

Consent Agenda Item 1.c

March 15-16, 2022 Board Meeting

Case No. 21CW3086 (Water Division 2); Town of Poncha Springs

Summary of Water Court Application

Application for change of water right, plan for augmentation 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 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 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
04CW0084	Green Creek	confl unnamed tributary	confl S Fork Arkansas River	3.9 (4/1 - 8/31) 1.9 (9/1 - 3/31)	01/28/2004
W-4438 (1976)	Pass Creek	headwaters	confl Little Cochetopa Creek	2 (1/1 - 12/31)	01/14/1976
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-4675 (1977)	Poncha Creek	confl Silver Creek	confl S Arkansas River	8 (1/1 - 12/31)	11/15/1977
79CW0121	Middle Fork South Arkansas River	headwaters in vicinity	confl S Arkansas River	5 (1/1 - 12/31)	03/14/1979

Potential for Injury

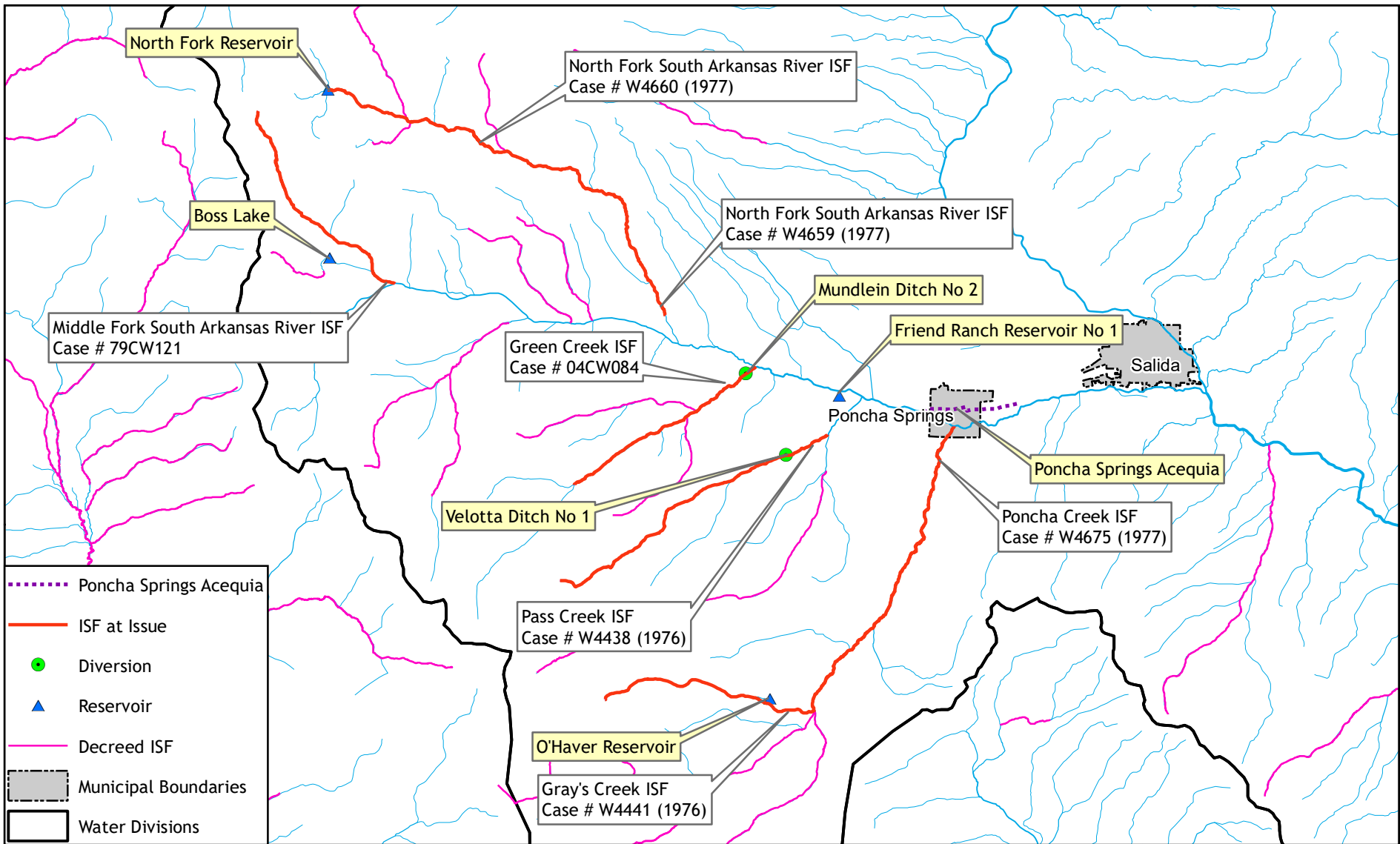
- The proposed plan for augmentation and claimed exchange(s) may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- The extraterritorial use for the changed water rights cannot be evaluated because the type of use and the place of use is undefined in the application. These undefined terms could injure the CWCB's instream flow water rights.
- 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 the decree to ensure that the proposed decree will not injure the CWCB's instream flow water rights.

