

**Consent Agenda Item 1.a**

March 15-16, 2022 Board Meeting

Case No. 21CW3236 (Water Division 1); City of Boulder

**Summary of Water Court Application**

Application for Approval of Conditional Water Storage Rights and Conditional Appropriative Rights of Substitution and Exchange.

**Staff Recommendation**

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in February 2022 to protect CWCB's instream flow water rights and to protect CWCB's exclusive authority to hold instream flow water rights.

**CWCB Instream Flow Water Rights**

The CWCB holds water rights, including the following instream flow water rights in Water Division 1 in the St. Vrain River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
95CW0257	Jasper Creek	headwaters in vicinity	confl S Fk Middle Boulder Creek	2.25 (4/16 - 10/15) 1 (10/16 - 4/15)	07/24/1995
94CW0019	North Boulder Creek	confl Lakewood Res inlet	confl N & M Boulder Creeks	5 (4/1 - 9/30) 2 (10/1 - 3/31)	11/10/1993
94CW0020	North Boulder Creek	hdgt Silver Lake div structure	confl Lakewood Res inlet	4 (4/1 - 10/31) 1.5 (11/1 - 3/31)	11/10/1993
W-9375 (1978)	Middle Boulder Creek	confl NF & SF M Boulder Ck	inlet Barker Res	12 (1/1 - 12/31)	07/11/1978
86CW0300	South Fork Middle Boulder Creek	confl Jasper Creek	confl NF Middle Boulder Creek	4 (10/1 - 3/31) 8 (4/1 - 9/30)	09/05/1986
80CW0379	South Boulder Creek	outlet Gross Res	USGS gage 06729500	15 (5/1 - 9/30) 6 (10/1 - 4/30)	12/02/1980
80CW0379	South Boulder Creek	USGS Gage 06729500	South Boulder Road bridge	2 (10/1 - 4/30) 15 (5/1 - 9/30)	12/02/1980
W-7636 (1974)	Boulder Creek	PSC Hydro Plant outfall	75th Street bridge	15 (1/1 - 12/31)	10/01/1973
94CW0018	Boulder Creek	confl N & M Boulder Creeks	PSC Hydro Plant outfall	15 (4/1 - 10/31) 6 (11/1 - 3/31)	11/10/1993

### **Potential for Injury**

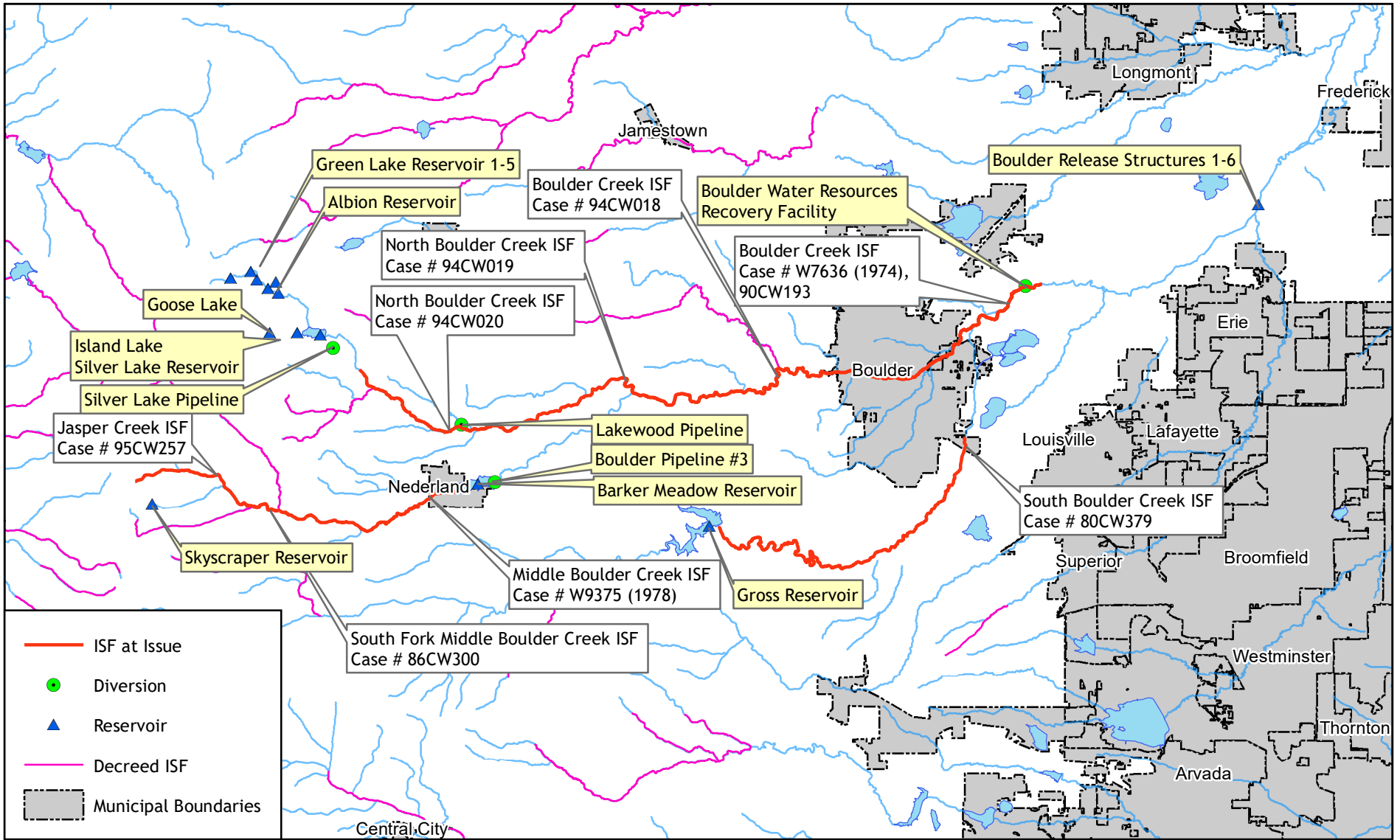
- The proposed appropriative right of exchange should be defined clearly with a reference to intervening instream flow water rights so that the CWCB's instream flow water rights are not injured.
- Terms and conditions should be included in any decree entered in this case to ensure that the decreed water rights will not injure the CWCB's acquired instream flow water rights and flows protected under Case Nos. 79CW308 and 90CW193.
- CWCB has exclusive authority to hold instream flow water rights. Applicant has not requested a contract or other device from CWCB for instream flow use of the water.
- Terms and conditions should be included in any decree entered in this case to ensure that Applicant's claims will not injure the CWCB's instream flow water rights, including those claims for which the type and place of use are not fully defined.

