RESOLUTION 2018-087
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO EXECUTE AN
AGREEMENT REGARDING PHASE II OF THE PLAN FOR
AUGMENTATION FOR INSTREAM FLOW PURPOSES
ON THE CACHE LA POUDRE RIVER

WHEREAS, the Cache la Poudre River ("Poudre River") flows through Fort Collins and is a significant amenity to the City, its citizens, and the region; and

WHEREAS, the Poudre River is the source of water supply for numerous water users, including the City, such that the majority of Poudre River flows are diverted into canals, ditches, pipelines, reservoirs, and other waterworks; and

WHEREAS, such diversions reduce the flows of water through Fort Collins, which has various ecological, environmental, recreational, sociological, and other impacts, some of which are adverse; and

WHEREAS, the City desires to enhance Poudre River flows through Fort Collins and in the region while working within the existing legal context, including the prior appropriation doctrine, which is confirmed in Sections 5 and 6 of Article XVI of the Colorado Constitution and the Water Right Determination and Administration Act of 1969, C.R.S. §§37-92-101 et seq.; and

WHEREAS, the City has actively participated in the Poudre Runs Through It Study/Action Work Group ("PRTI"), a group of community water leaders convened by the Colorado State University's Colorado Water Institute for the purpose of exploring options to improve the Poudre River as a healthy, working river; and

WHEREAS, the PRTI's FLOWS committee ("FLOWS Committee") was formed thereafter from members of the PRTI, including the City, the Cache la Poudre Water Users Association, the Colorado Water Trust, the City of Greeley, and the Northern Colorado Water Conservancy District (collectively, "Initial Participants"); and

WHEREAS, the FLOWS Committee was tasked with exploring options to improve Poudre River flows, particularly downstream of the canyon mouth to the South Platte River, and at times when flows would improve the ecological health of the river, while not injuriously affecting the owners of or persons entitled to use water under vested water rights or decreed conditional water rights; and

WHEREAS, as part of this effort, the FLOWS Committee developed the idea of a plan for augmentation for instream flow purposes ("Instream Flow Augmentation Plan") to enhance and protect additional flows in portions of the Poudre River without injuriously affecting the owners of or persons entitled to use water under vested water rights or decreed conditional water rights; and
WHEREAS, the Initial Participants executed the Agreement Regarding Phase I (Development) of a Multi-Phase Plan for an Instream Flow Augmentation Plan on the Cache la Poudre River ("Phase I Agreement") which was approved by City Council pursuant to Resolution 2016-022 on March 1, 2016; and

WHEREAS, Phase I and the tasks described in the Phase I Agreement regarding the initial development of the Instream Flow Augmentation Plan are substantially complete; and

WHEREAS, the City of Thornton, Colorado Parks and Wildlife, and the Colorado Water Conservation Board (collectively, "New Participants") wish to work with the Initial Participants to participate in development of the Instream Flow Augmentation Plan; and

WHEREAS, the Initial and New Participants (together "Participants") intend to proceed with Phase II, which primarily concerns receiving approvals from the Colorado Water Conservation Board and the District Court for Water Division 1 (a.k.a. "Water Court"); and

WHEREAS, the Participants have negotiated an agreement for Phase II of the multi-phase plan, which agreement is entitled the Memorandum of Agreement for Phase II of the Cache la Poudre River Instream Flow Augmentation Plan, a copy of which is attached as Exhibit "A" ("Agreement for Phase II"); and

WHEREAS, other water users and interested entities have expressed interest in contributing to the ISF Augmentation Plan and may desire to participate in the effort by joining the Agreement for Phase II at a later date, which would be to the overall benefit of the City and the Poudre River; and

WHEREAS, the Agreement for Phase II calls for the City to contribute $20,000 towards Phase II, which amount has been appropriated for 2018 for instream flow related efforts which is an appropriate use of the City’s General Funds and funds of the Natural Areas Department because this Agreement will further the welfare of the citizens of Fort Collins, further the Natural Areas Department’s conservation efforts, and benefit natural areas along the river; and

WHEREAS, proceeding with Phase II will benefit the City and its citizens because it will further the goal of preserving and improving the ecological, environmental, recreational, sociological, and other resources benefitted by Poudre River flows; and

