates. The instream flow water right might be subject to these water rights under section 37-92-102(3)(b), C.R.S., if the claimed pre-existing uses are sufficiently demonstrated.

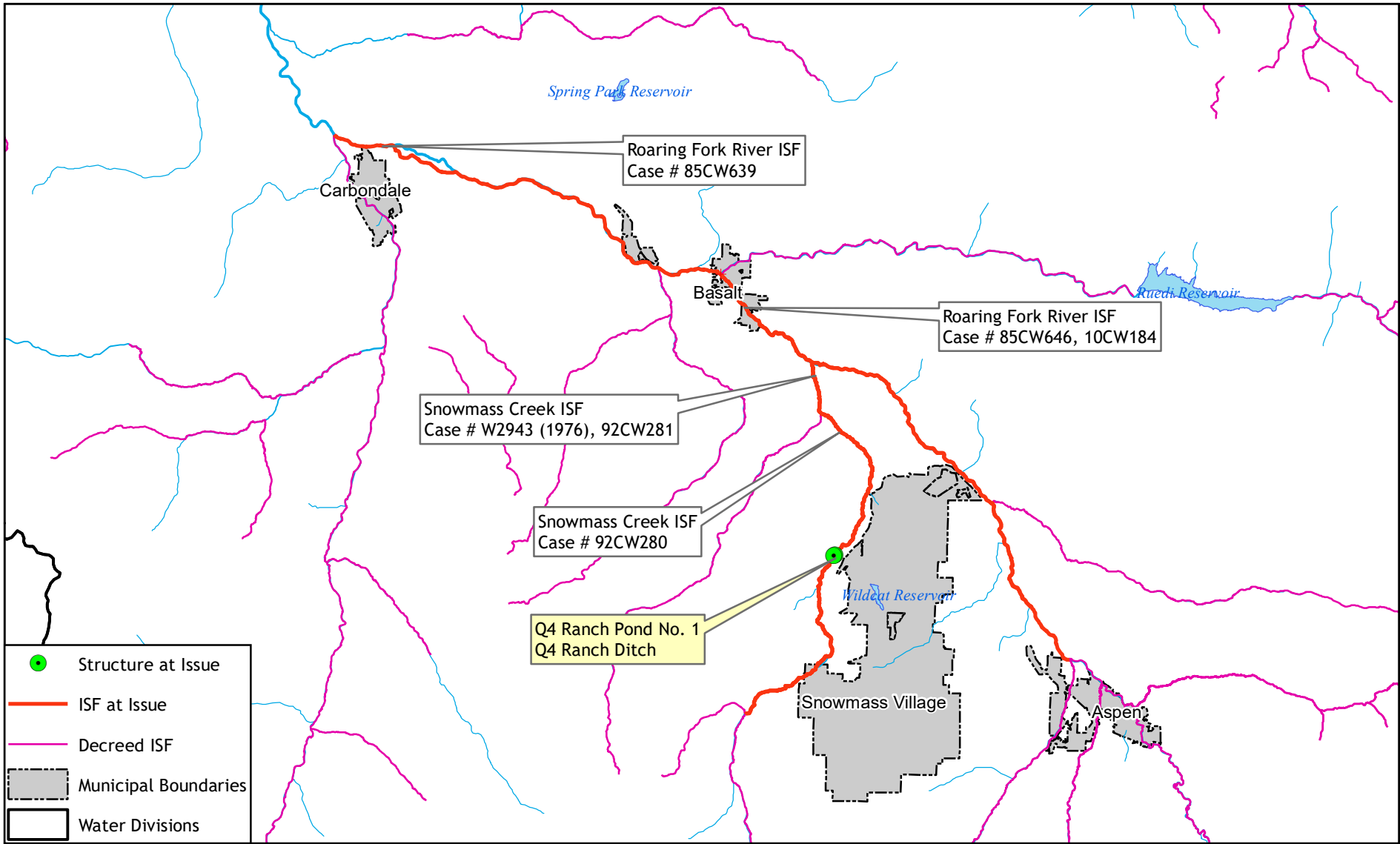
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place and amount, which could injure the CWCB's instream flow water rights.
- Terms and conditions should be included in any decree entered in this case to ensure that the decreed water rights will not injure the CWCB's instream flow water rights and flows protected under Case No. 10CW184 (CWCB's Stapleton Brothers Ditch water rights).