### **Other Objectors**

Statements of Opposition were also filed by City and County of Denver, acting by and through its Board of Water Commissioners, City of Lafayette, Dream Weaver Holdings, LLC, Eldora Enterprises LLC, Shores on Plum Creek Metropolitan District Nos. 1 through 10, Town of Erie, Water Users Association of District No. 6, Boulder & White Rock Ditch Company and, Public Service Company of Colorado, a Colorado corporation.

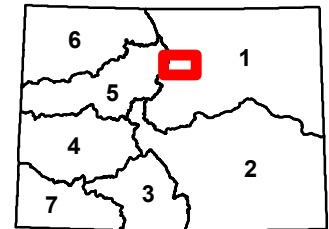
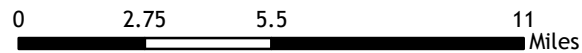
### **Attorney Representing CWCB**

Jennifer L. Mele, First Assistant Attorney General, is assigned to this case and can be contacted at [jennifer.mele@coag.gov](mailto:jennifer.mele@coag.gov), or 720-508-6282.



**COLORADO**  
**Colorado Water Conservation Board**  
 Department of Natural Resources

March 15-16, 2022 CWCB Board Meeting  
 Consent Agenda Item 1.a Statement of Opposition  
 Case No. 21CW3236 (Division 1)  
 City of Boulder



**DISTRICT COURT, WATER DIVISION 1, COLORADO  
DECEMBER 2021 WATER RESUME PUBLICATION**

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**TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN WATER DIV. 1**

Pursuant to C.R.S. 37-92-302, you are notified that the following is a resume of all water right applications and certain amendments filed in the Office of the Water Clerk during the month of **DECEMBER 2021** for each County affected.