WHEREAS, the City’s execution of the Agreement for Phase II is not intended to express support for the proposed Northern Integrated Supply Project ("NISP") or to change the City’s position with respect to NISP, and the City is not hereby altering or amending its comments on the NISP draft and supplemental draft environmental impact statements, which comments were submitted pursuant to Resolution 2008-082 and Resolution 2015-082; and

WHEREAS, the City’s execution of the Agreement for Phase II is not intended to express support for any other project, including the proposed Thornton Pipeline Water Project and the proposed Seaman Water Supply Project, or to change the City’s position with respect to those projects.
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Manager is hereby authorized to execute an agreement substantially in the form of Exhibit “A”, with such modifications and additional terms and conditions consistent with this Resolution as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Section 3. That the City Manager is hereby authorized to execute amendments to such agreement consistent with this Resolution as may be necessary to effectuate the purposes of this Resolution.

Passed and adopted on at a regular meeting of the Council of the City of Fort Collins this 18th day of September, A.D. 2018.

Mayor

ATTEST:

City Clerk
MEMORANDUM OF AGREEMENT FOR PHASE II OF THE CACHE LA Poudre RIVER INSTREAM FLOW AUGMENTATION PLAN

This Agreement, dated this ____________, is entered into by and between the following Parties listed in no particular order: the Cache la Poudre Water Users Association, a Colorado non-profit corporation; the City of Fort Collins, Colorado, a home rule municipality; the Colorado Water Trust, a Colorado non-profit organization; the Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision of the State of Colorado; the City of Greeley, Colorado, a home rule municipality; the City of Thornton, Colorado, a home rule municipality; the Colorado Water Conservation Board, an agency of the State of Colorado; and the Colorado División of Parks and Wildlife, an agency of the State of Colorado.

RECITALS

A. PRTI is a group of community water leaders convened by the Colorado State University's Colorado Water Institute for the purpose of exploring options to improve the Poudre River as a healthy, working river. From time-to-time the PRTI establishes informal initiative-specific committees to advance concepts or actions supported by PRTI.

B. The PRTI's FLOWS Committee is one such committee, and is comprised of members of PRTI and was tasked with exploring options to improve flows in the Poudre River, particularly downstream of the canyon mouth to the confluence of the South Platte River, at times when increased flows would improve the ecological health of the river, while ensuring that such options would not injuriously affect the owners of or persons entitled to use water under vested water rights or decreed conditional water rights.

C. As part of this effort, the FLOWS Committee developed the idea of the ISF Augmentation Plan as an innovative, voluntary approach to increase and protect additional flows in portions of the Poudre River without injuriously affecting the owners of or persons entitled to use water under vested water rights or decreed conditional water rights. As further described in the Draft Application, the Parties intend to accomplish this by measuring and delivering Added Water to the Poudre River at various points, having the Added Water shepherded by State water officials through designated segments to various downstream points, and to account for and have administered such deliveries of Added Water separately from other water in the river, as further described in the Draft Application. The Water Trust developed a multi-phase plan for developing the ISF Augmentation Plan.

D. The multi-phase plan may be generally summarized as follows:

1. Phase I (Development) generally concerns various initial and preliminary tasks needed to develop the ISF Augmentation Plan such that approval can subsequently be sought. Phase I tasks include: the organization of interested parties for the purposes of pursuing Phase I, various engineering, feasibility, and other analyses to support the ISF Augmentation Plan.
2. Phase II (CWCB and Water Court Approval and Formation) generally concerns the tasks needed to acquire approval of the ISF Augmentation Plan from the CWCB and from Water Court. Phase II Tasks include: creating this Phase II Agreement among the Parties; obtaining CWCB approval of the ISF Augmentation Plan; obtaining agreements/leases between the CWCB and some of the Water Users to provide Seed Water Rights for use in the ISF Augmentation Plan; establishing an organizational structure for the administration and operation of the ISF Augmentation Plan such that it can be implemented in Phase III; and preparing and prosecuting the Draft Application for the ISF Augmentation Plan in the Water Court to a final decree.

3. Phase III (Implementation) generally concerns the tasks needed to implement the ISF Augmentation Plan as approved by the CWCB and the Water Court and with the consensus of the Water Users, Water Trust, and CWCB. Phase III tasks include: accounting; communication with the Water Commissioner and the Parties on stream conditions and water releases; securing additional augmentation supplies to add to the ISF Augmentation Plan; reporting as required by the final decree; funding for operations and water acquisitions; and establishing operating procedures for the ISF Augmentation Plan.

