

Consent Agenda Item 1.d

November 17-18, 2021 Board Meeting

Case No. 21CW3110 (Water Division 5); Gateway of Snowmass Metropolitan District

Summary of Water Court Application

Application for Approval of Amendments to Augmentation Plans and Appropriative Rights of Exchange.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in September 2021 to protect CWCB's instream flow water rights.

CWCB Instream Flow Water Rights

The CWCB holds water rights, including the following instream flow water rights in Water Division 5 in the Roaring Fork River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
W-2941(1976)	Capitol Creek	outlet Capitol Lake	confl Snowmass Creek	10 (1/1 - 12/31)	01/14/1976
W-2943(1976)	Snowmass Creek	confl Capitol Creek	confl Roaring Fork River	12 (4/1 - 10/15) 11 (10/16 - 3/31)	01/14/1976
92CW0281*	Snowmass Creek	confl Capitol Creek	confl Roaring Fork River	10.5 (4/1 - 10/15)	09/15/1992
85CW0639	Roaring Fork River	confl Fryingpan River	confl Crystal River	75 (10/1 - 3/31) 145 (4/1 - 9/30)	11/08/1985
85CW0646	Roaring Fork River	confl Maroon Creek	confl Fryingpan River	30 (10/1 - 3/31) 55 (4/1 - 9/30)	11/08/1985

* Increased

Potential for Injury

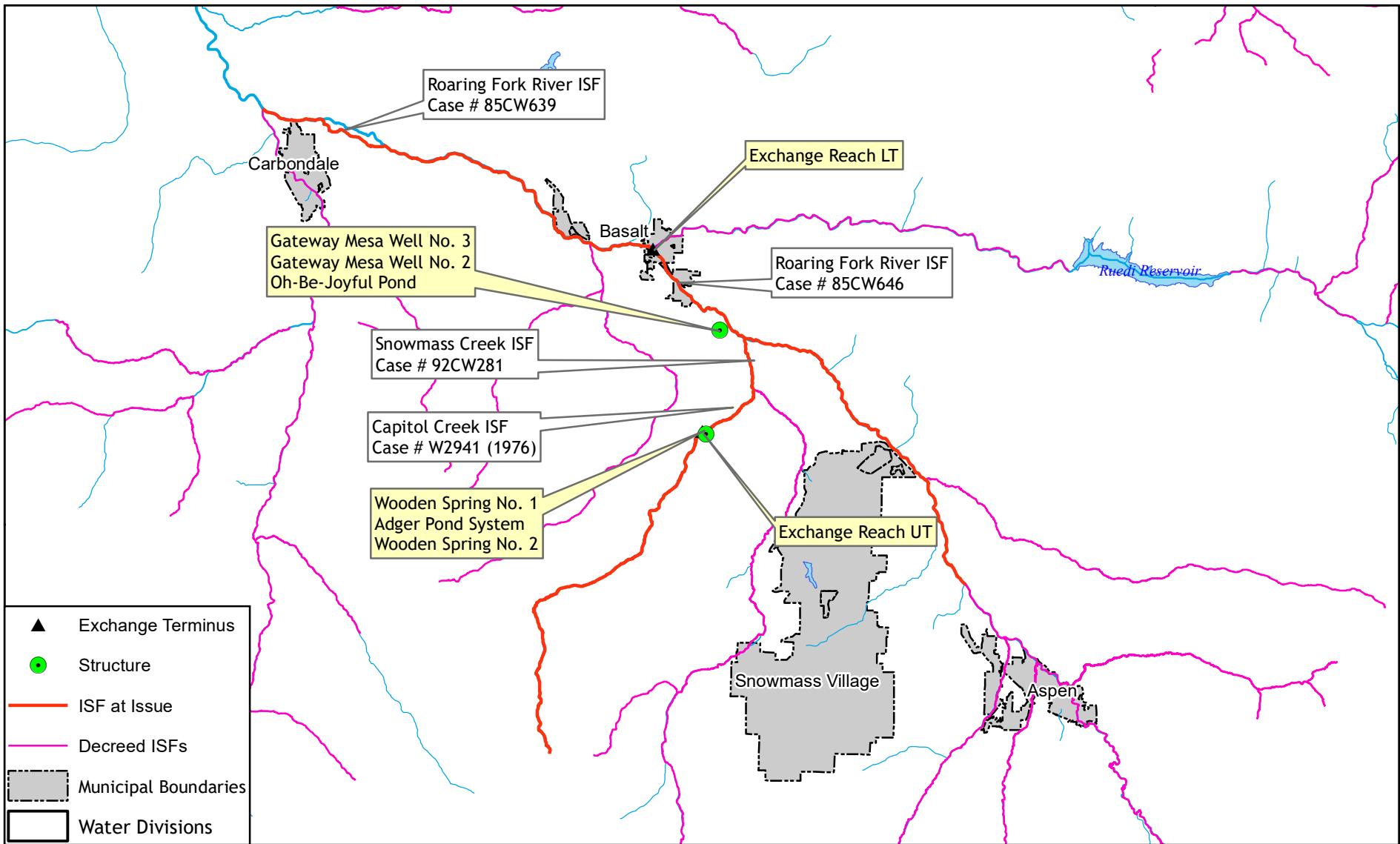
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- Terms and conditions should be included in any decree entered in this case to ensure that the decreed water rights will not injure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