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**21CW3236, CITY OF BOULDER** (“Boulder”), c/o Kim Hutton, P.E., Water Resources Manager, P.O. Box 791, Boulder, Colorado 80306-0791, Telephone: (303) 441-3200, email: huttonk@bouldercolorado.gov. Attorneys: Jessica L. Pault-Atiase, CITY OF BOULDER, COLORADO, OFFICE OF THE CITY ATTORNEY, P. O. Box 791, Boulder, Colorado 80306-0791, Telephone: (303) 441-3020, email: pault-atiasej@bouldercolorado.gov and Douglas M. Sinor, Esq., TROUT RALEY, 1120 Lincoln Street, Suite 1600, Denver, Colorado 80203, Telephone: (303) 861-1963, email: dsinor@troutlaw.com. **APPLICATION FOR APPROVAL OF CONDITIONAL WATER STORAGE RIGHTS AND CONDITIONAL APPROPRIATIVE RIGHTS OF SUBSTITUTION AND EXCHANGE, IN BOULDER COUNTY, COLORADO.** 1. Name, Mailing Address, Email Address and Telephone Number of Applicant: As above. 2. Introduction: By this application (“Application”), Boulder seeks approval of conditional water storage rights for Lake A, Goose Lake, Green Lakes Reservoir No. 1 and Green Lakes Reservoir No. 3, all on-stream high mountain reservoirs located within the City of Boulder municipal watershed. The conditional water storage rights claimed in this Application are in addition to existing decreed water storage rights for these high mountain reservoirs and will allow Boulder to store fully consumable municipal water in amounts consistent with the total capacity of each reservoir. For Lake Albion, Boulder plans to enlarge the total capacity of the reservoir as part of required dam safety improvements, and the conditional water storage right for municipal purposes claimed in this Application is based on the planned enlargement and raised height of the dam. For Goose Lake, Green Lakes Reservoir No. 1 and Green Lakes Reservoir No. 3, the existing decrees are for agricultural and municipal purposes in amounts less than the total capacity of each reservoir and the conditional water storage rights will allow Boulder to make full use of the total reservoir capacities for fully consumable municipal purposes. When electing to fill under the claimed conditional water storage rights, Boulder will paper-fill the senior right for each reservoir in the amount equal to such diversions to the extent the senior right has not been fully exercised that water year. In this Application, Boulder also seeks approval for conditional appropriative rights of substitution and exchange, whereby fully consumable water attributable to the conditional water storage rights made available at the Boulder Water Resources Recovery Facility Outfall or Release Structures Nos. 1 through 6, will be exchanged back up Boulder Creek and its tributaries for diversion to storage or direct use by Boulder. Boulder does not seek to include municipal return flows from outdoor uses of the conditional water storage rights as sources of substitute water supply for the conditional appropriative rights of substitution and exchange claimed in this Application but expressly reserves its rights to use such water and seek exchange rights of return flows from outdoor uses in one or more future water court applications or administrative proceedings to approve the same for temporary use. 3. Description of Conditional Water Storage Rights: a. Name of Reservoir: Lake Albion Enlargement i. Legal Description: Lake Albion is located in Section 18, Township 1 North, Range 73 West, 6th P.M., Boulder County, as depicted on the map attached hereto as **Exhibit A**. ii. Source: Albion Creek, a tributary to North Boulder Creek. iii. Date of Appropriation: December 30, 2021, on which date there was a concurrence of intent to appropriate and overt acts in furtherance of such intent, including, without limitation, the filing date of this Application. iv. Amount: 300 acre-feet, new conditional enlargement. v. Structure Details: 1. Surface Area of High Water Line: The exact parameters of the enlarged reservoir will not be known until