4. To commence the ISF Augmentation Plan, Northern Water, the Association, Greeley, Fort Collins, and the Water Trust executed the Phase I MOU, which governed the development efforts for the ISF Augmentation Plan concept.

5. Phase I, and the tasks described in the Phase I MOU, are substantially complete and the original participants have agreed to proceed with Phase II on the terms and conditions described herein. Thornton, CPW, and the CWCB also wish to participate in development of the ISF Augmentation Plan and therefore, each is also a Party to the Phase II Agreement.

6. Each of the Parties and their involvement and expectations related to the development of the ISF Augmentation Plan are described in more detail below:

   a. The Association is a Colorado non-profit association comprised of nearly all the major water users that derive their sources of supply from the Poudre River and its tributaries. One of the Association’s primary purposes is to protect the water rights of its members from injury. While improving stream flows and the ecological health of the River is not among the Association’s purposes, the Association recognizes that certain of its members do have such purposes, and one of the purposes of the Association is to maintain among such water users an effective spirit and means of co-operative effort for the common good. The Association believes that the ISF Augmentation Plan is likely to be a worthwhile “tool” for water users within the Poudre Basin provided it is voluntary, market-based, managed and operated locally by Poudre Basin water users, and, critically, is non-injurious to the water and property rights of other water users in the Basin.
b. Fort Collins is located along the Poudre River below the canyon mouth and has an interest in this Agreement and its subject matter for various reasons, including: Fort Collins' various policy goals related to preserving and improving the health and natural environment of the Poudre River and its associated systems; Fort Collins' ownership of lands traversed by the Poudre River, including the majority of the floodplain in Fort Collins' city limits and growth management area; Fort Collins' role as a home rule municipality and the centrality of the Poudre River to the health, safety, welfare, and identity of the citizens of Fort Collins; and Fort Collins' ownership of and reliance upon numerous water rights in and along the Poudre River. Fort Collins has been an active participant in the PRTI, the FLOWS Committee, and the ISF Augmentation Plan since its inception and intends to actively continue in this Phase II as a Water User as discussed herein. Fort Collins also desires to include some of its water rights in the ISF Augmentation Plan in accordance with the terms of this Agreement (and any subsequent agreements regarding this Phase II and any subsequent phases) and relevant agreements between Fort Collins and the CWCB.

c. The Water Trust is a Denver-based, statewide nonprofit whose mission is to restore stream flows to Colorado's rivers in need. To accomplish its mission, the Water Trust works with willing water users and suppliers to create voluntary, market-based solutions to those challenges, while respecting private property rights and working within the prior appropriation system. In 2013, the PRTI invited the Water Trust to present to the assembled Poudre River community options for voluntary streamflow restoration. Since then, the Water Trust has helped design, organize, and fund this locally-driven effort, and remains committed to its success.

d. Northern Water owns and is developing several conditional water rights in the Cache la Poudre River basin, including the water rights associated with Glade Reservoir and the South Platte Water Conservation Project. Northern Water through the NISP Water Activity Enterprise is nearing completion of the permitting process for NISP. As part of the permitting approval process, NISP has committed to providing mitigation and enhancement for fish and wildlife, and improving flows in Poudre River. Northern Water supports additional efforts to improve flows and the natural environment in the Poudre River, and therefore has been a participant in the PRTI, the FLOWS Committee, and the discussions for the ISF Augmentation Plan since its inception and plans to continue in this Phase II as part of the Management Committee as discussed herein.

e. Greeley is a home rule municipality situated just above the confluence of the Poudre and South Platte Rivers, with its primary domestic water
treatment plant located below the mouth of the Poudre Canyon. Greeley owns and operates water rights in a variety of ditch systems throughout the Poudre Basin and has been invested in the health and vitality of the Poudre River for many years, including via its involvement with the PRTI Work Group, its FLOWS Committee, and the ISF Augmentation Plan. Greeley desires to continue that investment by its participation in Phase II, and by including certain of its water rights decreed for augmentation uses in the ISF Augmentation Plan, as contemplated by this Agreement and in accordance with any future agreements for such inclusion with the CWCB.