Other Objectors

No other Statements of Opposition were filed.

Attorney Representing CWCB

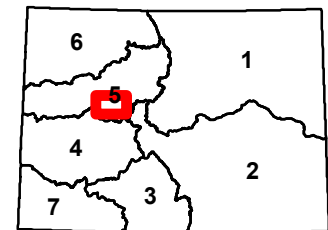
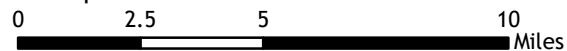
Patrick L. Barker, Assistant Attorney General, is assigned to this case and can be contacted at patrick.barker@coag.gov, or 720-508-6297.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

November 17-18, 2021 CWCB Board Meeting
 Consent Agenda Item 1.d Statement of Opposition
 Case No. 21CW3110 (Division 5)
 Application of Gateway of Snowmass
 Metropolitan District



DIVISION 5 WATER COURT-JULY 2021 RESUME

12. 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 JULY 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.*

21CW3110 PITKIN COUNTY, Application for Approval of Amendments to Augmentation Plans and Appropriative Rights of Exchange. Applicant: Gateway of Snowmass Metropolitan District; please direct all correspondence to Applicant's attorneys: Mary Elizabeth Geiger, Garfield & Hecht, P.C., 901 Grand Avenue, Suite 201, Glenwood Springs, CO 81601, (970)947-1936, megeiger@garfieldhecht.com. Applicant is a metropolitan district that provides potable water service to the Gateway of Snowmass Mesa Subdivision and certain real property adjacent thereto (see **Figure 1** attached to the Application). Applicant currently operates its water system pursuant to an augmentation plan approved by decree of this court in Case No. 91CW263, as amended by decree entered in Case No. 02CW392. Since the entry of those decrees and as the service by Applicant has expanded with development of the lots served, Applicant has tracked actual diversions and depletions which have changed in certain months, from the tables included in these decrees, as these decrees did not take into account early and late season irrigation and the extent of actual usage. Therefore, the purpose of this Application is to update the tables of demands, diversions and depletions and provide for the additional augmentation water Applicant has obtained from the Basalt Water Conservancy District ("BWCD") pursuant to Contract No. 235 (copy attached to the Application). *Water rights and structures to be augmented* (all shown on **Figure 2** attached to the Application): Gateway Mesa Well No. 2, decreed for 0.11 c.f.s. on June 27, 1973, in Case No. W-1440, District Court in and for Water Division No. 5. Gateway Mesa Well No. 2, First Enlargement, decreed for 50 g.p.m. on December 28, 1998 in Case No. 91CW261, District Court in and for Water Division No. 5. Gateway Mesa Well No. 3, decreed for 100 g.p.m. on December 28, 1998 in Case No. 91CW261, District Court in and for Water Division No. 5. Adger Pond System, decreed for 3.2 acre-feet on December 18, 1995 in Case No. 94CW184, District Court in and for Water Division No. 5. Wooden Spring No. 1, First Enlargement, decreed for 0.1 c.f.s. on December 18, 1995 in Case No. 94CW184, District Court in and for Water Division No. 5. Wooden Spring No. 2, First Enlargement, decreed for 0.1 c.f.s. on December 18, 1995 in Case No. 94CW184, District Court in and for Water Division No. 5. *Sources of Augmentation Water:* Applicant has contracted with BWCD for 29.4 acre-feet of water (Contract No. 235) from the BWCD's sources described as follows: 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