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final design and construction is complete, but the current surface area of Lake Albion is approximately 36 acres. 2. Vertical Height of Main Enlarged Dam: The exact parameters of the enlarged reservoir will not be known until final design and construction is complete, but the current height of the dam is 36 feet. 3. Length of Dam: 780 feet. vi. Total Capacity of Reservoir in Acre-Feet: The exact parameters of the enlarged storage structure will not be known until final design and construction is completed. The current capacity of Lake Albion is 1,111 acre feet. b. Name of Reservoir: Goose Lake Reservoir i. Legal Description: Goose Lake is located in Sections 19 and 30, Township 1 North, Range 73 West, 6th P.M., as depicted on the map attached hereto as **Exhibit A**. ii. Source: South branch of North Boulder Creek. iii. Date of Appropriation: December 30, 2021, on which date there was a concurrence of intent to appropriate and overt acts in furtherance of such intent, including, without limitation, the filing date of this Application. iv. Amount: 198.5 acre-feet, conditional. v. Structure Details: 1. Surface Area of High Water Line: Approximately 46 acres. 2. Vertical Height of Main Enlarged Dam: 31.7 feet. 3. Length of Dam: 425 feet. vi. Total Capacity of Reservoir in Acre-Feet: 1,036 acre feet. c. Name of Reservoir: Green Lakes Reservoir No. 1 i. Legal Description: Green Lakes Reservoir No. 1 is located in Section 18, Township 1 North, Range 73 West, 6th P.M., as depicted on the map attached hereto as **Exhibit A**. ii. Source: Albion Creek, a tributary to North Boulder Creek. iii. Date of Appropriation: December 30, 2021, on which date there was a concurrence of intent to appropriate and overt acts in furtherance of such intent, including, without limitation, the filing date of this Application. iv. Amount: 183.3 acre-feet, conditional. v. Structure Details: 1. Surface Area of High Water Line: Approximately 12 acres. 2. Vertical Height of Main Enlarged Dam: 24 feet. 3. Length of Dam: 270 feet. vi. Total Capacity of Reservoir in Acre-Feet: 197.3 acre feet. d. Name of Reservoir: Green Lakes Reservoir No. 3 i. Legal Description: Green Lakes Reservoir No. 3 is located in Section 18, Township 1 North, Range 73 West, 6th P.M., as depicted on the map attached hereto as **Exhibit A**. ii. Source: Albion Creek, a tributary to North Boulder Creek. iii. Date of Appropriation: December 30, 2021, on which date there was a concurrence of intent to appropriate and overt acts in furtherance of such intent, including, without limitation, the filing date of this Application. iv. Amount: 336.2 acre-feet, conditional. v. Structure Details: 1. Surface Area of High Water Line: Approximately 20 acres. 2. Vertical Height of Main Enlarged Dam: 28 feet. 3. Length of Dam: 315 feet. vi. Total Capacity of Reservoir in Acre-Feet: 336.2 acre feet. e. Uses: All municipal purposes, including, without limitation, domestic, storage, irrigation, commercial, industrial, power generation, fire protection, recreation, fish and wildlife preservation and propagation, exchange, substitution, augmentation, replacement and recharge, within the Boulder service area and outside the Boulder service area for such extra-territorial customers as Boulder may serve from time to time pursuant to City Charter and contracts. i. Reuse and Successive Use: Boulder claims the right to make a fully consumptive first use of the water and to use, reuse and successively use and dispose of the water to extinction for the purposes described in this Application. Boulder has a specific plan and intent to divert, store or otherwise capture, possess and control a specific quantity of water for the specific beneficial uses described above, including reuse and successive use by exchange as claimed in this Application. Boulder will quantify return flows from municipal indoor use of the conditional water storage rights using the methodology decreed for Boulder in Case No. 15CW3047, District Court, Water Division 1, October 18, 2016. 4. Description of Conditional Substitutions and Exchanges: Pursuant to Sections 37-80-120, 37-83-104 and 37-92-302(1)(a), C.R.S., Boulder seeks adjudication of appropriative rights of substitution and exchange on Boulder Creek, South Boulder Creek, Middle Boulder Creek, and North Boulder Creek, whereby Boulder's fully consumable water supplies attributable to the conditional water storage rights claimed herein will be delivered to Boulder Creek at the location of the Boulder Water Resources Recovery Facility Outfall or at the locations of Release Structures Nos. 1 through 6 to supply downstream appropriators, and an equivalent amount of water will be diverted from 1) South Boulder Creek into the Environmental Pool of an enlarged Gross Reservoir; 2) Middle Boulder Creek and its tributaries at Barker Meadow Reservoir, Boulder City Pipeline #3, and/or Skyscraper Reservoir; and 3) North Boulder Creek and its tributaries at Lakewood Pipeline, Silver Lake Pipeline, Silver Lake Reservoir, Island Lake, Goose Lake, Lake Albion, Green Lakes Reservoir No. 1, Green Lakes Reservoir No. 2, Green Lakes Reservoir No. 3, Green Lakes Reservoir No. 4 and/or Green Lakes Reservoir No. 5, for direct use or for storage for subsequent use by Boulder for the uses described below. a. Exchange Reaches: The lower termini of all

