

Consent Agenda Item 1.a

November 17-18, 2021 Board Meeting

Case No. 21CW3033 (Water Division 2); Upper Arkansas Water Conservancy District,
acting through the Upper Arkansas Activity Enterprise

Summary of Water Court Application

Application for Finding of Reasonable Diligence and to Make Absolute in Part.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Motion to Intervene and Statement of Opposition filed on behalf of the Board in October 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 2 in the Arkansas River Headwaters Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
W-4271(1975)	Lake Creek	Twin Lakes Res outlet	confl Arkansas River	15 (1/1 - 12/31)	05/01/1975
W-4441(1976)	Grays Creek	headwaters	confl Poncha Creek	4 (1/1 - 12/31)	01/14/1976
W-4659(1977)	North Fork South Arkansas River	confl McCoy Creek	hdgt North Fork Ditch	10 (1/1 - 12/31)	11/15/1977
W-4660(1977)	North Fork South Arkansas River	confl North Fork Res	confl McCoy Creek	8 (1/1 - 12/31)	11/15/1977
W-4665(1977)	South Cottonwood Creek	confl Mineral Creek	confl M Cottonwood Creek	10 (1/1 - 12/31)	11/15/1977
W-4667(1977)	Middle Cottonwood Creek	confl NF M Cottonwood Creek	confl S Cottonwood Creek	10 (1/1 - 12/31)	11/15/1977
W-4675(1977)	Poncha Creek	confl Silver Creek	confl S Arkansas River	8 (1/1 - 12/31)	11/15/1977
79CW0115	Cottonwood Creek	confl M&S Cottonwood Creeks	confl Arkansas River	20 (1/1 - 12/31)	03/14/1979

79CW0121	Middle Fork South Arkansas River	headwaters in vicinity	confl S Arkansas River	5 (1/1 - 12/31)	03/14/1979
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Potential for Injury

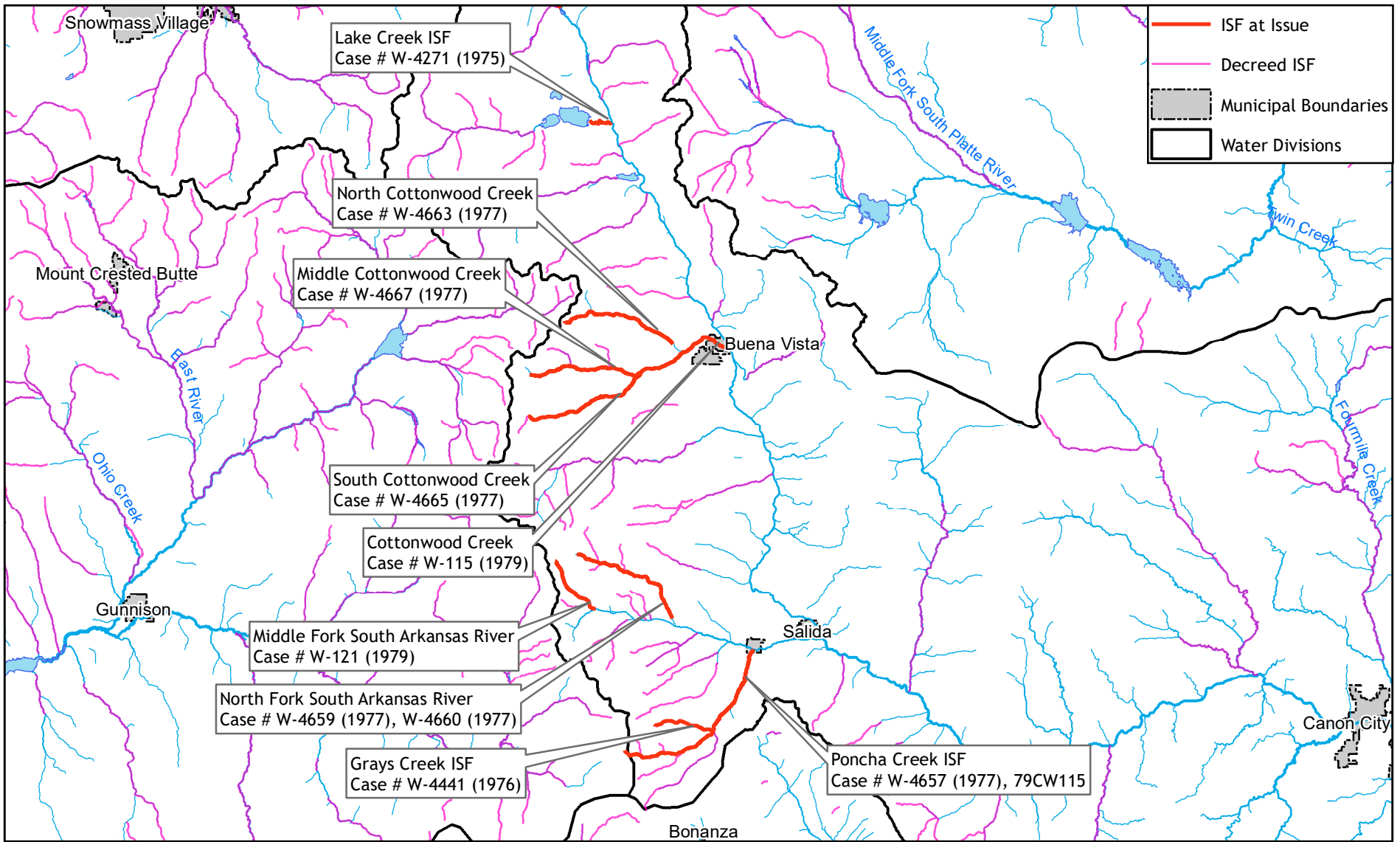
- Applicant must demonstrate that the conditional exchanges were operated in the amounts claimed and in-priority without injury to the CWCB's instream flow water rights in order to make those portions of the conditional appropriative rights of exchange absolute.
- The CWCB is unable to determine from the application whether additional grounds for opposition exist, and therefore reserves the right to assert other grounds for opposition as they become known.

