This memorandum shall serve as notice of the Regular Meeting of the Board of Directors of the Upper Eagle Regional Water Authority:

Thursday, June 25, 2020
8:30 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 is available prior to the meeting by emailing chayes@erwsd.org.

Cc:
ERWSD Managers
Carol Dickman

Board Materials via Email:
Caroline Bradford, Independent Consultant
Steve Coyer, Mountain Star
Melissa Nelson, Berry Creek Metropolitan District
Bill Simmons, Beaver Creek Metropolitan District
1. Consultant/Guest Introduction

2. Public Comment*

3. Action/Other Items
   3.1. Meeting Minutes of May 28, 2020, Regular Meeting ○
   3.2. Appointment of Eagle Park Reservoir Company Representative
   3.3. Information Reports
      3.3.1. Development Report*
      3.3.2. Contract Log*
      3.3.3. Authority and District Committees*
      3.3.4. Authority May Meeting Summary – draft*

4. General Manager Report – Linn Brooks*
   4.1. Communications and Public Affairs Manager Report*
   4.2. Sustainability Update*
   4.3. Preparation for Upcoming Bond Issue – James Wilkins

5. Operations Report – Siri Roman*
   5.1. 2019 Backflow Program Update – Shane Swartwout*
   5.2. Daybreak Ridge Water Main Break and Road Repair – Jeff Schneider
   5.3. Eagle Park Reservoir Company Operations Report†

6. General Counsel Report – Jim Collins

7. Water Counsel Report – Glenn Porzak
   7.1. Pando Feeder Canal Motion for Summary Judgment and Entry of Decree*

8. Executive Session pursuant to § 24-6-402(b) and (e), C.R.S.
   8.1. General Counsel Review of Matters in Negotiation – Jim Collins†
      8.1.1. CVC Residences Update†
   8.2. Water Counsel Review of Matters in Negotiation – Glenn Porzak
      8.2.1. Bolts Lake Matters†
      8.2.2. Eagle River MOU Update – Jason Cowles

9. Adjournment

* Action Item Attachment   ☀ Informational Attachment   † Confidential Attachment
* Public comment of items not on the agenda is limited to three minutes per person on any particular subject for which public comment is accommodated, pursuant to § 18-9-108, C.R.S.

This is a remote meeting and will be held virtually; for Skype information to join the meeting, please contact chayes@erwsd.org prior to the meeting.
<p>| Project Name                                | Year Submitted | Type of Use | SFES Proposed | Location | Anticipated Construction Start | Project Status | Type of Development | Connection Application Submitted | Inclusion | Water Demand Worksheet Submitted | System Capacity Analysis | Water Rights | Dedication Cash-in-Lieu | Service Letter | Construction Plan Review | Approval Process | Construction Acceptance | Warranty Period | Final Acceptance |
|---------------------------------------------|----------------|-------------|---------------|----------|-------------------------------|----------------|---------------------|-----------------------------|-----------|------------------------|------------------------|-------------|-------------------------|--------------|--------------------------|----------------|------------------------|
| Chamonix Residential Development            | 2015           | Residential | 32            | Vail     | 2016                          | Warranty       | Infill              | x x n/a                     | n/a       | x                      | n/a                   | n/a         | x                       | n/a          | n/a                      | x x x x | x x x x x x |
| Edwards Fire Station                        | 2015           | Commercial  | Edwards       | Vail     | 2017                          | Warranty       | Redevlopment       | x x n/a                     | n/a       | x                      | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| Marriott Residence Inn                     | 2015           | Mixed Use   | 75            | Vail     | 2021                          | Conceptual     | Redevelopment       | x                          |           | x                      | x                      | x           | x                       | x            | x x x x x x x x |
| Anglers PUD                                 | 2015           | Residential | 12.9          | Edwards  | 2017                          | Warranty       | PUD                 | x x x x                     | x x x     | x                      | x                      | x           | x                       | x            | x x x x x x x x |
| 6 West Apartments (formerly Via)            | 2016           | Residential | 120           | Edwards  | 2018                          | Warranty       | Upzoning            | x x x x x x x x x x x x x x x x x x |
| 5040 Wildridge Road East                   | 2016           | Residential | 2             | Avon     | 2016                          | Warranty       | Infill              | x x n/a                     | n/a       | n/a                    | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| Avon Public Safety Facility                | 2016           | Commercial  | 10.3          | Avon     | 2017                          | Warranty       | Infill              | x x n/a                     | n/a       | x                      | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| VVMC Phase II-East Wing                    | 2016           | Commercial  | Vail          | 2017     | In Construction               | Redevlopment   | x x n/a             | x x n/a                     | n/a       | n/a                    | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| BaseCamp                                    | 2016           | Residential | 15            | Avon     | 2016                          | Warranty       | PUD                 | x x x x x x x x x x x x x x x x x x |
| 3010 Basingdale (Phase 1)                  | 2016           | Residential | 4             | Vail     | 2016                          | Warranty       | Infill              | x x n/a                     | n/a       | n/a                    | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| Stillwater                                  | 2017           | Residential | 21            | Edwards  | 2018                          | Warranty       | PUD                 | x x x x x x x x x x x x x x x x x x |
| Fox Hollow Amended PUD                     | 2017           | Mixed Use   | 168           | Edwards  | 2020                          | In Construction| PUD                | x x x x x x x x x x x x x x x x x x |
| Edwards River Park PUD                      | 2017           | Mixed Use   | 594+com       | Edwards  | 2017                          | Conceptual     | PUD                 | x x x x x x x x x x x x x x x x x x |
| Vail Mountain View Phase II                | 2017           | Mixed Use   | 37            | Vail     | 2019                          | In Construction| Redevlopment       | x x n/a                     | n/a       | n/a                    | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| VVMC-Edwards Campus Addition               | 2017           | Commercial  | Edwards       | Vail     | 2017                          | Warranty       | Redevlopment       | x x n/a                     | n/a       | n/a                    | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| Red Sandstone Parking Garage               | 2017           | Infrastructure | N/A          | Vail     | 2018                          | Warranty       | Infill              | x x n/a                     | n/a       | n/a                    | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| S. Frontage Rd Roundabout                 | 2017           | Infrastructure | N/A          | Vail     | 2018                          | Conceptual     | Infill              | x x n/a                     | n/a       | n/a                    | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| 3010 Basingdale (Phase II)                 | 2018           | Residential | 2             | Vail     | 2018                          | Warranty       | Infill              | x x n/a                     | n/a       | n/a                    | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| 185 Elk Track                              | 2018           | Residential | 4             | Beaver Creek | 2018 | In Construction               | Redevlopment   | x x n/a                     | n/a       | n/a                    | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| SSCV Club House Expansion                  | 2018           | Mixed Use   | 4 + com       | Vail     | 2018                          | In Construction| Redevlopment       | x x x x x x x x x x x x x x x x x x |
| Colorado World Resort                      | 2018           | Mixed Use   | 81            | Avon     | 2019                          | In Construction| Upzoning           | x x n/a                     | x x x     | x                      | x                      | x           | x                       | x            | x x x x x x x x |
| S34 E Lionshead Circle - Elevation         | 2018           | Residential | 12            | Vail     | 2020                          | Conceptual     | Redevlopment       | x x n/a                     | n/a       | n/a                    | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| S34 E Lionshead Circle - Lion's View       | 2018           | Residential | 23            | Vail     | 2020                          | Conceptual     | Redevlopment       | x x n/a                     | n/a       | n/a                    | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| Warner Building 2 Conversion               | 2018           | Residential | 36            | Eagle-Vail | 2018 | Plan Review                  | Redevelopment   | x x x x                     | n/a       | n/a                    | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| Kudel Parcel                               | 2018           | Residential | 4             | Edwards  | 2020                          | Plan Review    | PUD                 | x x x x                     | n/a       | n/a                    | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| Avon Apartments                            | 2019           | Residential | 240           | Avon     | 2020                          | In Construction| Infill             | x x x x x x x x x x x x x x x x x x |
| Riverfront Village                         | 2018           | Residential | 59            | Avon     | 2019                          | Warranty       | PUD                 | x x n/a                     | n/a       | n/a                    | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| Booth Heights                              | 2019           | Residential | 61            | Vail     | 2020                          | Conceptual     | Infill              | x                          | n/a       | n/a                    | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| 941851 Main St Minturn                     | 2019           | Residential | 4             | Mintum   | 2019                          | In Construction| Redevlopment       | x x n/a                     | n/a       | n/a                    | n/a                   | n/a         | x                       | x            | x x x x x x x x |
| Mountain Hive                              | 2019           | Residential | 260           | Edwards  | 2020                          | Conceptual     | Infill              | x x x x x x x x x x x x x x x x x x |
| CVC Clubhouse Residences                   | 2018           | Residential | 12            | Edwards  | 2020                          | Conceptual     | Redevlopment       | x x x x                     | x x x     | x                      | x                      | x           | x                       | x            | x x x x x x x x |
| Miradoro                                    | 2018           | Residential | 10            | Vail     | 20?                          | Plan Review    | Redevlopment       | x x x x x x x x x x x x x x x x x x |
| Highline (Double Tree Expansion)           | 2019           | Mixed Use   | 47.85         | Vail     | 2020                          | Conceptual     | Redevlopment       | x x x x x x x x x x x x x x x x x x |
| North Mintum PUD                           | 2019           | Residential | 114           | Mintum   | 20?                          | Conceptual     | PUD                 | x x x x x x x x x x x x x x x x x x |</p>
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### COMMITTEES

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Dick Cleveland  | Steve Coyer  
Linn Brooks  
Melissa Mills McLoota  
James Wilkins  |

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Dick Cleveland  | George Gregory  
Brian Sipes  |

#### AUTHORITY

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George Gregory  |

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Bill Simmons (D)  | Mick Woodworth (A)  
Steve Coyer (D)  |

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Sarah Smith Hymes (A)  
Kim Bell Williams (A)  | Geoff Dreyer (A)  
Sarah Smith Hymes (A)  
Steve Coyer (D)  
Bill Simmons (D)  |

(A) = Authority  
(D) = District
TO: Board of Directors
FROM: Catherine Hayes, Board Secretary
DATE: May 28, 2020
RE: Summary of Authority’s May 28, 2020, virtual Board Meeting

The following is a summary of items discussed at the May 28, 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 alternate Bill Simmons.

Extension of Late Fee Waiver
Linn Brooks noted the volume of unpaid bills has remained low throughout the COVID-19 pandemic. The board unanimously approved the extension of late fee waivers, through the August billing period, which ends on September 2, 2020.

COVID-19 Operations Update
Linn Brooks reported the District will move to the sustain stage of its pandemic response starting June 1. This will allow up to 50% of staff to return onsite; however, Linn expects onsite staffing will be closer to 30%. The admin office remains closed to the public, and board meetings will continue to be hosted virtually to continue to comply with social distancing guidelines.

Finance Update
James Wilkins provided an update on Authority finances and the effects of COVID-19. Discussion ensued regarding water sales trending, seasonal changes in demand, and year over year comparisons. James expects impact fees for new development to be under budgeted amounts due to the economic impacts of COVID-19 locally. Authority savings are being achieved by leaving some open positions unrecruited, limiting staff to virtual training, and postponing Authority capital projects as feasible. James outlined the requirements for fund balance and sufficient reserves to maintain the Authority’s bond rating.

ERMOU Update
Jason Cowles noted two recent meetings regarding Eagle River MOU matters: one with principals and the other, which included each entity’s legal team. He reserved the rest of his discussion for Executive Session.

Operations Update
Siri Roman briefly updated on a sanitary sewer overflow, which was caused by grease buildup. Discussion ensued regarding how to better identify the sources of such incidents, which are likely restaurants.

2019 Backflow Program Update
Shane Swartwout discussed the Backflow Prevention and Cross Connection Control compliance. He noted the Authority and District remained out of compliance with the regulations and were required to report such non-compliance to customers, including in the Customer Confidence Reports for each entity. Shane affirmed that this was the Authority and District’s number one priority and a task force was recently created to ensure both entities are in compliance by the end of 2020. Staff will provide monthly board progress updates.
Cordillera Valley Club Development Request

Jason Cowles updated on developer Jeff Townsend’s request to add units on the Cordillera Valley Club (CVC) golf course tract. A conditional capacity to serve letter is required from the Authority before the developer can present the plan for Eagle County review. The CVC PUD is overusing the amount of water allocated to it. Additionally, Eagle County ruled the PUD must be amended before additional density could be added on the golf course tract. Jason received affirmation from the Authority board that a conditional capacity to serve letter cannot be issued at this time; the PUD must be amended and the overuse of irrigation water also must be addressed.

Edwards Spur Road Update

Jeff Schneider presented information to the board on the water main and support structure that were installed by Colorado Department of Transportation (CDOT) project contractor and subcontractor in summer 2019. The pipeline is exhibiting signs of deflection, indicating the alignment is not straight as shown on the construction plans. During installation, an issue with interpretation of the construction plans arose, resulting in the Authority accepting a substitution of pipeline material. During a late summer 2019 walkthrough, the pipeline exhibited a minor irregularity that worsened throughout the winter. An emergency bypass was installed in early May to continue serving the Old Edwards neighborhood, and staff formally notified CDOT of a potential construction defect. Staff is monitoring the pipeline joint deflections daily and working with the many involved parties to provide information and operations assistance as needed. Staff believes the Authority’s financial liability will be very limited, as this appears to be a combination of construction and design defect.
MEMORANDUM

TO: Boards of Directors

FROM: Diane Johnson, Communications & Public Affairs Manager

DATE: June 25, 2020

RE: Communications and Public Affairs Report

Legislative session
The Colorado legislature adjourned June 15 after reconvening May 26 to complete the 2020 legislative session, which was delayed on March 14 due to COVID-19. Their highest priority was to reconcile the $3.3 billion deficit created by the COVID19 pandemic.

The Governor signed a handful of water bills into law during the (unusual) intermission, including:

- Expanding the instream flow loan program (HB20-1157)
- For local governments with a water element in comprehensive plan, inclusion of water conservation (HB20-1095)
- Initiating workgroup to explore strengthening water anti-speculation laws (SB20-048)
- Clarifying that the CWCB has authority to augment stream flows with acquired water rights that have been previously decreed for augmentation use (HB20-1037)
- Instructing State Engineer to confirm existing uses when quantifying instream flow water rights (HB20-1159)

A summary story about the above bills is attached to this report.

Many bills died during the reconvened session, including SB20-189, Local Government Pesticide No Preemption, in which the district had some interest. Legislators made progress on PFAS (perfluoroalkyl and polyfluoroalkyl substances) related bills, though they are not yet signed. The House did not introduce a bill that reacted to the federal 2020 WOTUS rule. The federal rule will decrease the jurisdictional scope of water that is considered to be waters of the United States and subject to federal permits for the discharge of dredge or fill material. The proposed legislation aimed to establish a state Dredge and Fill Water Permit Program within CDPHE’s Water Quality Control Division. Colorado Water Congress’s State Affairs Committee was against the bill being considered in such a rushed session and sent a letter to House Speaker KC Becker asking that it be delayed until next year. The letter is attached to this report. For more, read the Water Education Colorado story, Colorado regulators’ efforts to fast-track Clean Water Act replacement legislation fails.

For an overview on the reconvened session, read the Colorado Sun story, Chaos and compromise: Colorado’s coronavirus legislative session ends with a flurry of big bills.

Vail Farmers’ Market
The market’s June 21 start was converted to virtual due to the COVID-19 pandemic. A modified in-person market begins July 5 and runs every Sunday through Oct. 4. We do not plan to operate the district water station booth for the foreseeable future due to difficulties associated with proper physical distancing and hygiene protocols to reduce transmission of the virus. As Eagle County transitions to the black diamond phase (and beyond), if there is a safe way to provide drinking water for market attendees and protect our staff, we will consider participating in the weekly market at that time.
Media roundup
During COVID-19 operations, we pitched or contributed to a variety of media stories, as listed below.

- March 18 Fresh Water News (Water Education Colorado) story - [Colorado water utilities race to protect workers from COVID-19 as they declare tap water safe](#)
- March 24 Vail Daily story on wipes – [Vail Valley sewer systems seeing more unflushable items](#)
- March 27 Vail Daily story – [Vail Valley snowpack looks good for now, but more is needed.](#)
- April 15 Vail Daily report on [flood insurance and high-water preparations](#)
- April 24 Vail Daily story about reduced influent flows and COVID-19 operations – [Here’s how fast the Vail Valley emptied after the ski resorts closed](#)
- May 4 Colorado Sun story – [When skiing stopped, so did pooping. Wastewater workers in Aspen and Vail faced a pile of problems](#)
- June 1 Vail Daily story – [Vail Valley streamflows may peak in the next few days](#)
- June 9 Vail Daily story – [Vail Valley streamflows have peaked; summer could be dry](#)

We also continued weekly interviews on local radio (KZYR) and collaborated with Siri Roman for stories that ran on Denver’s Fox 31 TV station and Boulder’s KGNU radio station.

Attachments:
1. April 29 Water Education Colorado: Polis signs five major water bills into law: instream flows, anti-speculating, and more
2. June 8 Colorado Water Congress state affairs committee letter to House Speaker KC Becker
Polis signs five major water bills into law: instream flows, anti-speculating, and more

by Larry Morandi | Apr 29, 2020 | Agriculture, Colorado’s Water Plan, Environment, Instream Flow, Land Use, Water Legislation |

The Colorado State Capitol remains quiet as COVID-19 forces lawmakers home. April 28, 2020 Credit: Jerd Smith
Gov. Jared Polis, even as COVID-19 swept across the state, gave his stamp of approval to five major pieces of water legislation, paving the way for everything from more water for environmental streamflows to a new study on how to limit water speculation.

Lawmakers announced March 13 that they would temporarily suspend work to comply with stay-at-home orders, and now plan to return May 18 to complete the session.

Signed into law in late March and early April, the new measures represent months if not years of negotiations between farm, environmental and legal interests that came to fruition this year thanks to hard-fought bipartisan agreements.

Three of the new laws address water for streams, fish and habitat, allowing more loans of water to bolster environmental flows, protecting such things as water for livestock from being appropriated for instream flows, and using an existing water management tool, known as an augmentation plan, to set aside water rights for streams.

**Expanded instream flow loans**

House Bill 1157 expands the state’s existing instream flow loan program, which allows a water right holder to loan water to the Colorado Water Conservation Board to preserve flows on streams where the state agency already holds an instream flow water right. The CWCB is the only entity in Colorado that can legally hold such rights, intended to benefit the environment by protecting a stream’s flows from being diverted below a certain level. Under existing law, a loan may be exercised for just three years in a single 10-year period.

The new law, however, expands the loan program by authorizing a loan to be used to improve as well as preserve flows, and increases the number of years it can be exercised from three to five, but for no more than three consecutive years. It also allows a loan to be renewed for two additional 10-year periods.
“This bill becoming law is crucial for our state’s rivers, our outdoor recreation businesses, and downstream agricultural users who depend on strong river flows,” said Rep. Dylan Roberts, D-Avon. After a similar bill he sponsored failed to pass last year, he said, “I knew I needed to work to bring more people to the table and improve the bill so we could garner the support we needed, and that is what we did. I am thrilled that we were able to get this done with strong bipartisan support.”

To ensure protection of existing water rights, House Bill 1157 increases the comment period on loan applications from 15 to 60 days; allows appeal of the State Engineer’s decision on a loan application to water court; and requires the CWCB to give preference to loans of stored water over loans of direct flow water where available.

“There’s no injury to other water uses. And there’s a methodology if someone feels they are injured they can go to the water referee in an expedited manner,” said Rep. Perry Will, R-New Castle and one of the bill’s sponsors.

Protecting existing water uses

House Bill 1159 provides a means for existing water uses, such as water for livestock, that have not been legally quantified to continue when an instream flow right downstream is designated. Current law is unclear as to whether preexisting uses that lack a court decree are protected. To provide clarity, the bill requires the State Engineer to confirm any claim of an existing use in administering the state’s instream flow program.

Augmentation of instream flows

House Bill 1037 authorizes the CWCB to use an acquired water right, whose historic consumptive use has been previously quantified and changed to include augmentation use, to increase river flows for environmental benefits. Farmers have long used so-called augmentation water to help offset their water use, particularly of groundwater, when that use is not in priority within Colorado’s water rights system. Now that same water can be used to boost environmental flows.
Anti-speculation study and water conservation in master planning

Beyond instream flows, Gov. Polis signed Senate Bill 48, which requires the Colorado Department of Natural Resources to form a working group to explore ways to strengthen anti-speculation laws. The agency must report its recommendations to the interim Water Resources Review Committee by Aug. 15, 2021.

Also signed into law was House Bill 1095, which authorizes counties and municipalities that have adopted master plans that contain a water supply element to include state water plan goals and conservation policies that may affect land development approvals.

Larry Morandi was formerly director of State Policy Research with the National Conference of State Legislatures in Denver, and is a frequent contributor to Fresh Water News. He can be reached at larrymorandi@comcast.net.

Fresh Water News is an independent, nonpartisan news initiative of Water Education Colorado. WEco is funded by multiple donors. Our editorial policy and donor list can be viewed at www.wateredco.org.
House Speaker KC Becker

June 8, 2020

Re: Proposal to Establish State Dredge & Fill Water Permit Program

Madam Speaker:

We respectfully request that you delay consideration of the CDPHE’s proposed bill to “Establish State Dredge & Fill Water Permit Program” until next year. CWC agrees that the State should consider how to protect the quality of state waters in light of the new federal rule scheduled to become effective June 22, 2020, which modifies the universe of waters receiving federal protection under the Clean Water Act in this State. However, we believe that it is neither prudent nor necessary to rush forward with a legislative “fix” at this point.

It sounds simple to create a “gap filler” permitting program to address the situation, but this approach raises issues that deserve far more deliberation than they will receive as part of a last-minute entry in this legislative session. The draft dredge and fill bill as currently presented is controversial and costly. To aid in the effort to promote the necessary deliberation and stakeholder involvement, the CWC offers to convene stakeholder meetings in the second half of the year for consideration of appropriate legislative and regulatory responses.

We see no compelling reason to rush legislation at this time. In fact, there has always been a gap between the universe of State Waters and those receiving protection under the federal dredge and fill program because State Waters are defined far more broadly than are Waters of the United States.

What is new is the CDPHE interpretation of state law as authorizing or requiring enforcement against activities that do not require a federal dredge and fill permit as discharges to State Waters without a permit. As a result, CDPHE is warning of possible enforcement actions against activities that were never before considered unlawful – the placement of fill material in non-jurisdictional waters. The problem can be resolved by CDPHE returning to its historical approach to fill activity in waters that are not subject to federal permitting requirements.

Moreover, the US Army Corps of Engineers has long issued permits for projects impacting aquatic resources that may not be subject to CWA jurisdiction using a preliminary jurisdictional determination process described in Corps regulation and guidance. The new Navigable Waters Protection Rule would not change the basis for project authorization under preliminary jurisdictional determinations. Project proponents could always rely on this mechanism to move projects forward in the interim if they deem it necessary. While this process is not ideal from the regulated community’s perspective since it typically results in more stringent mitigation requirements, it can provide a temporary option until the issue can be addressed more comprehensively.
While we appreciate CDPHE’s effort to obtain input from certain stakeholders over the last two weeks, the effort is insufficient given the far-reaching implications of the bill. Moreover, the resulting dialogue has clearly shown that substantial uncertainty remains among the regulated community throughout the State. Much of this confusion is caused by the inherent complexities of defining how this new permitting program would interface with the existing federal program both jurisdictionally and procedurally.

The CWC supports the development of cost effective and efficient permitting processes for water projects. Lack of clarity in the bill promises to cause permitting delays and cost increases. Much more stakeholder input is required to ensure that any state permitting processes are not unnecessarily inefficient or costly.

Further confusion arises from the introduction of this bill late in a legislative session already compromised by the current pandemic. In contrast, other states began comprehensive stakeholder processes long ago. For example, Arizona began working on the issue more than six months ago, since it has been apparent for some time that the federal rulemaking could raise concerns, particularly in drier southwestern states.

The issues raised by the bill are too numerous and complicated to simply work through in the very short time remaining in the legislative session, or in the context of a rulemaking. As part of the regulated community, CWC would be pleased to provide a forum for comprehensive stakeholder engagement to develop enabling legislation that would ensure an implementable, protective, and cost-effective program. We therefore respectfully request that you delay the CDPHE bill until next year.

Thank you for your consideration of CWC’s comments. If we can provide additional information, please contact Dianna Orf at (303) 324-8825 or Doug Kemper at (303) 808-3377.

Respectfully,

/s/ John McClow, Vice Chair CWC State Affairs Committee
/s/ Gabe Racz, Chair CWC Water Quality Committee

cc: Colorado General Assembly
MEMORANDUM

TO: Eagle River Water & Sanitation District Board & Upper Eagle Regional Water Authority Board

FROM: Kira Koppel, Sustainability Coordinator

DATE: June 17, 2020

RE: Sustainability Update

Here is an update on the status and outcomes of the various sustainability projects since the last board update.

- The onboarding process is nearly complete for new energy benchmarking software from THG Energy Solutions. The software aggregates all electric and natural gas data from every such meter across all facilities. The data will inform energy-saving changes, reduce administrative tracking time, and provide downloadable visual images of energy use over time.
- Automatic paper towel, soap and toilet paper dispensers were purchased and are being installed in all facilities. This will reduce waste, decrease the number of high touch surfaces in facilities, and allow purchase of refills that meet stricter sustainability criteria.
- Staff will apply to renew its Silver Level Partner status in the Colorado Environmental Leadership Program (ELP) by June 30. The ELP requires the District go beyond regulatory compliance and identify environmental impacts of its operations. Such impacts are identified through establishing an Environmental Management System (EMS). An organization-wide EMS committee was formed to identify and rate such impacts; next, the committee will devise plans to address and reduce those impacts. A fully implemented EMS would qualify the District for Gold level recognition in the ELP program.
- There are ongoing efforts to expand recycling infrastructure. Avon Drinking Water Facility upgraded to a larger recycling dumpster, and the Cattail Flats employee housing facility expanded waste enclosures to include recycling.
- Kira launched an internal, sustainability-focused biweekly newsletter to regularly disseminate relevant information to staff.
- Twenty employees joined the inaugural Sustainability Book Club. The group is reading Drawdown by Paul Hawken and will be discussing how to internally apply the book’s themes/strategies regarding how to reverse global warming.
- The District published an ad in the Vail Daily during Earth Week establishing the link between climate change and declining water resources, with a strong call to action.

Savings:
- Holy Cross Energy (HCE) is processing a new beneficial electrification rebate for the Vail Administration HVAC project for $19,245. The system was upgraded to variable refrigerant flow devices, allowing significant reductions in natural gas needed to heat and cool the building.
• Energy use decreased significantly from February – May 2020 when compared with 2019, likely due to the abrupt remote work requirement due to the COVID-19 pandemic. Over these four months, District-wide energy use decreased by 565,540 kwh compared to 2019. The most significant differences were seen in the month of March.

Relevant Information:
• Equity, specifically social equity, is the third “E” in the triple bottom line of sustainability, alongside environment and economy. It’s the lesser known and least likely to be implemented “E” of sustainability. Social equity means all individuals have an equal opportunity in education, health, and employment; that all have a political voice in our society; and that the “burdens and benefits of different policy decisions” are evenly distributed (Svara, 2015). Social equity recognizes previous inequities and seeks to remediate them, while establishing preventative measures to prevent future inequities. A sustainable business, system or community is not complete without this. To fully achieve sustainability, a comprehensive, strategic approach is required and must include social equity.

The District has done excellent work in this space by providing affordable housing, wellness, and health benefits, contributing to the long-term viability of our community, and doing its part to ensure equal recreation and employment opportunities. But this is an ongoing effort. Sustainability is so much more than what is typically seen on the surface. Staff will continue to brainstorm ways to promote social equity and include such efforts in all aspects of the District’s operations.

Resources:
• 2019 Annual Report by the Climate Action Collaborative
• Home Sustainability Guide created by Kira Koppel
I-70 West Vail Pass Auxiliary Lane Project

The Vail Daily reported that the Colorado Department of Transportation (CDOT) was awarded $60.7 million for an Infrastructure for Rebuilding America grant to make improvements on I-70 between mile post 180 and 190. The Vail Daily article stated that the total project cost is $140M. In the EA technical committee CDOT has stated that the total project cost is estimated to be >$500M; we have reached out to CDOT to clarify the costs and scope of the proposed work. The Environmental Assessment (EA) for this project is still scheduled to be released for public review later this summer.

Eagle Mine Superfund Site

The Consent Decree (CD) was finalized and signed by the owner of the Superfund site, CBS. The CD is being circulated for signature by the Environmental Protection Agency (EPA), the Colorado Department of Public Health and Environment (CDPHE) and the U.S. Department of Justice (DOJ). After the CD is signed, it will be released for public review and comment.

CBS ran the groundwater extraction wells this spring; unfortunately, the reduction in loading is unknown as sampling and field visits were restricted due to COVID-19.

Source Water Protection Plan – Gore Creek

The District and town of Vail hosted a kickoff meeting to develop a Gore Creek Source Water Protection Plan. Such a plan identifies a source water protection area (phase I, Gore Creek), lists potential contaminant sources, and outlines best management practices to reduce risks to the water source. This will be a collaborative effort with the town of Vail, Vail Resorts, Eagle River Watershed Council, Vail Recreation District, CDPHE, Eagle County, U.S. Forest Service, Colorado Rural Water Association and CDOT.

WATER

System-wide water production has steadily increased due to seasonal irrigation demands and abnormally warm spring temperatures.
The 2019 Consumer Confidence Reports (CCRs) for the District and Authority are complete and will be distributed to customers by the end of June.

Annual Lead and Copper Rule sampling began on June 1 with modified sampling protocols that allow customers to collect samples themselves. The new sampling protocols have been well-received by customers and have reduced staff labor hours.

Raw water irrigation startups at Donovan and Ford Parks were completed June 4 and June 10, respectively.

Radio Telemetry Unit (RTU) communications improvements began within the Authority system. Factory Authorization Testing (FAT) started June 8 and will continue into the week of June 15. EagleVail Tanks #1 and #2 will be the first sites to be commissioned on June 24.

New weather-tight access hatches were installed at Cordillera West Tank #2 and West Vail Tank to address a potential cross-contamination concern. Additional hatch improvements are planned at Bachelor Gulch Tanks #1 and #2 later this summer.

Water, CIP, and OTS staff completed installation of an internal tank mixing device in Cordillera West Tank #1 to prevent winter ice-buildup in the tanks. Staff will install similar devices at other tanks throughout the District and Authority systems later this year.

Eagle Park Reservoir is full pool and spilling as of June 8. Black Lakes are both at full pool and spilling. Fish stocking is scheduled at Black Lakes on Friday, June 19 and Tuesday, July 21.

Contractors adjusted the new pumps installed at the East Fork Pump Station in fall 2019; the pumps were tested and are fully operational.
The wastewater treatment facilities’ (WWTF) influent flows were lower this spring compared to spring 2019 (see below).

Siri Roman presented at Carollo Engineers’ virtual 2020 Nutrient Summit regarding COVID-19 financial impacts and associated planning. Siri represented a western slope perspective, while other participants included Metro Wastewater Reclamation District, City of Longmont, and South Platte Water Renewal Partners.

Field Operations is ramping up distribution and collection system maintenance activities. The five-year jetting program will begin at the end of June and include Singletree, Homestead, and Arrowhead. Jetting crews are currently cleaning the sewer interceptor on Highway 24 in Minturn. Distribution maintenance activities include booster pump station (BPS) inspections, fire hydrant flushing, and system valve inspections. Two-year pressure reducing valve (PRV) rebuilds and inspections are also in progress.

Field Operations received training on implementing an above-ground installation of 840 feet of 6” HDPE (high-density polyethylene) pipe. Staff worked with Core & Main, a national HDPE supplier, to fuse 21 pipe segments together in preparation for repair work on the Edwards Spur Road Bridge 16” water main crossing. The 6” HDPE pipeline will supply water to Old Edwards Estates and the Northstar Center during the repair.
On Monday, June 8, Field Operations was notified of water running down the road near the intersection of Daybreak Ridge and Elkhorn Road in Bachelor Gulch. The repair was completed on June 9 by 360 Civil, due to traffic impacts and water main location. The 8-inch ductile iron water main had a hole on the bottom of the pipe. The repair included two solid sleeves and mega lugs. The break occurred just after Bachelor Gulch Metropolitan District (BGMD) repaved Daybreak Ridge. Jeff Schneider is working with BGMD and will provide an update at the Authority Board meeting.
**WATER PROJECTS**

**Berry Creek Booster Pump Station 1 Replacement**  
Carter Keller

**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. 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 project is nearing completion, with finish grading around the pump station and restoration of the Mesquite trailhead. Installation of electrical/controls is in the final stages; startup and commissioning are scheduled for the end of June. The old below-grade pump station will be decommissioned and abandoned in place following successful startup of the new pump station and final revegetation and landscaping.

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

**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:** Contractors are constructing the infrastructure at key sites to complete radio path back to fiber connections at our facilities. Factory acceptance testing will be complete by June 23
followed by site commissioning for EagleVail and Mountain Star by Aug. 15 to conclude the first part of phase one. The second portion of phase one will start after Labor Day and run through November.

Red Draw Auto Flushing Hydrant

General Project Scope: Field Operations, Water Operations, and CIP departments continue planning work to install an automatic flushing device on Red Draw Rd. in Cordillera to maintain residual chlorine in the dead-end line. This same approach is utilized in other ‘dead ends’ in the distribution system.

Project Update: SGM completed facility design and 360 Civil is under contract for implementation. Due to material delivery delays, construction start is postponed to June 25; project duration is estimated at two weeks. At the request of Cordillera representatives, staff coordinated with 360 Paving to leave the cul-de-sac unpaved until project completion.

Wastewater Projects

Avon Wastewater Treatment Facility (AWWTF) Nutrient Upgrades

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:

Construction started May 4. Most work to date occurred outside on the west side of the facility. The contractor worked with Holy Cross Energy to remove the power line that once served the barn. The following items are either complete or underway:

- Mobilized equipment to site, including a crawler crane and multiple pieces of construction equipment
- Set contractor and owner/engineer construction trailers
- Demolished the outside odor control building, wing wall, fuel tank, and fence
- Installed 80’ of sewer piping to the tie in location at the existing sewer main
- Removed fascia from the north and west sides of the secondary clarifier building
- Installed a construction fence along the property line near LiftView condominiums

In addition, Moltz’s electrical subcontractor, Sturgeon, coordinated with the engineer and District staff to perform two successful process shutdowns and ensured temporary power was provided to critical equipment. Finally, the entire construction team participated in a virtual partnering session on May 29 to assess progress and team relationships as design phase transitions into construction phase.

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:**
The District opened bids for the Minturn aerial crossing replacement on June 10. Four bids were received, ranging from $1.49M to $2.6M. The two lowest bids, from Phoenix Industries and Gould Construction, are currently under review by the staff and the engineer. Staff expects to award the contract the week of June 22.

Permitting for the West Vail interceptor replacement is slowly progressing, with the Union Pacific Railroad (UPRR) permit in hand for the crossing replacement and the U.S. Forest Service Special Use Permit update fully executed. A separate permit was submitted to UPRR to replace the CenturyLink conduits and wires on the existing structure. CDOT permitting is anticipated shortly, followed by resolution of the Eagle County floodplain permit. The West Vail crossing will likely go out to bid this fall for spring 2021 construction.

The lift station replacement portion is approaching 60% design, with the anticipated deliverable due on June 26. This will be followed by the CDPHE permitting and submittal process.

**OTHER PROJECTS**

### Vail Administrative Building HVAC System

**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, completed successful startup, testing, balancing and commissioning of new HVAC units. Remaining work includes additional owner training and punchlist items. Holy Cross Energy approved a $19,245 beneficial electrification rebate for the project. Staff is pursuing additional available rebates.
Dry conditions are evident statewide and across the entire Upper Colorado River Basin. April and May were extremely warm and dry; therefore, conditions have not improved and in some cases are considerably worse. The warm and dry spring resulted in a very fast melt – basins that saw average or above-average peak snowpack are now substantially below the mean snow water equivalent (SWE). Last fall’s regional soil moisture deficit has negatively impacted streamflows.

The Statewide SWE map is shown in Figure 1. April and May statewide precipitation (rain or snow) was 50% of normal, bringing water year to date precipitation to 82% of average, as seen in Figure 2. For the entire Upper Colorado River Basin, the most likely estimate for Lake Powell inflow is 62% of normal; this represents the lowest predictions from April. In other words, an average winter became a very dry spring. Staff must closely monitor streamflows and temperatures going forward. Additionally, downstream agricultural users are likely to divert their maximum water volumes earlier in the season, which could impact Authority and District reservoir releases. The National Oceanic and Atmospheric Administration (NOAA) midterm and seasonal forecasts predict average precipitation but hotter than average temperatures. Summer rains are needed, though monsoon rains failed to appear in any measurable way the past two summers.

The statewide drought monitor is shown in Figure 3. Eagle County is now 100% either abnormally dry or in the D1 moderate drought condition. Only the band of northern Colorado counties remain drought-free, while the rest of the state is now at least abnormally dry. The southeast and southcentral are now in level D3 with extreme drought conditions.
Figure 1. Statewide SWE, June 15, 2020 (USDA NRC).
Figure 2. Precipitation Summary for Colorado, end of May 2020 (NRCS 2020).
Figure 3. Colorado Drought Monitor, NIDIS. Accessed June 15, 2020.
SWE and cumulative precipitation graphs for Vail Mountain, Copper Mountain and Fremont Pass are shown in Figures 4-6.

**Figure 4.** Vail Mountain Snow Water Equivalent and Cumulative Precipitation (USDA NRCS 2020).
Figure 5. Copper Mountain Snow Water Equivalent and Cumulative Precipitation (USDA NRCS 2020).
Figure 6. Fremont Snow Water Equivalent and Cumulative Precipitation (USDA NRCS 2020).
Current Gore Creek and Eagle River hydrographs show the speed of peak runoff; current conditions are tracking close to the 2018 hydrograph (Brown line on figures 7 and 8). Watershed conditions are shown in Figure 9. In-basin reservoirs are full, and year-to-date streamflow volumes are near normal, with conditions above normal in the upper basin and close to or slightly below normal further down in our service area basin.

Figure 7. Gore Creek hydrograph, May 19, 2020 (Colorado River Forecast Center 2020).
Figure 8. Eagle River hydrograph, May 19, 2020, (Colorado River Forecast Center).
Figure 9. Upper Eagle River Watershed map of stream gages and reservoirs (ERWSD 2020).
The 8-14 day precipitation and temperature forecasts are shown in Figures 10 and 11, predicting normal to slightly higher than normal precipitation for Colorado, but also hotter than normal temps.

Figure 10. 8-14 day Precipitation Forecast (NOAA 2020).
Figure 11. 8-14 day Temperature Forecast (NOAA 2020).
Lake Powell is expected to remain in the Upper Elevation Balancing Tier, despite lower than average expected runoff volumes flowing into Lake Powell this year, as seen in Figure 12. Balancing tiers are zones that define release schedules to Lake Mead.

Figure 12. Lake Powell predicted water levels (USBR, 2020).
Below-normal streamflows are expected, despite a near-normal snowpack for water year 2020. The expected Lake Powell inflow is shown in Figure 13. The most probable inflow is roughly 4 million acre feet (MAF) below the average inflow. The most probable expected inflow is nearly as low as the minimum expected inflow predicted in April 2020, due to low precipitation and streamflows.

Figure 14. Expected inflow to Lake Powell, Water Year 2020 (USBR, 2020).
MEMORANDUM

TO: Board of Directors
FROM: Shane Swartwout, Customer Service Manager
DATE: June 17, 2020
RE: Backflow Protection and Cross-Connection Control – Progress Report

The purpose of this memo is to provide the board with a status update of the Backflow Prevention and Cross-Connection Control (BPCCC) Program and outline the monthly progress made towards meeting Colorado Department of Public Health and Environment (CDPHE) requirements and achieving compliance by the end of this compliance period (Dec. 31, 2020).

Progress to date:
- The BPCCC task force was created and is meeting regularly
- Approximately 1,721 accounts were identified as compliance accounts
- Over 600 accounts were audited and updated by the task force staff
- The Customer Information System (CIS) was modified to label all compliance accounts and survey status providing the reporting function previously missing
- 200 letters were mailed out to customers requesting completion of a cross-connection hazard survey for their property
- Field staff was reprioritized to focus on BPCCC surveys.
- 51 hazard surveys were completed (onsite, phone, mail-in)
- Over 1,700 letters were mailed on June 17 reminding customers of the requirement to properly test all backflow prevention devices located on their property by September 1, 2020
- Outreach and coordination with local certified testing companies

Ongoing program development:
- Additional modifications to the backflow module in CIS to generate real-time progress reports and track status of backflow testing
- Audit the remaining 1,100 compliance accounts to accurately identify the compliance devices for each account and the device status
- Identify adequate staffing and resources for long-term program success
- Develop processes for backflow device data entry and tracking

Due to the violation, the District and Authority are required to continue distributing Tier 2 public notices to customers every three months as long as the violation or situation persists. The next notice will be included with the July 2 bill.

The District and Authority must also report the violation in the 2019 Consumer Confidence Reports which will be distributed to customers by June 30.
Attachment 1

Water Counsel Agenda Item

Attachment Name: Applicants' Motion for Summary Judgment and Entry of Decree
Attachment Date (if applicable): May 30, 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 Applicants' Motion for Summary Judgment and Entry of Decree regarding the protest to the Referee's Ruling in the Pando Feeder Canal diligence/absolute case. The State's answer brief is due on June 29, 2020.
Item 7.1  
Pando Feeder Canal Motion for Summary Judgment and Entry of Decree
Co-Counsel for Eagle Park Reservoir Company and attorneys for Vail Associates, Inc., shareholder of the Eagle Park Reservoir Company:
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Bradley N. Kershaw (#52386)
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Eagle Park Reservoir Company ("Reservoir Company") and its shareholders (collectively, the "Applicants"), by and through their undersigned attorneys, seek summary judgment and entry of decree pursuant to Colorado Rules of Civil Procedure ("C.R.C.P.") Rule 56 on their claims that (1) an additional 8.92 cubic feet per second ("cfs") of the Pando Feeder Canal water right ("Pando Right") has been made absolute, and that the total absolute amount for all decreed purposes is 42.42 cfs; (2) reasonable diligence has been exercised with respect to 37.58 cfs of the Pando Right and 80 cfs of the East Fork Pumping Plant Exchange and those conditional rights should be maintained in full force and effect; and (3) the protested provisions of the Findings of Fact, Conclusions of Law, Ruling of the Referee and Decree of the Water Court entered on January 23, 2020 ("Referee’s Ruling") and accompanying Order Regarding Modifications to the Proposed Ruling of the Referee ("Order") are contrary to law and should be deleted pursuant to C.R.S. § 37-92-304(5). As grounds therefor, Applicants state as follows:

I. BACKGROUND

The Eagle Park Reservoir Company is a Colorado nonprofit mutual ditch and reservoir company that is the owner of Eagle Park Reservoir, an off-channel reservoir located in the
headwaters of the East Fork of the Eagle River in Eagle County, Colorado. The shareholders include the Upper Eagle Regional Water Authority, Eagle River Water & Sanitation District, Vail Associates, Inc., the Colorado River Water Conservation District, and the Board of County Commissioners of Eagle County. As the primary west slope water storage reservoir in the Eagle River basin, releases of water from Eagle Park Reservoir replace out-of-priority depletions caused by the shareholders and provide a direct source of municipal and snowmaking water.

The Application to Make Water Rights Absolute and for Finding of Reasonable Diligence in the above-captioned case ("Application") was filed on October 26, 2018, and published in the October 2018 Resume in the District Court in and for Water Division 5, State of Colorado ("Water Court"). The Application concerns only two water rights: (1) the Pando Right; and (2) the East Fork Pumping Plant Exchange. The Pando Right was originally decreed by the Eagle County District Court in Civil Action No. 1193 on July 23, 1958, with an appropriation date of August 10, 1956. The Reservoir Company owns 80 cfs of the Pando Right, which was decreed in Water Court Case No. 97CW288 to be alternately diverted from sources in the headwaters of the Eagle River basin and be used directly or stored at Eagle Park Reservoir.

Eagle Park Reservoir has two decreed water storage rights. First, in Case No. 92CW340, the Water Court decreed the Eagle Park Reservoir Storage Right ("Storage Right") in the amount of 5,300 acre-feet, of which 3,301 acre-feet has been decreed absolute. Second, 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, which remains entirely conditional. The sources for the Storage Right and First Enlargement Right include sources in the headwaters of the Eagle River basin and the headwaters of Tenmile Creek in the Blue River basin. These two
rights are the subject of a separate diligence application pending in Water Court Case No. 19CW3145 and are not the subject of the Application in this case. As described in more detail below, the Referee’s Ruling conflates these three water rights, disregards the distinct attributes of each right, and significantly limits the Reservoir Company’s ability to make beneficial use of its lawfully decreed water rights.

The Application sought to make an additional 8.92 cfs of the Pando Right absolute and 42.42 cfs of the Pando Right absolute for all decreed uses based on a total of 42.42 cfs of in-priority diversions into storage in Eagle Park Reservoir on May 31, 2014. The Application further requested a finding of reasonable diligence for any remaining portion of the Pando Right not made absolute as well as for the entire East Fork Pumping Plant Exchange water right, which remains fully conditional. The Referee’s Ruling granted the Applicants’ request to make the requested portions of the Pando Right absolute and found that all of the remaining conditional water rights should be maintained in full force and effect. Referee’s Ruling, ¶ 6 & 7.

The Referee’s Ruling, however, also contained language in Paragraph 6 requiring that the entire 80 cfs of the Pando Right be made absolute before the remaining conditional portions of the Storage Right and the First Enlargement Right could be made absolute. Id. at ¶ 6. The Order made a similar finding that “since [the Applicants are] choosing to make a portion of the Pando Right absolute in this case, Applicant[s] 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 Storage Right and First Enlargement Right in addition to the Pando Right.” Order, p. 4 (emphasis added). There are a number of problems with the Referee’s Ruling and Order on this point.
First, the Storage Right and the First Enlargement Right are not before the Court and, as argued in more detail below, the Referee and this Court do not have jurisdiction to place limits on those right in this case. The Ruling and Order also violate the Colorado Constitution and fail to recognize important factual differences between the terms and conditions that limit and define the Pando Right and the very different terms and conditions that define and limit the Storage Right and the First Enlargement Right, including that the Storage Right and the First Enlargement Right can be used to fill Eagle Park Reservoir from water sources from two separate drainage basins, the Upper Eagle River and the Blue River. For example, in the Upper Eagle River basin, the East Fork Interceptor Ditch and the East Fork Pumping Plant are also decreed to fill Eagle Park Reservoir and divert in whole or in part from the East Fork of the Eagle River, which is tributary to the Eagle River. Additionally, in the Blue River basin, the Chalk Mountain Interceptor Ditch, East Interceptor Ditch, Supply Canal No. 1 and Supply Canal No. 2 are also decreed to fill Eagle Park Reservoir and divert in whole or in part from McNulty and Ten Mile Creeks, which are tributary to the Blue River. The Referee’s Ruling and Order, if allowed to stand, would effectively prevent the ability to store any Blue River basin water under the Storage Right and First Enlargement Storage until the entire 80 cfs of the Pando Right has been made absolute using Eagle River basin sources. That prohibition would apply even when water may be physically and legally available from the Blue River basin sources but not from Eagle River basin sources, effectively denying the Applicants their constitutional right to appropriate.

Applicants filed a Protest to the Referee’s Ruling and the Order on February 12, 2020 (“Protest”), objecting to the limitation incorporated into Paragraph 6 of the Referee’s Ruling and the related provision of the Order requiring that the Pando Right be made entirely absolute in the
amount of 80 cfs before additional amounts of the Storage Right and the First Enlargement Right may be diverted, stored, and made absolute. The Protest did not object to the granting of absolute status for 42.42 cfs of the Pando Right for all decreed uses or to the finding of reasonable diligence for the remaining conditional water rights. The deadline to file a protest to the Referee’s Ruling expired on February 13, 2020. Regardless, on March 11, 2020, the State and Division Engineers (“Engineers”) filed a motion to intervene in the above-captioned case. After briefing, the Water Court granted the Engineers’ motion to intervene on April 11, 2020.

A case management conference regarding the Protest was held with the Water Court on April 15, 2020. At that conference, the Water Court established a briefing schedule to determine if the issues in dispute could be resolved without a formal hearing. A follow-up case management conference was also scheduled. At the April 15, 2020, case management conference, the Engineers clarified that they were not objecting to the granting of the absolute status for an additional 8.92 cfs of the Pando Right for a total absolute amount of 42.42 cfs for all decreed purposes or to the finding of reasonable diligence for the remaining conditional water rights. See Minute Order, Case No. 18CW3140 (Apr. 15, 2020) (“basic adjudication of right not disputed”). As a result, there is no factual dispute that the Applicants have made the Pando Right absolute for a total amount of 42.42 cfs for all decreed purposes, and Applicants have been diligent on the remainder of the subject conditional water rights.

II. LEGAL STANDARD

Within twenty-one days of entry of a ruling of the referee, any person may file a protest in writing with the water clerk. C.R.S. § 37-92-304(2). “A decision of the water judge with respect to a protested ruling of the referee shall either confirm, modify, reverse, or reverse and remand
such ruling.” C.R.S. § 37-92-304(5). “[T]he water judge may reverse, or reverse and remand, any such ruling which he deems to be contrary to law.” Id.

Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” C.R.C.P. 56(c). A material fact is one whose resolution will affect the outcome of the case. *Peterson v. Halsted*, 829 P.2d 373, 375 (Colo. 1992). “The purpose of summary judgement is to permit the parties to pierce the formal allegations of the pleadings and save the time and expense connected with trial when, as a matter of law, based on undisputed facts, one party could not prevail.” Id. An uncontradicted showing of facts probative of right to judgment leaves a trial court with no alternative but to conclude that no genuine issues of material fact exist. *Civil Serv. Comm'n v. Pinder*, 812 P.2d 645, 649 (Colo. 1991); *Terrel v. Walter E. Heller & Co.*, 439 P.2d 989, 991 (Colo. 1968).

### III. ARGUMENT

#### A. Summary

The Referee’s Ruling and Order (1) violate the right to appropriate as guaranteed by Article XVI, Section 6 of the Colorado Constitution; (2) fail to recognize that the Water Court does not have jurisdiction to impose terms and conditions on the Storage Right and First Enlargement Right in this matter; (3) ignores the distinct nature and attributes of the Reservoir Company’s lawfully decreed water rights; (4) misinterpret prior case law; and (5) are contrary to the Water Court’s previous decrees concerning the Pando Right, Storage Right and First Enlargement Right.
B. The Referee's Ruling Violates Article XVI, Section 6 of the Colorado Constitution.

Article XVI, Section 6 of the Colorado Constitution states, "The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied." See also Art. XVI, § 5, COLO. CONST. ("The water of every natural stream, not heretofore appropriated, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided."). "In this way, the constitution guarantees Colorado's system of prior appropriation as it had developed since territorial days and protects the people of the state from divestment of appropriation." St. Jude's Co. v. Roaring Fork Club, L.L.C., 351 P.3d 442, 448 (Colo. 2015). It is also part of the policy of this state that there should be maximum utilization of water and "that the maximum utilization doctrine be integrated into the law of vested rights." A-B Cattle Co. v. U.S., 589 P.2d 57, 61 (Colo. 1978).

The Referee's Ruling and the Order violate Article XVI, Section 6 of the Colorado Constitution by denying the Applicants the ability to divert, store, and apply water to beneficial uses under the Storage Right and the First Enlargement Right. The Pando Right is decreed for a flow rate of 80 cfs for direct use and storage. In contrast, the Storage Right and the First Enlargement Right are separate and independent water storage rights based on entirely different parameters. Requiring that the Pando Right, decreed to divert from one source stream, be made entirely absolute prior to making additional portions of volumetric storage rights absolute, when those rights can be filled by different sources, infringes upon the Applicants' constitutional right to divert and diminishes the doctrine of maximum utilization of water. As stated in A-B Cattle Co.

By way of example, if the current capacity of Eagle Park Reservoir is enlarged by 1,000 acre-feet from its current 3,301 acre-feet to 4,301 acre-feet, the Referee’s Ruling and the Order indicate that Applicants cannot divert, store and make the additional 1,000 acre-feet of the volumetric Storage Right absolute until the entire flow rate of the Pando Right is made absolute. This would be true regardless of the fact that the Storage Right is decreed to fill from additional sources from which the Pando Right cannot. Thus, until stream conditions in the Eagle River basin permit the full 80 cfs of the Pando Right to be made absolute, the Referee’s Ruling and the Order effectively prohibit diversions and storage of water in a newly enlarged portion of the Eagle Park Reservoir even when water is available under the Storage Right or First Enlargement Right via a water source not decreed to the Pando Right. Such a denial of the Applicants’ right to divert into the Storage Right or First Enlargement Right when water is available in priority violates Colorado’s constitutional right to divert unappropriated waters.

C. The Water Court Does Not Have Jurisdiction in this Case to set forth Terms and Conditions Impacting the Ability of the Applicants to Divert the Storage Right and the First Enlargement Right.

“Water court proceedings are in rem, and once notice of the application is published through the statutory resume publication procedure, the water court achieves in rem jurisdiction over the matter.” Well Augmentation Subdistrict of Central Colo. Water Conservancy Dist. v. City of Aurora, 221 P.3d 399, 408 (Colo. 2009); see also ReMine ex rel. Liley v. Dist. Court for City & Cnty. of Denver, 709 P.2d 1379, 1382 (Colo. 1985) (“In its strictest sense, an in rem proceeding is an action initiated ‘against the thing,’ that is, against property of some sort in contrast to an action...
The resume notice and newspaper publication provisions of C.R.S. § 37-92-302(3) and C.R.C.P. 90 give the water court jurisdiction over the persons and property affected by an application or adjudication of water rights. See *Burlington Ditch Reservoir & Land Co. v. Metro Wastewater Reclamation Dist.*, 256 P.3d 645, 674 (Colo. 2011). The purpose of C.R.S. § 37-92-302(3), which requires the water clerk to prepare a resume each month, is to give all water users notice of whose rights may be affected by an application. *Id.*

Compliance with the statutory notice provision required for water court applications is evaluated on the particular facts of the case. *Burlington Ditch Reservoir & Land Co.*, 256 P.3d at 674. Water courts obtain in rem jurisdiction only over the water rights clearly put at issue by the application and properly noticed under C.R.S. § 37-92-302(3). *Id.* at 676.

Under these facts and circumstances, the Water Court lacks in rem jurisdiction to place terms and conditions limiting the ability to make the Storage Right and First Enlargement Right absolute. The above-captioned case was an application to make absolute and for findings of reasonable diligence on the Pando Right and the East Fork Pumping Plant Exchange. Neither the Storage Right nor the First Enlargement Right were the subject of this Application or mentioned in the resume notice that was published in the Water Court resume for October 2018. In fact, the Storage Right and the First Enlargement Right are the subject of their own separate diligence application pending in Water Court Case No. 19CW3145. Yet, the Referee’s Ruling and the Order place limitations on the ability to make the Storage Right and the First Enlargement Right absolute.

Publication of the resume notice in this case only gave the Water Court jurisdiction over the Pando Right and the East Fork Pumping Plant Exchange. With respect to the Storage Right and First Enlargement Right, because neither water right was mentioned therein, the resume notice
gave no indication that this proceeding or any decree entered in this case would place terms, conditions, or limitations on any water rights other than the Pando Right or the East Fork Pumping Plant Exchange. C.R.S. § 37-92-302(3) ("The resume shall give ... a description of the water right involved ... "). Therefore, the Water Court cannot place substantive limitations on the Storage Right and the First Enlargement Right since it's in rem jurisdiction in this matter does not include those rights, but only extends to those water rights clearly described in the Application, which were the Pando Right and the East Fork Pumping Plant Exchange.

Further, Colorado law favors finality of judgment, not imposing conditions on previously decreed rights in a piecemeal fashion. Even if the Court had jurisdiction over the Storage Right and the First Enlargement Right a diligence proceeding is not the place to impose any such substantive limitations. "An operative feature of Colorado water law... is to provide for final enforceable determinations on a case-by-case basis, so that owners of other water rights may proceed with security in the exercise of their allocated water under court decrees that the State Engineer, the Division Engineers, and the Water Commissioners administer pursuant to the terms of those decrees." Farmers Reservoir and Irr. Co. v. Consolidated Mutual Ditch Co., 33 P.3d 799, 814 (Colo. 2001). Upon reflection, a practical reason why the Water Court is without jurisdiction to impose additional terms and conditions on the Storage Right and First Enlargement decrees is clear – if allowed to do so, the decrees might never be final and the Applicants would be exposed to the possibility of ever-changing terms and conditions that could limit its rights and cost resources to defend.

The lack of jurisdiction over the Storage Right and First Enlargement Right further highlights the factual distinctions between the facts at hand and Upper Eagle Regional Water
Authority v. Wolfe discussed below, where both the junior and the senior conditional water rights were subject to the underlying diligence application. Thus, both water rights were included in the resume notice, and the Water Court clearly had in rem jurisdiction over both within that proceeding. Here, the Referee’s Ruling and the Order impact the Storage Right and First Enlargement Right without ever obtaining in rem jurisdiction over these two water rights.


The Pando Right is a flow rate water right that has been changed to authorize storage up to the decreed flow rate, whereas the Storage Right and First Enlargement Right are volumetric storage water rights. The Referee’s Ruling and Order wrongfully conflate the two distinct classes of water rights. “Colorado water law has long recognized a distinction between the right to use the direct flow of natural water and the right to store those waters for future use.” Grand Valley Water Users Ass’n v. Bush-Ivanhoe, Inc., 386 P.3d 452, 465 (Colo. 2016) (citing City of Thornton v. Bijou Irrigation Co., 926 P.2d 27 n.12 (Colo. 1996)); Handy Ditch Co. v. Greeley & Loveland Irrigation Co., 280 P. 481 (Colo. 1929). It is an important distinction because “[w]hether water diverted pursuant to a decree is used immediately or stored for future use affects the potential impact of the diversion on other water users.” Bijou Irrigation Co., 926 P.2d at 27.

Colorado case law consistently describes the two types of rights separately and emphasizes that they should be treated separately as well. For example, “[t]he right to store water is not an automatic incident of a direct flow right” and “for water to be held in a reservoir for later use, a storage decree must be sought,” Bush-Ivanhoe, 386 P.3d at 465 (citing City & Cnty. of Denver v. N. Colo. Water Conservancy Dist., 276 P.2d 992, 999 (Colo. 1954)). “Direct flow water rights and storage water rights are entitled to administration based on their priority, regardless of the type of
beneficial use for which the appropriation was made.” *Empire Lodge Homeowners' Ass'n v. Moyer*, 39 P.3d 1139, 1148 (Colo. 2001) (citing *People ex rel. Park Reservoir Co. v. Hinderlider*, 57 P.2d 894, 898–99 (Colo. 1936) (Butler, J., concurring)).

The Reservoir Company’s various water rights are legally distinct from each other and cannot be combined as was done in the protested sections of the Referee’s Ruling and Order. The Pando Right, which is at issue in this case, was originally decreed as a direct flow water right that the Reservoir Company may use in the amount of 80 cfs. Pursuant to the decree in Case No. 97CW288, the Reservoir Company may also divert this direct flow water right into Eagle Park Reservoir for storage and subsequent beneficial use. Although the Pando Right may be stored in Eagle Park Reservoir, the decree in Case No. 97CW288 is clear that the Reservoir Company retains the ability to use the Pando Right directly. The decrees for the Storage Right and First Enlargement Right are for volumetric storage of 5,300 acre-feet and 22,300 acre-feet, respectively. The Referee’s Ruling would prohibit the Reservoir Company from storing water pursuant to the Storage Right or First Enlargement Right until the Reservoir Company has demonstrated that it can divert the full 80 cfs of the Pando Right. This prohibition would illogically prevent the Reservoir Company from utilizing any newly constructed storage space unless and until it has made the full 80 cfs of the Pando Right absolute. The Reservoir Company currently is analyzing the potential to enlarge the reservoir, so the adverse impact of the Referee’s Ruling is not theoretical. Moreover, the Referee’s Ruling would prohibit the Reservoir Company from diverting its Blue River basin decreed rights into Eagle Park Reservoir. The Reservoir Company’s decrees include rights to divert from Ten Mile Creek and its tributaries, including Humbug Creek, Searle Creek, and Kokomo Creek all of which are tributaries to the Blue River—the Pando Right is
decree to divert from the Eagle River basin. The effect would essentially render the Reservoir Company’s Blue River basin supply useless. Simply, the Pando Right is unrelated to the Storage Right and First Enlargement Right. Thus, the finding to make the Pando Right absolute in this case should not limit the Storage Right and First Enlargement Right that are the subject of separate decrees and a pending separate diligence application.


In addition to violating Colorado’s constitution, there is neither case law nor statutory law that stands for the proposition mandated by the protested portion of the Referee’s Ruling and the Order. Under Colorado law, “[a] decreed conditional water right shall be made absolute for all decreed purposes to the extent of the volume of the appropriation that has been captured, possessed, and controlled at the decreed storage structure.” C.R.S. § 37-92-301(4)(e); see also Empire Lodge, 39 P.3d at 1148 (“In order to perfect a conditional right and obtain an absolute decree, the applicant must have: (1) captured, possessed, and controlled unappropriated water; and (2) placed the water to beneficial use.”). The Referee’s Ruling and the Order are directly contrary to Colorado law. Their underlying impact is that if the capacity of Eagle Park Reservoir is enlarged, and if water is captured, possessed, and controlled and placed to beneficial use under the terms and conditions decreed to the Storage Right and the First Enlargement Right, the Applicants cannot make any portions of these volumetric storage rights absolute unless and until the Pando Right becomes fully absolute.

Paragraph 6 of the Referee’s Ruling and portions of the Order cite two cases, Upper Yampa Water Conservancy District v. Wolfe (“Upper Yampa”) and Upper Eagle Regional Water Authority v. Wolfe (“Upper Eagle”), for the proposition that the Applicants cannot make the
Storage Right and the First Enlargement Right absolute until the Pando Right is made absolute in its entirety. Both cases, however, are factually distinguishable. Thus, the law set forth therein is inapplicable to the facts at hand.

(1) Upper Yampa Water Conservancy District v. Wolfe.

Upper Yampa holds that an applicant seeking to make conditional water rights absolute “must show that it in fact appropriated water in excess of its existing absolute decrees allowing for storage.” Upper Yampa Water Conservancy Dist. v. Wolfe, 255 P.3d 1108, 1109 (Colo. 2011). Here, the Reservoir Company diverted 42.42 cfs of the Pando Right into storage at Eagle Park Reservoir on May 31, 2014. In a previous diligence application, the Water Court found that Applicants had diverted 33.5 cfs of the Pando Right into Eagle Park Reservoir for snowmaking and augmentation. Thus, on May 31, 2014, the Pando Right diverted 8.92 cfs more than its existing absolute decree, which satisfies any concerns that water be appropriated in excess of an existing decree. There is no dispute between the Applicants, Referee, and the Engineers that 42.42 cfs of the Pando Right was diverted in-priority on that date.

(2) Upper Eagle Regional Water Authority v. Wolfe.

Upper Eagle involved a claim by the Upper Eagle Regional Water Authority (the “Authority”) to make one of its then conditional junior direct flow water right absolute instead of a more senior conditional direct flow water right decreed for the same uses and from the same diversion point. Upper Eagle Reg’l Water Auth. v. Wolf, 371 P.3d 681, 682 (Colo. 2016). The Authority chose the junior direct flow water right because it did not have all of the restrictive terms and conditions that burdened the senior conditional direct flow water right. The Colorado Supreme Court held that:
[W]here there is no evidence of waste, hoarding, or other mischief, and no injury to the rights of other water users, the owner of a portfolio of water rights is entitled to select which of its different, in-priority conditional water rights it wishes to first divert and make absolute. However, the portfolio owner must live with its choice.

_Id._ The Order focuses on the last sentence above, stating that 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.” Order at p. 2.

However, in _Upper Eagle_ the choice of the Authority was between two conditional direct flow water rights with the exact same source streams that were both the subject of the application in that case. Here, the Storage Right and First Enlargement Right were not the subject of the Application and the Court does not have jurisdiction over these rights. They are also different types of water rights. The Referee has imposed a choice on the Reservoir Company to live with a choice that was never made by the Reservoir Company. Thus, there is no basis for the statement in the Order that would prohibit the Storage Right or First Enlargement Right from being used at all until the Pando Right is made absolute in its entirety.

There are other important distinctions between _Upper Eagle_ and the case at hand. For example, whereas in _Upper Eagle_ the conditional rights at issue had the same sources, the Pando Right, Storage Right, and First Enlargement Right have different sources and operate under different terms and conditions. The Pando Right is limited to diverting water from the Eagle River basin; however, the Storage Right and First Enlargement Right are entitled to divert water from Tenmile Creek through the Chalk Mountain Interceptor Ditch, East Interceptor Ditch, Supply Canal No. 1 and Supply Canal No. 2, which are separate structures not decreed to the Pando Right. Under the Referee’s Ruling and Order, the Chalk Mountain Interceptor Ditch, East Interceptor
Ditch, Supply Canal No. 1 and Supply Canal No. 2 could not operate to fill Eagle Park Reservoir until the Pando Right is made absolute in the amount of 80 cfs. Such a scenario could expose the Applicants to a shortage of water in Eagle Park Reservoir.

The foregoing unjust result could manifest in other equally concerning ways. For example, when the Reservoir Company enlarges Eagle Park Reservoir, which it can do, it will need the Storage Right and First Enlargement Right to fill it. This is because the Pando Right can only divert up to 6,000 acre-feet into Eagle Park Reservoir. It would be an unjust result if Applicants expended tens of millions of dollars to expand the Eagle Park Reservoir only to have that increased capacity go unrealized because conditions in the Eagle River Basin had not yet allowed the Pando Right to be made absolute in the amount of 80 cfs.

F. The Referee’s Ruling is Contrary to the Water Court’s Decisions in Case Nos. 00CW210, 11CW77, and 13CW11.

As a general matter, a diligence proceeding is not the place to impose new, substantive terms and conditions on a water right. Doing so undermines the principle that water court decrees are final judgments and not subject to relitigation, modification or supplementation, as explained in Section III.C. above. See, Farmers Reservoir and Irr. Co., 33 P.3d at 814 (Colo. 2001). The prior diligence decrees related to the water rights discussed above and entered in Case Nos. 00CW210, 11CW77, and 13CW11 contained no new substantive terms and conditions, and certainly did not require that one water right be made absolute before another. For example, in Case No. 00CW210, decreed on August 12, 2002, the Water Court made 3,148 acre-feet of Eagle Park Reservoir absolute under the Storage Right. In Case No. 11CW77, decreed on October 4, 2012, the Water Court made 33.5 cfs of the Pando Right absolute for snowmaking and
augmentation uses. Subsequently, in Case No. 13CW11, the Water Court made an additional 153 acre-feet of the Storage Right absolute on November 10, 2013, after portions of the Pando Right had been made absolute. Only now, after portions of both rights have been made absolute, the Referee’s Ruling preconditions the making of additional portions absolute upon each other. Such a requirement is contrary to the Water Court’s previous decisions in Case Nos. 00CW210, 11CW77, and 13CW11 with respect to the exact water rights involved in this case.

IV. CONCLUSION

As there are no contested issues of fact, the Applicants request that their motion for summary judgment be granted as a matter of law and that this Court enter a decree in the above-captioned case consistent with the Referee’s Ruling but that deletes the paragraph 6 of the Referee’s Ruling and the second sentence of the Order.

On the other hand, if the Court disagrees with the Applicants with respect to the jurisdictional issues raised in Section III.C above and finds that it does have in rem jurisdiction over the Storage Right and the First Enlargement Right, the unjust and unconstitutional result that otherwise remains could be eliminated by revising both the Order and the Referee’s Ruling. Specifically, the Court should revise the second sentence of the protested portion of the Order 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 that it needs increased the capacity of Eagle Park Reservoir and stored the junior Storage Right or the First Enlargement Right in addition to the Pando Right.

Order, p. 4. Further, Paragraph 6 of the Referee’s Ruling should be similarly 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. Wolf, 255 P.3d 1108 (Colo. 2011) and Upper Eagle Regional 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 or 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.

Without these requested revisions, the Referee’s Ruling and Order violate Colorado’s constitution, case law, and statutory law.

Respectfully submitted this 22 day of May, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 2020, a true and correct copy of the foregoing APPLICANTS' MOTION FOR SUMMARY JUDGMENT AND ENTRY OF DECREES 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:

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<th>Party Name</th>
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<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>
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### Pando Feeder Canal Motion for Summary Judgment and Entry of Decree

**Case No. 18CW3140**

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<td>Vail Associates Inc.</td>
<td>Applicant</td>
<td>PAUL F HOLLEMAN (Buchanan Sperling and Holleman PC)</td>
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C. Woodard

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