f. Thornton is a home rule city in the northern Denver Metropolitan Area and owns and operates an integrated municipal water supply and sewer system. Thornton has water rights in the Poudre River Basin that were changed or adjudicated for multiple uses including augmentation use within the Poudre River Basin. Thornton desires to include certain of its water rights decreed for augmentation in the ISF Augmentation Plan, as contemplated by this Agreement and in accordance with any future agreements for such inclusion with the CWCB. Thornton desires to participate in the Poudre ISF Augmentation plan because it is a voluntary, non-regulatory, market-based program that will preserve and improve streamflows in the Poudre River while at the same time protecting its water rights and property interests.

g. CWCB is an agency of the state tasked with promoting the conservation of the waters of the state of Colorado in order to secure the greatest utilization of such waters pursuant to § 37-60-106, C.R.S. To that end, the CWCB has the exclusive authority to appropriate and acquire water rights for instream flow uses to preserve or improve the natural environment to a reasonable degree. The CWCB may also acquire by grant, purchase, donation, lease, exchange, or other contractual agreement, such water, water right, or interests in water in such amount as the board determines is appropriate for stream flows to preserve or improve the natural environment to a reasonable degree. § 37-92-102(3), C.R.S. The CWCB has a specific grant of authority from the General Assembly to file applications for augmentation plans. §37-92-102(3). The CWCB desires to participate in the planning process and in Water Court proceedings to support the local water users’ efforts to increase flows in the Poudre River. CWCB will participate toward the goal of obtaining and implementing a Water Court decree for an instream flow augmentation plan that establishes up-to flow rates for the beneficial uses of preserving and improving the natural environment to a reasonable degree in certain segments of the Poudre River and facilitates the use of acquired water rights to augment the flows of the river to reach such target flows.

h. CPW has a statutory mission to protect wildlife and aquatic resources, and maintain and protect stream flows for recreational and ecological
purposes. CPW also has a statutory obligation to consult with and provide opinions to CWCB on any proposed instream flow acquisitions. CPW has provided quantification of appropriate flows for the ISF Augmentation Plan based on scientific analyses needed to preserve and improve the natural environment to a reasonable degree. To further these statutory purposes, and to encourage and support the development of innovative ways to protect stream flows, CPW is party to this Agreement in an advisory and consulting role.

7. Recognizing that the Parties each have different purposes and motivations for being involved in the ISF Augmentation Plan, all Parties believe that it is in their mutual interest to pursue the Plan collaboratively in accordance with the terms and conditions described herein. Accordingly, the purpose of this Agreement is to set forth the Parties' general understanding, the guiding principles upon which the Parties will pursue the Plan, and in particular, how the Parties shall proceed to accomplish Phase II Tasks, including all tasks needed to acquire approval of the ISF Augmentation Plan from the CWCB and from the Water Court. A further purpose of this Agreement is to anticipate the implementation of the ISF Augmentation Plan (Phase III), including the governing/decision-making and administrative structure needed to implement the ISF Augmentation Plan once CWCB and Water Court approval has been obtained. The Parties expect to develop and execute a Phase III agreement consistent with the goals and guiding principles described herein that will more fully govern implementation of the ISF Augmentation Plan at or near the conclusion of Phase II.

NOW THEREFORE, in consideration of the mutual covenants made herein, the Parties hereby agree as follows:

AGREEMENT AND UNDERSTANDING

1. INCORPORATION OF RECITALS. The foregoing recitals are hereby incorporated as if fully restated in their entirety.

2. DEFINED TERMS. The following defined terms are used throughout this Agreement, including in the foregoing recitals.

a. "Added Water" means the water to be added to the Poudre River under the ISF Augmentation Plan and protected from diversion as set forth herein, which will be either Seed Water Rights or Additional Water Rights.

b. "Additional Water Rights" means the water rights that are to be added to the Plan after the plan is decreed as additional sources of Added Water.

d. "Agreement" or "Phase II Agreement" means this Agreement, including its exhibits.

e. **Common Interest Agreement** means that agreement executed by the Parties, effective July 23, 2018.

f. "CPW" means the Colorado Division of Parks and Wildlife, an agency of the State of Colorado.

g. "CWCB" means the Colorado Water Conservation Board, an agency of the State of Colorado.