Other Objectors

A Statement of Opposition was also filed by the City of Aurora.

Attorney Representing CWCB

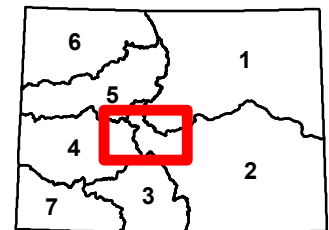
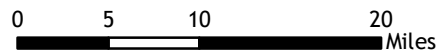
Andrew B. Nicewicz, Assistant Attorney General, is assigned to this case and can be contacted at andy.nicewicz@coag.gov, or 720-508-6259.



COLORADO
Colorado Water Conservancy Board

Department of Natural Resources

November 17-18, 2021 CWCB Board Meeting
 Consent Agenda Item 1.a Statement of Opposition
 Case No. 21CW3033 (Division 2)
 Application of Upper Arkansas Water Conservancy District



DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JUNE 2021. (This publication can be viewed in its entirety on the state court website at: www.courts.state.co.us).

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during June 2021, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved, and description of ruling sought as reflected by said applications, or amendments, are as follows:

****Per Order, Resume to be published by Water Division 1****

CASE NO. 2021CW3033; Previous Case No. 04CW96 – UPPER ARKANSAS WATER CONSERVANCY DISTRICT, acting through the Upper Arkansas Water Activity Enterprise (“UAWCD”), P.O. Box 1090, Salida, CO 81201 (Please direct all

correspondence to counsel for UAWCD: Law of the Rockies, Kendall K. Burgemeister, Atty. Reg. #41593, 525 North Main Street, Gunnison, CO 81230, 970-641-1903)

Amended Application for Finding of Reasonable Diligence and to Make Absolute in Part **PUEBLO, FREMONT, CHAFFEE, AND LAKE COUNTIES**

UAWCD seeks to make absolute portions of the conditional appropriative rights of exchange decreed in Case No. 04CW96 (District Court, Water Division 2, June 16, 2015) based on the exchange operations described below, and a finding of reasonable diligence for all conditional water rights and portions thereof decreed in Case No. 04CW96 that are not made absolute in this proceeding. Relevant structures are illustrated on **Exhibit A** attached to the Application a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

