

Consent Agenda Item 1.a

May 17-18, 2023 Board Meeting

Case No. 23CW3000 (Water Division 3); Forbes Park Land Owners Association

Summary of Water Court Application

Application for Absolute Water Storage Rights and Approval of Plan for Augmentation, Including by Exchange or Substitution.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in March 2023 to protect CWCB’s instream flow water rights.

CWCB Instream Flow Water Rights

The CWCB holds water rights, including the following instream flow water right (ISF) in Water Division 3 in the Alamosa-Trinchera Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
82CW0230	Sangre de Cristo Creek	headwaters in vicinity of lat. 37 deg. 6’56’’ N., long. 105 deg. 11’35’’ W.	confl Ute Creek at lat. 37 deg. 24’20’’ N., long 105 deg. 29’54’’ W.	2 (1/1 - 12/31)	10/07/1982

Potential for Injury

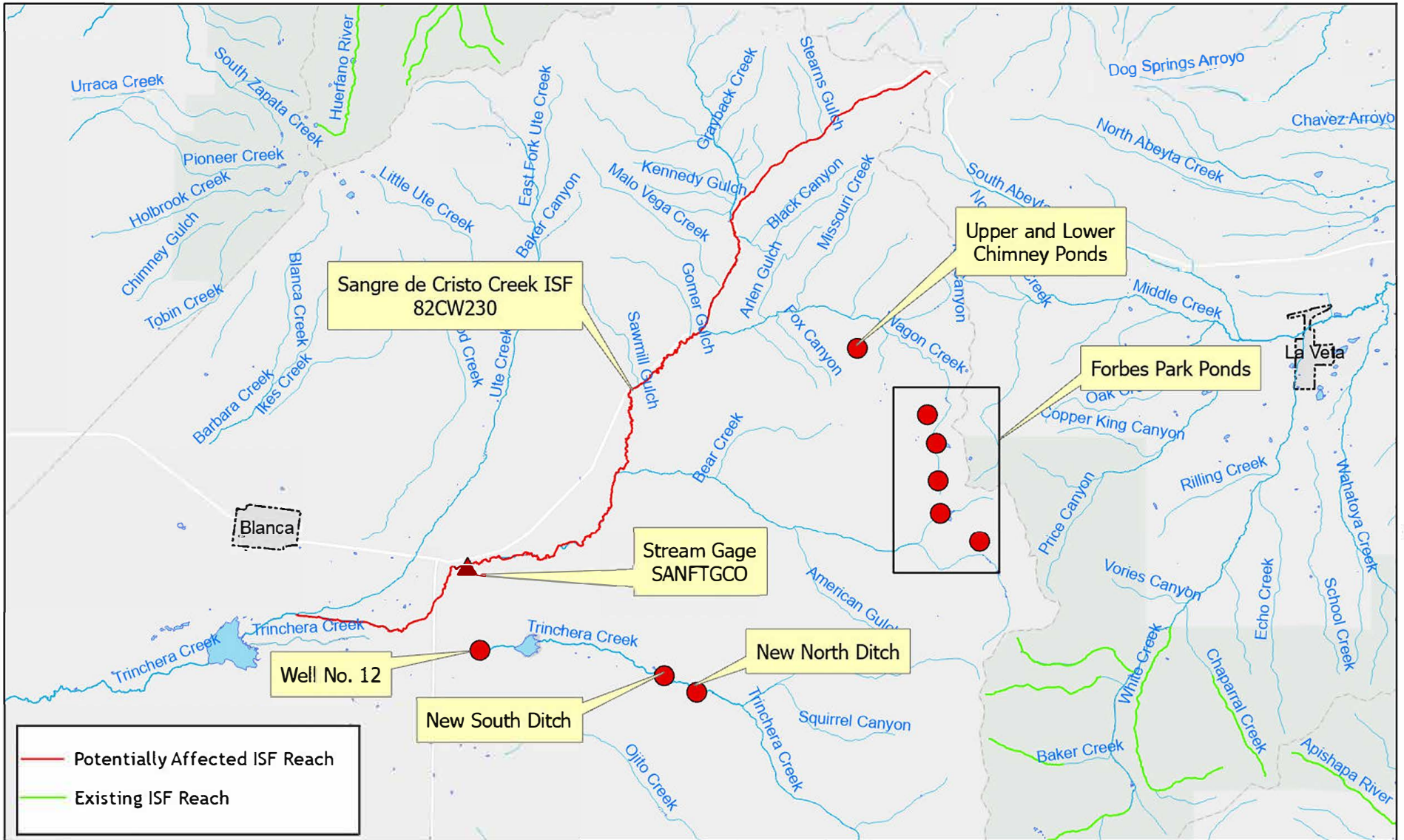
- Applicant claims some water rights with appropriation dates prior to the ISF appropriation. The CWCB’s ISF might be subject to these water rights under section 37-92-102(3)(b), C.R.S., if the claimed uses are sufficiently demonstrated.
- The proposed plan for augmentation and exchange may not replace 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 Applicant’s claims will not injure the CWCB’s instream flow water right.