#### **Other Objectors**

A Statement of Opposition was also filed by Steven Shane and Clare Evert-Shane, and Shane Aspen Real Estate/Compass.

#### **Attorney Representing CWCB**

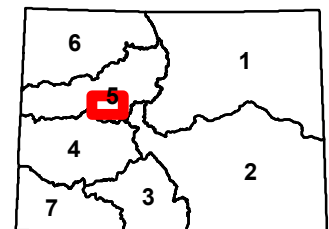
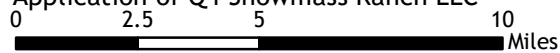
Marc D. Sarmiento, Assistant Attorney General, is assigned to this case and can be contacted at [marc.sarmiento@coag.gov](mailto:marc.sarmiento@coag.gov), or 720-508-6429.



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

Department of Natural Resources

May 19-20, 2021 CWCB Board Meeting  
 Consent Agenda Item 1.c Statement of Opposition  
 Case No. 21CW3014 (Water Division 5)  
 Application of Q4 Snowmass Ranch LLC



## 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.*

**21CW3014 PITKIN COUNTY COLORADO, SNOWMASS CREEK APPLICATION FOR WATER STORAGE RIGHT, APPLICATION FOR SURFACE WATER RIGHT, AND PLAN FOR AUGMENTATION.** Name and address of Applicant: **Q4 Snowmass Ranch, LLC**, 16479 North Dallas Parkway, Suite 400, Addison, TX 75001. Please direct all correspondence, motions and pleadings to Michael J. Sawyer, KARP NEU HANLON, P.C., 201 14th Street, Suite 200, P.O. Drawer 2030, Glenwood Springs, CO 81602 (970) 945-2261. **FIRST CLAIM: APPLICATION FOR WATER STORAGE RIGHT.** Name of structure: *Q4 Ranch Pond No.1* Legal description: NW ¼ of the SW ¼ of Section 23, Township 9 South, Range 86 West of the 6th P.M. The centerline of the dam at the outlet is located at UTM NAD83 coordinates 4346880.1 Northing and 329839.7 Easting. Located on Parcel 1, David Christensen Property Split, according to the Plat thereof recorded May 9, 1980 in Plat Book 9 at Page 47 as Reception No. 223906, in the County of Pitkin. 6458 Snowmass Creek Road, Snowmass, CO 81654. Source of Fill: Q4 Ranch Ditch, 0.25 c.f.s., diverting from Snowmass Creek, tributary to the Roaring Fork River, tributary to the Colorado River. Appropriation date: December 31, 1991. How appropriation was initiated: Construction of the Pond. Amount: 2.2 acre feet, absolute, with the right to fill and refill in priority. Uses: piscatorial, recreation, augmentation, fire protection, and as a pumping forebay for irrigation using the Applicant's senior water rights in the Lutz Ditch. Surface area of high water line: 0.52 acre. Vertical height of dam: 9 feet. Length of dam: Approximately 520 feet. Total capacity of reservoir: 2.2 acre feet. Active capacity: 2.0 acre feet. Dead storage: 0.2 acre feet. Remarks: The Applicant is not claiming the pond as an operational irrigation control structure and is augmenting out-of-priority evaporative depletions. Date water applied to beneficial use: May 31, 2020. **SECOND CLAIM: APPLICATION FOR SURFACE WATER RIGHT.** Name of structure: *Q4 Ranch Ditch.* Legal description: The point of diversion of the Q4 Ranch Ditch is located in the NW 1/4 of the SW 1/4 of Section 23, Township 9 South, Range 86 West of the 6th P.M. A more accurate location of the point of diversion for the Q4 Ranch Fill Ditch is UTM Zone 13, NAD83 coordinates 4346858.1 Northing and 329782.0 Easting. Located on Parcel 1, David Christensen Property Split, according to the Plat thereof recorded May 9, 1980 in Plat Book 9 at Page 47 as Reception No. 223906, in the County of Pitkin. 