Arkansas River Exchanges: Exchange Rate: 160.0 c.f.s. (conditional). Appropriation date: November 11, 2004. Lower Terminus: Pueblo Reservoir (WDID: 1403526), UTM: 524076E, 4235362N. (All UTM coordinates in this Application are NAD 83, Zone 13S, and approximate.) Erroneous verbatim description from 04CW96 Decree: Sec. 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 in T 20S, R 55W and Sec. 1, 2, 3, 4, 5, 9, 10 and 11, in T 21 S, R 66 W, and Sec. 5, 8, 9, 13, 14, 15, 16, 22, 23, 24 and 25, T 20 S, R 67 W, all 6th P.M., Pueblo County, Colorado. Additional description from 04CW96: in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32,

**Attachment
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33, 34, 35 and 36 in Township 20 South, Range 66 West, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, in Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, 24 and 25, in Township 20 South, Range 67 West, all of the 6th P.M., in Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section bears North 61° 21' 20" East, a distance of 2,511.05', all more particularly described in the decree in Case No. B-42135, District Court, Pueblo County, Colorado, in Pueblo County. Upper Termini and Volumetric Limits:

Description	Location	Volumetric Limit (acre-feet per year)
Minnequa Ditch Headgate	SW1/4NW1/4NW1/4, Sec. 7, T19S, R69W, 6th P.M.; 486022 E, 4251810 N	1,000
Confluence of Grape Creek and Arkansas River	NW1/4NE1/4NW1/4, Sec. 6, T19S, R70W, 6th P.M.; 476546 E, 4253704 N (In 04CW96 Decree: NW/4, NE/4, NW/4, Sec. 7, T 19S, R 70W)	619
Confluence of Stout Creek and Arkansas River	SW1/4NE1/4NW1/4, Sec. 12, T48N, R10E, N.M.P.M.; 429079 E, 4253907 N	100
Confluence of Cherry Creek and Arkansas River	SW1/4NW1/4NW1/4, Sec. 12, T48N, R10E, N.M.P.M.; 428642 E, 4253844 N (in 04CW96 Decree: NW/4, SW/4, NW/4, Sec. 12, T 48N, R 10 E, N.M.PM)	100
Confluence of West Creek and Arkansas River	NE1/4NE1/4NW1/4, Sec. 11, T48N, R10E, N.M.P.M.; 427632 E, 4254216 N	100
Confluence of South Arkansas River and Arkansas River	SW1/4SW1/4SE1/4, Sec. 4, T 49N, R 9E, N.M.P.M.; 414781 E, 4264103 N	1,300
Confluence of Chalk Creek and Arkansas River	SW1/4NE1/4SW1/4, Sec. 13, T 15 S, R 78 W, 6th P.M.; 407321 E, 4288612 N	1,000
Helena Ditch Headgate	NE1/4SE1/4SE1/4, Sec. 16, T 14 S, R 78 W, 6th P.M.; 403682 E, 4298355 N	10,000
Confluence of Cottonwood Creek and Arkansas River	SW1/4NW1/4NE1/4, Sec. 16, T 14 S, R 78 W, 6th P.M.; 403016 E, 4299206 N	450
Confluence of Lake Creek and Arkansas River	NE1/4NW1/4SE1/4, Sec. 24, T 11 S, R 80 W, 6th P.M.; 389206 E, 4326202 N	1,000
Confluence of Lake Fork Creek and Arkansas River	SW1/4SW1/4SE1/4, Sec. 5, T 10 S, R 80 W, 6th P.M.; 383089 E, 4340034 N	1,000

South Arkansas Exchanges: Exchange Rate: Up to 23.7 cfs. Lower Terminus: Confluence of the Arkansas River and South Arkansas River, as described above (also described in 04CW96 Decree as SWNWSE Sec. 4, T49N, R9E, NMPM). Appropriation date: November 11, 2004. Volumetric limits, exchange rates, and upper termini:

Description	Location	Rate Limit (cfs)	Volumetric Limit (acre-feet per year)
Tennessee Ditch	SE1/4SW1/4SE1/4, Sec. 6, T 49N, R 9E, N.M.P.M.; 411693 E, 4264220 N	5.23	1,000