h. "Draft Application" means Exhibit A, which is a draft of an application to be filed in Water Court pursuant to this Agreement that requests judicial approval of the ISF Augmentation Plan.

i. "Fort Collins" means the City of Fort Collins, Colorado, a home rule municipality.

j. "Greeley" means the City of Greeley, Colorado, a home rule municipality.

k. "ISF Augmentation Plan" means a plan for augmentation for instream flow purposes on the Poudre River being pursued by the Parties.

l. "Management Committee" means the committee of representatives from the Association, Fort Collins, Greeley, Northern Water, Thornton, the Water Trust, and the CWCB tasked under this Agreement to manage the ISF Augmentation Plan.

m. "Management Committee Account" means the account for monetary resources for Phase II held by the Water Trust pursuant to this Agreement.

n. "Member" means a Party to this Agreement with a seat on the Management Committee.

o. "Northern Water" means the Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision of the State of Colorado.

p. "Parties" means all entities that have signed this Agreement.

q. "Phase I MOU" means the Agreement Regarding Phase I (Development) of a Multi-Phase Plan for an Instream Flow Augmentation Plan on the Cache La Poudre River that Northern Water, the Association, Greeley, Fort Collins, and the Water Trust executed on January 13, 2017.
r. "Phase II Tasks" means the tasks under Phase II of the multi-phase plan for developing the ISF Augmentation Plan identified in this Agreement and needed to acquire approval of the ISF Augmentation Plan from the CWCB and from Water Court.

s. "Plan" means the ISF Augmentation Plan.

t. "Poudre River" means the Cache La Poudre River.

u. "PRTI" means the Poudre Runs Through It Study/Action Work Group.

v. "Seed Water Rights" means the water rights that are the initial sources of Added Water for the Plan expressly identified in the Draft Application.

w. "SWSP" means a substitute water supply plan under C.R.S. §37-92-308 or successor statutes.

x. "Thornton" means the City of Thornton, Colorado, a home rule municipality.

y. "Water Court" means the District Court for Water Division 1.

z. "Water Trust" means the Colorado Water Trust, a Colorado non-profit organization.

aa. "Water Users" means the Association, Fort Collins, Northern Water, Greeley, and Thornton.

3. PURPOSE OF PHASE II AGREEMENT.

a. THIS AGREEMENT. The primary purposes of this Agreement are to set forth the Parties' understanding and the guiding principles upon which the Parties will pursue the ISF Augmentation Plan, and to describe the nature and completion of Phase II Tasks necessary to obtain CWCB and Water Court approval. In particular, related to the completion of Phase II Tasks, this Agreement shall govern the development and prosecution of: 1) all actions necessary to achieve CWCB approval of the ISF Augmentation Plan; and 2) all actions necessary to achieve approval of the claims in the Draft Application to the Water Court seeking approval of the ISF Augmentation Plan. The Parties may also seek to operate the ISF Augmentation Plan through a temporary SWSP during Phase II. The Agreement also anticipates the implementation of the ISF Augmentation Plan once a decree is entered (Phase III), including the governing/decision-making structure and the Plan administration and accounting. Another purpose of this Agreement is to articulate certain goals and guiding principles that shall serve as the foundation for the Parties' agreement to proceed with the Plan, and that shall inform future decision-making in both Phase II and Phase III.
b. **GOALS AND GUIDING PRINCIPLES.** The goal of the ISF Augmentation Plan is to provide a legal mechanism whereby Added Water may be added to a defined segment or segments of the Poudre River and legally protected from diversion (including diversions by, under, or pursuant to exchanges, SWSPs, plans for augmentation, or other means that cause a reduction to the Added Water within the stream segment(s), other than reductions caused by accounted for evaporation, transportation, and other losses). More specifically, the goals of the ISF Augmentation Plan include:

1. to increase stream flows in the Poudre River from the canyon mouth to the South Platte River;
2. to protect the Added Water in the subject segment(s) by providing for State water officials to shepherd the Added Water downstream without diversion (including diversions by, under, or pursuant to exchanges, SWSPs, plans for augmentation, or other means that cause a reduction to the Added Water within the stream segment(s), other than reductions caused by accounted for evaporation, transportation, and other losses);
3. to allow for Additional Water Rights to be added to the Plan;
4. to accomplish the first three goals without injuriously affecting the owners of or persons entitled to use water under vested water rights or decreed conditional water rights; and
5. to allow the Management Committee to consider potential adverse impacts that the Plan may have on vested water rights, decreed conditional water rights, and other exchanges, practices, and operations, which may or may not be approved by Water Court decree.