6458 Snowmass Creek Road, Snowmass, CO 81654. Source: Snowmass Creek, tributary to the Roaring Fork River, tributary to the Colorado River. Appropriation date: December 31, 1991. How appropriation was initiated: Construction of Ditch. Amount: The flow rate for the Q4 Ranch Ditch water right is 0.25 c.f.s. Absolute. Uses: piscatorial, recreation, augmentation, fire protection, freshening flows and the fill and refill of the Q4 Ranch Pond No. 1. Remarks: Uses of water from the Q4 Ranch Ditch will occur in the Q4 Ranch Pond No. 1. Date water applied to beneficial use: May 31, 2020. **THIRD CLAIM APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION INCLUDING EXCHANGE.** The Applicant requests approval of a plan for augmentation including exchange as more fully described herein. Name of structures to be augmented: *Q4 Ranch Pond No. 1, Q4 Ranch Ditch*, as described above, (collectively, the "Augmented Water Rights"). Water rights to be used for augmentation: Applicant is applying for a Water Supply Contract with the Basalt Water Conservancy District ("the District") for 4.8 acre feet per year of augmentation water to replace out-of-priority depletions associated with use of water from the Augmented Water Rights, plus ten percent to cover transit losses. The District's augmentation water supply sources are described below. District's Sources of Supply: In Case No. 02CW77, Decree 2 of 2, the Court confirmed the District may use the following water rights for augmentation, including by exchange, pursuant to the District's Umbrella Plan. These District water rights are in and to the Ruedi Reservoir, Green Mountain Reservoir, the Troy & Edith Ditch, the Robinson Ditch, and the Favre Domestic Pipeline. Information from previous decree for Ruedi Reservoir: Source: Fryingpan River, tributary of Colorado River. 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. Adjudication Date: June 20, 1958. Appropriation Date: July 29, 1957. Case No.: C.A. 4613. Court: Garfield County District Court. Decreed Amount: 102,369 AF (Originally decreed for 140,697.3 AF; reduced to 102,369 AF in Case No. W-789-76). The full amount was made absolute in Case No. 88CW85. Decreed Uses: Generation of electric energy, domestic, municipal, piscatorial, industrial, and irrigation. Refill: By decree of the Water Court in Case No. 81CW34, Ruedi Reservoir was decreed a refill right in the amount of 101,280 AF, conditional. In Water Court Case No. 95CW95, 44,509 AF of the refill right was made absolute. In Water Court Case 01CW269, an additional 25,257 AF of the refill right was made absolute, for a total of 69,766 AF absolute in the refill right. 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 AF 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. Information from previous decree

for Green Mountain Reservoir: Source: Blue River, tributary of Colorado River. 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. Adjudication Date: October 12, 1955. Appropriation Date: August 1, 1935. Case Nos.: 2782, 5016, and 5017. Court: United States District Court, District of Colorado. Decreed Amount: 154,645 AF. 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. 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 AF 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. Information from previous decrees for Troy Ditch and Edith Ditch rights:

| Structure                                     | Priority | Case No. | Adj. Date   | App. Date   | Decreed Amount (CFS.) | Use (4)       | AMOUNT TRANSFERRED OR SOLD, OR RESERVED |       |       |       |       | AMOUNT REMAINING FOR DISTRICT (10) |        |
|---|----------|----------|-------------|-------------|-----------------------|---------------|---|-------|-------|-------|-------|------------------------------------|--------|
|   |          |          |             |             |                       |               | (5)                                     | (6)   | (7)   | (8)   | (9)   | CFS                                | AF     |
| Troy Ditch (1)                                | 370      | 3082     | 08/25 /1936 | 05/01/19 06 | 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 | 05/01/19 28 | 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 | 06/01/19 42 | 6.20                  | I             | 0.000                                   | 0.000 | 0.115 | 0.077 | 0.042 | 5.966                              | N/A    |
| Edith Ditch                                   | 353      | 3082     | 08/25 /1936 | 05/01/19 04 | 2.72                  | I             | 0.110                                   | 0.132 | 0.050 | 0.000 | 0.018 | 2.410                              | N/A    |
| Edith Ditch 1st Enlg                          | 673      | 4613     | 06/20 /1958 | 07/01/19 46 | 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                                   | 0.132 | 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, Division 5, the Court decreed that 453 AF of annual consumptive-use credits were available to these ditches, and that 300 AF could be stored in an unnamed reservoir. Applicant owns 412.89 AF of the 453 AF and makes the water rights available to contract allottees for use pursuant to an approved substitute supply plan or decree of Court. This Court changed the use of the 412.89 AF 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. Information from previous decrees for Robinson Ditch rights:

| STRUCTURE      | DECREED AMOUNT/ (CFS) | AMOUNT OWNED BY DISTRICT (CFS)(1) | ADJ. DATE  | APP. DATE  | PRIORITY | CASE 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         |

| STRUCTURE      | DECREED AMOUNT/ (CFS) | AMOUNT OWNED BY DISTRICT (CFS)(1) | ADJ. DATE  | APP. DATE  | PRIORITY | CASE NO. (2) |
|----------------|-----------------------|-----------------------------------|------------|------------|----------|--------------|
| 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 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. Historical Use: Irrigation of approximately 137.2 acres of hay and pasture under District's interest in the Robinson Ditch water rights. In Case No. 93CW319, the Court decreed that 360 AF of annual consumptive-use credits are associated with said irrigation. In that case, the 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 Court. The District applies the credits principally to the augmentation of Blue Creek and the Roaring Fork River. Information from previous decrees for Favre Domestic Pipeline rights:

(1)

| STRUCTURE                | AMOUNT <sup>1</sup> (CFS) | ADJ. DATE  | APP. DATE  | PRIORITY | CASE NO. <sup>2</sup> |
|--------------------------|---------------------------|------------|------------|----------|-----------------------|
| FAVRE DOM. PL. SP. NO. 1 | 0.50                      | 06/20/1958 | 08/11/1937 | 649      | 4613                  |
| FAVRE DOM. PL. SP. NO. 2 | 0.50                      | 06/20/1958 | 04/15/1912 | 666      | 4613                  |

Amount: Each spring is decreed for 0.50 cfs, but the use of both has a combined limit of 0.50 cfs