Other Objectors

Statements of Opposition was also filed by Trinchera Irrigation Company; Sangre de Cristo Water Services, Inc.; Trinchera Ranch Holdings, LLC; the State and Division Engineers; and Colorado Parks and Wildlife.

Attorney Representing CWCB

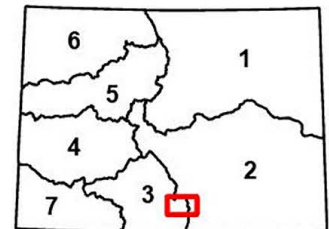
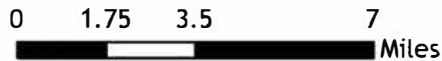
Kunal A. Parkih, Assistant Attorney General, is assigned to this case and can be contacted at kunal.parikh@coag.gov, or 720-508-6294.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

May 17-18, 2023 CWCB Board Meeting
 Consent Agenda Item 1a: Statement of Opposition
 Case No. 23CW3000 (Water Division 3)
 Forbes Park Land Owners Association



DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO
TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS FILED IN
WATER DIVISION 3.

Pursuant to C.R.S. 37-92-302(3), you are notified that the following is a resume in Water Division 3, containing notice of applications and certain amendments filed in the office of the Water Clerk during the month of January 2023 for each county affected.

23CW3000 Forbes Park Landowners Association, 100 Forbes Park Rd, Fort Garland, CO 81133. Direct all correspondence to co-counsel for Applicant: Mirko L. Kruse, Kruse Law PLLC, 134 F Street, Suite 203, Salida, CO 81201, mkruse@kruselawpllc.com and Kendall K. Burgemeister, Law of the Rockies, 525 North Main Street, Gunnison, CO 81230, kburgemeister@lawoftherockies.com. **APPLICATION FOR ABSOLUTE WATER STORAGE RIGHTS AND APPROVAL OF PLAN FOR AUGMENTATION, INCLUDING BY EXCHANGE OR SUBSTITUTION. Claim for Water Storage Rights.**