Other Objectors

Statements of Opposition were also filed by City of Salida, Colorado Parks and Wildlife and Wildlife Commission, Penrose Water District, the State and Division Engineers, THS Investments, LLC, and Upper Arkansas Water Conservancy District.

Attorney Representing CWCB

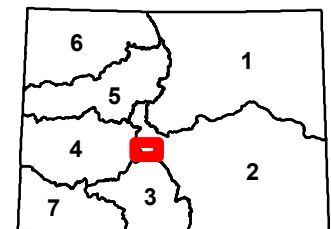
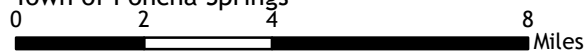
Jennifer L. Mele, First Assistant Attorney General, is assigned to this case and can be contacted at jennifer.mele@coag.gov, or 720-508-6282.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

March 15-16, 2022 CWCB Board Meeting
 Consent Agenda Item 1.c Statement of Opposition
 Case No. 21CW3086 (Division 2)
 Town of Poncha Springs



DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING DECEMBER 2021, INCLUDING FINAL ABANDONMENT LIST OF WATER RIGHTS IN WATER DIVISION 2 and Invitation to Join State Engineer's Substitute Water Supply Plan Notification List and/or The State Engineer's Produced Nontributary Ground Water Notification List (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, certain amendments and Notice of Final Abandonment List filed and/or ordered published during December 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, and notice of Revised Abandonment List are as follows:

CASE NO. 2021CW3086: Town of Poncha Springs c/o Brian Berger, Town

Administrator, P.O. Box 190, Poncha Springs, CO 81242 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: David M. Shoheit, #36675, Emilie B. Polley, #51296, Monson, Cummins & Shoheit, LLC, 13511 Northgate Estates Dr., Suite 250, Colorado Springs, CO 80921, Phone Number: (719) 471-1212)
Amended Application for Change of Water Right, Plan for Augmentation and Appropriate Rights of Exchange

CHAFFEE, SAGUACHE, AND PUEBLO COUNTIES

II. Summary of Application. The Town of Poncha Springs ("Town") owns the entirety of the Poncha Springs Acequia water right. All historically irrigated lands under the Poncha Springs Acequia have either been annexed or will be annexed in the Town's limits in the near future. The Town seeks to change the historical consumptive use of a portion of the Poncha Springs Acequia water right from irrigation use to municipal and augmentation uses for the Town's existing and future service areas and to supplement the Town's existing augmentation plans and exchanges decreed in Case Nos. 82CW104, 99CW183, & 07CW111 District Court, Water Division 2, for the replacement of the Town's depletions to the South Arkansas River. **III. Change of Water Right.** A. The Town seeks to change the following water right: 1. Name of Structure: The Poncha Springs Acequia. a. Appropriation Dates: March 23, 1881. b. Adjudication Dates: June 19, 1890, in Case No. CA 1127 by the District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, Sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11. c. Decreed Rate and Use: 5.82 c.f.s., for irrigation. d. Source: The South Arkansas River, tributary to the Arkansas River. e. Decreed Point of Diversion: The north bank of South Arkansas River, 335 feet nearly due N.E. of the center