Confluence of Poncha Creek and South Arkansas River	NW1/4SE1/4SW1/4, Sec. 10, T 49N, R 8E, N.M.P.M.; 406224 E, 4262968 N (In 04CW96 Decree "NE/4, NE/4, SW/4, Sec. 10, T 49N, R 9E, N.M.P.M.")	23.7	700
Confluence of Grays Creek and Poncha Creek	NW1/4SE1/4SW1/4, Sec. 7, T 48N, R 8E, N.M.P.M.; 401471 E, 4253333 N	10	700
Noland Ditch	NE1/4SE1/4SE1/4, Sec. 1, T 49N, R 7E, N.M.P.M.; 401024 E, 4264610 N	1.96	238.6
O'Haver Reservoir	Section 12, T.48N., R.7E, N.M.P.M.; 399983 E, 4253720 N	10	700
Maysville	NE1/4NE1/4NW1/4, Sec. 3, T 49N, R 7E, N.M.P.M.; 396862 E, 4265780 N	23.7	1,300
Cameron Ditch	SE1/4SE1/4SW1/4, Sec. 34, T 50N, R 7E, N.M.P.M.; 396758 E, 4265940 N	17	800
Boss Lake	E½Sec. 29, T. 50N., R. 6E. N.M.P.M.; 385004 E, 4268662 N (In 04CW96 Decree: "E½ of Sec. 25 and NE¼ Sec. 29, T. 50N., R. 6E. N.M.P.M.")	23.7	680
North Fork Reservoir	SE1/4, Sec. 5, T.50N., R.6E, N.M.P.M.; 384999 E, 4274370 N	23.7	976.3

Cottonwood Creek Exchanges: Exchange Rate: Up to 20.67 cfs. Lower Terminus: Confluence of the Arkansas River and Cottonwood Creek, described above. Appropriation date: November 11, 2004. Volumetric limits, exchange rates, and upper termini:

Description	Location	Rate Limit (cfs)	Volumetric Limit (acre-feet per year)
Thompson Ditch Headgate	SW1/4NW1/4SE1/4 Sec.7, T 14S, R 78W, 6TH P.M.; 399910 E, 4300060 N	0.795	60
Cottonwood Irrigating Ditch No. 1 Headgate	SE1/4SW1/4NE1/4 Sec.13, T 14S, R 79W, 6TH P.M.; 398346 E, 4298880 N	3.0	1,183
Cottonwood Maxwell Ditch Headgate	NW1/4SE1/4SW1/4 Sec.22, T 14S, R 79W, 6TH P.M.; 394543 E, 4296750 N	0.775	60
Confluence of South Cottonwood and Middle Cottonwood Creeks	SE1/4NW1/4NW1/4 Sec.28, T 14S, R 79W, 6TH P.M.; 392678 E, 4296189 N	20.67	313.54
Rainbow Lake	SE1/4SW1/4 and SW1/4SE1/4 Sec. 19, T 14S, R 79W, 6TH P.M.; 390150 E, 4296557 N (In 04CW96 Decree:	16.90	192.8

	"SE/4, SWE/4, & SW/4, SE/4, Sec. 19 & NE/4, NW/4, Sec. 19, T 14S, R 79, 6 TH PM")		
Cottonwood Lake	SE1/4 Sec.36, T 14S, R 80W, 6TH P.M.; 388968 E, 4293208 N	20.11	210.74