1. Forbes Park Lake A. Location: In portions of the South 1/2 of Section 11 and the North 1/2 of Section 14, Township 30 South, Range 70 West, 6th P.M., as shown on the map on **Exhibit A**. B. Point of diversion: Forbes Park Lake is an on-channel reservoir. The dam intersects the stream channel at approximately 483226E, 4144168N, UTM Zone 13, NAD 83. C. Source: North Fork of West Indian Creek, tributary to West Indian Creek, tributary to Sangre De Cristo Creek, tributary to Trinchera Creek. D. Date of appropriation: October 18, 1977. E. How appropriation was initiated: Construction of dam and impoundment of water on or before October 18, 1977. F. Date water applied to beneficial use: October 18, 1977. G. Amount: Approximately 214.4 acre-feet, absolute. Any amounts not made absolute during the pendency of this application will be claimed conditional. H. Uses: Aesthetic, fish & wildlife, fire suppression, and augmentation and replacement purposes. I. Surface area of high water line: Approximately 48 acres. J. Vertical height of dam: 14.2 feet. K. Length of dam: 200 feet. L. Total capacity: Approximately 214.4 acre-feet of total storage volume, and 214.4 acre-feet of live-storage.
2. McCarty Pond. A. Location: In the NW 1/4, Section 2, Township 30 South, Range 70 West, 6th P.M., as shown on the map on **Exhibit A**. B. Point of diversion: McCarty Pond is an on-channel reservoir. The dam intersects the stream channel at approximately 482940 E, 4147432 N, UTM 13S, NAD 83. C. Source: Wagon Creek, tributary to Sangre De Cristo Creek, tributary to Trinchera Creek. D. Date of appropriation: September 1, 1979. E. How appropriation was initiated: Construction of dam and impoundment of water on or before September 1, 1979. F. Date water applied to beneficial use: September 1, 1979. G. Amount: Approximately 10.84 acre-feet, absolute. Any amounts not made absolute during the pendency of this application will be claimed conditional. H. Uses: Aesthetic, fish & wildlife, fire suppression, and augmentation and replacement purposes. I. Surface area of high water line: 4.0 acres. J. Vertical height of dam: Approximately 9.5 feet. K. Length of dam: 220 feet. L. Total capacity: Approximately 10.84 acre-feet of total storage volume, and 10.83 acre-feet

**Attachment
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of live-storage. 3. Petito Pond. A. Location: SE 1/4 of Section 13, T30S, R70W, 6th P.M., as shown on the map on **Exhibit A**. B. Point of diversion: Petito Pond is an on-channel reservoir. The dam intersects the stream channel at approximately 485030 E, 4143221 N, UTM 13S, NAD 83. C. Source: An unnamed spring, tributary to the North Fork West Indian Creek, tributary to West Indian Creek, tributary to Sangre De Cristo Creek, tributary to Trinchera Creek. D. Date of appropriation: September 1, 1979. E. How appropriation was initiated: Construction of dam and impoundment of water on or before September 1, 1979. F. Date water applied to beneficial use: September 1, 1979. G. Amount: 8.0 acre-feet, absolute. Any amounts not made absolute during the pendency of this application will be claimed conditional. H. Uses: Aesthetic, fish & wildlife, fire suppression, and augmentation and replacement purposes. I. Surface area of high water line: 2.0 acres. J. Vertical height of dam: less than 10 feet. K. Length of dam: 160 feet. L. Total capacity: Approximately 8.0 acre-feet of total storage volume, and 8.0 acre-feet of live-storage. 4. Hayden Pond. A. Location: N 1/2 of Section 11, T30S, R70W, 6th P.M., as shown on the map on **Exhibit A**. B. Point of diversion: Hayden Pond is an on-channel reservoir. The dam intersects the stream channel at approximately 483296 E, 4145767 N, UTM 13S, NAD 83. C. Source: Wagon Creek, tributary to Sangre De Cristo Creek, tributary to Trinchera Creek. D. Date of appropriation: September 1, 1979. E. How appropriation was initiated: Construction of dam and impoundment of water on or before September 1, 1979. F. Date water applied to beneficial use: September 1, 1979. G. Amount: 4.4 acre-feet, absolute. Any amounts not made absolute during the pendency of this application will be claimed conditional. H. Uses: Aesthetic, fish & wildlife, fire suppression, and augmentation and replacement purposes. I. Surface area of high water line: 1.1 acres. J. Vertical height of dam: less than 10 feet. K. Length of dam: 220 feet. L. Total capacity: 4.4 acre-feet. 5. Burgoyne Pond. A. Location: SE 1/4 of Section 34 and SW 1/4 of Section 35, T29S, R70W, 6th P.M., as shown on the map on **Exhibit A**. B. Point of diversion: Burgoyne Pond is an on-channel reservoir. The dam intersects the stream channel at approximately 482548 E, 4148294 N, UTM 13S, NAD 83. C. Source: An unnamed spring, tributary to Wagon Creek, tributary to Sangre De Cristo Creek, tributary to Trinchera Creek. D. Date of appropriation: September 1, 1979. E. How appropriation was initiated: Construction of dam and impoundment of water on or before September 1, 1979. F. Date water applied to beneficial use: September 1, 1979. G. Amount: 3.2 acre-feet, absolute. Any amounts not made absolute during the pendency of this application will be claimed conditional. H. Uses: Aesthetic, fish & wildlife, fire suppression, and augmentation and replacement purposes. I. Surface area of high water line: 0.76 acres. J. Vertical height of dam: less than 10 feet. K. Length of dam: 200 feet. L. Total capacity: 3.2 acre-feet. 6. Upper Chimney Pond. A. Location: SW 1/4 of Section 21, T29S, R70W, 6th P.M., as shown on the map on **Exhibit A**. B. Point of diversion: Upper Chimney Pond is an on-channel reservoir. The dam intersects the stream channel at approximately 479658 E, 4151360 N, UTM 13S, NAD 83. C. Source: Wagon Creek, tributary to Sangre De Cristo Creek, tributary to Trinchera Creek. D. Date of appropriation: September 1, 1979. E. How appropriation was initiated: Construction of dam and impoundment of water on or before September 1, 1979. F. Date water applied to beneficial use: September 1, 1979. G. Amount: 0.8 acre-feet, absolute. Any amounts not made absolute during the pendency of this application will be claimed conditional. H. Uses: Aesthetic, fish & wildlife, fire suppression, and augmentation and replacement purposes. I. Surface area of high water line: 0.2 acres. J. Vertical height of

dam: less than 10 feet. K. Length of dam: 160 feet. L. Total capacity: 0.8 acre-feet. 7. Lower Chimney Pond. A. Location: W ½ of Section 21, T29S, R70W, 6th P.M., as shown on the map on **Exhibit A**. B. Point of diversion: Lower Chimney Pond is an on-channel reservoir. The dam intersects the stream channel at approximately 479605 E, 4151559 N, UTM 13S, NAD 83. C. Source: Wagon Creek, tributary to Sangre De Cristo Creek, tributary to Trinchera Creek. D. Date of appropriation: September 1, 1979. E. How appropriation was initiated: Construction of dam and impoundment of water on or before September 1, 1979. F. Date water applied to beneficial use: September 1, 1979. G. Amount: 4.0 acre-feet, absolute. Any amounts not made absolute during the pendency of this application will be claimed conditional. H. Uses: Aesthetic, fish & wildlife, fire suppression, and augmentation and replacement purposes. I. Surface area of high water line: 1.0 acres. J. Vertical height of dam: less than 10 feet. K. Length of dam: 200 feet. L. Total capacity: 4.0 acre-feet. **Claim for Augmentation Plan, Including Replacement by Exchange or Substitution**. 8. Name of structures to be augmented: Forbes Park Lake, McCarty Pond, Petito Pond, Hayden Pond, Burgoyne Pond, Upper Chimney Pond, and Lower Chimney Pond (together, “the Forbes Park Ponds”), as described above. 9. Water rights to be used for augmentation: The Association will replace out-of-priority depletions from the Forbes Park Ponds through exchange operations using substitute supplies from (A) water rights the Association owns on Trinchera Creek, and (B) water rights the Trinchera Irrigation Company (“the Company”) owns and that are storable in Smith Reservoir and exchanged up to the Forbes Park Ponds. The Association also reserves the right to add additional or alternative sources of replacement water to this plan in the future pursuant to Section 37-92-305(8), C.R.S. The substitute supplies are further described as follows: A. The Association’s Water Rights. The Association is the owner of the following water rights on Trinchera Creek and in the groundwater alluvium of Trinchera Creek (“the Association’s Water Rights”): i. New North Ditch: a. Decrees: District Court, Costilla County (Dec. 15, 1899); District Court, Costilla County (July 19, 1915); Case No. W-3312, District Court, Water Division No. 3 (April 3, 1975). b. Point of diversion: North bank of Trinchera Creek in the NE 1/4 of the SE 1/4 of Section 3, T31S, R71W, 6th P.M. (UTM 472886E, 4136823N). c. Source: Trinchera Creek. d. Date of appropriation: October 31, 1872. e. Amount: 2.0 cfs, absolute. f. Uses: Irrigation and augmentation. ii. New South Ditch: a. Decrees: District Court, Costilla County (Dec. 14, 1899); District Court, Costilla County (July 19, 1915); Case No. W-3312, District Court, Water Division No. 3 (April 3, 1975). b. Point of diversion: South bank of Trinchera Creek in the NW 1/4 of the SW 1/4 of Section 3, T31S, R71, 6th P.M. (UTM 471710E, 4137135N). c. Source: Trinchera Creek. d. Date of appropriation: May 1, 1873. e. Amount: 2.0 cfs, absolute. f. Uses: Irrigation and augmentation. iii. Well No. 12; Permit No. 14569-R; WDID 3505088. a. Decrees: Original Decree, Case No. W-572, Division No. 3, dated June 13, 1974; Augmentation Decree, Case No. W-3312, Division No. 3, dated April 3, 1975. b. Location: NW 1/4 of the SW 1/4 Section 35, Township 30 South, Range 72 West, 6th P.M., (UTM: 463415 E 4138445 N; Zone 13). c. Source: Groundwater tributary to Trinchera Creek. d. Date of appropriation: March 31, 1956. e. Amount: 1,350 gpm; being 6 acre-feet per twenty-four hours. f. Uses: Irrigation and augmentation. The irrigation uses of Well No. 12 have completely ceased. g. Depth: 496 feet. iv. Change of the Association’s Water Rights in Case No. W-3312: In Case No. W-3312, the Association’s Water Rights were changed to serve as a source of augmentation supply for the plan for augmentation

adjudicated therein. The Association's New North Ditch and New South Ditch water rights are not needed and not anticipated to ever be needed for augmentation in that plan because the primary source of augmentation supply from Well No. 12 is sufficient. The historical consumptive use of the Association's New North Ditch and New South Ditch water rights was quantified in Case No. W-3312 to be 59 acre-feet per year. In addition, there is excess augmentation supply from Well No. 12 not currently needed for augmentation in Case No. W-3312 or Case No. 22CW3042 (pending). As much as 73.5 acre-feet is currently available for use under this plan.

B. The Company's Water Rights:

- i. The Company is the owner of certain water rights in Ute Creek, Sangre De Cristo Creek, Trinchera Creek, and Ojito Creek, some or all of which may be stored in Smith Reservoir for irrigation purposes pursuant to Case Nos. W-3148 and CA-0659 ("The Company's Water Rights"). Smith Reservoir is located in the Trinchera Creek and Sangre De Cristo Creek drainages below the Forbes Park Ponds.
- ii. The Company's Water Rights would be made available for storage in the Forbes Park Ponds through upstream storage or an exchange up to the Forbes Park Ponds pursuant to C.R.S. § 37-80-120. Any upstream storage pursuant to C.R.S. § 37-80-120(1) would be released whenever needed for actual use by the Company.

10. Change of water rights:

A. The Association's Water Rights: The Association's Water Rights were already changed to be used for augmentation purposes in Case No. W-3312. If a change is still necessary to implement this augmentation plan however, Applicant requests such a change of the Association's Water Rights only to the extent necessary to allow augmentation of the Forbes Park Ponds as described above.

B. The Company's Water Rights: No change of water right is needed to the Company's Water Rights because such water will be stored in the Forbes Park Ponds through statutorily authorized upstream storage or exchange only. No change of the Company's Water Rights is or will be claimed or decreed in this case.