**Attachment
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of Section 9, Township 49 North, Range 8 East of the N.M.P.M., Chaffee County, Colorado. The location of the headgate is shown on the map attached to application as **Exhibit A**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) B. Description of Proposed Changes: The Town seeks to change the use of 2.75 c.f.s. of the Poncha Springs Acequia water right with the appropriation date of March 23, 1881 (“Subject Water Right”) historically used to irrigate lands in the South ½ of the Northeast ¼ of Section 10, and the North ½ of Section 11, all in Township 49 North, Range 8 East of the N.M.P.M., Chaffee County, Colorado. The historically irrigated lands are depicted in the Exhibit A map. The Town seeks to quantify the historical consumptive use of Subject Water Right used on the above identified irrigated acreage, and will determine the amount, timing, and location of return flows resulting from the historical use of Subject Water Right. Historical diversions of the Subject Water Right are shown on Exhibit B. C. Change in Type of Use: The Town seeks to change the Subject Water Right for direct flow and storage for the Town’s municipal uses including, without limitation, domestic and household purposes, commercial, industrial, irrigation, generation of electric power and power generally, fire protection, recreation, fish and wildlife preservation and propagation, agricultural, livestock water augmentation of evaporation, wetlands propagation, fire protection, groundwater recharge, augmentation, exchange and replacement purposes. The consumptive use component of the Subject Water Right is for reuse, successive use, and reuse to extinction for the above purposes. Storage may be in reservoirs on Town property, the Friend Ranch, and also in Boss Lake Reservoir, North Fork Reservoir, O’Haver Reservoir, or Pueblo Reservoir. Under this proposed change, the consumptive use from the Subject Water Right may also be changed for use as senior bypass water rights on the South Arkansas River under the Town’s existing augmentation and exchange decrees in Case Nos. 82CW104, 99CW183, and 07CW111. D. New places of use: The Subject Water Right is already decreed for use within the Town’s limits. Accordingly, no new place of use is requested for the direct application of the Subject Water Right. The Applicant, however, requests that the Subject Water Right be changed from its decreed and historical place of use to be used as consumptive credit to the South Arkansas River and Arkansas River as augmentation and for bypass water, including placement into and releases from storage at O’Haver Reservoir, North Fork Reservoir, Boss Lake, and storage on the Friend Ranch and in Pueblo Reservoir. The Subject Water Right may be used for the benefit of the Town’s service area whether within existing town boundaries, future annexation or extraterritorial areas served with water from the Town. The Town’s service area is likely to change from time to time in the future. E. Historical Consumptive use. The Town will continue to divert the Subject Water Right at the headgate of the Poncha Springs Acequia. After return flow obligations are met, the Town will deliver the historical consumptive use of the Subject Water Right to the South Arkansas River through a measurement device/augmentation station to be constructed on the Poncha Springs Acequia. Alternatively, the Town may deliver the historical consumptive use component of the Subject Water Right directly to the Town’s service area. The Town will use, divert and exchange the Subject Water Right, as changed, when water is physically available and legally in priority at the headgate of the Poncha Springs Acequia. F. Replacement of historical return flows: The Town will replace to the South Arkansas River and/or Arkansas River, above the calling water right senior to the date of this Application the historical return flows attributable to Subject Water Right (“Historical Return Flows”). Historical Return Flows may be replaced by turning water back to the South Arkansas River at an augmentation station to be constructed on the Poncha Springs Acequia at the time of diversion of the Subject Water Right, by fully consumable supplies of water controlled by the Town including, but not limited to, the Friend Ranch and the McPherson Ditch

water rights, as well as the release of any fully consumable water from storage. At certain times, the Town may replace the Historical Return Flows by delivering water the Town has stored in Pueblo Reservoir to account holders in Pueblo Reservoir. **IV. Plan for Augmentation. A. Summary of Existing Plans for Augmentation.** The Town currently has a decreed plan for augmentation and exchange in Case No. 82CW104, District Court, Water Division 2, as supplemented by Case Nos. 99CW183 & 07CW111, District Court, Water Division 2 (“Existing Plans for Augmentation”). The Decrees entered in Case Nos. 82CW104, 99CW183, and 07CW111 are attached as Exhibits C, D and E. The Town’s Existing Plans for Augmentation allow for the pumping from the Town’s wells for the Town’s physical water supply, which wells divert water from the alluvium of the South Arkansas River. Depletions to the South Arkansas River and Arkansas mainstem from groundwater diversions are then augmented. The existing augmentation sources are Frying-Pan Arkansas project water purchased from the Southeastern Colorado Water Conservancy District under the terms of Case No. 82CW104, the McPherson Ditch water right as changed in Case No. 99CW183, and the Friend Ranch water rights changed in Case No. 07CW111. The original plan for augmentation decreed in Case No. 82CW104 provides for the annual purchase of 45 acre feet of Frying-Pan Arkansas project water or such greater amount as the growth of the Town’s water demands requires, and the exchange of part of that project water to storage in Boss Lake Reservoir, North Fork Reservoir and O’Haver Reservoir in the headwaters of the South Arkansas River. When there is a valid call from the South Fork of the Arkansas River during the irrigation season, releases from these upstream reservoirs are made under the plan as necessary to replace depletions from the Town’s wells to the South Arkansas River and mainstem of the Arkansas River. At times when there is not a valid call on the South Fork, releases of project water are made only to the mainstem of the Arkansas River. As the Town’s domestic return flows are currently treated and returned to the Arkansas River through the Salida sewage treatment plant, the original plan recognizes that depletions to the South Arkansas River are therefore equal to the amount of water pumped minus return flows from irrigation. In order to prevent injury to the senior South Arkansas diverters during times of a call in the irrigation season, the Existing Plans for Augmentation require the replacement of these bypassed water rights to the South Arkansas River (“Bypass Water”). Under the terms of the Existing Plans for Augmentation, this Bypass Water protects all other diverters on the South Fork of the Arkansas River. This augmentation plan provides additional augmentation water for the Town’s municipal depletions. **B. Structures to be Augmented:** The structures to be augmented are as follows: 1. Poncha Springs Well No. 1. Poncha Springs Well No. 1 is located in the SE1/4 SW1/4, Section 10, Township 49 North, Range 8 East, N.M.P.M., at a point 1,280 feet from the south line of said Section 10, and 1,332 feet from the west line of Section 10. Said well was permitted under No. 26588-FR and was decreed in Case Nos. 82CW206 and 88CW5, District Court, Water Division 2. This well is tributary to the South Arkansas River and is included in the Applicant’s existing plan for augmentation and exchange in Case No. 82CW104 and in its augmentation plan in Case Nos. 99CW183 and 07CW111. 2. Poncha Springs Well No. 2. Poncha Springs Well No. 2 is located in the SE1/4 SW1/4, Section 10, Township 49 North, Range 8 East, N.M.P.M., at a point 1,090 feet from the south line of said Section 10, and 1,328 feet from the west line of Section 10. Said well was permitted under No. 26589-F and was decreed in Case Nos. 82CW206 and 88CW5, District Court, Water Division 2. This well is tributary to the South Arkansas River and is included in the Applicant’s existing plan for augmentation and exchange in Case No. 82CW104 and in its augmentation plan in Case No. 99CW183 and 07CW111. 3. Poncha Springs Well No. 3. Poncha Springs Well No. 3 is located in the NE1/4 NE1/4, Section 10, Township 49 North, Range 8 East, N.M.P.M., at a point 100 feet from the north line of said Section 10, and 850 feet from the east line of Section 10. Said well was permitted under No. 15127-R-R. This well is tributary to the South Arkansas River and is augmented under the Applicant’s existing plan for augmentation and exchange in Case No. 82CW104 and in its augmentation plan in Case No. 99CW183 and 07CW111. 4. Poncha Springs Well No. 4. Poncha Springs Well No. 4 is located in the NW1/4 NE1/4, Section 10, Township 49 North, Range 8 East, N.M.P.M., at a point 1245 feet from the north line of said Section 10, and 1,428 feet from the east line of Section 10. Said well was

permitted under No. 62784-F. This well is tributary to the South Arkansas River and is augmented under the Applicant's existing plan for augmentation and exchange in Case No. 82CW104 and its augmentation plan in Case No. 99CW183 and 07CW111. 5. Poncha Springs Well No. 5. Poncha Springs Well No. 5 is located in the NW1/4, NE 1/4, Section 7, Township 49 North, Range 8 East, N.M.P.M., at a point 563 feet from the north line of said Section 7, and 1441 feet from the east line of Section 7. Said well has been permitted under Well Permit No. 66925-F. This well is tributary to the South Arkansas River and will be augmented under the Applicant's existing plan for augmentation and exchange in Case No. 82CW104 and in its augmentation plan in Case No. 99CW183 and 07CW111. 6. Poncha Springs Well No. 8. Poncha Springs Well No. 8 is a well to be constructed within a park owned by the Town commonly known as Hoover Ranch Park. Poncha Springs Well No. 8 will be located in the SE 1/4 NE 1/4, Section 9, Township 49 North, Range 8 East, N.M.P.M. Said well has not yet been permitted. This well will be tributary to the South Arkansas River and will be augmented under the Applicant's existing plan for augmentation and exchange in Case No. 82CW104 and in its augmentation plan in Case No. 99CW183 and 07CW111. 7. Poncha Springs Well No. 9. Poncha Springs Well No. 9 will be located within a park to be constructed on land currently being developed and owned by Tailwind Group, LLC. Poncha Springs Well No. 9 will be located in the SW 1/4 NW 1/4 or the SE 1/4 NW 1/4, Section 11, Township 49 North, Range 8 East, N.M.P.M., Said well has not yet been permitted. This well will be tributary to the South Arkansas River and will be augmented under the Applicant's existing plan for augmentation and exchange in Case No. 82CW104 and in its augmentation plan in Case No. 99CW183 and 07CW111. 8. Poncha Springs Well No. 10. Poncha Springs Well No. 10 is a well to be constructed on land currently owned by Jls2, LLC, and will be located along a main water line owned by the Town, in the NW 1/4 SW 1/4, Section 3, Township 49 North, Range 8 East, N.M.P.M., Said well has not yet been permitted. This well will be tributary to the South Arkansas River and will be augmented under the Applicant's existing plan for augmentation and exchange in Case No. 82CW104 and in its augmentation plan in Case No. 99CW183 and 07CW111. A map of the structures to be augmented is set forth in the attached Exhibit F. C. Water and Water Rights to be Used for Augmentation: The Town seeks to utilize the Subject Water Right to be changed in this Application as an augmentation source for all structures listed herein. In addition, the Town seeks to utilize the following water rights decreed in the Existing Plans for Augmentation to replace depletions associated with Poncha Springs Well Nos. 8, 9, & 10, identified above, with the following additional augmentation sources: 1. Project Water. The Town's annual allocation of Project Water and non-sewered return flows after the Town's use of Project Water, which are already available as augmentation sources to replace depletions associated with the Poncha Springs Well Nos. 8, 9, & 10 under the terms and conditions of Case No. 82CW104, are described as follows: a. West Slope Decrees: The Fryingpan Arkansas Project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County. The principal water rights were adjudicated by the decrees in Civil Action No. 4613 (District Court, Garfield County) dated 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 were supplemented by the Decree in Case No. 83CW352 (District Court, Water Division No. 5) dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travel under the Continental Divide through Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, and applied to beneficial use within Southeastern's District boundaries. Because the water is imported from another river basin, it is fully consumable in Water Division 2. b. East Slope Decrees: The Fryingpan Arkansas 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. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir and elsewhere, with an

appropriation date of February 10, 1939, and are expressly decreed for reuse and exchange for beneficial use within Southeastern's District boundaries. Under these decrees, Turquoise Reservoir and Twin Lakes Reservoir may store native water or imported water, directly or by exchange with each other or with Pueblo Reservoir. The Town is eligible to receive annual allocations of Project Water from the Southeastern District. The Town is also eligible, and has the first right of refusal, to purchase any return flows generated from its use of Project Water therefrom. The Southeastern District allocates Project Water annually based on its principles, policies, rules and regulations. Any and all use of Project Water and return flows will be pursuant to and subject to the above referenced decrees for the Fryingpan Arkansas Project, and to all lawful rules, regulations, policies, and contract obligations of the Southeastern District. Any decree entered in this case will not give Applicant any rights to use Fryingpan Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocations of Project Water or return flows therefrom, but will not alter the existing rights, including allocation rights, held by Applicant. Applicant will use Project Water and return flows therefrom only if, and when, and to the extent they have purchased Project Water after it is allocated to them by the Southeastern District.

2. McPherson Ditch Water Right. The McPherson Ditch water right was decreed on June 19, 1890, District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11. The decreed point of diversion in the original decree for the McPherson Ditch water right is on the north bank of the South Arkansas River, a tributary to the Arkansas River, 400 feet due south of the quarter corner between Sections 9 and 10, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. The source of water for the McPherson Ditch water right is out of the South Arkansas River, a tributary of the Arkansas River, Chaffee County, Colorado. By Decree Changing Point of Diversion dated July 5, 1956, in Case No. 4502, Chaffee County District Court, State of Colorado, the point of diversion for the entire 1.0 c.f.s. of water decreed to the McPherson Ditch water right, was changed from the original decreed point of diversion, as set forth above, to the headgate of the Murray Ditch. The headgate of the Murray Ditch as fixed by decree dated February 1, 1902, Case No. 1735, in Chaffee County District Court, is described at a point located on the north bank of the South Arkansas River, a tributary to the Arkansas River, at a point whence the northeast corner of Section 10, Township 49 North, Range 8 East, of the N.M.P.M. bears north 39 degrees east, a distance of 5,200 feet in Chaffee County, Colorado. The Town, under Case No. 99CW183, changed the McPherson Ditch water right for dedication and use under the Town's existing plan for augmentation and exchange as previously decreed in Case No. 82CW104, District Court, Water Division 2, State of Colorado, for all municipal uses. The Court in Case No. 99CW183 found that the total consumptive use of the McPherson Ditch water right was 35.2 annual acre feet. The consumptive use from the McPherson Ditch water right was also changed for storage at O'Haver Reservoir for use under and in accordance under Case No. 82CW104. The Town has a storage contract with the Upper Arkansas Water Conservancy District for the use of up to 50 acre feet of storage in O'Haver Reservoir and other South Arkansas River reservoirs. The McPherson Ditch water right is already available as an augmentation source to replace depletions associated with the Poncha Springs Well Nos. 8, 9, & 10 under the terms and conditions of Case No. 82CW104 and Case No. 99CW183.

3. Friend Ranch Pass Creek Water Rights. The Town's Friend Ranch Water Rights, which the Town changed for augmentation and all municipal uses under Case No. 07CW111 (collectively referred to as the "Friend Ranch Water Rights"). All use of the Friend Ranch Water Rights shall be in accordance with the terms and conditions set forth in the Decree entered in Case No. 07CW11. The Friend Ranch Water Rights are described as follows:

a. Little Cochetopa Creek Water Rights. Town's interest in the Huntzicker Ditch, and the Hensie Ditch No. 1 (collectively referred to as the "Little Cochetopa Creek Water Rights"). The Little Cochetopa Creek Water Rights were decreed on June 19, 1890, in Case No. CA 1127 by the District Court in the original adjudication of the Fourth Judicial District of

the State of Colorado, Sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11. The source of water for the Little Cochetopa Creek Water Rights is Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. The decrees for the Little Cochetopa Creek Water Rights describe the locations of their respective headgates as follows: i. Huntzicker Ditch: About one-half mile from the junction of Cochetopa Creek with the South Arkansas River in Section 8, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. A more modern description of the actual location of the headgate is the NE1/4 SE1/4, Section 7, Township 49 North, Range 8 East, N.M.P.M., at a point 2,500 feet from the south line of said Section 7, and 100 feet from the east line of Section 7. ii. Hensie Ditch No. 1: About 20 rods below the mouth of Pass Creek in Section 7, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. A more modern description of the actual location of the headgate is the SW1/4 SE1/4, Section 7, Township 49 North, Range 8 East, N.M.P.M., at a point 90 feet from the south line of said Section 7, and 2,280 feet from the east line of Section 7. The appropriation dates and decreed amounts for Little Cochetopa Creek Water Rights are as follows:

Water Right Name	Adjudication Date	Appropriation Date	Local Priority No.	Full Water Right (c.f.s.)	Water Right Subject to change (c.f.s.)
Huntzicker Ditch	June 19, 1890	December 31, 1870	31	0.7	0.5
Hensie Ditch No. 1	June 19, 1890	December 31, 1873	49	0.3	0.3

The Little Cochetopa Creek Water Rights, were consolidated by Case No. W-294, District Court, Water Division 2, decreed conditionally on January 23, 1974, and decreed absolute on October 18, 1978. Case No. W-294 allows all of the water decreed to the Little Cochetopa Creek Water Rights to be combined and taken through the headgate of either the Hensie Ditch No. 1 or the Henry Ditch, which was located on the west bank of Cochetopa Creek, at a point from whence the South Quarter corner of Section 18, in Township 49 North, Range 8 East, N.M.P.M., in Chaffee County, Colorado, bears South 49 degrees and 10' East, 590 feet. ("Consolidated Decree"). b. Pass Creek Water Rights. Town's interest in the Boon Ditch No. 2, and Hensie Ditch No. 2 (collectively referred to as the "Pass Creek Water Rights"). The original adjudication for the Pass Creek Water rights are as follows: i. The Pass Creek Water Rights were decreed on June 19, 1890 in Case No. CA1127 in the District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, Sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11. An additional decree was entered for the Boon Ditch No.2 on September 13, 1917, in the District Court of Chaffee County, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11, Case No. CA 2559. The decrees for the Pass Creek Water Rights describe the locations of their respective headgates as follows: ii. Boon Ditch No. 2: North Bank of Pass Creek, about 200 feet from the junction of Pass Creek with Cochetopa Creek, Chaffee County, Colorado. A more modern description of the actual location of the headgate is the NW1/4 NE1/4,

Section 18, Township 49 North, Range 8 East, N.M.P.M., at a point 200 feet from the north line of said Section 18, and 2,450 feet from the east line of Section 18. iii. Hensie Ditch No. 2: About one-half mile from Pass Creek’s junction with Cochetopa, in Section 7, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. A more modern description of the actual location of the headgate is the SE1/4 NE1/4, Section 13, Township 49 North, Range 7 East, N.M.P.M., at a point 1,680 feet from the north line of said Section 13, and 90 feet from the east line of Section 13. The source of water for the Pass Creek Water Rights is Pass Creek, tributary to Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. The appropriation dates and decreed amounts for Pass Creek Water Rights are as follows:

Water Right Name	Adjudication Date	Appropriation Date	Local Priority No.	Full Water Right (c.f.s.)	Water Right Subject to change (c.f.s.)
Boon Ditch No. 2	June 19, 1890	Nov 30, 1871	33	1.4	All
Hensie Ditch No. 2	June 19, 1890	December 31, 1873	50	0.2	All

The water rights comprising the Pass Creek Water Rights, have also been consolidated by the Consolidated Decree. Case No. W-294 allows all of the water decreed to the Pass Creek Ditches to be combined and taken through the headgate of either the Hensie Ditch No. 2 or Velotta Ditch No. 1, which is located at a point on the north bank of Pass Creek, whence the East Quarter Corner of Section 13, Township 49 North, Range 7 East, of the N.M.P.M., bears South 74° 45' East, 1760 feet. c. Green Creek Water Right. Town’s interest in the Mundlein Ditch No. 2 water right (“Mundlein Ditch No. 2 Water Right”). The Mundlein Ditch No. 2 Water Right was originally adjudicated on June 19, 1890, in Case No. CA 1127, by the District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, Sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11. An additional decree for the Mundlein Ditch No. 2 was entered on July 9, 1969, by the District Court of Chaffee County, State of Colorado, In the Matter of Adjudication of Priorities of the Rights to the Use of Water for Irrigation and Non-Irrigation Uses in Water District 11, Case No. CA 5141. The original decree for theMundlein Ditch No. 2 Water Right describes the location of its headgate at a point on the East bank of Green Creek, whence the South Quarter Corner of Section 1, Township 49 North, Range 8 [sic] East of the N.M.P.M., bears South 67° 46' East, 3784 feet. The correct Range is 7 East. The source of water for the Mundlein Ditch No. 2 is Green Creek, tributary to the South Arkansas River, tributary to the Arkansas River. The appropriation dates and decreed amounts for Mundlein Ditch No. 2 Water Right are as follows:

Water Right Name	Adjudication Date	Appropriation Date	Local Priority No.	Full Water Right (c.f.s.)	Water Right Subject to change (c.f.s.)
Mundlein Ditch No. 2	June 19, 1890	March 1, 1873	44	1.74	0.58

C. Statement of Plan for Augmentation. The consumptive use attributable to the Subject Water Right shall be committed to the plan for augmentation to replace the out of priority depletions associated with diversions from the Poncha Springs Wells, as previously

described. Depletions from the Poncha Springs Wells are to be calculated in the same manner as under the existing augmentation decree in Case Nos. 82CW104, 99CW183, and 07CW111 considering the system wide municipal depletion percentages and the lagged aquifer depletions, as applicable, from the Town's wells. The release or dedication of the Subject Water Right will be used as replacement of the out of priority well depletions to be made in accordance with the terms of the Town's Existing Plans for Augmentation and to be provided in any final decree entered in this Application. **V. Appropriative Right of Exchange.** A. Water to Be Exchanged. The Town seeks to exchange the Subject Water Right to be changed under this Application. B. Exchange From Points. The Town seeks to exchange the Subject Water Right from the following points: 1. A turn back structure to be built by the Town on the Poncha Springs Acequia. The turn back structure will either be located near the headgate of the Poncha Springs Acequia in SW 1/4 NE 1/4 of Section 9, Township 49 North, Range 8 East, of the N.M.P.M., or in the Town's limits including the SE 1/4 NE 1/4, NE 1/4 SE 1/4 of Section 9, , or the N 1/2 SW 1/4 of Section 10, all in Township 49 North, Range 8 East, of the N.M.P.M. C. Exchange to Points: 1. O'Haver Reservoir. O'Haver Reservoir, decreed in Case No. 82CW205, District Court, Water Division No. 2, is an off-channel reservoir fed by O'Haver Filler Ditch, whose headgate is in the NW1/4 SW1/4 of said Section 12, approximately 5,000 feet from the east line of said Section 12 and 1,400 feet from the south line of said Section 12, which draws its waters from Grays Creek, tributary to Poncha Creek, tributary to the South Fork of the Arkansas River, tributary to the Arkansas River, and is located near the center of Section 12, Township 48 North, Range 7 East, N.M.P.M., and is decreed for 193 acre feet of storage for irrigation, municipal, industrial, recreational and augmentation uses. The Subject Water Right will be carried down the South Arkansas River to the confluence with Poncha Creek located in Section 10, Township 49 North, Range 8 East of the N.M.P.M., and exchanged from this point up Poncha Creek to the confluence with Grays' Creek, and from this point up Grays' Creek to the terminus of the exchange at O'Haver Reservoir. 2. North Fork Reservoir. Decreed in Case No. 82CW204, District Court, Water Division No. 2, North Fork Reservoir's source is the North Fork of the South Arkansas River is located as follows: 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, Chaffee County decreed for 1,095 acre feet of storage for irrigation, municipal, irrigation, augmentation and recreational uses. The exchange of the Subject Water Right will go up the South Arkansas River to the confluence with North Fork of the South Arkansas River located in North 1/2 of Section 3, Township 49 North, Range 7 East of the N.M.P.M., and from this point up the North Fork of the South Arkansas River to the terminus of the exchange at North Fork Reservoir. 3. Boss Lake. Boss Lake, also known as Donnell Reservoir Nos. 1 & 2, decreed on June 19, 1890, in Case No. CA 1127 by the District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, Sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11, is an on-channel reservoir fed by the Lake Fork, tributary to the Middle Fork of the South Arkansas River and is generally located in the Northeast 1/4 East 1/2 of Section 29, Township 50 North, Range 6 East, N.M.P.M. The exchange of the Subject Water Right will go up the South Arkansas

River to the confluence with the Middle Fork of the South Arkansas River located near the Town of Garfield, located in the South 1/2 of Section 27, Township 50 North, Range 6 East of the N.M.P.M., and from this point up the Middle Fork of the South Arkansas River to the confluence with the Lake Fork of the South Arkansas River and from this point up to the terminus of the exchange at Boss Lake. 4. Friend Ranch. The Town has annexed the real property located in Sections 7, 8, and 18 in Township 49 North, Range 8 East of the N.M.P.M., commonly known as the "Friend Ranch." A legal description of the Friend Ranch is attached as Exhibit G. The exchange of the Subject Water Right will go up the South Arkansas River to the confluence of the South Arkansas River and Little Cochetopa Creek, and from this point up Little Cochetopa Creek to the confluence of Little Cochetopa Creek and Pass Creek, then up Pass Creek to the headgate of the Velotta Ditch No. 1 described above. Alternatively, the exchange of the Subject Water Right will go up the South Arkansas River to the confluence of the South Arkansas River and Green Creek, and from this point up Green Creek to the headgate of the Mundlein Ditch No. 2 described above. A map of the exchange to and from points is attached as Exhibit H. D. Uses of Exchanged Water. The Town seeks to use the exchanged water for municipal purposes, including use as bypass water and augmentation for the Town's well depletions as set forth in the plan for augmentation. E. Appropriation Date. December 29, 2021. F. Amount of Exchange. The maximum exchange rate shall be 1.70 c.f.s., conditional. **VI. Name And Address Of Owners Of Land On Which Structures Will Be Located.** A. Poncha Springs Acequia and Turnback Structure. The headgate for the Poncha Springs Acequia and one of the locations for a possible measurement/augmentation station is located upon property owned by Post Office Ranch LLC, whose address is PO Box 208, Poncha Springs, CO 81242. B. Poncha Springs Wells. Poncha Springs Well Nos. 1, 2, 3, 4, & 8 are located upon property owned by the Town. Poncha Springs Well No. 5 is located upon property owned Ths Investments LLC, whose address is 11968 W 119th St., Overland Park, KS 66213. Poncha Springs Well No. 9 will be located upon property currently owned by Tailwind Group LLC, whose address is 7625 W. US Highway 50, Salida, CO 81201. Poncha Springs Well No. 10 will be located upon property currently owned by Jls2 LLC, whose address is 7693 US Highway 285, Salida, CO 81201. C. Reservoirs. O'Haver Reservoir, Boss Lake and North Fork Reservoir are all located upon land owned by the US Forest Service, whose address is 740 Simms, P.O. Box 25127, Lakewood, CO 80225, and operated by the Upper Arkansas Water Conservancy District, 339 E. Highway 50, Salida, CO 81201. Pueblo Reservoir is located on land owned by the United States of America, Bureau of Reclamation. The Bureau of Reclamation's address is Attn: Jeff Rieker, Area Manager, Eastern Colorado Area Office, 11056 W. County Road 18E, Loveland, Colorado 80537-9711. The Friend Ranch Reservoir and any future reservoirs to be built on Friend Ranch are located on land owned by Ths Investments LLC, whose address is listed above. D. Ditches. The Velotta Ditch No. 1 is on land owned by the Bureau of Land Management, whose address is 3028 E. Main St. Canon City, CO 81212. The Mundlein Ditch No. 2 is located on lands owned by Frankie Ann Spicer, whose address is 14670 County Road 220, Salida, CO 81201. **VII. Additional Terms and Conditions.** A. The Town shall install and maintain such water measuring devices as deemed essential by the State Engineer or Division Engineer and the same shall be installed and operated in accordance with the instruction of that office. The Town will provide appropriate monthly accountings to the Division Engineer demonstrating compliance with this plan for augmentation. B. Provided that the Town replaces historical return flows associated with the Subject Water Right, the Town will


fully consume and use to extinction the consumptive use stream credits attributable to the Subject Water Right. C. The operation of any exchange will be limited to the timing of the availability of the Subject Water Right within the exchange reach. The exchanges may only be operated to the extent that other vested water rights senior to this exchange within the exchange reaches are not deprived of water to which they would have been entitled in the absence of such exchanges. The operation of the exchange will be limited in time to periods when the water rights to be exchanged are available at the exchange-from point, and further limited to the rate and volume of the source of substitute supply legally and physically available for the Town's use at the exchange from point. The exchange may be operated only when there is a continuous live stream maintained between the point of the initiation of the exchange and the upstream terminus of the exchange. Prior to the operation of this exchange, the Town will coordinate with, and receive the approval of, the water commissioner or Division. D. Pursuant to C.R.S. § 37-92-305(8), Town may seek terms and conditions to add additional and alternative sources for replacement in this plan for augmentation after entry of this Decree if such sources are decreed or have been administratively approved for such use. E. The Division Engineer shall assess appropriate transit losses, if any.

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 February 2022, (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.

YOU ARE FURTHER NOTIFIED that any person who wishes to protest the inclusion of any water rights on the final decennial abandonment list shall file a written protest with the Water Clerk for the Division 2 Water Court and provide a copy to the Division Engineer in accordance with the procedures set forth in section 37-92-401(5), C.R.S (2021) not later than June 30, 2022. The fee for filing such a protest with the Water Clerk is forty-five dollars (\$45.00). The protest shall set forth in detail the factual and legal basis therefor. A form for such a protest ([JDF 304W](#)) is available on the Water Court website.

Witness my hand and the seal of this Court this 19th day of January 2022.


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)
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