exchanges are the Boulder Water Resources Recovery Facility Outfall and Release Structure No. 6 on Boulder Creek, as described more particularly below. i. South Boulder Creek Exchange. The upper terminus of the substitution and exchange reach on Boulder Creek/South Boulder Creek is the Environmental Pool of Gross Reservoir, as it will be enlarged. ii. Middle Boulder Creek Exchange. The upper termini of the substitution and exchange reach on Boulder Creek/Middle Boulder Creek is Skyscraper Reservoir. iii. North Boulder Creek Exchange. The upper termini of the substitution and exchange reach on Boulder Creek/North Boulder Creek are Goose Lake and Green Lakes Reservoir No. 5. iv. The individual exchange locations are described in more detail below. b. Exchange-From Locations (all in Boulder County, Colorado): i. Boulder Water Resources Recovery Facility Outfall: The Boulder Water Resources Recovery Facility (also known as the WRRF and Wastewater Treatment Facility) Outfall is located at or near the intersection of Boulder Creek and 75<sup>th</sup> Street, in the SW1/4 SW1/4 NE1/4, Section 13, Township 1 North, Range 70 West of the 6<sup>th</sup> P.M., at a point located approximately 2,500 feet from the north section line and 2,340 feet from the east section line of said Section 13. ii. Release Structures Nos. 1 through 6: Boulder will store and subsequently release water from Wittemyer Ponds or other reservoir(s) in lower Boulder Creek to Release Structures Nos.1 through 6 for delivery to Boulder Creek. The proposed locations for Release Structures Nos. 1 through 6 were decreed in Case No. 2016CW3160 and are described below.

<b>Release Structures</b>	<b>LAT/LONG</b>		<b>UTM zone 13N</b>	
	<i>x_coord</i>	<i>y_coord</i>	<i>Easting</i>	<i>Northing</i>
1	-105.0651006	40.0771491	494449.2934	4436322.102
2	-105.064295	40.077976	494518.0459	4436413.829
3	-105.0636228	40.079028	494575.4461	4436530.556
4	-105.0627924	40.0798545	494646.3112	4436622.235
5	-105.0577251	40.0868667	495078.8557	4437400.237
6	-105.0560561	40.0914679	495221.459	4437910.851

a. Exchange-To Location South Boulder Creek: i. Gross Reservoir Environmental Pool: Gross Reservoir is an on-stream reservoir that is proposed to be enlarged. The dam of Gross Reservoir is located in Tracts 48 and 49, Township 1 South, Range 71 West of the 6<sup>th</sup> Principal Meridian (where the north half (N1/2) of the southeast quarter (SE1/4) of Section 20 of Township 1 South, Range 71 West of the 6<sup>th</sup> Principal Meridian would be located by ordinary survey practices) and creates a reservoir covering parts of Tracts 47, 48, 49, 44, 45, 63, 107, 108, 109 and 110, the south half (S1/2) of the south half (S1/2) of Section 18, Section 19, Section 30, the south half (S1/2) of the northeast quarter (NE1/4) of Section 25 and the east half (E1/2) of the southeast quarter (SE1/4) of Section 24, all in Township 1 South, Range 71 West of the 6<sup>th</sup> Principal Meridian in Boulder County, Colorado. d. Exchange-To Locations Middle Boulder Creek (all in Boulder County, Colorado): i. Boulder City Pipeline #3: The pipeline intake from Barker Reservoir, located at a point whence the northwest corner of Section 17, Township 1 South, Range 72 West, 6<sup>th</sup> P.M., bears North 16°04' West a distance of 1920± feet. ii. Barker Meadow Reservoir: Barker Meadow Reservoir is located on the mainstem of Middle Boulder Creek in the W 1/2 of Section 17 and in Section 18, Township 1 South, Range 72 West, of the 6<sup>th</sup> P.M. and in the E 1/2 of Section 13, Township 1 South, Range 73 West, of the 6<sup>th</sup> P.M. iii. Skyscraper Reservoir: Skyscraper Reservoir is located in the SW ¼ SE ¼, Section 16, Township 1 South, Range 74 West of the 6<sup>th</sup> P.M. e. Exchange-To Locations North Boulder Creek (all in Boulder County, Colorado) i. Lakewood Pipeline: The pipeline intake from Lakewood Reservoir, also known as Headgate No. 1 of the Boulder City Pipeline (Lakewood Pipeline) is located at a point whence the southeast corner of Section 1, Township 1 South, Range 73 West of the 6<sup>th</sup> P.M., bears South 3°15' East a distance of 2,300 feet. ii. Silver Lake Pipeline: Headgate No. 3 of the Boulder City Pipeline, located at a point whence the NW corner of Section 34, Township 1 North, Range 73 West of the 6<sup>th</sup> P.M., bears North 77°35' West a distance of 1076+ feet. iii. Silver Lake Reservoir: Silver Lake Reservoir is located in Sections 20, 21, 28 and 29 of Township 1 North, Range 73 West, 6<sup>th</sup> P.M. iv. Island Lake: Island Lake is located in Sections 20 and 29, Township 1 North, Range 73 West, 6<sup>th</sup> P.M. v. Goose Lake: Goose Lake is