Lake County Reservoir Exchange. Exchange Rate: 25 cfs (conditional). Lower Terminus: Confluence of Lake Creek and the Arkansas River, as described above. Upper Terminus: Twin Lakes Reservoir, in Lake County. 387249 E, 4326318 N. Appropriation date: November 11, 2004. Beneficial Use: The above exchanges are decreed for all uses for which the applicable source of substitute supply is decreed, including but not limited to irrigation, agricultural, municipal, industrial, replacement, fisheries, augmentation and exchange, and recreation. Structures from which the sources of substitute supply will be released: Pueblo Reservoir, as described above; DeWeese Reservoir in Custer County, 460690 E, 4229169N; North Fork Reservoir, as described above (The 04CW96 Decree also described the reservoir as "Beginning at the Northeasterly point of contact of the dam axis with the existing ground said point being situated whence the Northwest corner of Section 21, T.50N., R.7E, N.M.P.M., in Chaffee, County, Colorado bears South 68°50' East a distance of 31,920 feet; said point being further described by bearing on the Peak of Granite Mountain of North 23°28' West and by bearing on the Peak of Calico Mountain of North 37°03' East. Thence South 15°30' West a distance of 500 feet to the Southwesterly point of contact of the dam axis with existing ground"); O'Haver Reservoir, as described above (The 04CW96 Decree also described the reservoir as being "near the center of Section 12, T.48N., R.7E, N.M.P.M., in Chaffee County"); Boss Lake and/or Donnell Reservoir 1 and 2, as described above (The 04CW96 Decree also described the reservoir as being in the "E½ of Sec. 25 and NE¼ Sec. 29, T. 50 N., R. 6 E. N.M.P.M, in Chaffee County."); Cottonwood Lake, as described above; Rainbow Lake, as described above (The 04CW96 Decree also described the reservoir as being in "the SE¼SW¼, and SW¼SE¼, Sec. 19, the NE¼NW¼ and NW¼NE¼, Sec. 30, at a point whence the SE corner of Sec. 19, T. 14 S., R. 79W. 6th P.M. bears South 80°34.0' East, 2,110.3 feet."); Twin Lakes Reservoir, as described above; Turquoise Reservoir, in Lake County, 381722 E, 4345669 N; and Cameron Ditch, as described above ("The 04CW96 Decree also described the ditch as being in "located on North Fork of the South Arkansas River about one-half mile above the confluence of the North and South Forks of the South Arkansas River, in Chaffee County."). Sources of Substitute Supply. North Fork Reservoir: Date of Original Decree – Sept. 9, 1982; Case No. 82CW204, District Court, Water Division No. 2, Colorado; appropriation date – Sept. 9, 1982; amount – 595 a.f.; uses – irrigation, municipal, industrial, recreational, and augmentation; White Ditch: Date of original decree – April 20, 1993; Case No. 91CW19, District Court, Water Division No. 2; appropriation date – May 1, 1874; amount – 26.08 a.f.; uses – storage in North Fork Reservoir for municipal, irrigation, augmentation, and recreational; North Fork Reservoir, 1984 Enlargement: Date of Original Decree - September 18, 1985, Case No. 84CW141, District Court, Water Division No. 2, Colorado (this conditional water right has been canceled); Water owned by the City of Salida and provided to UAWCD and stored in North Fork

Reservoir pursuant to contract with UAWCD, decreed in Case Nos. 87CW61 or 04CW125, or any other decrees obtained by the City of Salida. Prior to using such water owned by Salida, UAWCD must have a contract with Salida giving UAWCD the right to such water such as the June 21, 1993 lease agreement currently in effect between UAWCD and Salida; O'Haver Reservoir: date of original decree - June 28, 1985, Case No. 82CW205, District Court, Water Division No. 2, Colorado; appropriation date - September 9, 1982; amount - 193 acre-feet; uses: agricultural, municipal, industrial, replacement, fisheries, augmentation and exchange, and recreation; Fryingpan-Arkansas Project water stored by exchange in Cottonwood Lake and Rainbow Lake: date of original decree – July 12, 1999, Case No. 96CW17, District Court, Water Division No. 2, Colorado; appropriation date – Feb. 10, 1939; amount – 10 c.f.s., 75 a.f.y.; uses – augmentation and replacement; Thompson Ditch Water stored in Rainbow Lake, date of original decree June 4, 1996, Case No. 95CW208, District Court, Water Division No. 2, Colorado, or in Cottonwood Lake, date of original decree August 19, 1995, Case No. 94CW5, District Court, Water Division No. 2, Colorado; appropriation date - April 5, 1930; amount - 23.45 a.f.y.; uses - augmentation and replacement uses; Any water available to UAWCD by reason of its ownership or control of shares in the Twin Lakes Reservoir and Canal Company (“Twin Lakes Water”) and other Twin Lakes Water currently owned or controlled by UAWCD or acquired by UAWCD in the future. Such additional Twin Lakes Water acquired in the future may be exchanged pursuant to this decree without further amendment to this decree. The water rights producing UAWCD’s interest in Twin Lakes water are: Colorado River Water Rights, as described in Case No. 3802, District Court, Garfield County, August 25, 1963 and Case No. W-1901, District Court, Water Div. No. 5, May 12, 1976; and Arkansas River Water Rights: Case No. 2346, District Court, Chaffee County, July 14, 1913 as modified in Case No. W-3965, District Court, Water Div. No. 2, April 19, 1974; Fryingpan-Arkansas Project Water and return flows from Fryingpan-Arkansas Project Water which may be allocated to UAWCD in accordance with applicable principles, policies, rules and regulations. The water rights of the Project consist of: West Slope Decrees: The Project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County, Colorado. The principal water rights were adjudicated by the decrees in Civil Action No. 4613, District Court, Garfield County on June 20, 1958 and August 3, 1959, and were modified by the Decree in Case No. W-829-76, District Court, Water Division No. 5, dated November 27, 1979, and supplemented by the Decree in Case No. 83CW352, District Court, Water Division No. 5, dated May 31, 1985. The Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont, and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141, District Court, Chaffee County, dated July 9, 1969, and Civil Action No. B-42135, District Court, Pueblo County, dated June 25, 1962, and were modified and supplemented by the Decree in Case No. 80CW6, District Court, Water Division No. 2, dated October 23, 1980;

