MEMORANDUM

TO: Board of Directors
FROM: Catherine Hayes, Board Secretary
DATE: March 18, 2020
RE: March 26, 2020, Regular Board Meeting

This memorandum shall serve as notice of the Regular Board of Directors Meeting of the Eagle River Water & Sanitation District:

Thursday, March 26, 2020
11:30 a.m.

This meeting will be held via Skype to ensure compliance with state and local requirements to protect public health at this time.

Call-in information will be available via the District’s website prior to the meeting: www.erwsd.org

Cc public items:
ERWSD Managers
Ken Marchetti, Marchetti & Weaver, PC

Board Materials via Email:
Bob Armour, Vail resident
Caroline Bradford, Independent Consultant
Robert Lipnick, Vail resident
Rick Sackbauer, Vail resident
Cliff Thompson, IKS Consulting
1. Consultant/Guest Introduction
2. Public Comment*
3. Action/Other Items
   3.1. Meeting Minutes of Feb. 27, 2020, Regular Meeting○
   3.2. Ratification and Extension of Emergency Declaration – Linn Brooks
   3.3. Parameters Resolution re Series 2020A and 2020B Enterprise Wastewater Revenue Bonds – James Wilkins○
   3.4. Consent Agenda: Contract Log○
   3.5. Information Reports*
      3.5.1. Development Report†
      3.5.2. Authority and District Committees*
      3.5.3. Authority February Meeting Summary – draft*
4. COVID-19 Update and Operations Report – Linn Brooks and Siri Roman*
5. General Counsel Report – Jim Collins†
   6.1. Pando Feeder Canal*
   6.2. Eagle Park Reservoir*
7. Executive Session pursuant to § 24-6-402(a)(b) and (e), C.R.S.
   7.1. COVID-19 Policies – Linn Brooks†
   7.2. General Counsel Review of Matters in Negotiation – Jim Collins†
   7.3. Water Counsel Review of Matters in Negotiation – Glenn Porzak
      7.3.1. Bolts Lake Matters†
8. Adjournment
TO: Board of Directors

FROM: James O. Wilkins, Director of Finance

DATE: March 26, 2020

RE: Parameters Resolution for Series 2020A and 2020B Enterprise Wastewater Revenue Bonds

Summary of subject: Staff recommends the district adopt the attached parameters resolution, which will allow staff and consultants to move forward with the issuance of $40 million in new wastewater enterprise revenue bonds in the near future and the refunding of the Series 2012 Wastewater Revenue Bonds in the amount of $25 million to allow for net present savings based on lower prevailing interest rates. The new bond funds are needed to continue with various infrastructure projects, including the delivery of the upgrades and nutrient reduction processes for Avon Wastewater, so passing the resolution at this month’s meeting will allow the district to have funds on hand to complete these projects as costs are incurred in the near future. The contemplated refunding bond is estimated to save the district’s ratepayers between $2.4 million and $3.8 million in repayment costs, representing between 10% and 16% in net present savings.

Discussion and Background: The district will issue $40 million in wastewater enterprise revenue bonds for various district wastewater system improvements and $25 million in refunding bonds to pay off higher interest rate bonds from 2012. The parameters resolution sets forth a variety of stipulations for bond issuance. The resolution allows an interest rate of up to 6%; a subcommittee of the board may wish to approve the final interest rate proposal when such information is available from the underwriters. In addition, it allows for proceeding with bond issuance sometime in the next month or two.

Alternatives: Wait to approve the parameters resolution at a later date and delay the issuance of the bonds.

Legal Issues: Bond and general counsel have reviewed the resolution and recommend approval.

Budget Implications: The new bond issue will require repayment of interest and principal starting in 2021 and continuing for thirty years. The refunding bond will extinguish the old bond issued in 2012 and repay principal and interest over the remaining term (22 years) starting in 2021. The bonds will be repaid with funds received from customers paid monthly on their bill reflected as Series 2020A and Series 202B Wastewater Enterprise Debt Service Fees.

Recommendation: Staff and counsel recommend approval of the attached parameters resolution for the proposed wastewater enterprise revenue bonds.
**Suggested Resolution and Motion:** I move to adopt the attached parameters resolution for issuance of series 2020A and 2020B wastewater enterprise revenue bonds.

**Attachments available upon request:**

- 2020 Parameters Resolution from District bond counsel
- 2020 Paying Agent Agreement
- 2020 Continuing Disclosure Agreement
## EAGLE RIVER WATER & SANITATION DISTRICT 2020 CONTRACT LOG

<table>
<thead>
<tr>
<th>Contract Number</th>
<th>Date Executed</th>
<th>Change Order</th>
<th>Project Name</th>
<th>Contractor</th>
<th>Amount</th>
<th>Manager</th>
<th>Account Number</th>
<th>Status and Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.15.009</td>
<td>Pending</td>
<td></td>
<td>Avon WWTF Nutrient Upgrades 1041</td>
<td>Moltz Construction, Inc.</td>
<td></td>
<td>M. Marts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20.15.010</td>
<td>02/25/20</td>
<td></td>
<td>QWEL Training (Irrigation Analysis)</td>
<td>Irrigation analysis</td>
<td>$7,150.00</td>
<td>C. Wolff</td>
<td>10.3.9.20.30.778</td>
<td>Open/Contract Expires 4/24/2020</td>
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<tr>
<td>20.15.011</td>
<td>03/06/20</td>
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<td>QWEL Training (Water Now Alliance)</td>
<td>Water Flow Alliance</td>
<td>$12,396.51</td>
<td>C. Wolff</td>
<td>10.3.9.20.30.778</td>
<td>Open/Contract Expires 4/24/2020</td>
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<tr>
<td>20.15.012</td>
<td>02/24/20</td>
<td></td>
<td>Preventive Maintenance/Annual Service Vail WWTF</td>
<td>American Mechanical Services</td>
<td>$2,748.00</td>
<td>N. Tressmer</td>
<td>10.3.9.10.20.500</td>
<td>Open/Contract Expires 12/31/20</td>
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<tr>
<td>20.15.013</td>
<td>03/16/20</td>
<td></td>
<td>ERWSB Administrative Building - VRF Renovation</td>
<td>BG Buildingworks, Inc.</td>
<td>$8,000.00</td>
<td>M. Mantua</td>
<td>10.3.9.00.40.650</td>
<td>Open/Contract Expires 12/31/20</td>
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<tr>
<td>20.15.014</td>
<td>03/02/20</td>
<td></td>
<td>EWWTP Security Project</td>
<td>Triangle Electric</td>
<td>$78,200.00</td>
<td>J. Sica</td>
<td>10.1.2.00.45.308</td>
<td>Open/Contract Expires 04/06/20</td>
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<td>20.15.015</td>
<td>03/09/20</td>
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<td>Stone Security Project</td>
<td>Triangle Electric</td>
<td>$87,000.00</td>
<td>J. Sica</td>
<td>10.1.2.00.45.308</td>
<td>Open/Contract Expires 4/3/20</td>
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<tr>
<td>Project Name</td>
<td>Year Submitted</td>
<td>Type of Use</td>
<td>SFs Proposed</td>
<td>Location</td>
<td>Anticipated Construction Start</td>
<td>Project Status</td>
<td>Type of Development</td>
<td>Connection Application Submitted</td>
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<tr>
<td>Chamonix Residential Development</td>
<td>2015</td>
<td>Residential</td>
<td>32</td>
<td>Vail</td>
<td>2016</td>
<td>Warranty</td>
<td>Infill</td>
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<tr>
<td>Edwards Fire Station</td>
<td>2015</td>
<td>Commercial</td>
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<td>Marriott Residence Inn</td>
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<tr>
<td>Anglers PUD</td>
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<tr>
<td>6 West Apartments (formerly Via)</td>
<td>2016</td>
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<td>121</td>
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<td>5040 Wildridge Road East</td>
<td>2016</td>
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<td>2</td>
<td>Avon</td>
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<tr>
<td>Avon Public Safety Facility</td>
<td>2016</td>
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<td>10.3</td>
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<td>x</td>
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<td>VVMC Phase II-East Wing</td>
<td>2016</td>
<td>Commercial</td>
<td>Vail</td>
<td>2017</td>
<td>In Construction</td>
<td>Renovation</td>
<td>PUD</td>
<td>x</td>
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<tr>
<td>BaseCamp</td>
<td>2016</td>
<td>Residential</td>
<td>15</td>
<td>Avon</td>
<td>2016</td>
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<td>Stillwater</td>
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<td>Fox Hollow Amended PUD</td>
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<td>Edwards</td>
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<td>Edwards River Park PUD</td>
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<td>594+com</td>
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<td>VVMC-Edwards Campus Addition</td>
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<td>Red Sandstone Parking Garage</td>
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<td>S Frontage Rd Roundabout</td>
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<td>Infrastructure</td>
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<td>Vail</td>
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<td>185 Elk Track</td>
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<td>Beaver Creek</td>
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<td>x</td>
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<td>SSCV Club House Expansion</td>
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<td>4 + com</td>
<td>Vail</td>
<td>2018</td>
<td>In Construction</td>
<td>Renovation</td>
<td>x</td>
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<td>Colorado World Resort</td>
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<td>2019</td>
<td>In Construction</td>
<td>Upzoning</td>
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<td>S34 E Lionshead Circle - Elevation</td>
<td>2018</td>
<td>Residential</td>
<td>12</td>
<td>Vail</td>
<td>2020</td>
<td>Conceptual</td>
<td>Renovation</td>
<td>x</td>
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<td>S34 E Lionshead Circle - Lion's View</td>
<td>2018</td>
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<td>23</td>
<td>Vail</td>
<td>2020</td>
<td>Conceptual</td>
<td>Renovation</td>
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<td>Warner Building 2 Conversion</td>
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<td>36 Eagle-Vail</td>
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<td>Renovation</td>
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<td>Kudel Parcel</td>
<td>2018</td>
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<td>4</td>
<td>Edwards</td>
<td>2020</td>
<td>Conceptual</td>
<td>Infill</td>
<td>x</td>
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<tr>
<td>Avon Apartments</td>
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<td>Riverfront Village</td>
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<td>Avon</td>
<td>2019</td>
<td>Warranty</td>
<td>PUD</td>
<td>x</td>
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<tr>
<td>Booth Heights</td>
<td>2019</td>
<td>Residential</td>
<td>61</td>
<td>Vail</td>
<td>2020</td>
<td>Conceptual</td>
<td>Infill</td>
<td>x</td>
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<tr>
<td>941/851 Main St Minturn</td>
<td>2019</td>
<td>Residential</td>
<td>4 Minturn</td>
<td>MInturn</td>
<td>2019</td>
<td>In Construction</td>
<td>Renovation</td>
<td>x</td>
</tr>
<tr>
<td>Mountain Hive</td>
<td>2019</td>
<td>Residential</td>
<td>260</td>
<td>Edwards</td>
<td>2020</td>
<td>Conceptual</td>
<td>Infill</td>
<td>x</td>
</tr>
<tr>
<td>CVC Clubhouse Residences</td>
<td>2018</td>
<td>Residential</td>
<td>12</td>
<td>Edwards</td>
<td>2020</td>
<td>Conceptual</td>
<td>Renovation</td>
<td>x</td>
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<tr>
<td>Miradoro</td>
<td>2018</td>
<td>Residential</td>
<td>10</td>
<td>Vail</td>
<td>20??</td>
<td>Plan Review</td>
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<td>Highline (Double Tree Expansion)</td>
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<td>Vail</td>
<td>2020</td>
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<td>North Minturn PUD</td>
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<td>114</td>
<td>Minturn</td>
<td>2017</td>
<td>Conceptual</td>
<td>PUD</td>
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### District Committees

<table>
<thead>
<tr>
<th>Audit/Budget</th>
<th>Employee Housing</th>
<th>Retirement Plans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dick Cleveland, Steve Coyer</td>
<td>Steve Coyer, Dick Cleveland</td>
<td>Steve Coyer, Linn Brooks, Melissa Mills McLoota, James Wilkins</td>
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<table>
<thead>
<tr>
<th>Organizational Development</th>
<th>Facilities Master Plan (formerly Real Estate and New Development)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill Simmons, Dick Cleveland</td>
<td>George Gregory, Brian Sipes</td>
</tr>
</tbody>
</table>

### Authority Committees

<table>
<thead>
<tr>
<th>Audit/Budget</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Geoff Dreyer, George Gregory</td>
<td></td>
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</tbody>
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### Joint Committees

<table>
<thead>
<tr>
<th>Water Quality</th>
<th>Rules and Regulations</th>
<th>Water Demand Management</th>
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</thead>
<tbody>
<tr>
<td>Sarah Smith Hymes (A), Timm Paxson (D)</td>
<td>Kim Bell Williams (A), Bill Simmons (D)</td>
<td>Mick Woodworth (A), Steve Coyer (D)</td>
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</table>

<table>
<thead>
<tr>
<th>Climate Action Plan</th>
<th>Unification</th>
<th>Unification and Unallocated Water</th>
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</thead>
<tbody>
<tr>
<td>Sarah Smith Hymes (A), Timm Paxson (D)</td>
<td>Steve Coyer (D), Sarah Smith Hymes (A), Kim Bell Williams (A)</td>
<td>Geoff Dreyer (A), Sarah Smith Hymes (A), Steve Coyer (D), Bill Simmons (D)</td>
</tr>
</tbody>
</table>

(A) = Authority  
(D) = District
The following is a summary of items discussed at the Feb. 27, 2020, Authority Board Meeting:

Board members present and acting included: Chair George Gregory, Secretary Kim Bell Williams, Treasurer Geoff Dreyer, Sarah Smith Hymes, Mick Woodworth, and Bill Simmons (alternate).

Board Member Input
Director Smith Hymes reported that the Avon Town Council did not support her request that increments less than 1 SFE (3000 square feet) be used as the basis for calculating Avon’s tap fees. The council approved the District’s 1041 permit Tuesday night with conditions. She also reported interested parties can now give remote testimony on any state bills from Colorado Mountain College. She updated on Avon’s styrofoam ban. Secretary Williams reported the sale of 6 West to a non-local owner.

Sustainability Update
Kira Koppel reported on local efforts to engage stakeholders in climate change action through behavior change campaigns. The most impactful initiatives identified locally were offsetting electric use through purchase of renewable energy credits through Holy Cross Energy’s PuRE program; carpooling; and rooftop solar installations. She also gave an overview of composting and reminded directors that they are welcome and encouraged to compost at home and drop off their compost at any District facilities.

Quarterly Finance Report
James Wilkins discussed the quarterly finance report, which included year-end information for 2019. Water sales were below projections and below the five-year average, likely due to wet, cold spring conditions. Tap fees were well above projections, as developments moved more quickly than anticipated in Authority modeling. Water service revenues were closely aligned with projections, and expenditures were below projections. James also discussed anticipated bond refunding for the Authority in Aug. 2020. James also noted he and Linn continued to present to local entities regarding rate increases projected in the next five years.

Wastewater Updates
Siri Roman discussed various wastewater updates. Staff responded to a recent sanitary sewer overflow at Beaver Creek Landing. The spill was small, contained, and did not require reporting to the state. By comparison, a June overflow at the Dowd Junction lift station did require reporting to the state, based on size and that it reached the river. This overflow and many other items were discussed during the District’s recent compliance evaluation inspection. State inspectors toured the District’s wastewater facilities and heard from various staff members regarding operations. The inspectors were complimentary of District operations and facilities.

Capital Improvement Projects
Siri Roman and Jeff Schneider discussed upcoming capital improvements. An open house was recently held for Liftview residents to discuss the nutrient upgrade project that will begin soon at the Avon Wastewater Treatment Facility. The event was well-attended and went smoothly. Jeff Schneider discussed the Fenno
Wellhouse replacement, for which needed approvals are expected soon from the county.

### Engineering Report

<table>
<thead>
<tr>
<th>Section</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jason Cowles</td>
<td>Reminded directors of a developer's application to build 12 homes at</td>
</tr>
<tr>
<td></td>
<td>the Cordillera Valley Club. Staff previously alerted the board of</td>
</tr>
<tr>
<td></td>
<td>CVC's overuse of water. Jason noted the county does not believe the</td>
</tr>
<tr>
<td></td>
<td>developer has the correct entitlements to proceed with the development;</td>
</tr>
<tr>
<td></td>
<td>until this is determined, the Authority does not need to commit to an</td>
</tr>
<tr>
<td></td>
<td>ability to serve.</td>
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</tbody>
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### Traer Creek Tank Update

<table>
<thead>
<tr>
<th>Section</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jason Cowles</td>
<td>Discussed Traer Creek Tank planning. Geotechnical site analysis</td>
</tr>
<tr>
<td></td>
<td>confirmed the old tank site was the best place for the new tank. Staff</td>
</tr>
<tr>
<td></td>
<td>is proceeding with 30% tank design, with construction anticipated from</td>
</tr>
<tr>
<td></td>
<td>2021 – 2022. Jason said design and bidding requirements will not allow</td>
</tr>
<tr>
<td></td>
<td>for 2020 construction.</td>
</tr>
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### Communications Update

<table>
<thead>
<tr>
<th>Section</th>
<th>Details</th>
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<tbody>
<tr>
<td>Diane Johnson</td>
<td>Discussed the upcoming presentations to local entities regarding the</td>
</tr>
<tr>
<td></td>
<td>projected rate increases in the coming years. She also noted various</td>
</tr>
<tr>
<td></td>
<td>bills that staff and consultants are monitoring, including funding for</td>
</tr>
<tr>
<td></td>
<td>Colorado’s Water Plan, a bill that would have required the District to</td>
</tr>
<tr>
<td></td>
<td>index all its real property; and a housing authority bill to exempt</td>
</tr>
<tr>
<td></td>
<td>developers of workforce housing from paying tap fees. Staff continues</td>
</tr>
<tr>
<td></td>
<td>to monitor a bill regarding augmentation of instream flows.</td>
</tr>
</tbody>
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### PFAS Monitoring

<table>
<thead>
<tr>
<th>Section</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brad Zachman</td>
<td>Discussed monitoring for per- and polyfluoroalkyl substances (PFAS),</td>
</tr>
<tr>
<td></td>
<td>which have gained media coverage in recent years as they were found in</td>
</tr>
<tr>
<td></td>
<td>municipal water supplies. PFAS are commonly found in everyday items,</td>
</tr>
<tr>
<td></td>
<td>but have been linked most strongly to groundwater contamination near</td>
</tr>
<tr>
<td></td>
<td>military bases where firefighting training occurs. Brad noted staff</td>
</tr>
<tr>
<td></td>
<td>received a grant to do additional PFAS sampling for Authority and</td>
</tr>
<tr>
<td></td>
<td>District supplies, even though they are not high-risk. He will update</td>
</tr>
<tr>
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<td>the board when sampling has occurred.</td>
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### Eagle Park Reservoir Agreement with Eagle County

<table>
<thead>
<tr>
<th>Section</th>
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<tbody>
<tr>
<td>The Board</td>
<td>Unanimously approved an agreement with Eagle County to obtain its 87+</td>
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<td>acre feet of Eagle Park Reservoir water. The agreement specifies the</td>
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<td>water must be used within the Authority’s service area for affordable</td>
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<td>employee or workforce housing developments that conserve water, or</td>
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<td>projects that promote healthy streams and rivers in the Eagle River</td>
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### Pando Feeder Canal Protest

<table>
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<tbody>
<tr>
<td>Glenn Porzak</td>
<td>Discussed the protest letter he filed on behalf of the Authority and</td>
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<td>District regarding the recent diligence application for the Pando Feeder</td>
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<td>Canal water right. The referee agreed with a finding of diligence;</td>
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<td>however, Glenn is protesting an inclusion in the diligence finding that</td>
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<td>would unduly restrict the ability to obtain an absolute decree for a</td>
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<td>future enlargement of Eagle Park Reservoir.</td>
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I would like to begin by acknowledging the great work that is happening in our community. Eagle County Public Health has mobilized to manage this incident on a county-wide scale, and is providing excellent leadership, supporting both public and private organizations as they navigate the challenges presented by the COVID-19 Pandemic. I continue to appreciate their effective communications and responsiveness to issues we have raised. I know they are similarly supporting every other critical function in the county, especially our healthcare system.