11. Complete statement of plan for augmentation: A detailed description of Applicant's plan for augmentation is set forth below:

- A. **Estimate of depletions.** Depletions will result from initial fill of the Forbes Park Ponds and re-fill to replace losses from evaporation. Applicant estimates that depletions from initial fill will amount to 245.64 acre-feet and that depletions to replace evaporation losses will amount to a maximum of 54.84 acre-feet annually.
- B. **Location of depletions.** The Forbes Park Ponds are located on either Wagon Creek or tributaries of West Indian Creek, which are both tributary to Sangre De Cristo Creek, tributary to Trinchera Creek. The location of the ponds are shown on **Exhibit A**.
- C. **Timing of depletions.** All of the Forbes Park Ponds are on-channel reservoirs and therefore impact the stream instantaneously.
- D. **Replacement of depletions.** Under the plan for augmentation, Applicants will replace out-of-priority depletions in time, location, and amount through exchanges or a water exchange project from the Association's Water Rights and the Company's Water Rights. The Forbes Park Ponds will operate in a flow through configuration with augmented diversions raising the stage and any unreplaced net evaporative losses lowering the stage. The volume of net evaporation depletions as calculated or estimated for the Forbes Park Ponds may be accounted for and replaced either by releasing the unreplaced net evaporation from the ponds or by maintaining the same stage in the ponds and replacing the net evaporation from either the Association's Water Rights or the Company's Water Rights through exchange. The Association will deliver the 59 acre-feet per year of fully consumable water from its New North Ditch and New South Ditch water rights to Trinchera Creek to be shepherded down to Mountain Home (at which point it may be delivered to Smith Reservoir or

otherwise used in the Company's system). Similarly, the Association will deliver its excess augmentation supply from Well No. 12 into the Company's system, where it may be used for the Company's decreed uses or delivered to Smith Reservoir. In exchange, the Association will store an equivalent amount of water in the Forbes Park Ponds. The Association may also store water in the Forbes Park Ponds pursuant to upstream storage of, or exchange with, the Company's Water Rights. Any upstream storage pursuant to C.R.S. § 37-80-120(1) would be released whenever needed for actual use by the Company.

E. Replacement by exchange or substitution. In connection with the plan for augmentation, Applicant requests an appropriative right of exchange or substitution as follows: i. Downstream termini: The downstream termini of the exchange will be Smith Reservoir and Mountain Home Reservoir and other points upstream of those reservoirs from which the Company may divert water. Smith Reservoir is located in parts and portions of Sections 26, 27, 33, 34, and 35 of Township 30 South, Range 73 West of the 6th P.M. and in parts or portions of Sections 2 and 3 in Township 31 South, Range 73 West, 6th P.M. Mountain Home Reservoir is located in parts or portions of Sections 25 and 36 in Township 30, South of Range 72 West; Section 31 in Township 30, South of Range 71 West; Section 1, Township 31 South of Range 72 West; and in Section 6, Township 31, South of Range 71 West. ii. Source of Replacement: The Association's Water Rights and/or the Company's Water Rights, as described above. iii. Upstream termini: The Forbes Park Ponds, as described above and as shown on **Exhibit A**. iv. Appropriation date: January 13, 2023. v. How appropriation was initiated: By the filing of this application. vi. Annual Volume: 300.48 acre-feet vii. Maximum rate of exchange: 4 cfs. viii. To the extent that a separate "water exchange project" is required for replacement utilizing Well 12, Applicant requests approval of the same. F. Senior to in-stream flow right: The Forbes Park Ponds were constructed by 1979. Therefore, a fill of the ponds and evaporation are uses of water senior to the instream flow decreed in Case No. 82CW230 for Sangre de Cristo Creek in the amount of 2 cfs, with an appropriation date of October 7, 1982. C.R.S. § 37-92-102(3)(b).

12. Name and address of owners of the land upon which any new diversion or storage structure will be constructed or upon which water is or will be stored: See **Exhibit B**.

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 notified that you have until the last day of March 2023, to file with the Water Clerk a verified statement of opposition setting forth facts as to why a certain application should not be granted or why it should be granted only in part or on certain conditions or a protest to the requested correction. A copy of such a statement of opposition or protest must also be served upon the Applicant or the Applicant's attorney and an affidavit or certificate of such service must be filed with the Water Clerk. The filing fee for the Statement of Opposition is \$192.00. Forms may be obtained from the Water Clerk's Office or our website at www.courts.state.co.us. Jennifer Pacheco, Water Clerk, Water Division 3, 8955 Independence Way, Alamosa, CO 81101.