located in Section 19 and 30, Township 1 North, Range 73 West, 6th P.M. vi. Lake Albion: Lake Albion is located in Section 18, Township 1 North, Range 73 West, 6th P.M. vii. Green Lakes Reservoir No. 1: Green Lakes Reservoir No. 1 is located in Section 18, Township 1 North, Range 73 West, 6th P.M. viii. Green Lakes Reservoir No. 2: Green Lakes Reservoir No. 2 is located in Section 18, Township 1 North, Range 73 West, 6th P.M. ix. Green Lakes Reservoir No. 3: Green Lakes Reservoir No. 3 is located in Section 18, Township 1 North, Range 73 West, 6th P.M. x. Green Lakes Reservoir No. 4: Green Lakes Reservoir No. 4 is located in the Northwest Quarter of the Northwest Quarter of Section 18, Township 1 North, Range 73 West of the 6<sup>th</sup> P.M. and the North Half of the Northeast Quarter of Section 13, Township 1 North, Range 74 West of the 6<sup>th</sup> P.M. xi. Green Lakes Reservoir No. 5: Green Lakes Reservoir No. 5 is located in the Southeast Quarter of the Northwest Quarter and the North Half of the Southwest Quarter of Section 13, in Township 1 North of Range 74 West of the 6<sup>th</sup> P.M. A map showing the approximate locations of the above-described structures and the substitution and exchange reaches is attached to this Application as **Exhibit B**. An exchange matrix is also attached to this Application as **Exhibit C**. f. Water and Water Rights to be Used for Substitution and Exchange: The sources of substitute water supply for the exchanges are the fully consumable return flows from indoor uses of the conditional water storage rights claimed in this Application as more particularly described in Section 3 above. g. Date of Appropriation: December 30, 2021, on which date there was a concurrence of intent to appropriate and overt acts in furtherance of such intent, including, without limitation, the filing date of this Application. h. Amount: The rate of diversion at each of the above-described facilities by exchange from the Boulder Water Resources Recovery Facility Outfall shall be 21.9 c.f.s., CONDITIONAL, and from Release Structure No. 6 shall be 100 c.f.s. or the diversion capacity of the facility, CONDITIONAL. The simultaneous combined rate of diversion by exchange for all such facilities shall not exceed 121.9 c.f.s. i. Uses of Water Diverted by Substitution and Exchange: All uses for which the substitute supplies are claimed, as more particularly described in Section 3.e. above. j. Remarks: The exchange rates claimed in this Application are the same as the exchange rates decreed for Boulder in Case No. 16CW3160, but are not intended to be additive. Boulder will limit the combined rate of exchange for the exchanges claimed in this Application and the exchanges decreed in Case No. 16CW3160 to the exchange rates decreed in Case No. 16CW3160. Boulder will further limit the combined volumes of exchange for the exchanges claimed in this Application and the exchanges decreed in Case No. 16CW3160 to the volumetric limits contained in paragraph 21.g of the decree in Case No. 16CW3160. 5. Name(s) and address(es) of owner(s) 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: Gross Reservoir: City and County of Denver 1600 West 12th Avenue Denver, CO 80204-3412 United States Forest Service, Boulder Ranger District, Arapaho and Roosevelt National Forests 2140 Yarmouth Avenue, Boulder, CO 80301 Miramonte Limited Liability Company c/o Bruce K. Alexander 1000 E. Tufts Avenue Cherry Creek Village, Denver, CO 80113 Release Structures Nos. 1 through 6: Boulder County Parks and Open Space 5201 St Vrain Road, Building 1 Longmont, CO 80503 Crestone Peak Resources 1801 California Street, Suite 2500 Denver, CO 80202 All Other Structures: Applicant, City of Boulder P. O. Box 791 Boulder, Colorado 80306 WHEREFORE, Boulder requests the Court to enter a decree confirming and approving the conditional water storage rights and conditional appropriative rights of substitution and exchange described herein. (12 pages)

THE WATER RIGHTS CLAIMED BY THESE APPLICATIONS MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT WITHIN THE TIME PROVIDED BY STATUTE OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or an amended application, may file with the Water Clerk, P. O. Box 2038, Greeley, CO 80632, 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

**FEBRUARY 28, 2022** (forms available on [www.courts.state.co.us](http://www.courts.state.co.us) or in the Clerk's office), and must be filed as an Original and include **\$192.00** filing fee. A copy of each Statement of Opposition must also be served upon the Applicant or Applicant's Attorney and an affidavit or certificate of such service of mailing shall be filed with the Water Clerk.