**Attachment
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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 SOLD, TRANSFERRED OR RESERVED					AMOUNT REMAINING FOR DISTRICT (10)	
							(5)	(6)	(7)	(8)	(9)	CFS	AF
Troy Ditch (1)	370	3082	08/25/1936	05/01/1906	5.10	I	0.000	0.000	0.095	0.064	0.035	4.906	N/A
Troy Ditch 1st Enlg	427	3082	08/25/1936	05/01/1928	10.80	I	0.000	0.000	0.200	0.134	0.073	10.393	N/A
Troy Ditch 2nd Enlg	669	4613	06/20/1958	06/01/1942	6.20	I	0.000	0.000	0.115	0.077	0.042	5.966	N/A
Edith Ditch	353	3082	08/25/1936	05/01/1904	2.72	I	0.110	0.1320	0.050	0.000	0.018	2.410	N/A
Edith Ditch 1st Enlg	673	4613	06/20/1958	07/01/1946	3.23	I	0.000	0.000	0.060	0.000	0.022	3.148	N/A
Troy Ditch Water System a.k.a. Lower Headgate	(2)	W-2281			15.50(3)	I, D, M, C, P	0.110	0.1320	0.520	0.275	0.190	14.273	412.89

Originally diverted from Miller Creek. All others originally diverted from Fryingpan River. Alternate point for all priorities of Troy and Edith Ditches. Combined amount limited to 15.5 cfs. and 453 AF of consumptive use, 300 AF of which can be stored. I = Irrigation, D = Domestic, M = Municipal, C = Industrial and P = Piscatorial. Transferred to Edith Ditch Well in Case No. 80CW1 with 1.0 AF. Transferred to three springs on Cap K Ranch in Case No. 82CW189 (1.29 AF assumed to be included). 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. Deeded to Joan Wheeler in 1987 for diversion at the Troy Ditch 1st and 2nd Enlargement (16.9 AF assumed to be included). Reserved for augmentation of Cap K Ponds with 5.52 AF. Case No. 91CW220. 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