To organize a District and Authority response to this incident, our staff is utilizing the Incident Command System, which is an emergency response system developed by the Federal Government after Hurricane Katrina. Our staff is trained in this system and has used it to manage actual incidents for several years, including the 2012 and 2018 droughts, water main breaks, and the arc flash incident at the East Fork Pump Station in 2018. This system provides a clear chain of command and roles and responsibilities for members of the response team, so planning and response activities are efficient, and communications are effective and clear.

The greatest risk to the District and Authority’s ability to fulfill their mission to customers is excessive absenteeism in our staff. We may experience absenteeism because parents must stay home with children who can’t attend school or from infection with the coronavirus; therefore, our highest priority is protecting the health and safety of our staff.

My assessment of our planning and response is that we are on track, even as the spread of the virus and the impacts to the community are moving fast. We will provide a verbal update in the meeting.

I am tremendously proud of our team here at the District for their calm focus in the face of crisis and uncertainty; they are and always have been top performers in emergencies. As you can imagine, many of our normal duties are curtailed to allow for us to dedicate our resources to planning and response, and to ensuring that we maintain a healthy and safe environment for our dedicated employees. A unit of the ICS structure is dedicated solely to supporting our staff through accurate information and clear policies, mental health, food and hydration, and team dynamics.
LOCAL NEWS

Eagle Mine Superfund Site

The OU1 Record of Decision was amended to clarify where the alternate remedial goal for arsenic of 3 ug/L applies and what arsenic range will be used to assess the protectiveness of the remedy in surface water. The 3 ug/L will be the end-of-pipe effluent limit for the Eagle Mine Wastewater treatment plant. The protective risk range of 0.6-6 ug/L will be the interim WQ standard until a new surface WQ standard is adopted by the State. The current surface WQ standard is 0.02 ug/L. Most state surface water exceed the current WQ standard.

Newfields, a contractor for the Eagle Mine, shared the 2020 Surface Water and Groundwater Monitoring Plan. They will be increasing the sampling frequency during the spring metals flush. Sampling will occur weekly at 4 locations within the mine site.

The Consent Decree should be available for public comment either late March or early April.

WATER

All drinking water facilities are in service after seasonal maintenance shutdowns.

The Avon Drinking Water Facility (ADWF) is preparing for a planned shutdown in early April to complete Phase II of the Clearwell Improvements Project. This phase involves minor improvements to the disinfection clearwell and sanitary modifications to the filter-to-waste discharge line.

Water Operations, Field Operations, and OTS staff responded to an emergency overflow call out on Feb. 24 at the Intermountain Water Storage Tank in Vail. No damage was reported, and the cause of the overflow is under investigation.

Operations staff is closely monitoring and controlling discharges from the raw water reservoir system. Eagle Park Reservoir is releasing at a rate of 0.5 cfs. Black Lakes Reservoirs are at minimum fish pool as of March 12 and releasing 1.0 cfs under direction of consultants.

District-wide programmable logic controller (PLC) training was held March 10 – 13. Staff from multiple departments participated: 11 employees registered for the two-day course and an additional 14 employees completed the four-day course.

WASTEWATER & LABORATORY

Leah Cribari, Laboratory Supervisor, completed and submitted the 2019 Annual Stormwater Report to Colorado Department of Public Health and Environment. Each wastewater facility has a Stormwater
Discharge Permit and Stormwater Management Plan with required inspection and monitoring. The District has satisfied all permit requirements and was in compliance for 2019.

### FIELD OPERATIONS

Field Operations On-Call Staff responded to a repeat Sanitary Sewer Overflow (SSO) at Beaver Creek Landing near a ski run. Crews contained the area, freed the blockage (large pieces of concrete, debris etc.) and disinfected the area. All work was coordinated with Vail Resorts. Additional jetting and televising of the collection main is scheduled for this spring, when snow has melted, and the upstream manholes are accessible.

Work continues at the Hillcrest site in Edwards. Staff is working with contractors to finalize the fence and gate installation. The relocation of materials, fleet and equipment to this location will take place over the next couple of weeks.

Field Operations staff attended a demonstration of installing and locating tracer wire. This directly relates to the addition of Appendix E to our Rules and Regulations, which references Senate Bill 18-167. The requirements of this bill increase the ability to locate underground utilities, improve safety for contractors working around our infrastructure, and decrease the likelihood of costly repairs.

### ENGINEERING

#### WATER PROJECTS

**Berry Creek Booster Pump Station 1 Replacement**

*General Project Scope:* The Berry Creek Booster Pump station pumps water from the main Edwards Cordillera Valley Club (CVC) pressure zone (Berry Creek Tank 1) up to the larger Berry Creek Tank 2. This station is at the end of its useful life. This project will replace the station from an in-ground vault to a bunker-style, at-grade access vault. The replacement will increase reliability and address electrical safety issues that were identified, including inadequate access, ventilation, code compliance, and tank hatch improvements. Other items to be addressed include landscaping improvements and electrical, instrumentation, and controls upgrades, as well as emergency backup power and pumping connections.

*Project Update:* The pump station base structure is complete, with façade work scheduled for spring. Exterior work will be completed as weather permits. Two of the three water main tie-ins for the new pump station are complete as of late Feb. with minimal disruption to customers. Interior construction work is in progress, including the installation of instrumentation, controls, process piping, and electrical equipment.

**Radio Telemetry Unit (RTU) System Upgrades**

*General Project Scope:* This project is a systematic approach to install standardized communication equipment to increase the reliability of the telemetry system throughout the distribution system (82 sites) and develop a standard (i.e., non-proprietary) telemetry platform to allow competitive pricing.
for upgrades, replacement, and system maintenance. Implementation is anticipated over a three-year period with a highly detailed sequence and schedule to limit distribution system disruptions.

**Project Update:** East Vail, Vail, and West Vail Phase 1 and 2 punchlist items are 95% complete.

Scoping and bids for the UERWA phase 1 have been delivered to the district for review and comment. The project team anticipates contract release mid-March for a spring start. The project areas include Dowd Junction, EagleVail, Avon, Mountain Star, Beaver Creek, Strawberry Park, with radio work in Wildridge and Edwards.

**Traer Creek Water Storage Tank Demolition**

**General Project Scope:** This project consists of the demolition of the failed Traer Creek tank, piping, and appurtenances; selective salvage of identified equipment; maintenance and protection of existing utilities not scheduled for demolition; and grading of the site to a flat, even surface at the end of demolition. Prior to Traer Creek Tank redesign, geotechnical boring must take place to determine subsurface soil and rock conditions.

**Project Update:** Water tank demolition started in late fall 2019; work resumed after a winter hiatus. Tank top slab, bottom slab and walls are completely de-tensioned and demolished. Concrete and tank reinforcement continue to be hauled offsite. Tank design is underway using information obtained by new geotechnical borings. A design review workshop was held, and tank location, footprint and type were selected. The project team is evaluating a test pier installation in summer 2020 to reduce construction risk. The project is slated for 2021 construction.

**Fenno Well House Replacement**

**General Project Scope:** The Fenno Wellhouse is a facility that disinfects groundwater in Cordillera and pumps finished water into the water distribution system. It is in serious need of replacement as it contains electrical code compliance issues, a lack of reliability and redundancy, and is at the end of its useful life. The project consists of replacement of the entire wellhouse facility and installation of a below-grade clearwell tank/contact basin.

**Project Update:** Staff received CDPHE design review and Eagle County Location & Extent permit approval in early March. The engineer is preparing the issue for bid (IFB) package, and the project will be advertised following final staff review. The team anticipates approximate construction start on May 1, 2020.

**Village Hall Water Main**

**General Project Scope:** A water main currently runs underneath the tunnel accessing Village Hall and the Park Hyatt in Beaver Creek. Corrosive soils and high groundwater have led to mainline breaks. The project will replace the main with a non-corrodible HDPE pipeline material, reestablish the service to Village Hall, install a dry fire standpipe, and abandon the existing hydrant, making the new line a private service line.
Project Update: The project is divided into two phases to maintain domestic water and fire suppression service to Village Hall and lessen the impact on the resort community: dry fire standpipe installation and water main replacement.

Dry standpipe – Dry standpipe phase is complete, and Eagle River Fire Protection District will perform testing on their schedule.

Water Main replacement – Phase 2 was scheduled to start on 04/13/2020; however, due to the Beaver Creek Resort early closure, coordination is in progress with the stakeholder group to start Phase 2 earlier.

WASTEWATER PROJECTS

Avon Wastewater Treatment Facility (AWWTF) Nutrient Upgrades

Melissa Marts

General Project Scope: As identified in the Wastewater Master Plan Update, the Avon WWTF requires upgrades to meet Regulation 85, which involves reducing the concentrations of nitrogen and phosphorus in the effluent. These improvements will also allow staff to bypass flows from Vail WWTF to AWWTF during the peak winter season. This project also includes improvements identified in a 2017 condition assessment in other process areas throughout the facility. Scope includes the following: addition of 0.6 million gallons of aeration basin capacity; a new secondary clarifier; structural modifications to the existing aeration basins to remove the existing double-tees and replace with a building structure; a new odor control study and system; and other improvements throughout the facility.

Project Update:
Moltz Construction submitted the Guaranteed Maximum Price (GMP) proposal on February 13. Their GMP is within 5% of the 3rd party cost verification, which is excellent in the current market conditions. The District and Carollo teams reviewed the proposal and are working closely with Moltz to reach an agreement on scope and price.

In light of applicable health and safety guidelines, the project team is working to develop a Conditional Notice to Proceed, which would allow for the contractor to begin shop drawing, rebar detailing, equipment procurement, etc. Actual field presence and mobilization would be on hold until it is safe to do so.

The project team is working closely with operations staff to mitigate impacts to parking once contractors mobilize to site.

Dowd Junction Collection System Improvements

Debbie Hoffman/Jeffrey Schneider

General Project Scope: The project consists of four major components, all of which are at the end of their useful lives: the aerial interceptor crossing at Dowd Junction; Lift Station 4, which conveys all of Minturn’s wastewater; the aerial interceptor crossing at the Minturn Road bridge; and the force main downstream of Lift Station 4. The project will also include capacity for growth in its respective service areas, most notably the Minturn area improvements.
Project Update: District staff continued coordination efforts with CenturyLink, Eagle County Trails, and the US Forest Service (USFS). A new USFS Special Use Permit is expected imminently. CDOT permitting is also underway. The team anticipates advertising the project for bid in late March. District staff continues to work with the Union Pacific Railroad (UPRR) to address permitting concerns which delayed the project. The project team will likely need to reapply since relocating the CenturyLink communications cables on the existing pipe bridge structures was not included in the application.

Staff is working with the design engineer on siting and design of the new lift station structure. Some project management issues were encountered with the engineer, and staff is negotiating a cost to complete and revised schedule and budget to complete the design work.

**OTHER PROJECTS**

**Vail Administrative Building HVAC System**

Mark Mantua

**General Project Scope:** The south portion of the Vail administrative building is served by a variable air volume system, baseboard heat and two air handling units (AHUs). This portion of the building also contains eight different temperature zones, each controlled by a Trane system controller that can only heat or cool at one time. The AHUs are over 25 years old and well past their service life. Certain zones within AHU-1s service area consistently fail to cool efficiently. The District intends to install a new Variable Refrigerant Flow (VRF) system with the ability to simultaneously heat and cool zones in the south portion of the Vail administrative building.

**Project Update:** The contractor, Economy AC, has started installing new equipment in the Admin areas. Ceiling cassettes and fan coils recessed in the ceiling were installed in the first floor Admin area. Additional piping and duct were moved onsite, and installation of new ductwork and refrigerant piping began on 3/16/20.
March 2020 Water Resources Report

Statewide Snow Water Equivalent remains slightly above average for most of the state, as shown in Figure 1. Southwest Colorado is below normal as of March 16. This is also seen in Figure 2, where the Southwest has the most severe drought condition, with some areas in D2-Severe Drought. Eagle County has a small area in the Southwest listed as “D0-Abnormally Dry”.

Figure 1. State SWE
Figure 2. Colorado Drought Monitor, NIDIS. Accessed 3/16 2020.
The Upper Colorado River Basin is currently at 111% of normal SWE for mid-March, as shown below in Figure 3.

Figure 3. Upper Colorado River Basin SWE (USDA NRCS, as of March 16, 2020)

The story for water suppliers this season is that the abnormally dry fall resulted in a deeper soil moisture deficit than normal. This deficit was not made up for all parts of the state, even by the deeper-than-normal snowpack. An example of this is shown in the time series plot for the Vail Mountain SNOTEL station shown below in Figure 3, where the SWE is above normal, but the water year-to-date total precipitation is below normal. In fact, the current precipitation accumulation (black line, approximately 15 inches) is 75% of the normal for this time of year (gray line, approximately 20 inches). Note that precipitation is unaffected by the changes to shading that have occurred at this site over the past 10-15 years, so the line for precipitation is unbiased over time for this measurement.
Figure 4. Vail Mountain SWE and Precipitation plot.

The SNOTEL stations on Copper Mountain and Fremont Pass are improved both in terms of SWE and total precipitation; these stations show that the cumulative precipitation deficit evident early in the year was made up over the course of the winter. However, current streamflow predictions do still show a lower runoff volume than might be expected if considering SWE alone.

Figure 5. Copper Mountain SNOTEL, SWE and Total Precipitation (NRCS 2020).
Streamflows are increasing along with temperatures. Generally, these are on the low end of normal, but this is still very early in the runoff season.
Black Lakes 1 released over the winter and is currently at 33% percent capacity and not releasing. We expect BL1 to fill this season. Black Lakes 2 is releasing 2.5 cfs, and is 76% full. Eagle Park Reservoir is releasing 0.5 cfs, and is 77% of capacity. We expect Eagle Park to fill this season as well.
The forecast for the remainder of March shows normal temperatures and precipitation for Western Colorado.

Figure 10. One-month temperature forecast (NOAA).
Figure 11. One-Month Precipitation Forecast (NOAA).
The most probable peak level for Lake Powell this year is currently just a bit higher than last season, slightly above 3,625 feet, as seen below in Figure 12. This keeps it in the mid-elevation release tier, meaning no significant change is likely in levels or releases for water year 2020.

Figure 12. Lake Powell predicted water levels (USBR, 2020).
District and Authority Attachment 1

Water Counsel Agenda Item

Attachment Name: Protest to the Referee’s Ruling and Decree

Attachment Date (if applicable): February 13, 2020

Purpose of Agenda Item:

☒ Background for board meeting discussion (information only)

☒ Enter into public record

☐ Request board input/direction

Topic: Pando Feeder Canal

Summary of Topic: Attached is the Ruling of the Referee, the accompanying Order, and the Protest to the Referee’s Ruling and Order filed in Case No. 18CW3140 regarding the diligence and absolute application for the Pando Feeder Canal. This water right is a direct flow and storage right used to fill Eagle Park Reservoir. This Protest challenges one important sentence of the Ruling of the Referee and the Order to which the Ruling of the Referee is subject. As detailed in the 2 page Protest, this sentence would unduly restrict the ability to obtain an absolute decree for a future enlargement of Eagle Park Reservoir.
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE EAGLE PARK RESERVOIR COMPANY,
IN EAGLE, SUMMIT, GRAND, PITKIN, AND GARFIELD COUNTIES, COLORADO

Co-Counsel for Eagle Park Reservoir Company and attorneys for the Eagle River Water & Sanitation District and Upper Eagle Regional Water Authority, shareholders of the Eagle Park Reservoir Company:
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Kristin H. Moseley (#28678)
Porzak Browning & Bushong LLP
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Boulder, CO 80302
Phone: 303-443-6800
Email: gporzak@pbblaw.com; kmoseley@pbblaw.com

Co-Counsel for Eagle Park Reservoir Company and attorneys for the Colorado River Water Conservation District, shareholder of the Eagle Park Reservoir Company:
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Jason V. Turner (#35665)
Colorado River Water Conservation District
201 Centennial Street | PO Box 1120
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Email: pfleming@crwcd.org; jturner@crwcd.org

Co-Counsel for Eagle Park Reservoir Company and attorneys for the Board of County Commissioners of Eagle County Colorado, shareholder of the Eagle Park Reservoir Company:
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500 Broadway | P.O. Box 850
Eagle, CO 81631
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Email: bryan.treu@eaglecounty.us; holly.strablizky@eaglecounty.us
Applicant Eagle Park Reservoir Company ("Reservoir Company"), by and through its co-counsel and the attorneys for its shareholders, hereby protests the second to the last paragraph of the Order Regarding Modifications to the Proposed Ruling of the Referee (the "Order"). The Reservoir Company also opposes the related paragraph within section 6 of the Findings of Fact, Conclusions of Law and Referee’s Ruling in this case entered on January 23, 2020 ("Ruling"). The paragraph of the Order that the Reservoir Company protests states as follows:

For the reasons explained above and under the circumstances of this case, the Referee concludes that the Applicant can make the Pando Right absolute in this case for the amount and uses requested in the application. However, since the Applicant is choosing to make a portion of the Pando Right absolute in this case, Applicant may not now divert and store the Storage Right or the First Enlargement Right unless it demonstrates that the Pando Right has been made absolute in its entirety and that it needs the junior Storage Right and First Enlargement Right in addition to the Pando Right.

The related paragraph within section 6 of the Ruling that the Reservoir Company protests states as follows:

The Referee finds that the Applicant is selecting to make the Pando Feeder Canal water right absolute as the senior priority decreed for diversion and storage in Eagle Park Reservoir. As a result of this selection and in accordance with the Colorado Supreme Court’s decisions in Upper Yampa Water Conservancy District v. Wolfe, 255 P.3d 1108 (Colo. 2011) and Upper Eagle Reg’l Water Authority v. Wolfe, 2016 CO 42, the Applicant may not make its junior storage rights for Eagle Park Reservoir decreed in Case Nos. 92CW340 and 93CW301 absolute unless and until the Pando Feeder Canal water right is made absolute in its entirety and it demonstrates an additional need for the junior storage rights.

The Reservoir Company believes that its concerns with the Ruling and Order can be addressed by deleting the second sentences or by making changes to these sentences. As explained below, the Reservoir Company’s primary concern is to ensure its ability to use the junior Storage Right and the junior First Enlargement Right when necessary to do so, even if the direct-flow Pando Right has not been made absolute for its full-decreed amount. As grounds for this protest, the
Reservoir Company states that the Ruling and Order are contrary to law and not supported by the evidence. More specifically, the Reservoir Company states as follows:

1. The Pando Right referenced in the Referee's Order is a flow rate decreed in the amount of 80 cfs, 33.5 cfs of which has previously been made absolute by this Court in Case No. 11CW77, and an additional 8.92 cfs of which is made absolute by the Ruling of the Referee in this case. The junior Storage Right and junior First Enlargement Right referenced in the Order are separate volumetric storage rights originally decreed in Case Nos. 92CW340 and 93CW301, respectively, and are the subjects of a separate diligence case pending in Case No. 19CW3145. 3,301 acre feet of the 5,300 acre feet decreed to the junior Storage Right has been made absolute and the remaining 1,999 acre feet is conditional. All 22,300 acre feet of the First Enlargement Right is conditional.

2. While the Pando Right was decreed for storage in the Eagle Park Reservoir in Case No. 97CW288, it remains a flow rate, it is not a volumetric storage right as are the junior Storage Right and the junior First Enlargement Right.

3. The Eagle Park Reservoir Storage Right and First Enlargement Right may fill from additional points of diversion and sources that are not available for the Pando Right. Specifically, under the decrees in Case Nos. 92CW340 and 93CW301, Supply Canal Nos. 1 and 2, which divert water from sources tributary to Tenmile Creek, are decreed as points of diversion and filling structures for the Storage Right and the First Enlargement Right, but are not for the Pando Right. Also, while Tenmile Creek is a decreed source for the Storage Right and First Enlargement Right, it is not a decreed source for the Pando Right.

4. The Pando Right is subject to different terms and conditions than the Eagle Park Reservoir Storage Right and First Enlargement Right as noted in paragraph 6 of the Judgement and Decree in Case No. 97CW288.

5. Under the terms of the protested paragraphs of the Ruling and Order, the Referee erred because Applicant could not make any volumetric portion of the storage rights absolute until it had made the entire 80 cfs of the flow rate of the Pando Right absolute. This is inappropriately equating volumetric storage water rights with a flow rate water right to the injury of the volumetric storage rights, and fails to account for the fact that the Storage Right and First Enlargement Right can be filled from different points of diversion (Supply Canal Nos. 1 and 2), from different sources (tributaries to Tenmile Creek), and under different terms and conditions than the Pando Right.