and Any other water rights that UAWCD may add in the future pursuant to paragraph 11.f. of the 04CW96 Decree. A detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures is included in the Application. Specifically, UAWCD exercised its rights in the 04CW96 Exchanges in every year subsequent to the 04CW96 Decree. A tabulation of exchange operations is included as Exhibit B to the Application. Significantly: On August 12, 2019, UAWCD operated the Arkansas River Exchange at a rate of 50.55 acre-feet per day, or 25.49 cfs. The lower terminus was Pueblo Reservoir, and the upper termini were the confluence with the South Arkansas River (0.23 acre-feet), the confluence with Cottonwood Creek (0.32 acre-feet), and the confluence with Lake Creek (50 acre-feet); UAWCD exchanged Twin Lakes Water into Cottonwood Lake at a maximum rate of 1.95 acre-feet per day, or 0.98 cfs, from October 30 through November 18, 2019, and in a maximum annual volume of 39.6 acre-feet in 2019. UAWCD exchanges of Project Water did not exceed the maximum decreed rate under the senior 96CW17 exchange. UAWCD exchanged Twin Lakes Water into Rainbow Lake at a maximum rate of 8.81 cfs on October 3, 2016, and a maximum volume of 28.45 acre-feet in 2020. UAWCD exchanged Project Water at a rate of 14 cfs on May 17 and 18, 2020. Of this, 10 cfs was exchanged under the senior 96CW17 exchange. UAWCD completed multiple exchanges to Boss Lake, but none exceeded the senior absolute exchange rate decreed in 97CW31. UAWCD completed multiple exchanges to North Fork Reservoir, but none exceeded the senior absolute amounts decreed in 04CW96. UAWCD completed multiple exchanges to O'Haver Reservoir. None of the Project Water exchanges exceed the senior right decreed in 97CW160. UAWCD exchanged Twin Lakes Water at a maximum rate of 0.06 cfs and a maximum annual volume of 14.826 acre-feet in 2020; On August 12, 2019, UAWCD exchanged 50 acre-feet of water from Pueblo Reservoir to Twin Lakes Reservoir, at an average daily rate of 25.21 cfs. Owners of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored: Cottonwood Reservoir, North Fork Reservoir, Boss Lake, and O'Haver Reservoir are located on land owned by the United States Forest Service, 5575 Cleora Rd, Salida, CO 81201; A portion of Boss Lake may be located on land owned by SALCO Associates, LLP, 225 G St., Salida, CO 81201. Pueblo Reservoir, Turquoise Reservoir, and Twin Lakes Reservoir are owned by United States Department of the Interior, Bureau of Reclamation, 11056 W. County Road 18-E, Loveland, CO 80537; Rainbow Lake is located on land owned by Rainbow Lake Resort, Inc., P.O. Box 17450, Oklahoma City, OK, 73136; DeWeese Reservoir is owned by DeWeese Dye Ditch & Reservoir Co., c/o Dorothy Ormsby, PO Box 759, Canon City, CO 81215.

THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS 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.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of August 31 2021, (forms available at Clerk's office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$192.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 13th day of July 2021.

/s/ Michele M. Santistevan

Michele M. Santistevan, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
501 N. Elizabeth Street, Suite 116
Pueblo, CO 81003; (719) 404-8749

(Court seal)
Published: