

Consent Agenda Item 1.e

September 20-21, 2022 Board Meeting

Case No. 22CW3059 (Water Division 5); Blue River Valley Ranch Lakes Association

Summary of Water Court Application

Application for Approval of Plan for Augmentation and Appropriative Right of Exchange.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in August 2022 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 Blue River watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
87CW0294	Blue River	confl Straight Creek	confl Willow Creek	50 (10/1 - 4/30) 55 (5/1 - 7/31) 52 (8/1 - 9/30)	10/02/1987
87CW0295	Blue River	confl Willow Creek	confl Rock Creek	58 (10/1 - 3/31) 75 (4/1 - 9/30)	10/02/1987
87CW0296	Blue River	confl Rock Creek	confl Boulder Creek	78 (10/1 - 10/31) 67 (11/1 - 3/31) 90 (4/1 - 4/30) 115 (5/1 - 8/31) 90 (9/1 - 9/30)	10/02/1987
87CW0297	Blue River	confl Boulder Creek	confl Slate Creek	70 (11/1 - 2/29) 78 (3/1 - 3/31) 90 (4/1 - 4/30) 125 (5/1 - 8/31) 90 (9/1 - 10/31)	10/02/1987
87CW0298	Blue River	confl Slate Creek	inlet Green Mtn Res at Doig Gulch	90 (10/1 - 11/30) 85 (12/1 - 2/29) 125 (5/1 - 9/30) 90 (3/1 - 4/30)	10/02/1987
87CW0299	Blue River	outlet Green Mountain Res	confl Colorado River	60 (5/1 - 7/15) 85 (7/16 - 4/30)	10/02/1987

Potential for Injury

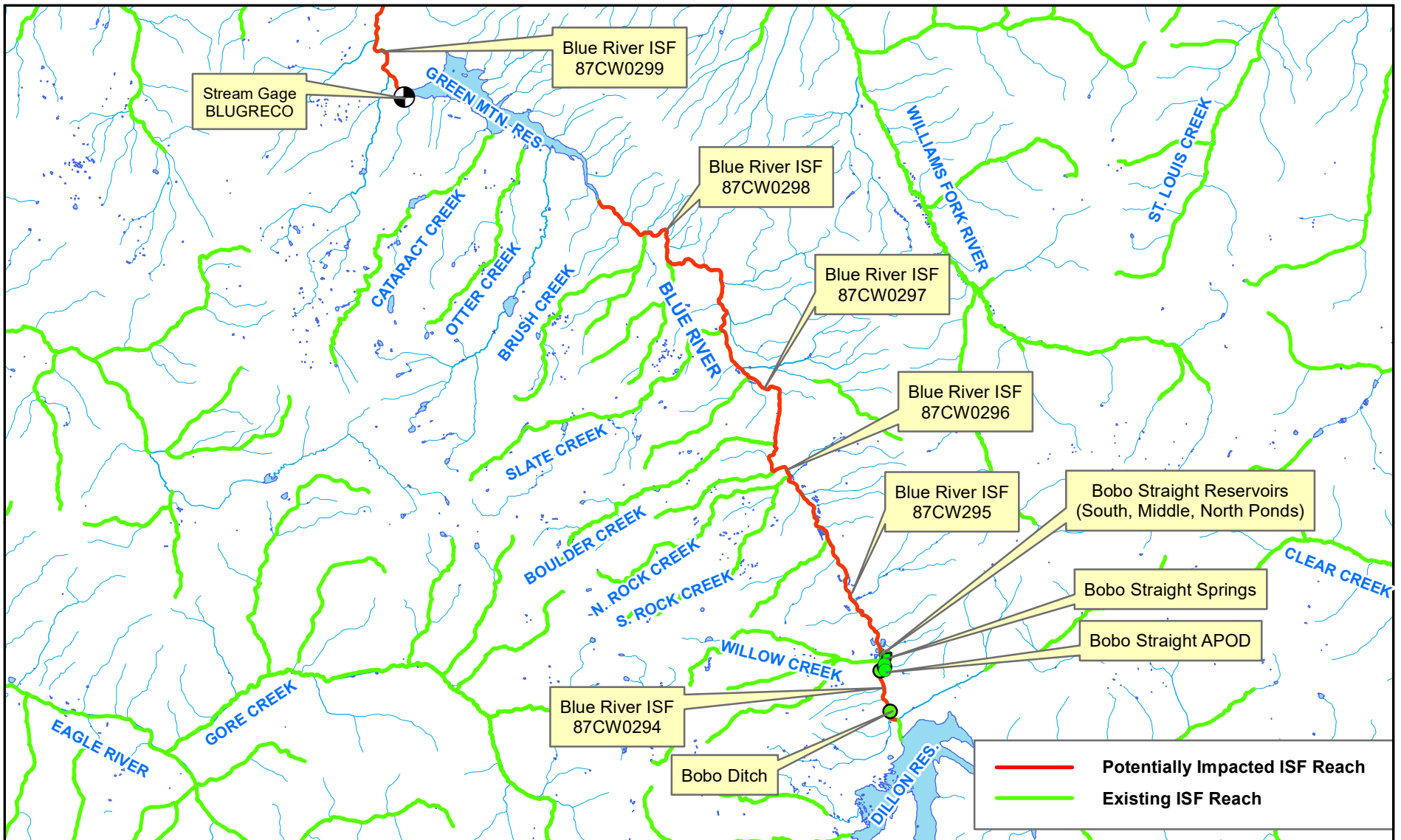
- The CWCB's instream flow water rights might be subject to use of the Bobo Ditch and Bobo-Strait Springs for fill of the Bobo-Strait Reservoir, and refill to replace evaporative losses from Bobo-Strait Reservoir, under section 37-92-102(3)(b), C.R.S., if such uses are sufficiently documented to pre-exist the CWCB's instream flow water rights.
- The use of the Bobo Ditch and Bobo-Strait Springs for fill of the Bobo-Strait Reservoir, and refill to replace evaporative losses from Bobo-Strait Reservoir, could injure the CWCB's instream flow water rights because the uses and evaporative losses may be fully depletive to a segment of an instream flow reach.
- The proposed plan for augmentation and exchange may not replace depletions not benefitting from the terms of section 37-92-102(3)(b), C.R.S., in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- Terms and conditions should be included in the decree to ensure that the Applicant's operations will not cause injury to the CWCB's instream flow water rights, including the Peabody #1 Ditch acquired by CWCB and changed to instream flow use in Case No. 05CW264.

Other Objectors

Statements of Opposition were also filed by the City and County of Denver, acting by and through its Board of Water Commissioners (Denver Water) and, Dillon Valley District.

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.



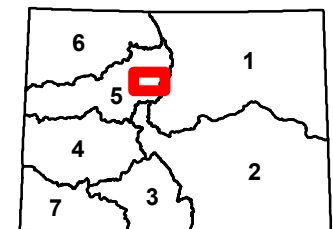
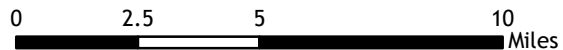
— Potentially Impacted ISF Reach
— Existing ISF Reach



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

September 20-21, 2022 CWCB Board Meeting
 Consent Agenda Item 1e: Statement of Opposition
 Case No. 22CW3059 (Water Division 5)
 Blue River Valley Ranch Lakes Association



DIVISION 5 WATER COURT- JUNE 2022 RESUME

13. PURSUANT TO C.R.S., §37-92-302, AS AMENDED, YOU ARE NOTIFIED THAT THE FOLLOWING PAGES COMPRISE A RESUME OF THE APPLICATIONS AND AMENDED APPLICATIONS FILED WITH THE WATER CLERK FOR WATER DIVISION 5 DURING THE MONTH OF JUNE 2022. *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.*

22CW3059 Application for Approval of Plan for Augmentation and Appropriative Right of Exchange in Summit County. **I. Name, Address, and Phone of Applicant.** Blue River Valley Ranch Lakes Association, PO Box 31, Silverthorne, Colorado 80498, (970) 7440623 (“Applicant”). **Name, Address, and Phone Number of Attorneys.** Ryan W. Farr, #39394, Emilie B. Polley, #51296, MONSON, CUMMINS, SHOHET & FARR, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, (719) 471-1212.

II. Background and Summary of Application. Applicant is a Title 7 nonprofit corporation incorporated in Colorado operating as a homeowner’s association with shareholders being the residents of the Blue River Valley Ranch Subdivision (“Subdivision”). Applicant owns and controls three lakes that are used for aesthetic, recreational, fish propagation, wildlife habitat, stock watering, domestic, and fire suppression and protection purposes by the residents of the Subdivision. Applicant is seeking an augmentation plan to replace the depletions of the lakes caused by fills and evaporation when the Bobo-Strait Reservoir/Bobo-Strait Springs water rights are out-of-priority. **III. Plan for Augmentation.**

A. Property Description. Applicant owns property within the boundaries of the Subdivision located in the NE1/4 of the NW1/4, the SE1/4 of the NW1/4, the NW1/4 of the NE1/4, the SW1/4 of the NE1/4, the NE1/4 of the SW1/4, and the NW1/4 of the SE1/4 all in Section 1, Township 5 South, Range 78 West of the 6th P.M., Summit County, Colorado and shown on attached **Exhibit A** (“Applicant’s Property”). **B. Structures to be Augmented.** The structures to be augmented are the Bobo Ditch, the Bobo-Strait Springs, and the three lakes comprising what is known as the Bobo-Strait Reservoir, all located on the Applicant’s Property as shown on the attached **Exhibit A**. The lakes comprising the Bob-Strait Reservoir are known as South Pond, Middle Pond, and North Pond (“Lakes”) and are shown on attached **Exhibit A**. **C. Source.** The Lakes are filled by the capture of flows from the Bobo-Strait Springs, tributary to the Blue River, and by diversions through the Bobo Ditch from the Blue River. **D. Uses.** The Lakes are used for fish propagation, recreation, wildlife habitat, stock watering, domestic, augmentation, aesthetic, and fire suppression and protection purposes. **E. Water Rights.**

1. **Bobo Ditch.** Applicant owns a 5 cfs interest in the Bobo Ditch water right (“Bobo Right”), WDID No. 3600535. The Bobo Ditch water right was decreed in Case No. CA1805, District Court for Summit County on March 18, 1952 for 10 cfs for irrigation. The headgate for Bobo Ditch is located on the east bank of the Blue River in the NW1/4 of the SE1/4 of Section 12, Township 5 South, Range 78 West of the 6th P.M., UTM Zone 13, NAD83, Easting: 408062, Northing: 4387205 (“Original Headgate”). An alternate point of diversion for the Bobo Right was decreed in Case No. 91CW272, District Court, Water Division 5, on March 8, 1993. The alternate point of diversion is located on the east bank of the Blue River in the SE1/4 of the NW1/4 of Section 1, Township 5 South, Range 78 West of the 6th P.M., UTM Zone 13, NAD83, Easting: 407634, Northing: 4389055 (“APD Headgate”).

2. **Bobo-Strait Springs.** Applicant owns the entire interest in Bobo-Strait Springs (“Bobo Springs”), WDID No. 3600536. The Bobo Springs were decreed in Case No. CA1806, District Court of Summit County on March 10, 1952 for 3 cfs for propagation and culture of fish, boating, resort, domestic, and stock watering purposes. The Bobo Springs are located in the SE1/4 of the NW1/4 of Section 1, Township 5 South, Range 78 West of the 6th P.M. along a line starting within the South Pond and extending north reaching into the Middle Pond. 3. **Bobo-Strait Reservoir.** Applicant owns the entire interest in the Bobo-Strait Reservoir (“Bobo Reservoir”), WDID No. 3603534. The Bobo-Reservoir was decreed in Case No. CA1806, District Court of Summit County on March 10, 1952 for 40 acrefeet with a surface area of up to 20 acres for propagation and culture of fish, boating, resort, domestic, stock watering, and fire protection purposes. The Bobo Reservoir is located in the E1/2 of the NW1/4 and the NW1/4 of the NE1/4 of Section 1, Township 5 South, Range 78 West of the 6th P.M. and consists of the Lakes. Decreed point of diversion for Bobo Reservoir is the capture of Bobo Springs. **F. Water Rights to be Used for Augmentation.**

1. **Silverthorne Water Rights.** Applicant currently has a 99-year lease with the Town of Silverthorne (“Silverthorne”) up to 17.0 annual acre-feet of augmentation water. The source or sources of augmentation water from Silverthorne shall be legally available for the herein requested purpose, shall be determined by Silverthorne at any given time, and may include, but not be limited to, the following: a. **Old Dillion Reservoir Storage:** Old Dillon Reservoir is located in the SW1/4 of the SE1/4 and the SE1/4 of the SW1/4 of Section 13, Township 5 South, Range 78 West of the 6th P.M.: i. Water rights decreed in Case No. 93CW288, District Court, Water Division 5, Old Dillon Reservoir First Enlargement, for municipal, domestic, irrigation, industrial, snowmaking, augmentation, recreation, and all other beneficial uses. Filled by means of the Dillon Ditch from Salt Lick Gulch, tributary to the Blue River at a rate of 10 cfs for a total of 150 annual acre-feet. ii. Water rights decreed in Case No. 07CW223, District Court, Water Division 5, Old Dillon Reservoir Second Enlargement, for municipal, domestic, commercial, irrigation, industrial, snowmaking,

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augmentation, replacement, exchange, recreation, piscatorial, and wildlife watering. Filled by means of the Dillon Ditch from Salt Lick Gulch, tributary to the Blue River at a rate of 10 cfs for a total of 60 annual acre-feet. iii. Water rights decreed in Case No. 08CW201, District Court, Water Division 5, Old Dillon Reservoir Third Enlargement, for municipal, domestic, commercial, irrigation, industrial, snowmaking, augmentation, replacement, exchange, recreation, piscatorial, and wildlife watering. Filled by means of the Dillon Ditch from Salt Lick Gulch, tributary to the Blue River at a rate of 10 cfs for a total of 30 annual acre-feet with refill right or 45 annual acrefeet to replace gross evaporation. iv. Water rights decreed in Case No. 12CW171, District Court, Water Division 5, Old Dillon Reservoir Fourth Enlargement, for municipal, domestic, commercial, irrigation, industrial, snowmaking, augmentation, replacement, exchange, recreation, piscatorial, and wildlife watering. Filled by means of the Dillon Ditch from Salt Lick Gulch, tributary to the Blue River at a rate of 10 cfs for a total of 17.27 annual acre-feet. b. Dillon Reservoir. Dillion Reservoir is located in all or portions of Sections 7, 8, 17, 18, 19, 20, 21, 30, and 31 of Township 5 South, Range 77 West of the 6th P.M., and Sections 13, 23, 24, 25, 26, 35, and 36 of Township 5 South, Range 78 West of the 6th P.M. Silverthorne is a party to the Colorado River Cooperative Agreement dated September 26, 2013 (“Cooperative Agreement”). Pursuant to the Cooperative Agreement, Silverthorne is allotted 60 annual acre-feet of water stored in Dillon Reservoir by the City and County of Denver, acting by and through its Board of Water Commissioners (“Denver Water”). Additionally, Silverthorne may also be allotted an additional 140 annual acre-feet of water stored in Dillon Reservoir by Denver Water. The Cooperative Agreement and underlying water cases are currently subject of litigation. Therefore, such water is currently not yet available to Silverthorne. c. Clinton Gulch Reservoir Storage. Clinton Gulch Reservoir is located in Section 25 of Township 7 South, Range 79 West of the 6th P.M. Silverthorne owns shares in the Clinton Ditch and Reservoir Company that controls water rights stored in Clinton Gulch Reservoir. Clinton Gulch Reservoir storage originally decreed in Case No. W-2559, District Court, Water Division 5 for 4,250 acre-feet for industrial, domestic, irrigation, recreation, and fish and wildlife propagation uses. Clinton Gulch Reservoir is filled by Clinton Ditch leading from Clinton Creek, tributary to Ten Mile Creek, tributary to the Blue River. Silverthorne changed its interest in the Clinton Gulch Reservoir water in Case No. 92CW95, District Court, Water Division 2 to allow for augmentation use by Silverthorne of 55 annual acre-feet of Clinton Gulch Reservoir water. In Case No. 92CW65, District Court, Water Division 5, the Clinton Ditch and Reservoir Company adjudicated a Use Enlargement of Clinton Gulch Reservoir for an additional 4,250 acre-feet with the ability to refill. d. Ruth Ditch. Silverthorne owns an interest in the Ruth Ditch originally adjudicated in Case No. CA1598, District Court of Summit County, for irrigation at a rate of 3 cfs diverting from South Willow Creek, tributary to the Blue River. Silverthorne’s interest in the Ruth Ditch water right was quantified and changed in Case No. 84CW284, District Court, Water Division 5, quantifying historical consumptive use of 50.6 acre-feet over five years, changed the use to domestic and municipal purposes, and changed the point of diversion to the Silverthorne Well Nos. 1 through 11. e. Valaer Ditch. Silverthorne owns an interest in the Valaer Ditch originally decreed in Case No. CA1805, District Court of Summit County, for irrigation at a rate of 30 cfs diverting from Salt Lick Creek tributary of the Blue River and the Blue River. Silverthorne changed some of its interest in the Valaer Ditch in Case No. W-1223 District Court, Division 5, allowing for diversion of 18.48 annual acre-feet of consumptive use water through Silverthorne Well Nos. 1 through 4 for municipal and domestic purposes. Silverthorne changed its remaining interest in the Vaelar Ditch water right in Case No. 93CW288, District Court, Water Division 5, allowing for diversion by means of the Dillon Ditch and storage of 11.87 acrefeet per year in Old Dillon Reservoir for municipal, domestic, irrigation, industrial, snowmaking, augmentation, and all other beneficial purposes. f. Graff Ditch. Silverthorne owns an interest in the Graff Ditch originally adjudicated in Case No. CA1277, District Court of Summit County, for irrigation at a rate of 4 cfs diverting from North Willow Creek, tributary to the Blue River. Silverthorne changed its interest in the Graff Ditch in Case No. 81CW160, District Court, Water Division 5 to quantify 91 acre-feet of annual consumptive use to be diverted by means of the Silverthorne Well Nos. 1 through 11 for domestic and municipal purposes. g. Applicant may increase its supply of augmentation water from Silverthorne without the need for additional water court approval as long as such sources utilized by Silverthorne remain consistent with the above listed sources. Any such increase in augmentation supply from Silverthorne would first be subject to future approval by and agreement with Silverthorne. h. The replacement sources, except for the discharge from the

Blue River Wastewater Treatment Plant of the Silverthorne Dillon Joint Sewer Authority (“BRWWTP”), are all upstream of the Original Headgate, APD Headgate, and Bobo Springs. 2. Other Augmentation Water. Pursuant to C.R.S. § 37-92-305(8)(c), Applicant requests that the final decree provide procedures to allow additional or alternative sources of augmentation water, including water leased on a yearly or less frequent basis, to be used as replacement water in the augmentation plan if the use of the additional or alternative sources are part of a substitute water supply plan approved pursuant to C.R.S. § 37-92-308 or if such sources are decreed for such use. G. Statement of Plan for Augmentation. Applicant seeks to augment stream depletions associated with diversions through Bobo Ditch, which includes the Bobo APD, and the capture of Bobo Springs to fill and cover evaporative losses from the Lakes. 1. Lakes Information: a. South Pond: 1. Maximum Depth: 3.99 feet. 2. Maximum Surface Area: 2.16 acres. 3. Maximum Volume: 3.52 acre-feet. 4. Center point of Dam: UTM Zone 13, NAD83, Easting: 407809, Northing: 4389145. ii. Middle Pond. 1. Maximum Depth: 6.22 feet. 2. Maximum Surface Area: 8.03 acres. 3. Maximum Volume: 21.90 acre-feet. 4. Center point of Dam: UTM Zone 13, NAD83, Easting: 407839, Northing: 4389369. iii. North Pond. 1. Maximum Depth: 8.30 feet. 2. Maximum Surface Area: 6.25 acres. 3. Maximum Volume: 30.48 acre-feet. 4. Center point of Dam: UTM Zone 13, NAD83, Easting: 407840, Northing: 4389757. 2. Gross Maximum Annual Evaporation: Maximum annual evaporative depletions from the Lakes when at maximum levels have been determined to be approximately 36.18 acre-feet, the total of which is broken down into maximum monthly acre-foot amounts as follows:

Month	South Pond	Middle Pond	North Pond	TOTAL
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January	0.00	0.00	0.00	0.00
February	0.00	0.00	0.00	0.00
March	0.00	0.00	0.00	0.00
April	0.00	0.00	0.00	0.00
May	0.79	2.93	2.28	5.99
June	0.98	6.36	2.82	7.43
July	1.01	3.75	2.92	7.67
August	0.82	3.04	2.37	6.23
September	0.69	2.57	2.00	5.27
October	0.47	1.76	1.37	3.59
November	0.00	0.00	0.00	0.00
December	0.00	0.00	0.00	0.00
Total	4.75	17.67	13.76	36.18

No effective precipitation credit is claimed against evaporative depletions as the Lakes are off-channel. Applicant has surveyed the Lakes and completed stage area-capacity tables to allow the Applicant to administer the ponds at differing levels to reduce evaporative loss and/or modify which Lakes to maintain water in, at the discretion of the Applicant, based on the availability of in-priority diversions and augmentation supplies throughout any given year. Such stage area-capacity tables also allow for the proper administration of the Bobo Springs when the Bobo Springs are not in priority. Any decrease in Lake volume from the maximum will be administered pursuant to stage area-capacity tables to determine surface area and subjected to a gross evaporative amount of 34.98 inches/year with monthly distribution determined according to SB 89-120 Guidelines for elevations above 6,500 feet. Evaporative depletions are assumed to be zero at times when the Lakes are frozen. **IV. Appropriative Right of Exchange.** A. Exchange Right. Applicant seeks a decree for an exchange from the discharge outlet of the BRWWTP with discharge outlet located at UTM Zone 13, NAD83, Easting: 407086, Northing: 4391381, to the Original Headgate, the APD Headgate, and the Bobo Springs up to a rate of up to 1.0 cfs for up to 17 annual acre-feet or the annual leased amount from Silverthorne, whichever is greater. See **Exhibit A** map for reference. B. Operation of Exchanges. Water will be exchanged from the point of discharge from the BRWWTP to the upstream points of the Original Headgate, APD Headgate, and Bobo Springs. C. Uses. The Applicant will use the water for all uses as set forth in Section III.D. D. Source of Water for Exchange. The sources of water for the exchanges are the water rights set forth in Section F. E. Amount of Exchange. The amount of the exchanges shall be up to 1.0 cfs to all points of exchange for up to 17 annual acre-feet or the annual leased amount from Silverthorne, whichever is greater. F. Appropriation Date. The appropriation date of the herein exchanges shall be June 28, 2022, the date upon which this application was filed with the Water Court thereby confirming, implementing, and demonstrating the Applicant's intent and actions to initiate and appropriate these water rights for the beneficial uses as set forth herein. V. **V. Remarks.** Additional remarks are as follows: A. Depletions will be considered to be out-of-priority during all times when there is a valid call for water downstream of the Bobo Springs/Bobo Reservoir that is senior to the Bobo Springs/Bobo Reservoir. B. The Applicant requests a finding that the vested water rights of others will not be materially injured by fill and evaporative depletions as long as those fills and depletions are in-priority or augmented as set forth herein. C. The Bobo Ditch and Bobo Reservoir, including Bobo Springs, shall be measured as reasonably required by the State and Division Engineers. The Applicant shall provide accounting to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan for augmentation. D. The transit loss from the delivery point to the point of augmentation will be assessed on the delivered water as reasonably determined by the Division Engineer's Office. E. If augmentation sources are exhausted or not available at any time that the Bobo Springs/Bobo Reservoir is called out, Applicant will shut off diversions of the Bobo Ditch into the Lakes, other than those diversions used for irrigation by means of 72-hour storage hold allowances or future equivalent, and shall pass all flows from the Bobo Springs until such augmentation sources are once again available and shall allow the levels of the Lakes to drop as a result of the total suffered evaporation.

YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of AUGUST 2022 to file with the Water Clerk a verified Statement of Opposition setting forth facts as to why this application should not be granted or why it should be granted in part or on certain conditions. A copy of such statement of opposition must also be served upon the applicant or the applicant's attorney and an affidavit or certificate of such service shall be filed with the Water Clerk, as prescribed by Rule 5, CRCP. (Filing Fee: \$192.00) KATHY POWERS, Water Clerk, Water Division 5; 109 8th Street, Suite 104 Glenwood Springs, CO 81601.