- (2) District Court in and for Garfield County  
Legal Description: Favre Domestic Pipeline - Spring No. 1: Located at a point whence the E1/4 corner, Section 34, Township 7 South, Range 87 West, 6th P.M. bears South 34 degrees 26' East, 890.9 feet. Favre Domestic Pipeline - Spring No. 2: Located at a point whence the E1/4 corner, Section 34, Township 7 South, Range 87 West, 6th P.M. bears South 37 degrees 24' East 721.4 feet. Source: Blue Creek, which is tributary to Roaring Fork River. Decreed Use: Domestic and augmentation. Historical Use: The District owns the Favre Domestic Pipeline rights. The springs historically provided a majority of the domestic water supply for El Jebel, a community of 364 Equivalent Residential Units ("EQR"), consisting of 291 single-family residential units, irrigation of 12.5 acres of lawn and landscape, and commercial development. In Case No. 93CW319, the Court decreed that 142.82 AF of historical consumptive-use credits were available to Blue Creek as a result of such historical use; and that 67.2 AF of historical consumptive-use credits were available to the Roaring Fork River as a result of such historical use. In 93CW319, the Court also decreed a change of use of said credits to include augmentation. The District makes the credits available to contract allottees for use pursuant to an approved substitute supply plan or decree of Court. Statement of Plan for Augmentation, Estimated water demands, consumptive uses and augmentation requirements: The Q4 Ranch Ditch will be used to fill and refill, and to provide freshening flows through, the Q4 Ranch Pond No. 1. Out-of-priority evaporative depletions from the Q4 Ranch Pond No. 1 will be replaced by releases from District's sources of supply in accordance with the summary of depletions and augmentation supply contained in Table 1 of the application. In the event of a valid administered local call on Snowmass Creek or the Roaring Fork River between the confluences with the Frypan River and Snowmass Creek, the Q4 Ranch Ditch will continue to deliver freshening flows to the Q4 Ranch Pond No. 1. Water levels in the Q4 Ranch Pond No. 1 will be lowered commensurate with the evaporation rate and water released to Snowmass Creek in accordance with rate shown on Table 1 to the application. The consumptive use of water for the Q4 Ranch Pond No. 1 associated with 0.52 acre of surface area is 100%

consumptive to Snowmass Creek. The annual net evaporation rate is calculated at 3.19 acre feet per surface acre for an annual evaporative depletion of 1.66 acre feet. The monthly distribution and calculation of gross annual water evaporation is in accordance with the Office of the State Engineer's Policy 2004-3, and does not take credit for effective precipitation. A portion of the evaporative depletions will occur at times when there is no call on the Colorado River system. Of the total estimated evaporative depletion, 1.19 acre feet (including 10% transit loss) of water will be replaced from the District's water supplies to augment out-of-priority depletions. Transit loss associated with the delivery of augmentation water from the District is estimated to be ten percent. Description of augmentation exchange reaches: This plan will operate by exchange between the decreed locations for the District's sources of supply and the location of the Q4 Ranch Ditch. **FOURTH CLAIM: APPLICATION FOR APPROPRIATIVE RIGHT OF EXCHANGE.** The Applicant requests an appropriative right of exchange more fully described below: The Plan for Augmentation will operate by exchange of BWCD contract water from the District's Sources of Supply described in Sections 4D-4H, including Ruedi Reservoir and Green Mountain Reservoir. Lower Termini: Green Mountain Reservoir: The lower terminus of the exchange is at the confluence of the Roaring Fork River and the Colorado River for use of Green Mountain Reservoir water. The confluence of the Roaring Fork River and the Colorado River is located in the SE ¼ of the NW ¼ of Section 9, Township 6 South, Range 89 West, in the 6th P.M. at a point 2200 feet from the north section line, and 2350 feet from the west section line. UTM Zone 13, NAD83 coordinates Easting 299759, Northing 4380329. Ruedi Reservoir, Troy Ditch and Edith Ditch, Robinson Ditch, Favre Domestic Pipeline: The lower terminus of the exchange is at the confluence of the Frying Pan River and the Roaring Fork River for the use of Ruedi Reservoir, Troy Ditch and Edith Ditch, Robinson Ditch, Favre Domestic Pipeline. The confluence of the Frying Pan River and the Roaring Fork River is located in the SW1/4 SE1/4 of Section 7, Township 8 S., Range 86 W. 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). Upper Terminus: Q4 Ranch Ditch: described above. Source: Snowmass Creek, Roaring Fork River, tributary to the Colorado River. Rate of the exchange: 0.018 c.f.s. Date of appropriation of the exchange: July 31, 2020. How appropriation initiated: Applicant directed engineer to develop plan for augmentation for Q4 Ranch Pond No. 1. Names and addresses of owners of land upon which structures are located: Applicant. The following exhibits are on file with the Water Court: a map depicting the location of the structures to be decreed (Figure 1), and a table describing the consumptive use and augmentation requirements under the plan for augmentation (Table 1) (13 pp. with exhibits).

**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.**