The guiding principles that Parties have agreed to include that the Plan shall be voluntary and operated locally by water users in the Poudre River basin. Any alteration to or modification of existing ditch or reservoir structures infrastructure (e.g. headgates, diversion dams) required to implement the ISF Augmentation Plan shall only take place after agreement with the owner(s) of any such structures. An additional goal is to develop the Plan with sufficient flexibility to allow water rights to be added to the Plan. The goals include for the Plan to be capable of utilizing water rights that may only be available temporarily (including: water rights associated with local alternative transfer mechanisms projects (commonly called “ATMs”); Agricultural Water Protection Water Rights under House Bill 16-1228, the rules and regulations promulgated thereunder, and subsequent statutes; and other water rights that are the subject of temporary administrative approvals) and serve as a potential revenue source for water users in the Poudre River basin willing to lease or to enter into agreements allowing for the use of their water rights in the Plan. The Parties also agree that the ISF Augmentation Plan and actions taken for it shall not be or result in violations of applicable CWCB statutes and rules and regulations.
c. **Added Water.** The Parties intend that this Paragraph 3.c identifies the initial sources of Added Water (the Seed Water Rights) which are expressly identified in the Draft Application, establishes procedures for the inclusion of Additional Water Rights in the future, and sets forth principles for the Management Committee's operation of Added Water and consideration of Additional Water Rights. The Parties do not intend that this Paragraph 3.c or any other portion of this Agreement affects in any way the standards of review that may be applied by the Water Court, the Colorado Supreme Court, the CWCB, or any administrative agency. Any Added Water included in the Plan must be capable of being measured where delivered to the stream. Any Added Water also shall not be water attributable to calculated accretions to the stream from recharge or lawn irrigation return flows.

i. **Seed Water Rights: Initial Sources of Added Water.** The initial sources of Added Water for the Plan are the Seed Water Rights. The Parties agree that these water rights are appropriate sources of Added Water for the Plan, consistent with the principles regarding operations set forth in this Agreement. Any Party may raise concerns within the context of the Management Committee as to specific operations of the Seed Water Rights going forward.

ii. **Additional Water Rights: Future Additional Sources of Added Water.** The Parties anticipate that Additional Water Rights will be sought for inclusion in the Plan after this Agreement is executed, after the Draft Application is filed with the Water Court or after the final decree for the Plan is entered. The Management Committee (discussed below in Paragraph 4) must approve the inclusion of any Additional Water Rights before such water rights may be included in the Plan and before any requests for their inclusion in the Plan are approved by the CWCB and filed with the Water Court or administrative agencies. The Management Committee must also consider the potential operation of such water rights in the Plan, consistent with the principles regarding operations set forth in this Agreement. A person or entity (including a Party) seeking to include any Additional Water Rights in the Plan must request approval from the Management Committee and provide the Management Committee with sufficient information regarding such water rights and their proposed operations to allow for a complete review of the request, including: information required by any decree approving the Plan regarding such Additional Water Rights; copies of the decree(s) for the Additional Water Rights; how the subject water would be measured; how the subject water would be accounted for separately from other water in the river; where the subject water would be delivered to the Poudre River; where and in what segments the subject water would be used under the Plan; whether the subject water would need to be bypassed past any intervening diversion structures and if any agreements to that effect exist; and where or how
the subject water would be reused, if applicable. The Management Committee will thereafter consider the request, including the information provided by the requesting person or entity, any additional relevant information, the final decree for the Plan, the guiding principles regarding Added Water, and any other relevant information concerning the Additional Water Rights and the potential impacts that including the Additional Water Rights could have on other water users, existing stream conditions, or river administration. The Management Committee's approval to include any Additional Water Rights in the Plan must be in writing and may include additional terms and conditions as the Management Committee may deem appropriate, including to be consistent with the goals and guiding principles set forth in this Agreement.

iii. Principles for Inclusion of Additional Water Rights. The Parties agree to the following guiding principles regarding Additional Water Rights. Additional Water Rights is water that is diverted, measured, and delivered to the stream that is attributable to:

(1) a water right that has been changed by judicial decree to be legally available for augmentation use, or has been granted administrative approval to be legally available for augmentation use;
(2) a nontributary, transmountain, or other developed water right that is legally available for augmentation use; or
(3) a water right decreed to be legally available for augmentation use, or administratively approved to be legally available for augmentation use.

iv. General Principles Regarding Added Water. In determining whether Added Water Rights can be operated in the Plan, the Management Committee shall consider whether water attributable to the Added Water Rights has historically been delivered and carried in any segment (or portion of a segment) in which the water would be protected and in which such water has historically been delivered and carried in the stream for re-diversion, including whether the water would be protected in the segment (or portion of a segment) of the historical operations, the frequency and duration of such operations, the legal character of the water rights, and whether other water users may have relied on such water for existing operations or appropriations. The operation of Added Water Rights must be consistent with the goals and guiding principles set forth in this Agreement.

d. IMPLEMENTATION OF THE ISF AUGMENTATION PLAN. Based upon the foregoing goals and guiding principles, the Parties agree to the following general description of the ISF Augmentation Plan that is to be brought before the
CWCB for approval and to be applied for with the Water Court in the form of an application substantially similar to the Draft Application, which shall guide all decision-making concerning the ISF Augmentation Plan. The ISF Augmentation Plan will create the legal framework for the inclusion of the Seed Water Rights in the Plan and a procedure for the introduction of Additional Water Rights to the Plan after the entry of the decree pursuant to C.R.S. §37-92-305(8)(c). The application shall contain provisions that provide for the State water officials to shepherd Added Water past intervening points of diversion so that it is legally protected from diversion (including diversions by, under, or pursuant to exchanges, SWSPs, plans for augmentation, or other means that cause a reduction to the Added Water within the stream segment(s), other than reductions caused by accounted for evaporation, transportation, and other losses) within stream segment(s) of the Poudre River, while assuring that, as the Added Water is shepherded downstream, there will be no injurious effect on the owners of or persons entitled to use water under vested water rights or decreed conditional water rights. The Parties understand and agree that shepherding the Added Water past existing structures in the River is likely to be necessary in certain instances and that nothing in the ISF Augmentation Plan is intended to require or compel structure owners to alter existing structures or operations to accommodate Plan operations; any such accommodations needed to add or bypass Added Water will be reached by separate agreement. Further, to promote Plan efficiency and flexibility and potential rental options for water users in the Poudre River basin, the ISF Augmentation Plan shall seek to provide a mechanism in the decree by which Additional Water Rights can be voluntarily added to the ISF Augmentation Plan for temporary or permanent use in the Plan. It is further anticipated that the ISF Augmentation Plan will provide for the reuse or successive use of Added Water downstream of the segments where the Added Water is used in the Plan. In accordance with the applicable water right decree(s) or other relevant legal authority, the owners of the Seed Water Rights and Additional Water Rights shall be entitled to reuse or successively use water attributable to those water rights downstream of the segment(s) where those water rights are used in the Plan, or to enter into agreements with other persons or entities for their reuse or successive use of such water. Decisions concerning such agreements shall be made consistent with this Agreement, sound Plan management and other Plan goals, but to the extent possible, preference shall be given to water users within the Poudre River basin who desire such water for reuse or successive use.

4. **ESTABLISHMENT OF MANAGEMENT COMMITTEE.**

   a. **Management Committee in Phase II.** To implement and manage Phase II Tasks, a Management Committee is hereby created.

      i. **Representation.** Each Member shall designate one (1) person, and may designate one (1) alternate, to be the Party’s representative on the
Management Committee. The following are the Parties' Management Committee representatives:

**Water User Members**

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<tr>
<th>Association:</th>
<th>Representative</th>
<th>Alternate</th>
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<tr>
<td>Dan Brown</td>
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<tr>
<th>Fort Collins:</th>
<th>John Stokes</th>
<th>Susan Smolnik</th>
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<tr>
<th>Greeley:</th>
<th>Jennifer Petzelka</th>
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<th>Northern Water:</th>
<th>Brad Wind</th>
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<tr>
<th>Thornton:</th>
<th>Emily Hunt</th>
<th>Cari Bischoff</th>
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**Non-Water User Members**