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

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. 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. **Historic Consumptive Use Credits as Quantified in Case No. 02CW392:** Applicant is entitled to the use of 2.94 acre feet of consumptive use credits from the Williams No. 4 Ditch (originally decreed in CA 968, Garfield County District Court) from August through October when there is a valid enforceable call on Snowmass Creek. The Applicant owns water rights in the *Adger Pond System* which are available for releases for augmentation: **Prior decrees:** December 18, 1995, Case No. 94CW184 (1 of 3), District Court in and for Water Division No. 5; made absolute by decree entered in Case No. 18CW3064, District Court in and for Water Division No. 5. **Location:** The centerline of the dam axis of the Adger Pond System is located in the SE1/4 of Section 4, Township 9 South, Range 86 West of the 6th P.M. at a point 1,375 feet east of the West section line and 875 feet north of the South section line. **Source:** Wooden Springs Nos. 1 and 2 as decreed in Case No. 94CW184 (3 of 3), and unnamed springs tributary to the Roaring Fork River, tributary to the Colorado River. **Appropriation Date:** April 10, 1992. **Amount:** 3.5 acre-feet, with the right to fill and refill when and if water is legally and physically available. **Uses:** aesthetic, augmentation and exchange. **Length of dam:** 250 feet. **Total capacity of reservoir:** 3.5 acre-feet; Active storage: 3.5 acre-feet; dead storage: 0 acre-feet. The Applicant owns water rights in the *Oh-Be-Joyful Pond* which are available for releases for augmentation: **Original Decree:** Case No. 87CW138, District Court in and for Water Division No. 5, entered on October 29, 1987; Case No. 96CW186, District Court in and for Water Division No. 5, entered on November 5, 1996, with regard to Applicant's uses. **Legal Description as Corrected by Decree entered in Case No. 19CW3051:** The point of diversion and place of storage is at a point in Section 34, Township 8 South, Range 86 West of the 6th P.M. being 1689 feet from the North section line and 2650 feet from the West section line. **Source:** spring runoff, Snowmass Creek, tributary to the Roaring Fork River and the Gateway Mesa Wastewater Ditch (as decreed in Case No. 96CW185), all tributary to the Colorado River. **Appropriation Date:** September 1, 1962; December 8, 1991 (for Applicant's uses). **Amount:** 1.72 acre-feet, absolute, 1.3 acre-feet of which is for Applicant's uses for augmentation and exchange. **Use:** piscatorial and irrigation; augmentation and exchange. **Description of Amendment to Plans for Augmentation:** As stated above, Applicant is a metropolitan district that provides potable water service to the Gateway at Snowmass Mesa Subdivision and certain surrounding properties (**Figure 1**). This Application does not alter the general framework of the augmentation plans previously approved in Case Nos. 91CW263 and 02CW392, which are incorporated herein by reference. Instead, Applicant substitutes the attached **Table 2** (a complete outline of the water use for the Applicant's service area – diversions and depletions), **Table 3** (summary of augmentation requirements necessary to replace for the depletions along with a delayed pumping and proposed transit losses), **Table 4** (amounts and sources of augmentation to be used on a monthly basis), as well as an updated BWCD Contract No. 235 in the amount of 29.4 acre-feet. **Augmentation By Ruedi Reservoir Releases:** At times when an administrative call is placed on the mainstem of the Colorado River and/or the Roaring Fork River up to its confluence with the Fryingpan River, the Applicant's out-of-priority depletions will be augmented by water released from Ruedi Reservoir pursuant to the Applicant's water allotment contract with the BWCD and/or historic consumptive use credits from the Williams No. 4 Ditch. It is anticipated that the Applicant's well or wells may frequently be placed on call by the Cameo demand from the period of April and June through October in various years. **Augmentation Pond Releases:** In those rare instances when a valid administrative call is placed on Snowmass Creek or any portion of the Roaring Fork River above the Fryingpan River to its confluence with Snowmass Creek, Applicant will release water from the Adger Pond System or the Oh-Be-Joyful Pond to augment its out-of-priority depletions, as well as use of the historic consumptive use credits from the Williams No. 4 Ditch. **Claim for Conditional Appropriative Rights of Exchange: Exchange Reach No. 1: Lower terminus:** Confluence of the Fryingpan River and the Roaring Fork River The confluence of the Roaring Fork and Fryingpan Rivers, located in the SW ¼, SE ¼, Section 7, Township 8 South, Range 86 West of the 6th P.M., at a point approximately 647 feet from the South section line and 1,475 feet from the East section line (Eagle and Pitkin Counties). **Upper terminus:** Point of diversion for Wooden Spring No. 2 which is the most upstream point of diversion for Applicant's water system, located at in the SW ¼ of the SW ¼ of Section 4, Township 9 South, Range 86 West of the 6th P.M. at a point 1,105 feet east of the West section line and 800 feet north of the South section line. **See Figure 2** attached to the Application. **Exchange Reach No. 2. Lower terminus:** Confluence of the Roaring Fork River and Colorado River generally located in the SE ¼ NW ¼ of Section 9, Township 6 South, Range 89 West of the 6th P.M., at a point approximately 2200 feet from the North section line and 2350 feet from the West section line (Garfield County). **Upper terminus:** Point of diversion for Wooden Spring No. 2 which is the most upstream point of diversion for Applicant's water system, located at in the SW ¼ of the SW ¼ of Section 4, Township 9 South, Range 86 West of the 6th P.M. at a point 1,105 feet east of the West section line and 800 feet north of the South section line. **See Figure 2** attached to the Application. **Appropriation date of exchanges:** June 2, 1992, by the filing of the application in the original augmentation plan in Case No. 91CW263, District Court in and for Water Division No. 5. **Exchange rate for each Exchange:** 0.15 c.f.s, conditional, with a volumetric limit of 29.4 acre-feet. (10 pages) **YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of SEPTEMBER 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, CO81601.**