6. The flow rate water right and the volumetric storage rights are based on entirely different construction and flow rate parameters. None of the cases cited by the Referee in the Order stand for the proposition set forth in the protested portions of the Ruling and Order. By way of example, if Eagle Park Reservoir was enlarged by 1,000 acre feet from 3,301 acre feet to 4,301 acre feet, the Order indicates that the Applicant can not make the additional 1,000 acre feet absolute until the entire 80 cfs of the Pando Right is made absolute. In fact, the Order prohibits the Applicant from even diverting and storing water in the reservoir enlargement. If stream conditions do not permit the 80 cfs of the Pando Right to be made absolute, the Applicant should
be permitted to divert and store water in the enlarged portion of the reservoir, and make the physical enlargement of the storage rights absolute. There is no case or statutory law that stands for the proposition mandated by the Ruling and Order and the mandate of the Ruling and Order is neither fair nor logical. To the contrary, if the capacity of Eagle Park Reservoir is physically enlarged, the Applicant should be and is entitled to divert, store and make absolute the amount of water that could be stored in the enlarged capacity under the terms of the decrees in Case Nos. 92CW340 and 93CW301. This is true even if the flow rate remains at the 42.42 cfs absolute amount of the Pando Right.

7. The prohibition in the Order against even diverting and storing water in the reservoir enlargement violates Article XVI, Section 6 of the Colorado Constitution.

8. The Order is contrary to this Court’s decisions in Case Nos. 00CW210, 11CW77 and 13CW11.

9. The foregoing unjust result could be eliminated if the second sentence of the protested portion of the Order is deleted. In the alternative, this section should be revised to read as follows:

   However, since the Applicant is choosing to make a portion of the Pando Right absolute in this case, Applicant may not now make absolute an additional portion of divert and store the Storage Right or the First Enlargement Right unless it demonstrates that the Pando Right has been made absolute in its entirety and it needs increased the capacity of Eagle Park Reservoir and stored the junior Storage Right or First Enlargement Right in addition to the Pando Right.

10. Paragraph 6 of the Referee’s Ruling should similarly be deleted or revised as follows:

   The Referee finds that the Applicant is selecting to make the Pando Feeder Canal water right absolute as the senior priority decreed for diversion and storage in Eagle Park Reservoir. As a result of this selection and in accordance with the Colorado Supreme Court’s decisions in Upper Yampa Water Conservancy District v. Wolfe, 255 P.3d 1108 (Colo. 2011) and Upper Eagle Reg’l Water Authority v. Wolfe, 2016 CO 42, the Applicant may not make its junior storage rights for Eagle Park Reservoir decreed in Case Nos. 92CW340 and 93CW301 absolute unless and until the Pando Feeder Canal water right is made absolute in its entirety and it demonstrates an additional need for the junior storage rights. It increased the capacity of Eagle Park Reservoir and stored water in all or a portion of the increased capacity.
Respectfully submitted this 12th day of February, 2020.

PORZAK BROWNING & BUSHONG LLP

Glenn E. Porzak (#2739)
Kristin H. Moseley (#28678)
Co-counsel for Eagle Park Reservoir Company and
Attorneys for Eagle River Water & Sanitation District and
Upper Eagle Regional Water Authority, shareholders of the
Eagle Park Reservoir Company
COLORADO RIVER WATER CONSERVATION
DISTRICT

Peter C. Fleming (#20805)
Jason V. Turner (#35665)
Co-counsel for Eagle Park Reservoir Company and
Attorneys for the Colorado River Water Conservation
District, shareholder of the Eagle Park Reservoir Company

THE BOARD OF COUNTY COMMISSIONERS OF
EAGLE COUNTY COLORADO

Bryan R. Treu (#29577)
Holly K. Strablizky (#35156)
Co-counsel for Eagle Park Reservoir Company and
Attorneys for the Board of County Commissioners of Eagle
County Colorado, shareholder of the Eagle Park Reservoir
Company

BUCHANAN SPERLING & HOLLEMAN PC

P. Fritz Holleman (#21888)
Bradley N. Kershaw (#52386)
Co-counsel for Eagle Park Reservoir Company and
Attorneys for Vail Associates, Inc., shareholder of the
Eagle Park Reservoir Company
CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of February, 2020, a true and correct copy of the foregoing Protest to the Order of the Ruling of the Referee was filed and served via the Colorado Courts E-Filing system addressed to counsel for each of the parties in the above-captioned matter, as follows:

<table>
<thead>
<tr>
<th>Party Name</th>
<th>Party Type</th>
<th>Attorney Name</th>
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<tbody>
<tr>
<td>Colorado River Water Conservation District</td>
<td>Applicant</td>
<td>Jason Victor Turner (Colorado River Water Conservation District)</td>
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<td>Peter Cheney Fleming (Colorado River Water Conservation District)</td>
</tr>
<tr>
<td>Division 5 Engineer</td>
<td>Division Engineer</td>
<td>Division 5 Water Engineer (State of Colorado DWR Division 5)</td>
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<tr>
<td>Eagle County Board of County Commissioners</td>
<td>Applicant</td>
<td>Bryan Robert Treu (Eagle County Attorneys Office)</td>
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<td>Holly Kirsner Strabizky (Eagle County Attorneys Office)</td>
</tr>
<tr>
<td>Eagle Park Reservoir Company</td>
<td>Applicant</td>
<td>Bryan Robert Treu (Eagle County Attorneys Office)</td>
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<td>Glenn Edward Porzak (Porzak Browning &amp; Bushong LLP)</td>
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<td></td>
<td>Kirstin Howse Moseley (Porzak Browning &amp; Bushong LLP)</td>
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<td></td>
<td>Paul F Hollerman (Buchanan Sperling and Hollerman PC)</td>
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<td>Peter Cheney Fleming (Colorado River Water Conservation District)</td>
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<tr>
<td>State Engineer</td>
<td>State Engineer</td>
<td>Colorado Division of Water Resources (State of Colorado - Division of Water Resources)</td>
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Rebecca Bean
The Referee enters the proposed Ruling of the Referee as submitted by the Applicant with modifications to paragraphs 4, 5.A.2, 5.A.2.a, 5.A.2.d, and 6 to make those paragraphs consistent with this Order.

In this case, the Applicant seeks confirmation that it has made absolute 42.42 cubic feet per second ("cfs") of the Pando Feeder Canal water right ("Pando Right") for all decreed purposes based on the in-priority diversion and storage of the water in Eagle Park Reservoir on May 31, 2014. In Case No. 97CW288, the Water Court decreed Eagle Park Reservoir as an alternate point of diversion and storage for the Applicant’s 80 cfs portion of the Pando Right. The appropriation date for the Pando Right is August 10, 1956 and the right is decreed for irrigation, domestic, municipal, industrial, mining, milling, snowmaking, stock watering, recreational, fish and wildlife, agricultural, exchange, replacement, and augmentation purposes. The originally decreed source for Pando Right is the Eagle River. In Case No. 97CW288, the Water Court changed the source to include the Chalk Mountain Interceptor Ditch with a term and condition that “no water from the Ten Mile Creek drainage will be diverted pursuant to this decree.” In Case No. 11CW77, the Court decreed 33.5 cfs of the Pando Right absolute based on the in-priority diversion and storage in Eagle Park Reservoir and subsequent beneficial use of snowmaking and augmentation.

Eagle Park Reservoir has two storage rights decreed in Case No. 92CW340 and 93CW301. In Case No. 92CW340, the Water Court decreed the Eagle Park Reservoir Storage Right ("Storage Right") in the amount of 5,300 acre feet conditional for mining, milling, industrial, snowmaking, municipal, domestic, stock watering, recreational, fish and wildlife, irrigation, agricultural, and exchange, replacement, and augmentation purposes. The Storage
Right has an appropriation date of March 16, 1991. Of this amount, the Water Court in Case Nos. 00CW210 and 13CW11 decreed a total of 3,301 acre feet absolute with 1,999 acre feet remaining conditional for the Storage Right.

In Case No. 93CW301, the Water Court decreed the Eagle Park Reservoir First Enlargement Right ("First Enlargement Right") in the amount of 22,300 acre feet conditional for the same uses as the Eagle Park Reservoir Storage Right. The First Enlargement Right has an appropriation date of May 18, 1993. The entire amount of the First Enlargement Right remains conditional.

In pending Case No. 19CW3145, the Applicant seeks a finding of diligence on the remaining portions of the Storage Right and First Enlargement Right.

During the Referee’s investigation of this case and the consultation process with the Division Engineer’s Office, a question arose regarding the allocation of water to the Pando Right and/or the Storage Right. Specifically, the issue is whether the water diverted on May 31, 2014 should be first allocated to the already decreed absolute water rights for the Eagle Park Reservoir, which include a portion of the Pando Right and a portion of the Storage Right. Under this “absolutes first” allocation, 33.50 cfs would be allocated to the Pando Right and 8.92 cfs would be allocated to the Storage Right, rather than allocating the full 42.42 cfs to the Pando Right as requested by the Applicant. There is no dispute that the Applicant diverted 42.42 cfs in-priority on May 31, 2014.

The Referee requested input from the Applicant and the Division Engineer’s Office on the allocation issue and held a status conference to further discuss this issue. Applicant disagrees with the allocation proposed by the Division Engineer’s Office. Applicant argues that it is entitled under the Colorado Supreme Court’s decision in Upper Eagle Reg’l Water Authority v. Wolfe, 2016 CO 42, to select which in-priority conditional water right to first divert and make absolute. In addition, Applicant asserts that the Storage Right has no relevance to whether it can divert water under the changed Pando Right. The Division Engineer’s Office takes the position that a water user must first divert and allocate water to its existing absolute water rights, regardless of appropriation date, prior to making any conditional water right absolute for the same points of diversion and same beneficial uses based on the Colorado Supreme Court’s decision in Upper Yampa Water Conservancy District v. Wolfe, 255 P.3d 1108 (Colo. 2011).

As the Applicant correctly points out, the Upper Eagle decision holds that a water user may select a junior direct-flow conditional water right to first make absolute when it has available a more senior direct-flow conditional water right decreed for diversion at the same structure, for the same claimed beneficial uses at the same location. 2016 CO 42, ¶2. The Supreme Court also held that the water user “must live with its choice” and cannot switch between making junior and senior conditional water rights absolute. Id. The Court expressly limited its holding to cases involving a choice between two conditional water rights and did not extend the holding to a choice between senior and junior absolute water rights or between absolute and conditional water rights. Id. ¶ 9, 14.
Upper Yampa Water Conservancy District v. Wolfe, 255 P.3d 1108 (Colo. 2011) addressed whether a conditional storage right could be made absolute without first showing that the applicant stored water under the already absolute portion of its storage right. The Supreme Court concluded that an “applicant must also show that it in fact appropriated water in excess of its existing absolute decrees allowing for storage; in other words, it must show that it has exhausted its absolute rights before its conditional rights can be perfected.” Id. at 1109. Accordingly, an applicant “must show with quantifiable evidence that it in fact appropriated water in excess of its existing absolute decrees” prior to making a conditional water right absolute. Id. at 1115.

Upper Eagle distinguished the holding in Upper Yampa. The Supreme Court noted that unlike Upper Yampa the choice in Upper Eagle involved choosing between two conditional water rights, rather than an absolute and conditional water right. Further, the Court stated that the “holding in Upper Yampa does not compel the choice of the senior over the junior conditional right in all circumstances.” 2016 CO 42, ¶14. Regarding the “seniors first policy” adopted by the State Engineer’s Office, the Supreme Court concluded in Upper Eagle that the policy does not mandate that a water user always allocate a diversion to the most senior conditional water right. Id. at ¶22. In reaching this conclusion, the Court stated that an applicant seeking to make a conditional water right absolute must show its need for that water right and cannot do so unless it has exhausted its absolute rights first. Id. at ¶21.

As an initial matter, the Court disagrees with the Applicant’s assertion that the Storage Right and First Enlargement Right for the Eagle Park Reservoir are not relevant to the determining the allocation of water for the Pando Right. The Pando Right, Storage Right, and First Enlargement Right are all decreed for storage in the Eagle Park Reservoir, are decreed for the same uses, and can be diverted for storage at the same points of diversion. Accordingly, the Court analyzes how to allocate the diversions on May 31, 2014 in consideration of all three water rights.

The facts in this case are distinct from both Upper Yampa and Upper Eagle. Applicant seeks to allocate diversions to the Pando Right, which is most senior water right decreed for storage in Eagle Park Reservoir. Portion of the Pando Right and the more junior Storage Right have already been absolute. As the senior priority, the Water Court previously determined the need for the water right and decreed the original appropriation for the Pando Right prior to both the Storage Right and First Enlargement. While the change case for the Pando Right occurred after the Water Court decreed the Storage Right and First Enlargement Right, the Pando Right retained its original senior appropriation date.

Applying a strict interpretation of the “absolutes first” policy in this case would result in forcing the Applicant to allocate water to its junior Storage Right rather the senior Pando Right contrary to the “seniors first” policy. Regarding the application of “absolutes first” to the Pando Right and the Storage Right, the Water Court has previously made portion of both the Pando Right and the Storage Right absolute without an analysis of this issue. Accordingly, the Referee cannot determine in this case if the Applicant has selected one right over the other to make absolute in accordance with the Upper Eagle decision.
Because the Applicant is seeking to allocate diversions to its most senior water right, the Court finds that concerns regarding maximizing the beneficial use of water and water administration raised in Upper Yampa and Upper Eagle are not implicated here. Further, Upper Yampa did not involve a choice between the conditional portions of senior and junior appropriations as is at issue here. Rather, Upper Yampa held that a water user could not make a conditional storage right absolute when the diversions allocated to that right were less than the portion already made absolute for a water right with same appropriation date.

For the reasons explained above and under the circumstances of this case, the Referee concludes that the Applicant can make the Pando Right absolute in this case for the amount and uses requested in the application. However, since the Applicant is choosing to make a portion of the Pando Right absolute in this case, Applicant may not now divert and store the Storage Right or the First Enlargement Right unless it demonstrates that the Pando Right has been made absolute in its entirety and that it needs the junior Storage Right and First Enlargement Right in addition to the Pando Right.

The Referee and Division Engineer’s Office also raised issues related to the source of water diverted and stored under the Pando Right. There are no measurement devices on the Pando Feeder Canal and the water stored in Eagle Park Reservoir is determined by a mass-balance analysis. As noted above, water from Ten Mile Creek cannot be claimed as a source for the Pando Right. Applicant stated that the Eagle Park Reservoir was filled on May 31, 2014 under the Pando Right partially with tributary drainage from around Eagle Park Reservoir, which is a decreed source per Case No. 97CW288. Applicant also provided an engineering memo to support its claims regarding the source of water diverted and stored under the Pando Right. The Referee finds that the Applicants adequately addressed the source of water diverted and stored under the Pando Right.

DATED: January 23, 2020

BY THE REFEREE

Susan M. Ryan, Water Referee
Division 5, Water Court
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE AND DECREES OF THE WATER COURT

The above captioned application was filed on October 26, 2018 ("Application"), and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court in accordance with Article 92 of Chapter 37, Colorado Revised Statutes, known as the Water Right Determination and Administration Act of 1969.

The undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the Application are true, and having become fully advised with respect to the subject matter of the Application, does hereby make the following determinations and Ruling as the Referee in this matter.

FINDINGS OF FACT

1. The statements in the Application are true, except as may be otherwise stated herein.

2. Name and Address of the Applicant:

Eagle Park Reservoir Company (the "Applicant")
846 Forest Road
Vail, Colorado 81657
3. **Objectors.** No statements of opposition to the Application were filed, and the time for filing such statements has expired. No party has sought to intervene in this case.

4. **Summary of Consultation.** The Referee has considered the summary of consultation filed by the Division Engineer dated January 24, 2019, and the Applicant’s response thereto. The Referee also considered the supplemental summary of consultation dated April 8, 2019 and the Applicant’s response thereto as well as input received from the Applicant and the Division Engineer’s Office regarding the allocation of diversions to the Pando Feeder Canal water right and the source of water for the Pando Feeder Canal water right.

5. **Description of conditional water rights:** Applicant is the owner of 80 cfs of certain conditional uses of the Pando Feeder Canal and 46.5 cfs of other conditional uses of this water right, and 80 cfs of the conditional East Fork Pumping Plant Exchange, all as more particularly described below. These water rights are sources for Eagle Park Reservoir. A map of the Eagle Park Reservoir and related facilities is attached.

   A. **Pando Feeder Canal.**

   1. **Original and subsequent decrees:** Originally decreed by the Eagle County District Court in Civil Action No. 1193. Findings of diligence, continuing the subject water right in full force and effect, were made in Case Nos. W-56, W-789(76), 80CW94, 84CW70, 88CW85, 95CW52, 03CW41, 11CW77, District Court in and for Water Division No. 5 (“Water Court”). Alternate points of diversion and storage were decreed in Case No. 97CW288.

   2. **Locations:** In Case No. 97CW288, the Water Court decreed the Applicant the right to alternately divert and store 80 cfs of the Pando Feeder Canal water right at the Eagle Park Reservoir, as described below and in paragraph 5(a) of the decree in Case No. 97CW288, and at the alternate points of diversion for storage in Eagle Park Reservoir as listed below. The Pando Feeder Canal water right is limited to storage in the Eagle Park Reservoir and diversion at the following points of diversion, for the beneficial uses described in paragraph 5.A.6 of this decree, up to a maximum of 6,000 acre feet per year as decreed in paragraph 5 of Case No. 97CW288.

   a. **Eagle Park Reservoir,** decreed by the District Court in Water Division No. 5 Case Nos. 92CW340 and 93CW301, for a combined total capacity of 27,600 acre feet, with an appropriation date of March 16, 1991, for 5,300 acre feet, and May 18, 1993, for 22,300 acre feet. Of this amount, a total of 3,301 acre feet of the March 16, 1991 appropriation was decreed as absolute in Case Nos. 00CW210 and 13CW11. The remaining 1,999 acre feet of the March 16, 1991 appropriation remains conditional and 22,300 acre feet of the May 18, 1993 appropriation remains conditional. The north abutment of the dam crest is located approximately 160 feet north of the south section line and 650 feet east of the west section line of Section 28, T.7 S., R. 79 W. of the 6th
P.M., Eagle County, Colorado. The source of this reservoir is the East Fork of the Eagle River, including runoff, surface flow and seepage from the area above the reservoir and tributary thereto, and water from the Ten Mile Creek drainage, a tributary of the Blue River diverted through the Chalk Mountain Interceptor Ditch as more particularly detailed below. In addition to the tributary area upstream of the reservoir, the specific points of diversion are described below.

b. The East Fork Pumping Plant, which is located on the East Fork of the Eagle River in the SE1/4 of the NE1/4 of Section 32, T. 7 S., R. 79 W. of the 6th P.M. at a point whence the Northeast corner of said Section 32 bears North 31°53' East a distance of 2,414 feet.

c. The East Fork Interceptor Ditch, which is located at the following points: (a) 900 feet south of the north section line and 1100 feet west of the east section line of Section 5, T. 8 S., R. 79 W., 6th P.M.; (b) 1250 feet south of the north section line and 700 feet east of the west section line of Section 4, T. 8 S., R. 79 W., 6th P.M.; (c) 1200 feet north of the south section line and 800 feet east of the west section line of Section 33, T. 7 S., R. 79 W., 6th P.M.; and (d) runoff, surface flow, and seepage from the area above the East Fork Interceptor Ditch as it runs between the above-described points of diversion and Eagle Park and Robinson Reservoirs.

d. The Chalk Mountain Interceptor Ditch, which diverts runoff and seepage as it runs a distance of approximately 3.4 miles from Fremont Pass, located in the W½ of Section 11, T. 8 S., R. 79 W., 6th P.M., northwesterly along State Highway 91 and the south side of Robinson Tailing Pond, thence westerly to the south of Chalk Mountain Reservoir and Robinson Reservoir, thence northwesterly to Eagle Park and Robinson Reservoirs. The Chalk Mountain Interceptor Ditch diverts water from the headwaters of Tenmile Creek in Lake and Summit Counties and from the headwaters of the East Fork of the Eagle River in Eagle County. No water from the Ten Mile Creek drainage will be diverted by the Pando Feeder Canal water right pursuant to paragraph 5(b)(2) of the decree in Case No. 97CW288.

3. **Source:** Eagle River, a tributary of the Colorado River.

4. **Amount:** 33.5 cfs absolute for snowmaking and augmentation uses, and 46.5 cfs conditional for snowmaking and augmentation uses and 80 cfs conditional for irrigation, domestic, municipal, industrial, mining, milling, stock watering, recreational, fish and wildlife, agricultural, exchange, and replacement purposes out of the 400 cfs originally decreed to this water right.

5. **Appropriation date:** August 10, 1956.
6. **Uses:** Irrigation, domestic, municipal, industrial, mining, milling, snowmaking, stock watering, recreational, fish and wildlife, agricultural, exchange, replacement, and augmentation purposes.

7. **Remarks:** The Colorado River Water Conservation District conveyed the subject 80 cfs of the original 400 cfs of the Pando Feeder Canal water right to the Applicant and retained the remaining 320 cfs of this water right. The 320 cfs of the Pando Feeder Canal water right retained by the Colorado River Water Conservation District is not the subject of this Application.

**B. East Fork Pumping Plant Exchange (augmentation by exchange):**

1. **Original decree:** Case No. 03CW211, dated May 17, 2006.

2. **Augmentation water rights:** Up to 5010.7 acre-feet of water from any part or combination of one or more of the following water rights:

   a. 1813 acre feet of water from Green Mountain Reservoir by virtue of existing contracts between the Bureau of Reclamation and the Upper Eagle Regional Water Authority, the Eagle River Water & Sanitation District (as successor to Vail Valley Consolidated Water District), and Vail Associates, Inc., as shareholders of Applicant. Green Mountain Reservoir was decreed by the United States District Court for the District of Colorado in Consolidated Case Nos. 2782, 5016 and 5017, for 154,645 acre feet, with an appropriation date of August 1, 1935, and is located on the Blue River in Sections 11, 12, 13, 14, 15 and 24, T. 2 S., R. 80 W., and Sections 18, 19, 20, 21, 28, 29 and 34, T. 2 S., R. 79 W., 6th P.M., Summit County, Colorado.

   b. 302.8 acre feet of historic consumptive use credits which were quantified, changed and decreed to the member districts of the Upper Eagle Regional Water Authority in Water Court Case Nos. W-3289, W-3664, W-3999, 80CW397, 81CW161, 81CW195, 84CW225 and 92CW295 from the water rights more particularly described in the attached Exhibits A-1 and A-2.

   c. 379.9 acre feet of historic consumptive use credits which were quantified, changed and decreed to the Eagle River Water & Sanitation District in Water Court Case No. 82CW328 from the water rights more particularly described in the attached Exhibits B-1 and B-2.

   d. 115 acre feet of historic consumptive use credits owned by Vail Associates, Inc. which were quantified, changed and decreed in Water Court Case No. 80CW397 from the water rights more particularly described in the attached Exhibits C-1 and C-2.

   e. 1400 acre feet of annual snowmaking return flows which accrue to the Eagle River from the Arrowhead and Beaver Creek ski areas. Those ski areas
are generally located in Sections 19, 30 and 31, T. 5 S., R. 81 W., 6th P.M. and Sections 10, 11, 14, 15, 23-26, 35 and 36, T. 5 S., R. 82 W., 6th P.M. By decrees entered in Water Court Case Nos. 88CW456, 89CW201 and 89CW296, 98CW203, the snowmaking diversions for these ski areas are fully augmented and the return flows are calculated and measured pursuant to the accounting procedures decreed in Water Court Case No. 94CW303.

f. 1000 acre-feet annually of water from Wolford Mountain Reservoir which consists of the following water rights:

(i) Case No. 87CW283: Decree Date: November 20, 1989. 
Legal description of place of storage: The dam is located in the SW1/4 of the NE1/4 of Section 25, T. 2 N., R. 81 W., 6th P.M. The intersection of the dam axis with the right abutment will occur at a point which bears W. 54°54'20" E. a distance of 3,716.46 feet from the NW Corner of said Section 25. Source: Muddy Creek and its tributaries. Amount: 59,993 acre feet conditional; of this amount, 32,986 acre feet were made absolute for piscatorial and recreational uses by decree entered in Water Court Case No. 95CW251. Appropriation Date: December 14, 1987. Use: All beneficial uses, including but not limited to domestic, municipal, agricultural and recreational uses, which uses satisfy the requirements of the Windy Gap Settlement made with the Municipal Subdistrict of the Northern Colorado Water Conservancy District; use to meet the water requirements of the inhabitants of the Colorado River Water Conservation District for all uses, including uses in the Middle Park area; and use to meet the terms of a lease agreement executed March 3, 1987 between the Colorado River Water Conservation District and the City and County of Denver.

(ii) Case No. 95CW281: Decree Date: August 26, 1997. 
Legal description of place of storage: The dam is located in the SW1/4 of the NE1/4 of Section 25, T. 2 N., R. 81 W., 6th P.M. The as-built intersection of the dam axis (Sta. D19+35.61) with the West Access Road (Sta. WR50+55.05), as shown on the Colorado River Water Conservation District, Wolford Mountain Project, Ritschard Dam construction drawing "Dimensional Dam Layout" sheet 8 of 94, occurs at a point which bears S. 53°24'56" E. a distance of 3,395.51 feet from the NW Corner of said Section 25; the bearing of said dam axis from Sta. 19+35.61 to Sta. 0+00 being S. 75°28'29" E. Source: Muddy Creek and its tributaries. Amount: 6,000 acre feet conditional. Appropriation Date: January 16, 1995. Use: All beneficial uses by and for the benefit of the inhabitants of the Colorado River Water Conservation District, including but not limited to domestic, municipal, industrial, irrigation, agricultural, piscatorial and recreational; such uses will include environmental mitigation, including environmental mitigation requirements associated with the Wolford Mountain Project; such uses will be made directly or by substitution, augmentation, or exchange. None of the water stored in the exercise of the right will be delivered directly or by exchange, substitution, or otherwise for use outside of Colorado Water Division No. 5.
(iii) Case No. 98CW237: Decree Date: July 6, 2000. Legal Description of place of storage: Same as for 95CW281. Source: Muddy Creek and its tributaries. Amount: 30,000 acre feet conditional with 15,895 acre feet being absolute for recreational and piscatorial and flood control. Appropriation Date: November 17, 1998. Use: Certain of the beneficial uses previously adjudicated for Wolford Mountain Reservoir in Case Nos. 87CW283 and 95CW281.

   g. Ruedi Reservoir. The Colorado River Water Conservation District holds Contracts No. 009D6C0111, 009D6C0118 and 039F6C0011 from the United States Bureau of Reclamation for 1,730 acre-feet of annual supply from Ruedi Reservoir and may obtain additional contracts in the future. This water will be used in addition to and as substitution for the Wolford Mountain Reservoir water described in paragraph 4(F) above in appropriate circumstances where Ruedi Reservoir water is physically equivalent to Wolford Reservoir water. Ruedi Reservoir consists of the following water rights:

   (i) Case No. CA 4613: Legal Description of place of storage: Ruedi Reservoir is located in Sections 7, 8, 9, 11 and 14 through 18, T. 8 S., R. 84 W., 6th P.M., in Eagle and Pitkin Counties. Source: Fryingpan River. Amount: By order entered in Case No. W-789-76, the decreed amount of this reservoir was fixed at 102,369 acre-feet. Appropriation Date: July 29, 1957. Use: domestic, municipal, irrigation, industrial, generation of electrical energy, stock watering and piscatorial uses. In Water Court Case No. 88CW85, the full amount was made absolute.

   (ii) In Water Court Case No. 81CW34, Ruedi Reservoir was decreed a refill right in the amount of 101,280 acre-feet conditional. In Case No. 95CW95, 44,509 acre-feet was made absolute. In Water Court Case No. 01CW269, an additional 25,257 acre-feet was made absolute, for a total of 69,766 acre-feet absolute.

   This Ruedi Reservoir water is included to the extent it is substituted for Wolford Mountain Reservoir water to satisfy a call downstream of the confluence of the Roaring Fork River and the Colorado River.

3. Location and Exchange Reaches: The East Fork Pumping Plant is the upper terminus of the exchanges, and it is located on the East Fork of the Eagle River in the SE1/4 of the NE1/4 of Section 32, T. 7 S., R 79 W. of the 6th P.M. at a point whence the Northeast corner of said Section 32 bears North 31° 53' East a distance of 2,414 feet. The downstream terminus of the exchange involving the Green Mountain Reservoir contract water is the confluence of the Colorado River and the Eagle River. The downstream terminus of the exchanges involving the water rights described in paragraph 5(B)(2)(b) above shall extend from the confluence of Gore Creek and the Eagle River to the confluence of Lake Creek and the Eagle River, depending on the specific water right being exchanged. The
downstream terminus of the exchange involving the water rights described in paragraph 5(B)(2)(c) above shall be the confluence of Gore Creek and the Eagle River. The downstream terminus of the exchanges involving the water rights described in paragraphs 5(B)(2)(d) and 5(B)(2)(e) shall be the confluence of Beaver Creek and the Eagle River or the confluence of McCoy Creek and the Eagle River, depending on the specific water right being exchanged. The downstream terminus of the exchange involving the Wolford Mountain Reservoir water described in paragraph 5(B)(2)(f) above is the confluence of the Colorado River and the Eagle River. The downstream terminus of the exchange involving the Ruedi Reservoir water described in paragraph 5(B)(2)(g) above is the confluence of the Roaring Fork River and the Colorado River.

4. **Source:** Eagle River, a tributary of the Colorado River.

5. **Amount:** 80 cfs, conditional.

6. **Appropriation date:** September 30, 2003.

6. **Absolute diversion of Pando Feeder Canal:** Applicant seeks confirmation that it has made absolute 42.42 cfs of the Pando Feeder Canal water right for all decreed purposes based on diverting and storing the water in Eagle Park Reservoir. Applicant submitted evidence and the Referee finds that on May 31, 2014, the Applicant diverted 42.42 cfs under the Pando Feeder Canal water right and placed that water into storage in Eagle Park Reservoir. By this Ruling and Decree, the Court confirms that 42.42 cfs of the Pando Feeder Canal water right can be made absolute pursuant to section 37-92-301(4)(e) of the Colorado Revised Statutes. This is 8.92 cfs greater than the current portion of the Pando Feeder Canal (33.5 cfs) decreed absolute for snowmaking and augmentation uses in Case No. 11CW77. Thus, the Referee finds that 42.42 cfs of the Pando Feeder Canal water right should and can be made absolute for all decreed uses, including the 33.5 cfs previously decreed absolute for snowmaking and augmentation uses which is now absolute for all decreed uses.

The Referee finds that the Applicant is selecting to make the Pando Feeder Canal water right absolute as the senior priority decreed for diversion and storage in Eagle Park Reservoir. As a result of this selection and in accordance with the Colorado Supreme Court's decisions in *Upper Yampa Water Conservancy District v. Wolfe*, 255 P.3d 1108 (Colo. 2011) and *Upper Eagle Reg'l Water Authority v. Wolfe*, 2016 CO 42, the Applicant may not make its junior storage rights for Eagle Park Reservoir decreed in Case Nos. 92CW340 and 93CW301 absolute unless and until the Pando Feeder Canal water right is made absolute in its entirety and it demonstrates an additional need for the junior storage rights.

7. **Finding of diligence.** The Referee further finds that the work and expenditures described in the Application constitute reasonable diligence in the development of the remaining 37.58 cfs decreed for the Pando Feeder Canal and the 80 cfs of the East Fork Pumping Plant Exchange. Thus, these remaining conditional water rights should be maintained in full force and effect for all decreed uses.
CONCLUSIONS OF LAW

8. To the extent they constitute legal conclusions, the foregoing Findings of Fact are incorporated herein.

9. All notices required by law have been properly made, including as required under C.R.S. § 37-92-302(3). The Court has jurisdiction over the Application and over all entities or persons who had standing to appear, even though they did not do so.


11. Applicant has fulfilled all legal requirements for a decree for the requested application to make a portion absolute and for finding of diligence.

RULING OF THE REFEREE

12. The Findings of Fact and Conclusions of Law as set forth above are incorporated herein by reference and are hereby modified as necessary to constitute part of the Ruling and Final Judgment and Decree.

13. The application for making absolute additional portions of the Pando Feeder Canal conditional water right is granted, with 42.42 cfs of said conditional water right having been made absolute as described above for all decreed uses.

14. The application for finding of reasonable diligence with respect to the remaining conditional portions of the subject water rights is granted. The East Fork Pumping Plant Exchange in the amount of 80 cfs, and the portion of the Pando Feeder Canal water right in the amount of 37.58 cfs for irrigation, domestic, municipal, snowmaking, industrial, mining, milling, stock watering, recreational, fish and wildlife, agricultural, augmentation, exchange, and replacement purposes, which are not made absolute herein, are continued in full force and effect for all decreed purposes as conditional water rights.

15. If Applicant desires to maintain such conditional water rights, an application for finding of reasonable diligence shall be made before the end of the month six years from the date of the Water Judge’s Decree set forth below, or a showing made on or before such date that the conditional water right has become absolute by reason of completion of the appropriation, or otherwise disposed of.

16. Nothing in this Decree will be construed as approval by Climax Molybdenum Company of the use of Robinson Reservoir by the Applicant for any purpose, and this Decree does not vary any of the terms of any existing agreements with the Climax Molybdenum Company.
17. Pursuant to Rule 9 of the Uniform Local Rules for All State Water Court Divisions, upon
the sale or other transfer of the conditional water right decreed herein, the transferee shall file
with the Division 5 Water Court a notice of transfer which shall state:

(A) The title and case number of this Case No. 18CW3140;

(B) The description of the conditional water right transferred;

(C) The name of the transferor;

(D) The name and mailing address of the transferee; and

(E) A copy of the recorded deed.

The owner of said conditional water right shall also notify the Clerk of the Division 5 Water
Court of any change in mailing address. The Clerk shall place any notice of transfer or change
of address in the case file of this Case No. 18CW3140 and in the case file (if any) in which the
Court first made a finding of reasonable diligence.

A copy of the Ruling shall be filed with the Division Engineer for Water Division No. 5
and with the State Engineer.

It is further ORDERED that this Ruling shall be filed with the Water: Clerk, subject to
judicial review.


BY THE REFEREE:

[Signature]

Water Referee, Water Division No. 5
State of Colorado
DECREE OF THE WATER COURT

No protest was filed in this matter. The foregoing Ruling is confirmed and approved, and is hereby made a Decree of this Court.

Dated: ________________.

__________________________
Hon. James B. Boyd, Water Judge
Water Division No. 5
FIGURE 1

Eagle Park Reservoir Location Map

Helton & Williansen, P.C.

Drawn by: Andy Olson
Checked by:
Job No. E561
File: 631W311_Fig1.mxd
Rev. Date: 12/7/2011
Date: 2/3/2004

Scale in Feet

0 1,500 3,000 6,000 9,000
# Exhibit A-1
**Water Rights - Upper Eagle Regional Water Authority**

| Item 6.1 Pando Feeder Canal Protest and related info |

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<td>2-Apr-1889</td>
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<td>Barry Cr.</td>
<td>Barry Cr.</td>
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<td>6-Mar-1901</td>
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<td>Patterson Ditch</td>
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<td>1,250</td>
<td>5-Mar-1901</td>
<td>5-May-1903</td>
<td>CA345</td>
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</tbody>
</table>
Upper Eagle Regional Water Authority Decreed Points of Diversion:

**C.A.C. #1 Ditch:** The headgate is located on the left bank of Whiskey Creek at a point whence the Northwest Corner of Section 17, Township 5 South, Range 81 West of the 6th P.M. bears North 40°24' West 9,638.9 feet.

**C.A.C. #2 Ditch:** The headgate is located on the left bank of Whiskey Creek at a point whence the Northwest Corner of Section 17, Township 5 South, Range 81 West of the 6th P.M. bears North 49°10' West 9,309.9 feet.

**C.A.C. #3 Ditch:** The headgate is located on the right bank of Stone Creek (aka Willow Creek) at a point whence the Northwest Corner of Section 17, Township 5 South, Range 81 West of the 6th P.M. bears North 61°50' West 7,234.5 feet.

**Eagle Ditch:** The headgate is located on the south bank of the Eagle River at a point whence the Southeast Corner of Section 16, Township 5 South, Range 81 West bears South 3°55' West 375 feet.

**Eagle Ditch 1st Enlargement:** The headgate is located on the left bank of the Eagle River at a point whence the Northwest Corner of Section 17, Township 5 South, Range 81 West of the 6th P.M. bears North 65°01' West 11,692.83 feet.

**Eagle Ditch Nottingham Enl.:** The headgate is located at a point on the southerly bank of the Eagle River whence the section corner common to Sections 15, 16, 21 and 22, Township 5 South, Range 81 West of the 6th P.M. bears North 63°22' East 777.5 feet.

**Freck Ditch:** The headgate is located on the east bank of Beaver Creek at a point near where the East and West section line between Section 12 and Section 13, Township 5 South, Range 82 West crosses said Beaver Creek.

**Grae Park Ditch:** The headgate is situated on the south bank of the Eagle River about one quarter of one mile below the mouth of Gore Creek.

**Grae Park Ditch 1st Enlargement:** The headgate is located on the left bank of the Eagle River at a point whence the Northwest Corner of Section 17, Township 5 South, Range 81 West of the 6th P.M. bears North 65°45' West 10,868 89 feet.

**Grae Park Ditch 2nd Enlargement:** The headgate is located at a point on the west bank of the Eagle River whence the Southeast Corner of Section 16, Township 5 South, Range 81 West of the 6th P.M. bears South 66°04' East 1,295.0 feet.

**Graham #1 Ditch:** The headgate is located on the south bank of the Eagle River at a point near the West line of Section 16, Township 5 South, Range 81 West.

**Graham #1 Ditch 1st Enlargement:** The headgate is located on the left bank of the Eagle River at a point whence the North Quarter Corner of Section 16, Township 5 South, Range 81 West of the 6th P.M. bears North 8°30' East 1,695 feet.

**Graham #1 Ditch 2nd Enlargement:** The headgate is located at a point on the southerly bank of the Eagle River whence the West Quarter Corner of Section 16, Township 5 South, Range 81 West of the 6th P.M. bears South 82°0 West 2,263.6 feet.
Willow Creek Ditch and 1st Enl: The headgate of one of said laterals is situated at a point on the left bank of Willow Creek (aka Stone Creek) whence the Northwest Corner of Section 17, Township 5 South, Range 81 West of the 6th P.M. bears North 43°45' West 3,250 feet; and that the headgate of another lateral is situated on the right bank of said creek about 1,000 feet below the headgate above described.

Graham #2 Ditch and 1st Enl: The headgate is located on the westerly bank of Willow Creek (aka Stone Creek) at a point in the Northwest Corner of Section 17, Township 5 South, Range 81 West of the 6th P.M.

Mahoney Ditch: The headgate is located on the right bank of Willow Creek (aka Stone Creek) at a point whence the Southwest Corner of Section 8, Township 5 South, Range 82 West of the 6th P.M. bears North 14°00' West 4,755.70 feet.

Terrell and Ford Ditch: The headgate is located on the left bank of the Eagle River at a point whence the East Quarter Corner of Section 11, Township 5 South, Range 82 West, 6th P.M. bears South 21°25' East, 1,450 feet.

Metcalf Ditch: The headgate is located on the North bank of the Eagle River at a point whence the Southeast Corner of the NW1/4 of Section 7, Township 5 South, Range 81 West bears North, 50 feet.

Hurd Ditch: The headgate is located on the West bank of Ernest Creek (aka Buck Creek) at a point whence the Southwest Corner of Section 1, Township 5 South, Range 82 West bears Southeast about 1,500 feet.

Nottingham and Puder Ditch: The headgate is located on the North bank of the Eagle River at a point South 12° West, 250 feet from the South Quarter Corner of Section 8, Township 5 South, Range 81 West of the 6th P.M.

Johnson and Howard Ditch 1st and 2nd Enlargements: The headgate is located on the left bank of Beaver Creek at a point whence the Northeast Corner of Section 24, Township 5 South, Range 82 West of the 6th P.M. bears Northeast, 1,980 feet.

Johnson and Howard Ditch 3rd Enlargement: The headgate is located at a point on the West bank of Beaver Creek whence the East Quarter Corner of Section 24, Township 5 South, Range 82 West of the 6th P.M. bears South 43°56' East, 2,567.5 feet.

Nottingham and Puder Ditch 1st Enlargement: The headgate is located on the North bank of the Eagle River at a point whence the South Quarter Corner of Section 8, Township 5 South, Range 81 West of the 6th P.M. bears North 12° East, 250 feet.

Nottingham and Puder Ditch: Per transfers from the C.A.C. No. 1, C.A.C. No. 2 and Grace Park Ditches in Civil Action No. 1496, the headgate is located at a point on the North bank of the Eagle River whence the South Quarter Corner of Section 8, Township 5 South, Range 81 West, 6th P.M. bears North 12° East, 250 feet.

Metcalf Ditch 1st Enlargement: The headgate is located on the North bank of the Eagle River at a point whence the Southeast Corner of the NW1/4 of Section 7, Township 5 South, Range 81 West of the 6th P.M. bears North, 50 feet.
Matcalf Ditch 2nd Enlargement: The headgate is located at a point on the North bank of the Eagle River whence the East witness corner of Section 7, Township 5 South, Range 81 West of the 6th P.M. bears North 65°31' East, 4,258.2 feet.

Nottingham and Puder Ditch Pump and Pipelining Enlargement: The headgate is located at a point on the North bank of the Eagle River which bears South 12° West 250 feet from the South Quarter Corner of Section 8, Township 5 South, Range 81 West of the 6th P.M.

Howard-Winslow Ditch and 1st and 2nd Enlargements: The headgate is located on the left bank of Berry Creek at a point whence the Northwest Corner of Section 4, Township 5 South, Range 82 West of the 6th P.M. bears North 35° East, 2,740 feet.

June Creek Ditch and 1st Enlargement: The headgate is located on the left bank of June Creek at a point whence the South Quarter Corner of Section 34, Township 4 South, Range 82 West of the 6th P.M. bears South 22°12' West, 7,041.3 feet.

Howard Ditch and 1st Enlargement: The headgate is located on the right bank of the Eagle River at a point 100 feet South of the Southeast Corner of Section 3, Township 5 South, Range 82 West of the 6th P.M.

Breck Ditch and 2nd Enl.: The headgate is located on the West bank of Lake Creek at a point 3,600 feet above the mouth of Lake Creek near the center of the South line of the NE¼SE¼ of Section 6, Township 5 South, Range 82 West of the 6th P.M.

J.M. Dodd Ditch, Hyde and Beck Enl. and 2nd Enl.: The headgate is located at a point South 43°30' West, 2,050 feet from the East Quarter Corner of Section 7, Township 5 South, Range 82 West of the 6th P.M.

Creamery Ditch and 1st Enl.: The headgate is located on the right bank of East Lake Creek at a point whence the Southwest Corner of Section 8, Township 5 South, Range 82 West of the 6th P.M. bears North 30°6' East, 3,576 feet.

Peterson Ditch: The headgate is located on the North bank of the Eagle River at a point whence the South Quarter Corner of Section 4, Township 5 South, Range 82 West of the 6th P.M. bears South 85°11' West a distance of 1,343.7 feet.

Dutton Ditch: The headgate is located on the Northwest bank of Berry Creek at a point in the SE¼NE¼ of Section 5, Township 5 South, Range 82 West of the 6th P.M. and near the southwesterly line of the Denver & Rio Grande Railroad right-of-way.
## EXHIBIT 8-1
WATER RIGHTS - VAIL VALLEY CONSOLIDATED WATER DISTRICT

<table>
<thead>
<tr>
<th>Structure Name</th>
<th>Source(s)</th>
<th>Amount (cfs)</th>
<th>Adjusted Date</th>
<th>Appropriation Date</th>
<th>Case Number</th>
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<td>Owned</td>
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<td>Mann Ditch</td>
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<td>1-Jun-1913</td>
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<tr>
<td>Sawmill Ditch 1st End</td>
<td>wenton Cr.</td>
<td>3,000</td>
<td>3,000</td>
<td>7-Feb-1956</td>
<td>1-Jun-1913</td>
</tr>
<tr>
<td>Frank Lanzader Ditch 1st End</td>
<td>wenton Cr.</td>
<td>1,000</td>
<td>1,000</td>
<td>7-Feb-1956</td>
<td>1-Jun-1913</td>
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<tr>
<td>Sandstone Ditch 1st End</td>
<td>wenton Cr.</td>
<td>2,700</td>
<td>2,700</td>
<td>7-Feb-1956</td>
<td>1-Jun-1913</td>
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<tr>
<td>Lanzader Ditch 1st End</td>
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<td>8,200</td>
<td>8,200</td>
<td>7-Feb-1956</td>
<td>1-Jun-1913</td>
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<tr>
<td>Main Gore Ditch</td>
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<td>1,000</td>
<td>1,000</td>
<td>7-Feb-1956</td>
<td>1-Jun-1913</td>
</tr>
<tr>
<td>Mann Ditch 1st End</td>
<td>wenton Cr.</td>
<td>4,200</td>
<td>4,200</td>
<td>7-Feb-1956</td>
<td>1-Jun-1913</td>
</tr>
<tr>
<td>Edward Ditch</td>
<td>wenton Cr.</td>
<td>2,000</td>
<td>2,000</td>
<td>7-Feb-1956</td>
<td>1-Jun-1913</td>
</tr>
<tr>
<td>Mike Ditch</td>
<td>wenton Cr.</td>
<td>2,000</td>
<td>2,000</td>
<td>7-Feb-1956</td>
<td>1-Jun-1913</td>
</tr>
</tbody>
</table>
Vail Valley Consolidated Water District Decreed Points of Diversion:

**Mann Ditch:** The headgate is located on the west bank of Booth Creek at a point near the Northeast Corner of the NE¼ of the SE¼ of Section 3, Township 5 South, Range 80 West, 6th P.M.

**Webb Ditch:** The headgate is located at a point on the west bank of Pitkin Creek whence the witness corner to the East Quarter Corner of Section 11, Township 5 South, Range 80 West, 6th P.M. bears South, 5°53’ West, 1,580.5 feet.

**Larzalere Ditch:** The headgate is located on the west bank of Middle Creek, at a point near the Northeast Quarter Corner of the SW¼ of the SE¼ of Section 6, Township 5 South, Range 80 West, 6th P.M.

**Frank Larzalere Ditch:** The headgate is located on the west bank of Saw Mill Creek (aka Mill Creek), at a point near the Southwest Corner of the SW¼ of the NW¼ of Section 8, Township 5 South, Range 80 West, 6th P.M.

**Scoville Ditch:** The headgate is located on the east bank of Middle Creek, at a point in the NW¼ of the SW¼ of Section 6, Township 5 South, Range 80 West, 6th P.M.

**Saw Mill Ditch:** The headgate is located on the east bank of Saw Mill Creek (aka Mill Creek), at a point near the Southwest Corner of the SW¼ of the NW¼ of Section 8, Township 5 South, Range 80 West, 6th P.M.

**Shively Ditch:** The headgate is located on the south bank of Gore Creek at a point 200 feet north of the Northeast Corner of the NE¼NE¼ of Section 9, Township 5 South, Range 80 West, 6th P.M.

**McMonagle Ditch:** The headgate is located on Red Sandstone Creek in the NE¼SE¼ of Section 1, Township 5 South, Range 81 West, 6th P.M.

**Bryant Lower Ditch and 1st Enl.:** The headgate is located on Gore Creek in the SE¼SW¼NE¼ of Section 12, Township 5 South, Range 81 West, 6th P.M.

**Sandstone Ditch and 1st Enl.:** The headgate is located at a point on the east bank of Sandstone Creek (aka Red Sandstone Creek) whence the Northwest Corner of Section 7, Township 5 South, Range 80 West, 6th P.M. bears South 11°E, 900 feet.

**Park Ditch:** The headgate is located on the west bank of Park Creek at a point whence the North Quarter Corner of Section 7, Township 5 South, Range 80 West, 6th P.M., bears North 16°45’ East, 1,550 feet.

**Spraddle Ditch:** The headgate is located at a point on the west bank of Spraddle Creek whence the Northeast Corner of Section 7, Township 5 South, Range 80 West, 6th P.M. bears North 63° East, 100 feet.

**Buehrer and Rose Ditch and 1st Enl.:** The headgate is located (per change in Case No. W-2479) at a point on the Southeast bank of Gore Creek 75 feet West of the Northeast Corner of the SW¼NE¼ of Section 12, Township 5 South, Range 81 West, 6th P.M.
Item 6.1 Pando Feeder Canal Protest and related info

**Rose Ditch and 1st Enl.:** The headgate is located (per change in Case No. W-2478) at a point on the West bank of Gore Creek 150 feet West of the Northeast Corner of the SW¼NE¼ of Section 12, Township 5 South, Range 81 West, 6th P.M.

**Ruder No. 1 Ditch and 1st Enl.:** The headgate is located at a point on Gore Creek whence the Northeast Corner of the NW¼NW¼ of Section 14, Township 5 South, Range 81 West, 6th P.M. bears North 29°21' West, 3,118.19 feet.

**Kalsos Ditch:** The headgate is located at a point on the East bank of Booth Creek whence the witness corner to the East Quarter Corner of Section 11, Township 5 South, Range 80 West, 6th P.M. bears South 50°20' East, 6,666.4 feet.

**Kalsos No. 2 Ditch:** The headgate is located at a point on the East bank of an unnamed tributary of Gore Creek whence the witness corner to the East Quarter Corner of Section 11, Township 5 South, Range 80 West, 6th P.M. bears South 73°43' East, 5,195.6 feet.

**Kialsines No. 1 Ditch:** The headgate is located on an unnamed tributary of Black Gore Creek at a point whence the North Quarter Corner of Section 18, Township 5 South, Range 79 West, 6th P.M. bears North 28°30' East, 2,580.3 feet.

**Kialsines No. 2 Ditch:** Headgate number 1 is located on an unnamed tributary of Gore Creek at a point whence the North Quarter Corner of Section 18, Township 5 South, Range 79 West, 6th P.M. bears North 81°08' East, 3,031.2 feet; headgate number 2 is located on an unnamed tributary of Gore Creek at a point whence the North Quarter Corner of the same said Section 18 bears South 85°50' East, 3,696.6 feet.

**Kialsines No. 3 Ditch:** Headgate number 1 is located on an unnamed tributary of Gore Creek at a point from which the witness corner to the West Quarter Corner of Section 12, Township 5 South, Range 80 West, 6th P.M. bears North 39°03' West, 3,008.7 feet; headgate number 2 is located on an unnamed tributary of Gore Creek at a point from which said witness corner bears South 81°24' East, 369.3 feet.

**Kialsines No. 6 Ditch:** The headgate is located on Pitkin Creek at a point from whence the witness corner to the West Quarter Corner of Section 12, Township 5 South, Range 80 West, 6th P.M. bears South 7°57' West, 1,775.2 feet.

**Spraditle No. 2 Ditch:** The headgate is located at a point on the West bank of Spraditle Creek whence the Northeast Corner of Section 7, Township 5 South, Range 80 West, 6th P.M. bears North 63° East, 100 feet.

**Black Gore Ditch:** The headgate is located on Black Gore Creek in the NW¼NW¼, Section 18, Township 5 South, Range 80 West, 6th P.M.

**Webb Ditch First Enlargement:** The headgate is located on Pitkin Creek in the SW¼SW¼, Section 1, Township 5 South, Range 80 West, 6th P.M.

**Sawmill Ditch First Enlargement:** The headgate is located at a point on the East side of Saw Mill Creek (aka Mill creek) whence the North Quarter Corner of Section 8, Township 5 South, Range 80 West, 6th P.M. bears North 7°37' East, 2,915.2 feet.

**Frank Lartigere Ditch First Enlargement:** The headgate is located at a point on the West bank of Saw Mill Creek (aka Mill creek) whence the Northwest Corner of Section 7, Township 5 South, Range 80 West, 6th P.M. bears North 69°45' West, 7,153.2 feet.
Rose Ditch and 1st Enl.: The headgate is located (per change in Case No. W-2478) at a point on the West bank of Gore Creek 160 feet West of the Northeast Corner of the SW¼NE¼ of Section 12, Township 5 South, Range 81 West, 6th P.M.

Ruder No. 1 Ditch and 1st Enl.: The headgate is located at a point on Gore Creek whence the Northeast Corner of the NW¼NW¼ of Section 14, Township 5 South, Range 81 West, 6th P.M. bears North 29°21' West, 3,116.19 feet.

Katsos Ditch: The headgate is located at a point on the East bank of Booth Creek whence the witness corner to the East Quarter Corner of Section 11, Township 5 South, Range 80 West, 6th P.M. bears South 50°20' East, 6,666.4 feet.

Katsos No. 2 Ditch: The headgate is located at a point on the East bank of an unnamed tributary of Gore Creek whence the witness corner to the East Quarter Corner of Section 11, Township 5 South, Range 80 West, 6th P.M. bears South 73°43' East, 5,196.5 feet.

Kiahlopes No. 1 Ditch: The headgate is located on an unnamed tributary of Black Gore Creek at a point whence the North Quarter Corner of Section 18, Township 5 South, Range 79 West, 6th P.M. bears North 26°30' East, 2,580.3 feet.

Kiahlopes No. 2 Ditch: Headgate number 1 is located on an unnamed tributary of Gore Creek at a point whence the North Quarter Corner of Section 18, Township 5 South, Range 79 West, 6th P.M. bears North 81°08' East, 3,031.2 feet; headgate number 2 is located on an unnamed tributary of Gore Creek at a point whence the North Quarter Corner of the same said Section 18 bears South 85°50' East, 3,696.6 feet.

Kiahlopes No. 3 Ditch: Headgate number 1 is located on an unnamed tributary of Gore Creek at a point from which the witness corner to the West Quarter Corner of Section 12, Township 5 South, Range 80 West, 6th P.M. bears North 39°03' West, 3,098.7 feet; headgate number 2 is located on an unnamed tributary of Gore Creek at a point from which said witness corner bears South 81°24' East, 369.3 feet.

Kiahlopes No. 4 Ditch: The headgate is located on Pitkin Creek at a point from whence the witness corner to the West Quarter Corner of Section 12, Township 5 South, Range 80 West, 6th P.M. bears South 7°57' West, 1,775.2 feet.

Spraddle No. 2 Ditch: The headgate is located at a point on the West bank of Spraddle Creek whence the Northeast Corner of Section 7, Township 5 South, Range 80 West, 6th P.M. bears North 83° East, 100 feet.

Black Gore Ditch: The headgate is located on Black Gore Creek in the NW¼NW¼ of Section 18, Township 5 South, Range 80 West, 6th P.M.

Webb Ditch First Enlargement: The headgate is located on Pitkin Creek in the SW¼SW¼ of Section 1, Township 5 South, Range 80 West, 6th P.M.

Sawmill Ditch First Enlargement: The headgate is located at a point on the East side of Saw Mill Creek (aka Mill creek) whence the North Quarter Corner of Section 6, Township 5 South, Range 80 West, 6th P.M. bears North 7°37' East, 2,915.2 feet.

Frank Larzalere Ditch First Enlargement: The headgate is located at a point on the West bank of Saw Mill Creek (aka Mill creek) whence the Northwest Corner of Section 7, Township 5 South, Range 80 West, 6th P.M. bears North 69°45' West, 7,153.2 feet.
LaRagere Ditch First Enlargement: The headgate is located at a point on the West bank of Middle Creek whence the Southwest Corner of Section 6, Township 5 South, Range 80 West, 6th P.M. bears South 74°17' West, 4,009.6 feet.

Main Gore Ditch: The headgate is located on Gore Creek in the NW¼NE¼, Section 18, Township 5 South, Range 79 West, 6th P.M.

Mann Ditch First Enlargement: The headgate is located on the West bank of Booth Creek at a point whence the witness corner of Section 11, Township 5 South, Range 80 West, 6th P.M. bears South 52°48' East, 6,664.1 feet.

Edward Ditch: The headgate is located on Red Sandstone Creek in the SE¼SE¼, Section 1, Township 6 South, Range 81 West, 6th P.M.

Mike Ditch: The headgate is located on Red Sandstone Creek in the NE¼SE¼, Section 1, Township 6 South, Range 81 West, 6th P.M.
<table>
<thead>
<tr>
<th>Structure Name</th>
<th>Source</th>
<th>Amount (cfs)</th>
<th>Decreed</th>
<th>Owned</th>
<th>Adjudication Date</th>
<th>Appropriation Date</th>
<th>Case Number</th>
</tr>
</thead>
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<tr>
<td>Dry Gulch Ditch</td>
<td>McCoy Cr.</td>
<td>0.300</td>
<td>0.300</td>
<td></td>
<td>4-Jun-1907</td>
<td>25-Aug-1901</td>
<td>CA-446</td>
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<td>McCoy Ditch</td>
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<td></td>
<td>4-Jun-1907</td>
<td>23-Aug-1901</td>
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<td>McCoy &amp; Taylor Ditch</td>
<td>McCoy Cr.</td>
<td>6.000</td>
<td>6.000</td>
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<td>7-Jun-1909</td>
<td>1-May-1886</td>
<td>CA-468</td>
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<td>McCoy &amp; Taylor Ditch 1st Enl.</td>
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<td>6.830</td>
<td>6.830</td>
<td></td>
<td>3-Oct-1936</td>
<td>1-May-1887</td>
<td>CA-963</td>
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</table>
Vail Associates, Inc. Decreed Points of Diversion:

Terrell and Ford Ditch 1st Enrl: The headgate is located on the left bank of the Eagle River at a point whence the East Quarter Corner of Section 11, Township 5 South, Range 82 West, 6th P.M. bears South 21°25' East, 1,450 feet.

McCoy Ditch: The headgate is located on the left bank of Herwick Creek (aka McCoy Creek) at a point whence the South Quarter Corner of Section 10, Township 5 South, Range 82 West, 6th P.M. bears South 58°30' East, 1,370 feet.

Dry Gulch Ditch: The headgate is located on the East bank of Herwick Creek (aka McCoy Creek) at a point whence the South Quarter Corner of Section 10, Township 5 South, Range 82 West, 6th P.M. bears South 6°15' East, 1,474 feet.

McCoy and Taylor Ditch: The headgates are located on both banks of Herwick Creek (aka McCoy Creek) at a point near the center of the S1/2 of Section 10, Township 5 South, Range 82 West, 6th P.M.
### Exhibit D

**Historical Consumptive Use Credits In Excess of Contemplated Municipal Depletions**

(values in acre-foot)

<table>
<thead>
<tr>
<th>Entity</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Oct</th>
<th>Total</th>
<th>Irrigation Season</th>
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<tr>
<td>Vall Valley Consolidated Water District</td>
<td>18.2</td>
<td>111.0</td>
<td>65.4</td>
<td>63.8</td>
<td>83.0</td>
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<td>Eagle-Vail Metropolitan District 2</td>
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<td>30.7</td>
<td>37.8</td>
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<td>131.0</td>
<td>13-May 10-Oct</td>
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<tr>
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<td>35.0</td>
<td>28.2</td>
<td>18.0</td>
<td>0.7</td>
<td>123.0</td>
<td>13-May 10-Oct</td>
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<tr>
<td>Barry Creek Metropolitan District 2</td>
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<td>12.1</td>
<td>1.2</td>
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<td>25.0</td>
<td>13-May 10-Oct</td>
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<td>Arrowhead Metropolitan District 2</td>
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<td>2.6</td>
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<td>Edwards Metropolitan District 2</td>
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<td>Vall Associates, Inc.  3</td>
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<td>115.0</td>
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<td>Total (maximum exchange volume)</td>
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<tr>
<td>Maximum Exchange Rate (cfs)</td>
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<td>7.18</td>
<td>4.72</td>
<td>3.78</td>
<td></td>
<td></td>
<td>79.7</td>
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**Notes:**

1) Pursuant to respective plans for augmentation: Vail Valley, 82CW320; Eagle-Vail, W-3288; Avon, 84CW225; Barry Creek, W-3999; Arrowhead, 80CW307; Edwards, W-3288 and 92CW285; and Vall Associates, 80CW397.

2) The irrigation season is defined as the respective decrees or supporting engineering reports.

3) Excludes 45 acre-feet sold to Edwards.

4) Excludes water rights conveyed to Singletree Golf Club and retained by June Creek Ranch Company.

5) Excludes water rights conveyed to Country Club of the Rockies and retained by VeV/Arohead, Inc.

6) Includes only the water rights obtained from Eagle-Vail.

7) These water rights were included in Case No. 80CW307 and were retained by Vall/Arohead, Inc.

8) The maximum exchange rate is 2 times the average daily rate calculated from the monthly volumes. For May and October the rates are:

   - May 13-10: 2.58 cfs
   - May 20-31: 4.10 cfs
   - Oct 1-10: 1.78 cfs
   - Oct 11-20: 1.50 cfs

10STCU.XLS 7/28/1996
District and Authority Attachment 2

Water Counsel Agenda Item

Attachment Name: State & Division Engineer's Motion to Intervene and Opposition to the Motion to Intervene

Attachment Date (if applicable): March 11, 2020

Purpose of Agenda Item:

☒ Background for board meeting discussion (information only)
☐ Enter into public record
☐ Request board input/direction

Topic: Pando Feeder Canal

Summary of Topic: Attached are copies of the Motion to Intervene filed by the State & Division Engineers in the Pando Feeder Canal diligence/absolute case. The Reservoir Company and shareholders are in the process of preparing an opposition to this motion to intervene which is due in early April.
DISTRIBUTION COURT, WATER DIVISION 5,  
STATE OF COLORADO  

109 Eighth Street, Suite 104  
Glenwood Springs, CO 81601  
(970) 928-3062  

CONCERNING THE APPLICATION FOR  
WATER RIGHTS OF THE EAGLE PARK  
RESERVOIR COMPANY,  

IN EAGLE, SUMMIT, GRAND, PITKIN, AND  
GARFIELD COUNTIES, COLORADO  

Attorneys for the State and Division  
Engineers:  
PHILIP J. WEISER, Attorney General  
WILLIAM D. DAVIDSON, Assistant Attorney  
General, Attorney Reg. No. 49099*  
CHRISTOPHER R. STORK, Assistant Attorney  
General, Attorney Reg. No. 47555*  
Water Resources Unit  
Natural Resources and Environment Section  
Office of the Colorado Attorney General  
1300 Broadway, 7th Floor  
Denver, CO 80203  
Telephone: (720) 508-6280 (Davidson);  
(720) 508-6311 (Stork)  
Email: will.davidson@coag.gov;  
christopher.stork@coag.gov;  
*Counsel of Record  

STATE AND DIVISION ENGINEERS' MOTION TO INTERVENE  

The State Engineer and the Division Engineer for Water Division No. 5  
(“Engineers”), by and through undersigned counsel, move this Court for an order
allowing the Engineers to intervene in this case under section 37-92-304(3), C.R.S. (2019)\(^1\) or C.R.C.P. 24. In support of this Motion, the Engineers state as follows:

1. Under C.R.C.P. 121 § 1-15(8), counsel for the Engineers conferred with counsel for the Eagle Park Reservoir Company ("Applicant") before filing this Motion. Counsel for the Engineers is authorized to state that Applicant opposes the relief requested herein.

2. On October 26, 2018, Applicant filed an Application to Make Water Right Absolute and for Finding of Reasonable Diligence in this matter ("Application").

3. The Application asks the Court to confirm that Applicant has made absolute 42.42 cfs of Applicant's 80 cfs interest in the Pando Feeder Canal water right ("Pando Right") for all decreed uses, and to determine that Applicant has exercised reasonable diligence in developing the conditional portions of the Pando Right and Applicant's East Fork Pumping Plant Exchange water right.

4. The Pando Right was originally decreed by the Eagle County District Court in Civil Action No. 1193, with an appropriation date of August 10, 1956. Currently, 33.5 cfs of the Pando Right is absolute for snowmaking and augmentation uses. 11CW77 Decree, ¶ 11.

5. In Case No. 97CW288, this Court changed the Pando Right to include Eagle Park Reservoir as an alternate place of storage, and Eagle Park Reservoir, the East Fork Pumping Plant, the East Fork Interceptor Ditch, and the Chalk Mountain Interceptor Ditch as alternate points of diversion. 97CW288 Decree, ¶ 5. Under the 97CW288 Decree, up to 6,000 acre-feet of Eagle River basin water may be diverted under the Pando Right for direct use or for use after storage in Eagle Park Reservoir. Id.

6. In addition to the Pando Right, water also may be stored in Eagle Park Reservoir under the Eagle Park Reservoir Storage Right ("Storage Right") and the Eagle Park Reservoir First Enlargement Right ("First Enlargement Right").

\(^1\) All statutory cites are to the Colorado Revised Statutes of 2019 unless otherwise indicated.
7. The Storage Right was decreed by this Court in Case No. 92CW340 on September 15, 1998, with an appropriation date of March 16, 1991. 92CW340 Decree, ¶ 3.6. Under the Storage Right, up to 5,300 acre-feet of water from the Eagle River and Blue River basins may be stored in Eagle Park Reservoir after diversion at the following points of diversion: Eagle Park Reservoir, the East Fork Interceptor Ditch, the Chalk Mountain Interceptor Ditch, the East Interceptor Ditch, and Supply Canal Nos. 1 and 2. Id. at ¶ 3. Currently, 3,301 acre-feet of the Storage Right is absolute and 1,999 acre-feet remains conditional. 13CW11 Decree, ¶¶ 19, 20.

8. The First Enlargement Right was decreed by this Court in Case No. 93CW301 on October 19, 1993, with an appropriation date of May 18, 1993. 93CW301 Decree, ¶ 3.6. Under the First Enlargement Right, up to 22,300 acre-feet of water from the Eagle River and Blue River basins may be stored in Eagle Park Reservoir after diversion at the same points of diversion as may be utilized for the Storage Right. Id. at ¶ 3. All 22,300 acre-feet of the First Enlargement Right remains conditional. 13CW11 Decree, ¶ 21.


10. The Applicant filed a Response to the Summary of Consultation on February 11, 2019, and a Response to the Supplemental Summary of Consultation on May 14, 2019.

11. In the Summaries of Consultation, the Engineers raised concerns regarding how the absolute and conditional portions of the Pando Right, the Storage Right, and the First Enlargement Right should be administered relative to each other.

13. Under section 37-92-304(2), C.R.S., the deadline to file pleadings protesting or supporting the Referee's Order and Ruling was February 13, 2020.

14. The Engineers generally agree with the legal conclusions stated in the Referee's Ruling and Order and believe that the Referee's Ruling and Order is administrable. Accordingly, the Engineers did not protest the Referee's Ruling and Order.

15. On February 12, 2020, Applicant filed a Protest to the Referee's Ruling and Order ("Protest"). Because the Engineers were unaware of Applicant's intent to protest the Referee's Ruling and Order before Applicant filed its Protest, the Engineers did not have time to prepare and file a pleading supporting the Referee's Ruling and Order before the February 13, 2020 deadline.

16. The Engineers disagree with certain aspects of Applicant's positions stated in the Protest concerning how the remaining conditional portions of the Pando Right, the Storage Right, and the First Enlargement Right may be made absolute. In addition, the Engineers wish to ensure that the final decree entered in this case is administrable and clearly describes: (a) how the absolute and conditional portions of the Pando Right, the Storage Right, and the First Enlargement Right should be administered relative to each other; and (b) how the remaining conditional portions of those rights may be made absolute. Accordingly, the Engineers now request to intervene and become a formal party to this case.

17. The Engineers' Motion to Intervene should be granted under section 37-92-304(3), C.R.S. That section states in pertinent part:

Any person may move to intervene in proceedings before the water court upon payment of a fee, equal to that for filing an answer to a civil action in district court, except for the state engineer who shall pay no fee, and upon a showing of mistake, inadvertence, surprise, or excusable neglect or to support a referee's ruling. The water court shall grant the motion to intervene only if intervention is sought no less than thirty-five days before any pretrial conference or due date for trial data certificates and if intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.
18. Here, the Engineers' initial decision to participate in this case through the summary of consultation process rather than by filing a statement of opposition and the Engineers' failure to file a pleading supporting the Referee's Ruling and Order before Applicant filed its Protest constitute both a mistake and excusable neglect within the meaning of section 37-92-304(3), C.R.S.

19. The Engineers' statutory responsibility under the Water Right Determination and Administration Act of 1969 carries with it "a clear obligation to represent the public interest in proceedings involving water rights." Bar 70 Enterprises, Inc. v. Tosco Corp., 703 P.2d 1297, 1304 (Colo. 1985). In this case, the Engineers initially sought to fulfill that obligation while conserving the Division of Water Resources' limited resources by participating in the summary of consultation process instead of filing a statement of opposition. The Colorado Supreme Court has recognized that "one of the purposes of the statutory consultation process" is "allow[ing] the division engineer to comment on water rights applications without shouldering the burdens of a formal party to the litigation," and that requiring the Division Engineer to file a statement of opposition in every case would frustrate that purpose. Id. at 1305. Accordingly, the Engineers' initial decision to participate in this case through the consultation process rather than by filing a statement of opposition is consistent with the statutory consultation process's purpose.

20. The Engineers' decision to participate in this case through informal consultation is also good public policy. The Engineers often are able to resolve their concerns through informal negotiations with the parties based on the Division Engineer's consultation process rather than by filing statements of opposition, thus substantially limiting the expenses incurred by water rights applicants and the State of Colorado. Indeed, in this case, the Referee's Ruling and Order was acceptable to the Engineers, and before Applicant filed its Protest, the Engineers had no need to formally enter the case. Accordingly, the Engineers' initial decision to participate in this case through the summary of consultation process and the Engineers' failure to file a pleading supporting the Referee's Ruling and Order before Applicant filed its Protest constitute "excusable neglect" and "mistake" under section 37-92-304(3), C.R.S.

21. In addition to seeking to intervene in this case as a result of excusable neglect and mistake, the Engineers also seek to intervene to generally support the
Referee's Ruling and Order. The Engineers agree with the substance of the Referee's Ruling and Order, but believe that the final decree entered in this case should include additional detail not included in the Referee's Ruling and Order concerning how the Pando Right, the Storage Right, and the First Enlargement Right should be administered and made absolute. As such, the Engineers wish to support the Referee's Ruling and Order against Applicant's Protest while also seeking further clarification of certain issues in the final decree.

22. As required by section 37-92-304(3), C.R.S., the Engineers are seeking to intervene no less than 35 days before any pretrial conference or due date for trial certificates. Additionally, under Rule 11(b)(1) of the Uniform Local Rules for All State Water Court Divisions, this case is not yet at issue. As such, the Engineers' intervention will not unduly delay this case.

23. Further, granting the Engineers' Motion to Intervene will not unduly delay or prejudice Applicant. The Colorado Supreme Court has equated "prejudice" with actions that cause undue surprise or prevent a party from preparing its case adequately. See, e.g., Public Service Co. v. Blue River Irr. Co., 753 P.2d 737, 740-41 (Colo. 1988) (water court did not err in allowing party to participate in hearing as de facto intervenor where, among other factors, there was no surprise on part of applicant); see also J.P. v. District Court, 873 P.2d 745, 751 (Colo. 1994) (in discovery context, "[p]rejudice may occur if a party is unduly surprised or if the party does not have adequate time to prepare").

24. Here, the Engineers' concerns were raised in the Summaries of Consultation and during the Engineers' informal participation in this case, and, therefore, Applicant is well aware of the Engineers' concerns. Additionally, this case is not yet at issue, and no court deadlines will require rescheduling. Thus, making the Engineers a formal party to this case through intervention will not cause Applicant any undue surprise or prevent Applicant from preparing its case adequately.

25. Accordingly, the Engineers should be granted mandatory intervention under section 37-92-304(3), C.R.S.
26. Alternatively, if the Court does not grant the Engineers’ intervention as a matter of right, the Engineers should be granted permissive intervention under C.R.C.P. 24(b), which provides in relevant part:

When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency . . . , the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

27. Here, the Engineers may be granted permissive intervention upon timely application as the state agency responsible for the administration of the water rights statutes that apply to the Application. Indeed, the Engineers are required to: “administer, distribute, and regulate the waters of the state in accordance with the constitution of the state of Colorado, the provisions of this article and other applicable laws, and written instructions and orders of the state engineer, in conformity with such constitution and laws.” § 37-92-501(1), C.R.S.; see also Empire Lodge Homeowners’ Ass’n v. Moyer, 39 P.3d 1139, 1147 (Colo. 2002); Wadsworth v. Kuiper, 562 P.2d 1114, 1118 (Colo. 1977). And, as previously discussed, intervention by the Engineers will not unduly delay or prejudice the adjudication of Applicant’s water rights.

Accordingly, the Engineers move this Court for issuance of an order allowing them to intervene in this matter. In approving the Engineers’ intervention, the Engineers also request the Court to direct the Water Clerk to accept the attached statement of opposition for filing.
DATED this 11th day of March 2020.

PHILIP J. WEISER
Attorney General
E-filed in accordance with C.R.C.P. Rule 121 § 1-26. A printed or printable copy bearing the original, electronic, or scanned signature is on file at the Office of the Colorado Attorney General.

/s/ William D. Davidson

WILLIAM D. DAVIDSON, #49099*
Assistant Attorney General
CHRISTOPHER R. STORK, #47555*
Assistant Attorney General
Natural Resources and Environment Section
Attorneys for the State and Division Engineers
*Counsel of Record
CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of March, 2020, I caused the foregoing STATE AND DIVISION ENGINEERS' MOTION TO INTERVENE to be served either electronically by CO Courts E-filing or by first-class U.S. mail to each of the following:

<table>
<thead>
<tr>
<th>Party Name</th>
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<th>Attorney Name</th>
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<tbody>
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E-filed in accordance with C.R.C.P. Rule 121 § 1.26. A printed or printable copy bearing the original, electronic, or scanned signature is on file at the Office of the Colorado Attorney General.

/s/ Pauline Wilber

State Engineer and Division Engineer, Water Division No. 5, Motion to Intervene
Case No. 18CW3140
Page 9
District Court, Water Division 5, State of Colorado

109 Eighth Street, Suite 104
Glenwood Springs, CO 81601
(970) 928-3062

Concerning the Application for Water Rights of the Eagle Park Reservoir Company,
In Eagle, Summit, Grand, Pitkin, and Garfield Counties, Colorado

☐ Court Use Only ☐

Case No. 18CW3140

Order Granting State and Division Engineers' Motion to Intervene

The Court, having considered the State and Division Engineers' Motion to Intervene ("Motion"), and being fully advised in the premises, hereby Grants the Motion and further orders that the Statement of Opposition of the State Engineer and the Division Engineer, Water Division 5, be accepted for filing by the Water Clerk.


By the Court:

__________________________
James Berkley Boyd
Water Judge
Water Division 5
DISTRICT COURT, WATER DIVISION 5, STATE OF COLORADO

109 Eighth Street, Suite 104
Glenwood Springs, CO 81601
(970) 928-3062

CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE EAGLE PARK RESERVOIR COMPANY,

IN EAGLE, SUMMIT, GRAND, PITkin, AND GARFIELD COUNTIES, COLORADO

Attorneys for the State and Division Engineers:
PHILIP J. WEISER, Attorney General
WILLIAM D. DAVIDSON, Assistant Attorney General, Attorney Reg. No. 49099*
CHRISTOPHER R. STORK, Assistant Attorney General, Attorney Reg. No. 47555*

Water Resources Unit
Natural Resources and Environment Section
Office of the Colorado Attorney General
1300 Broadway, 7th Floor
Denver, CO 80203
Telephone: (720) 508-6280 (Davidson);
(720) 508-6311 (Stork)
Email: will.davidson@coag.gov;
christopher.stork@coag.gov;
*Counsel of Record

STATEMENT OF OPPOSITION OF THE STATE ENGINEER AND THE DIVISION ENGINEER, WATER DIVISION 5

1. Name and address of Opposers:

   Kevin G. Rein, P.E.                      Alan Martellaro, P.E.
   State Engineer                           Division Engineer
                                           P.O. Box 396
2. State facts as to why this application should not be granted or why it should be granted only in part or on certain conditions:

A. Any decree entered in this case should specify how the absolute and conditional portions of Applicant's interest in the Pando Feeder Canal Water Right ("Pando Right"), the Eagle Park Reservoir Storage Right originally decreed in Case No. 92CW340 ("Storage Right"), and the Eagle Park Reservoir First Enlargement Right originally decreed in Case No. 93CW301 ("First Enlargement Right") should be administered relative to each other.

B. Any decree entered in this case should specify how the remaining conditional portions of the Pando Right, the Storage Right, and the First Enlargement Right may be made absolute.

C. Any decree entered in this case should specify that the remaining conditional storage volumes of the Storage Right and the First Enlargement Right may only be made absolute by storing Eagle River basin water in the Eagle Park Reservoir storage structure under the following conditions: either (i) Applicant has made the Pando Right's 80 cfs flow rate absolute and needs to store additional water in the Eagle Park Reservoir storage structure after fully utilizing the absolute portion of the Storage Right; or (ii) the water is diverted to storage at a time when water is not legally available for diversion and/or storage under the Pando Right—including without limitation times when the 6,000 acre-foot volumetric limit on the Pando Right has been reached—and Applicant needs to store additional water in the Eagle Park Reservoir storage structure after fully utilizing the absolute portion of the Storage Right.

D. Any decree entered in this case should specify that the remaining conditional storage volumes of the Storage Right and the First Enlargement Right may be made absolute by storing Tenmile Creek basin water in the Eagle Park Reservoir storage structure even if the Pando Right is not yet fully absolute.
E. Any decree entered in this case should specify that if Applicant chooses to store Eagle River basin water in the Eagle Park Reservoir storage structure under the Storage Right or the First Enlargement Right at a time when water is legally available for diversion and storage under the Pando Right and Applicant has not fully utilized the Pando Right's 80 cfs diversion rate, the Pando Right's 6,000 acre-foot volumetric limit will be paper-filled by the amount of Eagle River basin water stored under the Storage Right or the First Enlargement Right.

F. If not already in place, properly maintained measuring and recording devices acceptable to the Division Engineer or the Water Commissioner are required for administration of the Pando Right and the East Fork Pumping Plant Exchange. Specifically, measuring devices must be installed in the Chalk Mountain Interceptor Ditch and any other structures that divert water from both the Eagle River and Tenmile Creek basins to enable determination of the amount of water diverted into the Eagle Park Reservoir storage structure from each river basin.

3. The State Engineer and the Division Engineer for Water Division 5 are unable to determine from currently available information whether additional grounds for opposition exist and, therefore, reserve the right to assert other grounds for opposition as they become known.

4. This statement of opposition is continuing in nature and shall apply to any and all future amendments to the original application.

PHILIP J. WEISER
Attorney General
E-filed in accordance with C.R.C.P. Rule 121 § 1-26. A printed or printable copy
bearing the original, electronic, or scanned signature is on file at the Office of the
Colorado Attorney General.

/s/ William D. Davidson

WILLIAM D. DAVIDSON, #49099*
Assistant Attorney General
CHRISTOPHER R. STORK, #47555*
Assistant Attorney General
Natural Resources and Environment Section
Attorneys for the State and Division Engineers
*Counsel of Record
VERIFICATION

STATE OF COLORADO

) ss
CITY AND COUNTY OF DENVER )

I, Tracy L. Kosloff, Deputy State Engineer for the Colorado Division of Water Resources, being duly sworn, hereby state that I have read the foregoing Statement of Opposition of the State Engineer and the Division Engineer, Water Division 5 and that the contents are true to the best of my knowledge and belief.

TRACY L. KOSLOFF, P.E.
Deputy State Engineer
Colorado Division of Water Resources

Subscribed and sworn to before me this 14th day of March 2020

MONA D. GONZALES
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID: 20074009448
NY COMMISSION EXPIRES MARCH 8, 2023

My Commission expires: March 8, 2023
CERTIFICATE OF SERVICE

I hereby certify that on March **11**, 2020, I caused the foregoing STATEMENT OF OPPOSITION OF THE STATE ENGINEER AND THE DIVISION ENGINEER, WATER DIVISION 5 to be served either electronically by CO Courts E-filing or by first-class U.S. mail to each of the following:

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/s/ Pauline Wilber
CONFIDENTIAL

District and Authority Attachment 3

Water Counsel Agenda Item

Attachment Name: Findings of Fact, Conclusions of Law, Ruling of Referee and Decree of the Water Court

Attachment Date (if applicable): March 16, 2020

Purpose of Agenda Item:

☒Background for board meeting discussion (information only)

☐Enter into public record

☐Request board input/direction

Topic: Eagle Park Reservoir

Summary of Topic: Attached are the Response to the Division Engineer's Summary of Consultation, the proposed Findings of Fact, Conclusions of Law, Ruling of the Referee and Decree of the Water Court in Case No. 19W3145 regarding the diligence application for the Eagle Park Reservoir conditional water rights, and a motion for entry of this decree. No statements of opposition were filed in this case.
### Item 6.2 Eagle Park Reservoir

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<td>Glenwood Springs, CO 81601</td>
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**CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE EAGLE PARK RESERVOIR COMPANY, COLORADO RIVER WATER CONSERVATION DISTRICT, EAGLE RIVER WATER & SANITATION DISTRICT, UPPER EAGLE REGIONAL WATER AUTHORITY, VAIL ASSOCIATES, INC., and BOARD OF COUNTY COMMISSIONERS OF EAGLE COUNTY, COLORADO.**

**Attorneys for the Eagle River Water & Sanitation District and Upper Eagle Regional Water Authority, individually and as shareholders of the Eagle Park Reservoir Company:**

- Glenn E. Porzak (#2793)
- Kristin H. Moseley (#28678)
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- Boulder, CO 80302
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- Email: gporzak@pbblaw.com; kmoseley@pbblaw.com

**Attorneys for the Colorado River Water Conservation District, acting by and through its Colorado River Water Projects Enterprise, individually and as a shareholder of the Eagle Park Reservoir Company:**

- Peter C. Fleming (#20805)
- Jason V. Turner (#35665)
- Colorado River Water Conservation District
- 201 Centennial Street | PO Box 1120
- Glenwood Springs, CO 81602
- Phone: (970) 945-8522 | Fax: 970-945-8799
- Email: pfleming@crwcd.org; jturner@crwcd.org

**Attorneys for Vail Associates, Inc., individually and as a shareholder of the Eagle Park Reservoir Company:**

- P. Fritz Holleman (#21888)
- Buchanan Sperling & Holleman PC
- 1525 Spruce Street, Suite 200
- Boulder, CO 80302
- Phone: (303) 431-9141
- Email: tholleman@tbvs.net

**Case No:** 19CW3145 (13CW11, 04CW138, 04CW163)

**Division:** 5
Applicants, by and through their undersigned attorneys, hereby respond as follows to the Summary of Consultation dated February 27, 2020 filed by the Division Engineer in the above-captioned case:

CONCERNS

1. Any Ruling in this case should identify the location of the second point of diversion for the Supply Canal No. 1 as being a distance of 2550 feet from the described reference point, see paragraph 3(b)(5) of the application and paragraph 2.5.2 of the decree in Case No. 1992CW0340.

Response: This minor typographical error has been corrected in the proposed Findings of Fact, Conclusions of Law, Ruling of the Referee and Decree of the Water Court (the "proposed Ruling and Decree").

2. Any Ruling in this case should clearly identify the case number in which the Eagle Park Reservoir and Eagle Park Reservoir First Enlargement water rights were changed to include the alternate point of diversion at the East Fork Pumping Plant when describing the point of diversion for the East Fork Pumping Plant. In reviewing the prior decrees relating to the Eagle Park Reservoir water rights, we could not locate when and where the East Fork Pumping Plant was changed to be an alternate point of diversion for the storage rights. We also reviewed Case No. 97CW288 which changed the Pando Feeder Canal to have an alternate point of diversion at the East Fork Pumping Plant, however, the storage rights were not changed by that decree. If the Eagle Park Reservoir water rights have not been changed to include the East Fork Pumping Plant as an alternate point of diversion, then this point of diversion should be excluded from any Ruling in this case.

Response: The East Fork Pumping Plant is mentioned in Case No. 97CW288 where the decree states "for purposes of this change of water rights, the specific point of diversion into storage for Eagle Park Reservoir are as follows... East Fork Pumping Plant" pages 2-3. The East Fork Pumping Plant is also referenced in the diligence applications for the Eagle Park Reservoir and its First Enlargement in Case Nos. 00CW210 and 04CW163. The Applicants will add to the source in the proposed decree the words "as added in 97CW288" when noting the East Fork Pumping Plant as a source for the reservoir and its enlargement.
3. Any Ruling in this case should describe the source for the Eagle Park Reservoir as decreed in paragraph 3.2 in Case Nos. 1992CW0340 and 1993CW0301.

Response: The proposed Ruling and Decree describes these sources.

4. Any Ruling in this case should include the filling rates for the East Fork Interceptor Ditch, the Chalk Mountain Interceptor Ditch, the East Fork Interceptor Ditch, the Supply Canal No. 1, and the Supply Canal No. 2 as described in paragraphs 3.4.1 through 3.4.5 in Case Nos. 92CW340 and 93CW301.

Response: The Application and the proposed Ruling and Decree includes the filling rates.

5. Applicant must overcome two burdens. First, looking back in time, applicant must prove that it applied steady effort to complete the appropriation during the subject diligence period. C.R.S. § 37-92-301(4)(b). Second, looking forward, applicant must prove that the subject water rights “can and will” be beneficially used within a reasonable time and that applicant is not speculating in priorities. C.R.S. § 37-92-305(9)(b); C.R.S. § 37-92-103(3)(a).

   a. Regarding the “can and will” and the “anti-speculation” doctrines, the applicant must demonstrate that: (1) it will complete the appropriations within a reasonable time; (2) a specific plan is in place to develop the subject water rights; and (3) an ongoing need for the conditional appropriation.

   b. Regarding diligent efforts, many of the activities cited in the application apply to other structures and water rights owned by the Applicants. Applicants should provide specific evidence that demonstrates a plan to complete the appropriation for the Eagle Park Reservoir First Enlargement right within a reasonable amount time, such as engineering reports, feasibility studies, etc.

Response: The verified Application contains a detailed outline of the $4.4 million in expenditures to operate, maintain, protect, upgrade and repair Eagle Park Reservoir and its associated diversion facilities and water rights. All of these expenditures and activities are necessary to apply Eagle Park Reservoir and its First Enlargement to the beneficial uses for which they were decreed and meet Applicants’ burden of proof to demonstrate reasonable diligence.
Dated this 16th day of March, 2020.

PORZAK BROWNING & BUSHONG LLP

Glenn E. Porzak (#2739)
Kristin H. Moseley (#28678)
Attorneys for Eagle River Water & Sanitation District and
Upper Eagle Regional Water Authority, individually and
as shareholders of the Eagle Park Reservoir Company

COLORADO RIVER WATER CONSERVATION
DISTRICT, acting by and through its Colorado River
Water Projects Enterprise

Peter C. Fleming (#20805)
Jason V. Turner (#35665)
Attorneys for the Colorado River Water Conservation
District, acting by and through its Colorado River Water
Projects Enterprise, individually and as a shareholder of
the Eagle Park Reservoir Company

BUCHANAN SPERLING & HOLLEMAN PC

P. Fritz Holleman (#21888)
Attorneys for Vail Associates, Inc., individually and as a
shareholder of the Eagle Park Reservoir Company

THE BOARD OF COUNTY COMMISSIONERS OF
EAGLE COUNTY COLORADO

Bryan R. Treu (#29577)
Holly K. Strabizky (#35156)
Attorneys for the Board of county Commissioners of
Eagle County Colorado, individually and as a
shareholder of the Eagle Park Reservoir Company
The Application in this case was filed on November 27, 2019 ("Application"), and was referred by the Water Judge for the District Court in and for Water Division No. 5, State of Colorado (the "Water Court") to the Referee of the Water Court in accordance with C.R.S. 37-92-101, et seq., known as the Water Right Determination and Administration Act of 1969.

The Water Referee, having made such investigations as are necessary to determine whether or not the statements in the Application are true, and having become fully advised with respect to the subject matter of the Application, does hereby make the following determinations and Ruling as the Referee in this matter.

**FINDINGS OF FACT**

1. The statements in the Application are true, except as may be otherwise stated herein.

2. **Name and Address of Applicants.** The Application was filed by the (a) Eagle Park Reservoir Company, Eagle River Water and Sanitation District, and Upper Eagle Regional Water Authority, whose address is 846 Forest Road, Vail, Colorado 81657; (b) Colorado River Water Conservation District, acting by and through its Colorado River Water Projects Enterprise, whose address is P.O. Box 1120 Glenwood Springs, CO 81602; (c) Vail Associates, Inc., whose address is 390 Interlocken Crescent, Suite 1000, Broomfield, CO 80021; and (d) the Board of
County Commissioners of Eagle County, Colorado, whose address is P.O. Box 850, Eagle, Colorado 81631.

3. **Jurisdiction.** All notices required by law have been duly given and the Water Court has jurisdiction over the Application and all parties affected thereby, whether or not they have chosen to appear.

4. **Objectors.** No statement of opposition was filed herein, and the time for filing statements of opposition has now expired.

5. **Summary of Consultation.** The Referee has considered the Summary of Consultation of the Division Engineer dated February 27, 2020, and the Applicants' response thereto.

6. **Description of conditional water right.** Eagle Park Reservoir and Eagle Park Reservoir First Enlargement.

   (a) **Decrees:**

   (1) Eagle Park Reservoir was decreed by the Water Court in Case No. 92CW340 on September 15, 1998, for 5,300 acre-feet conditional, with an appropriation date of March 16, 1991. Previous findings of diligence include Case Nos. 13CW11 (dated November 10, 2013), 04CW138 (dated January 15, 2007) and 00CW210 (dated August 12, 2002).

   (2) Eagle Park Reservoir First Enlargement was decreed by the Water Court in Case No. 93CW301 on October 19, 1998, for 22,300 acre-feet conditional, with an appropriation date of May 18, 1993. Previous findings of diligence include Case Nos. 13CW11 (dated November 10, 2013) and 04CW163 (dated January 15, 2007).

   (b) **Decreed Locations of Structures:** The dam and diversion facilities for the Eagle Park Reservoir and its First Enlargement depicted on Exhibit A are described as follows:

   (1) **Eagle Park Reservoir.** The north abutment of the enlarged dam crest for Eagle Park Reservoir is located approximately 160 feet north of the south section line and 650 feet east of the west section line of Section 28, T. 7 S., R. 79 W., 6th P.M., Eagle County, Colorado.

   (2) **East Fork Interceptor Ditch.** The East Fork Interceptor Ditch has a capacity of 48 cfs and diverts from unnamed tributaries of the East Fork of the Eagle River at the following points, all of which are located in Eagle County, Colorado: (i) 900 feet south of the north section line and 1,100 feet west of the east section line of Section 5, T. 8 S., R. 79 W., 6th P.M.; (ii) 1,250 feet south of the north section line and 700 feet east of the west section line of Section 4, T. 8 S., R. 79 W., 6th P.M.; (iii) 1,200 feet north of the south section line and 800 feet east of the west section line of Section 33, T. 7 S., R. 79 W., 6th P.M.; and (iv) runoff, surface
flow, and seepage from the area above the East Fork Interceptor Ditch as it runs between the above-described points of diversion and Eagle Park Reservoir.

(3) **Chalk Mountain Interceptor Ditch.** The Chalk Mountain Interceptor Ditch has a capacity of 12 cfs and diverts run-off and seepage as it runs a distance of approximately 3.4 miles from Fremont Pass, located in the W½ of Section 11, T. 8 S., R. 79 W., 6th P.M., northwesterly along State Highway 91 and the south side of Robinson Tailing Pond, thence westerly to the south of Chalk Mountain Reservoir and Robinson Reservoir, thence northwesterly to Eagle Park Reservoir. The Chalk Mountain Interceptor Ditch diverts water from the headwaters of Tenmile Creek in Lake and Summit Counties and from the headwaters of the East Fork of the Eagle River in Eagle County.

(4) **East Interceptor Ditch.** The East Interceptor Ditch has a capacity of 20 cfs and runs northeasterly from a point whence the northeast corner of Section 2, T. 8 S., R. 79 W., 6th P.M. bears North 77° 20’ East a distance of 850 feet at the north fork of McNulty Creek, thence along the east side of Robinson and Tenmile Tailing Ponds into Supply Canal No. 1. The East Interceptor Ditch diverts water from the north fork of McNulty Creek and surface flow, seepage, and run-off from watersheds above it that are tributary to Tenmile Creek.

(5) **Supply Canal No. 1.** The Supply Canal No. 1 has a capacity of 10 cfs and diverts water from the following tributaries of Tenmile Creek at the following points: (i) on the west bank of Humbug Creek at a point whence Section 18, T. 7 S., R. 79 W. bears South 71° 35’ West a distance of 3250 feet; (ii) on the south bank of Mayflower Creek at a point whence the northeast corner of Section 24, T. 7 S., R. 79 W., 6th P.M. bears North 16° 55’ East a distance of 2550 feet; (iii) runoff, surface flow, and seepage from the area above the Supply Canal No. 1 as it runs between the above-described points of diversion and the Climax Mill; and (iv) the Supply Canal No. 1 can also divert water from Clinton Gulch Creek. However, water from Clinton Gulch Creek is not claimed as a source for the water rights decreed herein.

(6) **Supply Canal No. 2.** The Supply Canal No. 2 has a capacity of 10 cfs and diverts water from the following tributaries of Tenmile Creek at the following points: (i) on the west bank of Searle Creek at a point whence U.S.L.M. Kokomo bears South 45° 58’ East 3740 feet (located in the NW1/4 of the SE1/4 of Section 13, T. 7 S., R. 79 W., 6th P.M.); (ii) on the south bank of Kokomo Creek at a point whence U.S.L.M. Kokomo bears North 39° 36’ East 2635 feet (located in the SE1/4 of Section 22, T. 7 S., R. 79 W., 6th P.M.); and (iii) runoff, surface flow, and seepage from the area above the Supply Canal No. 2 as it runs between the above-described points of diversion and the Climax Mill.

(7) **East Fork Pumping Plant.** The East Fork Pumping Plant has a capacity of 6 cfs and diverts from the East Fork of the Eagle River in the SE1/4 of the NE1/4 of Section 32, T. 7 S., R. 79 W., 6th P.M., at a point whence the Northeast corner of said Section 32 bears North 31° 53’ East a distance of 2,414 feet, which is 2,130 feet from the North section line and 1,100 feet from the East section line of Section 32.
(c) **Sources of Water:** The sources of water for the Eagle Park Reservoir are the East Fork of the Eagle River, including run-off, surface flow, and seepage from the area above the reservoir and tributary thereto; and water tributary to Tenmile Creek, a tributary of the Blue River; including Hamburg Creek, Mayflower Creek, Searle Creek, and Kokomo Creek.

(d) **Appropriation date:** The appropriation date for the initial 5,300 acre-feet of the Eagle Park Reservoir storage right decreed in Case No. 92CW340 is March 16, 1991. The appropriation date for the Eagle Park Reservoir First Enlargement is May 18, 1993.

(e) **Amount:** 5,300 acre-feet for the Eagle Park Reservoir, of which 3,301 acre-feet has been made absolute and 1,999 acre-feet remain conditional, and 22,300 acre-feet, conditional, for the Eagle Park Reservoir First Enlargement.

(f) **Uses:** The beneficial uses for water stored, released, and diverted, whether directly or by exchange, under the Eagle Park Reservoir and the Eagle Park Reservoir First Enlargement are mining, milling, industrial, snowmaking, municipal, domestic, stock watering, recreational, fish and wildlife, irrigation, agricultural, exchange, replacement, and augmentation purposes.

7. **Detailed outline of work done to complete project and apply water to beneficial use:** During the subject diligence period, the Eagle Park Reservoir Company and its shareholders spent approximately $4.4 million to operate, maintain, protect, upgrade and repair Eagle Park Reservoir and its associated diversion facilities and water rights. The Application set forth a detailed outline of the work and expenditures done to complete the subject water rights and apply water to beneficial use. All of these expenditures and activities are necessary to apply Eagle Park Reservoir and its First Enlargement to the beneficial uses for which they were decreed.

**CONCLUSIONS OF LAW**

8. To the extent they constitute legal conclusions, the foregoing Findings of Fact are incorporated herein.

9. **All notices required by law have been properly made, including as required under C.R.S. § 37-92-302(3).** The Water Court has jurisdiction over the Application and over all entities or persons who had standing to appear, even though they did not do so.


11. **The Application is in accordance with Colorado law and should be granted as set forth herein.**
RULING OF THE REFEREE

12. The Findings of Fact and Conclusions of Law as set forth above are incorporated herein by reference to constitute part of the Ruling of the Referee and Final Judgment and Decree.

13. The Referee does, therefore, conclude that the Application should be granted and orders that the Applicants have exercised reasonable diligence with respect to the Eagle Park Reservoir and Eagle Park Reservoir First Enlargement for all decreed uses and continues these conditional water rights in full force and effect.

14. An application for a finding of reasonable diligence with regard to the conditional portions of the Eagle Park Reservoir and Eagle Park Reservoir First Enlargement shall be filed six years from the date of the Decree of the Water Court, and thereafter in accordance with the provisions of Article 92 of Chapter 37, Colorado Revised Statutes, so long as the Applicants, or their successors and assigns, desire to maintain the conditional Eagle Park Reservoir and its First Enlargement or until the remaining portions of the Eagle Park Reservoir and its First Enlargement are made absolute.

15. Pursuant to Rule 9 of the Uniform Local Rules for All State Water Court Divisions, upon the sale or other transfer of the conditional rights of exchange decreed herein, the transferee shall file with the Division 5 Water Court a notice of transfer which shall state:

(a) The title and case number of this Case No. 19CW3145;
(b) The description of the conditional rights transferred;
(c) The name of the transferor;
(d) The name and mailing address of the transferee; and
(e) A copy of the recorded deed.

16. The owner of said conditional rights of exchange shall also notify the Clerk of the Division 5 Water Court of any change in mailing address. The Clerk shall place any notice of transfer or change of address in the case file of this Case No. 19CW3145.

It is accordingly ORDERED that this Ruling shall be filed with the Water Clerk subject to judicial review.
It is further ORDERED that a copy of this Ruling shall be filed with the appropriate Division Engineer and with the State Engineer.

Dated this ____ day of ________________, 2020.

BY THE REFEREE:

______________________________
Water Referee
Water Division 5

DECREE OF THE WATER COURT

No protest was filed in this matter. The foregoing Ruling is confirmed and approved, and is hereby made the Decree of the Water Court.

Dated: ______________________

BY THE COURT

______________________________
James Boyd, Water Judge
Water Division 5
Your filing has been successfully submitted to the court. Your filing is not considered final until the court accepts it.

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<tr>
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<tr>
<td>Case Caption: In the Interest of: Eagle River Water Sanitation District et al</td>
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<td>Authorized Date: 03/16/2020 1:37 AM</td>
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<td>Submitted By: Rebecca Bean</td>
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<thead>
<tr>
<th>Party</th>
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<tbody>
<tr>
<td>Eagle Park Reservoir Company</td>
<td>Applicant</td>
<td>Active</td>
<td>Glenn Edward Porzak (Porzak Browning &amp; Buahong LLP) Kristin Howes Moseley (Porzak Browning &amp; Buahong LLP)</td>
</tr>
<tr>
<td>Eagle River Water Sanitation District</td>
<td>Applicant</td>
<td>Active</td>
<td>Glenn Edward Porzak (Porzak Browning &amp; Buahong LLP) Kristin Howes Moseley (Porzak Browning &amp; Buahong LLP)</td>
</tr>
<tr>
<td>Upper Eagle Regional Water Authority</td>
<td>Applicant</td>
<td>Active</td>
<td>Glenn Edward Porzak (Porzak Browning &amp; Buahong LLP) Kristin Howes Moseley (Porzak Browning &amp; Buahong LLP)</td>
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| Documents: |
|------------------|------------------|------------------|
| Document ID | Document | Title | Statutory Fee | Security |
| F1F95918146C6D | Resources | Response to the Division Engineer's Summary of Consultation | $0.00 | Public |
| BF9285F96351B | Exhibit - Attach to Pleading/Doc | Exhibit - Proposed Ruling and Decree | $0.00 | Public |

| Service: |
|------------------|------------------|------------------|
| Party | Type | Attorney | Organization | Method |
| Colorado River Water Conservation Dist | Applicant | Jason Victor Turner | Colorado River Water Conservation District | E-Service |
| Colorado River Water Conservation Dist | Applicant | Peter Cheney Fleming | Colorado River Water Conservation District | E-Service |
| Division S Engineer | Division Engineer | Division S Water Engineer | State of Colorado DWR Division S | E-Service |
| Eagle City Board of County Commissioners | Applicant | Holly Krenner Stanfill | Eagle County Attorneys Office | E-Service |
| Eagle City Board of County Commissioners | Applicant | Bryan Robert Trew | Eagle County Attorneys Office | E-Service |
| State Engineer | State Engineer | State of Colorado - Division of Water Resources | State of Colorado - Division of Water Resources | E-Service |
| Veil Associates Inc. | Applicant | Paul F. Hollenbeck | Buchanan Spelbring & Hollenbeck PC | E-Service |

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<td>Authorize: Glenn Edward Porzak</td>
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<td>Submit Options: Submit to the court and serve selected parties.</td>
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https://www.jbtl.e courts.state.co.us/efiling/web/filing/reviewFiling/submitted.htm?filingid=99928674EFCBF
**Item 6.2 Eagle Park Reservoir**

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<tr>
<td>109 - 8th Street, Suite 104</td>
</tr>
<tr>
<td>Glenwood Springs, CO 81601</td>
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CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE EAGLE PARK RESERVOIR COMPANY, COLORADO RIVER WATER CONSERVATION DISTRICT, EAGLE RIVER WATER & SANITATION DISTRICT, UPPER EAGLE REGIONAL WATER AUTHORITY, VAIL ASSOCIATES, INC., and BOARD OF COUNTY COMMISSIONERS OF EAGLE COUNTY, COLORADO.

<table>
<thead>
<tr>
<th>In Eagle, Lake, and Summit Counties, Colorado</th>
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<tr>
<th>Attorneys for the Eagle River Water &amp; Sanitation District and Upper Eagle Regional Water Authority, individually and as shareholders of the Eagle Park Reservoir Company:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glenn E. Porzak (#2793)</td>
</tr>
<tr>
<td>Kristin H. Moseley (#28678)</td>
</tr>
<tr>
<td>Porzak Browning &amp; Bushong LLP</td>
</tr>
<tr>
<td>2120 13th Street</td>
</tr>
<tr>
<td>Boulder, CO 80302</td>
</tr>
<tr>
<td>Phone: 303-443-6800</td>
</tr>
<tr>
<td>Email: <a href="mailto:gporzak@pbblaw.com">gporzak@pbblaw.com</a>; <a href="mailto:kmoseley@pbblaw.com">kmoseley@pbblaw.com</a></td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Attorneys for the Colorado River Water Conservation District, acting by and through its Colorado River Water Projects Enterprise, individually and as a shareholder of the Eagle Park Reservoir Company:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peter C. Fleming (#20805)</td>
</tr>
<tr>
<td>Jason V. Turner (#35665)</td>
</tr>
<tr>
<td>Colorado River Water Conservation District</td>
</tr>
<tr>
<td>201 Centennial Street</td>
</tr>
<tr>
<td>Glenwood Springs, CO 81602</td>
</tr>
<tr>
<td>Phone: (970) 945-8522</td>
</tr>
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<table>
<thead>
<tr>
<th>Attorneys for Vail Associates, Inc., individually and as a shareholder of the Eagle Park Reservoir Company:</th>
</tr>
</thead>
<tbody>
<tr>
<td>P. Fritz Holleman (#21888)</td>
</tr>
<tr>
<td>Buchanan Sperling &amp; Holleman PC</td>
</tr>
<tr>
<td>1525 Spruce Street, Suite 200</td>
</tr>
<tr>
<td>Boulder, CO 80302</td>
</tr>
<tr>
<td>Phone: (303) 431-9141</td>
</tr>
</tbody>
</table>

Case No: 19CW3145
(13CW11, 04CW138, 04CW163)

Division: 5
Applicants, Eagle Park Reservoir Company and its shareholders ("Applicants"), by and through undersigned counsel and pursuant to C.R.C.P. 56, respectfully move for summary judgment and entry of the attached proposed Findings of Fact, Conclusions of Law, Ruling of the Referee, and Decree of the Water Court, and in support thereof states as follows:

1. The Application in this matter was filed on November 27, 2019, with the District Court in and for Water Division No. 5, State of Colorado (the "Water Court") and was referred to the Water Referee by the Water Judge of the Water Court in accordance with C.R.S. §§ 37-92-101, et seq., known as the Water Right Determination and Administration Act of 1969.

2. No statements of opposition were filed in this case. The time for filing statements of opposition has expired, and no party has sought to intervene in this case.

3. The Division Engineer for Water Division No. 5 filed a Summary of Consultation dated February 27, 2020. Applicants filed a Response to the Summary of Consultation on March 16, 2020, fully addressing the Division Engineer’s concerns.

4. To the best of Applicants’ knowledge, there are no disputed issues of material fact or law remaining in this case, and this matter is ripe for determination by the Water Court.

5. Because there were no statements of opposition filed in this case, and because the Applicants addressed the concerns of the Division Engineer in its Response to the Summary of Consultation, this matter is ripe for determination by the Water Referee and Water Judge. An uncontradicted showing of facts probative of a right to judgment leaves a trial court with no alternative but to conclude that no genuine issue of material fact exists. Civil Service Comm’n v. Pinder, 812 P.2d 645, 649 (Colo. 1991); Terrell v. Walter E. Heller & Co., 165 Colo. 463, 467, 439 P.2d 989, 991 (1968). Therefore, it is appropriate for the Court to grant summary judgment and enter the proposed decree as the Decree of the Water Court. Rule 56, C.R.C.P.; Bunger v. Uncompahgre Valley Water Users Ass’n., 192 Colo. 159, 557 P.2d 389, 393 (1976).
WHEREFORE, Applicants respectfully request that the Water Referee enter the proposed Findings of Fact, Conclusions of Law, Ruling of the Referee, and Decree of the Water Court in this matter.

Respectfully submitted this 14th day of March 2020.

PORZAK BROWNING & BUSHONG LLP

Glenn E. Porzak (#2739)
Kristin H. Moseley (#28678)
Attorneys for Eagle River Water & Sanitation District and Upper Eagle Regional Water Authority, individually and as shareholders of the Eagle Park Reservoir Company

COLORADO RIVER WATER CONSERVATION DISTRICT, acting by and through its Colorado River Water Projects Enterprise

Peter C. Fleming (#20805)
Jason V. Turner (#35665)
Attorneys for the Colorado River Water Conservation District, acting by and through its Colorado River Water Projects Enterprise, individually and as a shareholder of the Eagle Park Reservoir Company

BUCHANAN SPERLING & HOLLEMAN PC

P. Fritz Holleman (#21888)
Attorneys for Vail Associates, Inc., individually and as a shareholder of the Eagle Park Reservoir Company
THE BOARD OF COUNTY COMMISSIONERS OF EAGLE COUNTY COLORADO

Holly K. Strabizly
Bryan R. Treu (#29577)  
Holly K. Strabizly (#35156)  
Attorneys for the Board of County Commissioners of Eagle County Colorado, individually and as a shareholder of the Eagle Park Reservoir Company
CERTIFICATE OF SERVICE

I hereby certify that on the ______ day of March, 2020, a true and correct copy of the foregoing MOTION FOR ENTRY OF RULING AND DECREE was filed and served via the Colorado Courts E-Filing system addressed to counsel for each of the parties in the above-captioned matter, as follows:

<table>
<thead>
<tr>
<th>Party Name</th>
<th>Party Type</th>
<th>Attorney Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eagle County Board of County Commissioners</td>
<td>Applicant</td>
<td>Bryan Robert Treu (Eagle County Attorneys Office)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Holly Kirsner Strubli/A (Eagle County Attorneys Office)</td>
</tr>
<tr>
<td>Eagle River Water &amp; Sanitation District</td>
<td>Applicant</td>
<td>Glenn Edward Porzek and Kristin Howse Moseley (Porzek Browning &amp; Bushong LLP)</td>
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<tr>
<td>Vail Associates Inc.</td>
<td>Applicant</td>
<td>Paul F Holleman (Bushanan Sperling and Holleman PC)</td>
</tr>
<tr>
<td>Division 5 Engineer</td>
<td>Division Engineer</td>
<td>Division 5 Water Engineer (State of Colorado DWR Division 5)</td>
</tr>
<tr>
<td>State Engineer</td>
<td>State Engineer</td>
<td>Colorado Division of Water Resources (State of Colorado - Division of Water Resources)</td>
</tr>
</tbody>
</table>

Rebecca S. Bean
DISTRICT COURT, WATER DIVISION NO. 5, 
GARFIELD COUNTY, COLORADO

Court Address: 109 8th Street, Suite 104 
Glenwood Springs, CO 81601

Phone Number: 970.947.3862

COURT USE ONLY

CONCERNING THE APPLICATION FOR WATER 
RIGHTS OF THE EAGLE PARK RESERVOIR 
COMPANY, COLORADO RIVER WATER 
CONSERVATION DISTRICT, EAGLE RIVER 
WATER & SANITATION DISTRICT, UPPER 
EAGLE REGIONAL WATER AUTHORITY, VAIL 
ASSOCIATES, INC., and BOARD OF COUNTY 
COMMISSIONERS OF EAGLE COUNTY, 
COLORADO,

IN EAGLE, LAKE AND SUMMIT COUNTIES, 
COLORADO 

FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE 
AND DECREES OF THE WATER COURT

The Application in this case was filed on November 27, 2019 (“Application”), and was referred by the Water Judge for the District Court in and for Water Division No. 5, State of Colorado (the “Water Court”) to the Referee of the Water Court in accordance with C.R.S. 37-92-101, et seq., known as the Water Right Determination and Administration Act of 1969.

The Water Referee, having made such investigations as are necessary to determine whether or not the statements in the Application are true, and having become fully advised with respect to the subject matter of the Application, does hereby make the following determinations and Ruling as the Referee in this matter.

**FINDINGS OF FACT**

1. The statements in the Application are true, except as may be otherwise stated herein.

2. **Name and Address of Applicants.** The Application was filed by the (a) Eagle Park Reservoir Company, Eagle River Water and Sanitation District, and Upper Eagle Regional Water Authority, whose address is 846 Forest Road, Vail, Colorado 81657; (b) Colorado River Water Conservation District, acting by and through its Colorado River Water Projects Enterprise, whose address is P.O. Box 1120 Glenwood Springs, CO 81602; (c) Vail Associates, Inc., whose address is 390 Interlocken Crescent, Suite 1000, Broomfield, CO 80021; and (d) the Board of
County Commissioners of Eagle County, Colorado, whose address is P.O. Box 850, Eagle, Colorado 81631.

3. **Jurisdiction.** All notices required by law have been duly given and the Water Court has jurisdiction over the Application and all parties affected thereby, whether or not they have chosen to appear.

4. **Objectors.** No statement of opposition was filed herein, and the time for filing statements of opposition has now expired.

5. **Summary of Consultation.** The Referee has considered the Summary of Consultation of the Division Engineer dated February 27, 2020, and the Applicants’ response thereto.

6. **Description of conditional water right.** Eagle Park Reservoir and Eagle Park Reservoir First Enlargement.

   (a) **Decrees:**

   (1) Eagle Park Reservoir was decreed by the Water Court in Case No. 92CW340 on September 15, 1998, for 5,300 acre-feet conditional, with an appropriation date of March 16, 1991. Previous findings of diligence include Case Nos. 13CW11 (dated November 10, 2013), 04CW138 (dated January 15, 2007) and 00CW210 (dated August 12, 2002).

   (2) Eagle Park Reservoir First Enlargement was decreed by the Water Court in Case No. 93CW301 on October 19, 1998, for 22,300 acre-feet conditional, with an appropriation date of May 18, 1993. Previous findings of diligence include Case Nos. 13CW11 (dated November 10, 2013) and 04CW163 (dated January 15, 2007).

   (b) **Decreed Locations of Structures:** The dam and diversion facilities for the Eagle Park Reservoir and its Firs: Enlargement depicted on Exhibit A are described as follows:

   (1) **Eagle Park Reservoir.** The north abutment of the enlarged dam crest for Eagle Park Reservoir is located approximately 160 feet north of the south section line and 650 feet east of the west section line of Section 28, T. 7 S., R. 79 W., 6th P.M., Eagle County, Colorado.

   (2) **East Fork Interceptor Ditch.** The East Fork Interceptor Ditch has a capacity of 48 cfs and diverts from unnamed tributaries of the East Fork of the Eagle River at the following points, all of which are located in Eagle County, Colorado: (i) 900 feet south of the north section line and 1,100 feet west of the east section line of Section 5, T. 8 S., R. 79 W., 6th P.M.; (ii) 1,250 feet south of the north section line and 700 feet east of the west section line of Section 4, T. 8 S., R. 79 W., 6th P.M.; (iii) 1,200 feet north of the south section line and 800 feet east of the west section line of Section 33, T. 7 S., R. 79 W., 6th P.M.; and (iv) runoff, surface.
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(6) **Supply Canal No. 2.** The Supply Canal No. 2 has a capacity of 10 cfs and diverts water from the following tributaries of Tenmile Creek at the following points: (i) on the west bank of Searle Creek at a point whence U.S.L.M. Kokomo bears South 45° 58' East 3740 feet (located in the NW1/4 of the SE1/4 of Section 13, T. 7 S., R. 79 W., 6th P.M.); (ii) on the south bank of Kokomo Creek at a point whence U.S.L.M. Kokomo bears North 39° 36' East 2635 feet (located in the SE1/4 of Section 22, T. 7 S., R. 79 W., 6th P.M.); and (iii) runoff, surface flow, and seepage from the area above the Supply Canal No. 2 as it runs between the above-described points of diversion and the Climax Mill.

(7) **East Fork Pumping Plant.** The East Fork Pumping Plant has a capacity of 6 cfs and diverts from the East Fork of the Eagle River in the SE1/4 of the NE1/4 of Section 32, T. 7 S., R. 79 W., 6th P.M., at a point whence the Northeast corner of said Section 32 bears North 31° 53' East a distance of 2,414 feet, which is 2,130 feet from the North section line and 1,100 feet from the East section line of Section 32.
(c) **Sources of Water:** The sources of water for the Eagle Park Reservoir are the East Fork of the Eagle River, including run-off, surface flow, and seepage from the area above the reservoir and tributary thereto; and water tributary to Tenmile Creek, a tributary of the Blue River; including Hamburg Creek, Mayflower Creek, Searle Creek, and Kokomo Creek.

(d) ** Appropriation date:** The appropriation date for the initial 5,300 acre-feet of the Eagle Park Reservoir storage right decreed in Case No. 92CW340 is March 16, 1991. The appropriation date for the Eagle Park Reservoir First Enlargement is May 18, 1993.

(e) **Amount:** 5,300 acre-feet for the Eagle Park Reservoir, of which 3,301 acre-feet has been made absolute and 1,999 acre-feet remain conditional, and 22,300 acre-feet, conditional, for the Eagle Park Reservoir First Enlargement.

(f) **Uses:** The beneficial uses for water stored, released, and diverted, whether directly or by exchange, under the Eagle Park Reservoir and the Eagle Park Reservoir First Enlargement are mining, milling, industrial, snowmaking, municipal, domestic, stock watering, recreational, fish and wildlife, irrigation, agricultural, exchange, replacement, and augmentation purposes.

7. **Detailed outline of work done to complete project and apply water to beneficial use:** During the subject diligence period, the Eagle Park Reservoir Company and its shareholders spent approximately $4.4 million to operate, maintain, protect, upgrade and repair Eagle Park Reservoir and its associated diversion facilities and water rights. The Application sets forth a detailed outline of the work and expenditures done to complete the subject water rights and apply water to beneficial use. All of these expenditures and activities are necessary to apply Eagle Park Reservoir and its First Enlargement to the beneficial uses for which they were decreed.

8. **Claim for Finding of Reasonable Diligence.** The Applicants request a finding that they have exercised reasonable diligence in the development of the conditional water rights awarded to the remaining 1,999 acre-feet of the Eagle Park Reservoir and the 22,300 acre-feet of the Eagle Park Reservoir First Enlargement, all for mining, milling, industrial, snowmaking; municipal, domestic, stock watering, recreational, fish and wildlife, irrigation, agricultural, exchange, replacement, and augmentation purposes. The Referee, having completed investigations necessary to make a determination in this matter, does hereby find that the Applicants have demonstrated reasonable diligence in the development of the remaining 1,999 acre-feet decreed conditional to Eagle Park Reservoir and the 22,300 acre-feet decreed conditional to Eagle Park Reservoir First Enlargement, all for mining, milling, industrial, snowmaking, municipal, domestic, stock watering, recreational, fish and wildlife, irrigation, agricultural, exchange, replacement, and augmentation purposes, and the Applicants' request should be granted. CRS. § 37-92-301(4).
CONCLUSIONS OF LAW

9. To the extent they constitute legal conclusions, the foregoing Findings of Fact are incorporated herein.

10. All notices required by law have been properly made, including as required under C.R.S. § 37-92-302(3). The Water Court has jurisdiction over the Application and over all entities or persons who had standing to appear, even though they did not do so.


12. The Application is in accordance with Colorado law and should be granted as set forth herein.

RULING OF THE REFEREE

13. The Findings of Fact and Conclusions of Law as set forth above are incorporated herein by reference to constitute part of the Ruling of the Referee and Final Judgment and Decree.

14. The Referee does, therefore, conclude that the Application should be granted and orders that the Applicants have exercised reasonable diligence with respect to the Eagle Park Reservoir and Eagle Park Reservoir First Enlargement for all decreed uses and continues these conditional water rights in full force and effect.

15. An application for a finding of reasonable diligence with regard to the conditional portions of the Eagle Park Reservoir and Eagle Park Reservoir First Enlargement shall be filed six years from the date of the Decree of the Water Court, and thereafter in accordance with the provisions of Article 92 of Chapter 37, Colorado Revised Statutes, so long as the Applicants, or their successors and assigns, desire to maintain the conditional Eagle Park Reservoir and its First Enlargement or until the remaining portions of the Eagle Park Reservoir and its First Enlargement are made absolute.

16. Pursuant to Rule 9 of the Uniform Local Rules for All State Water Court Divisions, upon the sale or other transfer of the conditional rights of exchange decreed herein, the transferee shall file with the Division 5 Water Court a notice of transfer which shall state:

(a) The title and case number of this Case No. 19CW3145;

(b) The description of the conditional rights transferred;

(c) The name of the transferor;
(d) The name and mailing address of the transferee; and

(e) A copy of the recorded deed.

17. The owner of said conditional rights of exchange shall also notify the Clerk of the Division 5 Water Court of any change in mailing address. The Clerk shall place any notice of transfer or change of address in the case file of this Case No. 19CW3145.

It is accordingly ORDERED that this Ruling shall be filed with the Water Clerk subject to judicial review.

It is further ORDERED that a copy of this Ruling shall be filed with the appropriate Division Engineer and with the State Engineer.

Dated this _____ day of __________________, 2020.

BY THE REFEREE:

____________________________
Water Referee
Water Division 5

DECREE OF THE WATER COURT

No protest was filed in this matter. The foregoing Ruling is confirmed and approved, and is hereby made the Decree of the Water Court.

Dated: ______________________

BY THE COURT

____________________________
James Boyd, Water Judge
Water Division 5
### Item 6.2 Eagle Park Reservoir

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**EXHIBIT A**

Location Map
Eagle Park Reservoir

Helton & Williamson, P.C.

- Drawn by: ACQ
- Job No.: 9801
- File: 031W211_Ext_A.mdr
- Date: 12/12/2011
- Checked by:

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The map shows the location of Eagle Park Reservoir and other features such as the East Fork Pumping Plant and Proposed East Fork Interceptor. The map is attributed to Helton & Williamson, P.C., with details on the file and date of creation.