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<tr>
<th>Water Trust:</th>
<th>Zach Smith</th>
<th>Karen Wogslard</th>
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| CWCB:        | Linda Bassi / Chief of Stream & Lake Protection Section Kaylea White / Senior Water Resources Specialist |         |

Each Member shall be entitled, at its sole discretion, to change its representative and alternate on the Management Committee, provided that the Member provides prompt notice of the same to the other Members.

ii. **Charge.** The purpose of the Management Committee is to provide oversight (including oversight of operations and Added Water), direction, and decision-making for the ISF Augmentation Plan during Phase II, and Phase III as appropriate in accordance with Paragraph 3.b. The Management Committee is charged with meeting, discussing, and conferring regarding all decisions necessary to implement and accomplish Phase II Tasks, including the filing and prosecution of the Draft Application, and reviewing proposed additional sources of Additional Water Rights pursuant to Paragraph 3.c).

iii. **Duties.** Each representative will: (a) represent its Member on the Management Committee including, communicating the Member's perspectives and positions; and (b) communicate to its Member the work of the Management Committee and the ISF Augmentation Plan.
iv. **Decision-making in Phase II.** Decisions of the Management Committee are to be made consistent with Plan goals and guiding principles set forth herein. The Management Committee shall operate by consensus in making Phase II decisions and prosecution of Phase II Tasks. To this end, the Members of the Management Committee shall make a good faith effort to reach consensus, propose alternative solutions, and otherwise work to resolve any issues that prevent consensus. Any decisions involving the use of a particular Water User’s water rights may only be made with the consent of that Water User that owns the particular water right, in that Water User’s sole discretion.

v. **Water Court Application.** To implement the ISF Augmentation Plan some of the Parties will file an application in Water Court substantially in the form of the Draft Application. The CWCB shall be an applicant because the Application involves the adjudication of an augmentation plan to help preserve and improve the natural environment under the CWCB’s statutory authority to use water for instream flow purposes. It is anticipated that other Parties may individually participate as a co-applicant(s) or the Management Committee may create an entity, should it deem it necessary, for this purpose and that entity may participate as a co-applicant. It is presently anticipated that the Association will be a co-applicant. All decisions concerning the prosecution of the Application shall be made in accordance with Paragraph 4.a.iv. A Water User/co-applicant in its sole discretion may withdraw as a co-applicant. Any Party that is not a co-applicant may file a “friendly” statement of opposition to the Draft Application, and the Parties hereby consent to the submission of said “friendly” statement of opposition. In the event a Party files a statement of opposition, other than a “friendly” statement of opposition, or files documents that are contrary to the entry of the decree, such Party is automatically removed from the Management Committee, but shall continue to be subject to the Common Interest Agreement.

vi. **Meetings.** The Management Committee will schedule monthly meetings but said meetings may occur more frequently or less frequently as the Management Committee determines to be prudent. The Management Committee shall agree on a time and place of meetings that is convenient and practical for as many Members as practicable. At the Management Committee’s discretion these meetings may be in person, by telephone, or may allow participation by other means of remote access. Water Trust shall circulate a financial report pursuant to Paragraph 4.d.iii at least one week in advance of the meetings, unless otherwise agreed to by the Members. Water Trust shall take action minutes of all meetings identifying: (a) the Members present and other attendees; and (b) any and all decisions made and actions taken by the Management Committee. The draft action minutes...
taken by Water Trust shall be circulated to the Management Committee one week prior to the next meeting for any comments or corrections. The Management Committee may coordinate on taking more detailed minutes, in addition to the action minutes to be taken by Water Trust. The Management Committee may collectively determine whether persons other than representatives of the Members may attend any meeting(s) no less than one week in advance of the meeting. If the Management Committee determines that persons other than representatives of the Members may attend a meeting, the meeting shall be open to such persons, and perhaps the public, and the Management Committee shall determine how, when, and if to provide notice of the time and location of the meeting.

b. **Consultation With CPW.** The Parties agree that CPW will be consulted to assist in the development of the ISF Augmentation Plan in the following ways:

i. To provide science-based recommendations regarding appropriate segments and appropriate flows for augmentation, including use of the Seed Water Rights, any administrative approval to be pursued, and Additional Water Rights to be added later;

ii. To review and assist in the development of the Water Court application and proceedings; and

iii. To attend meetings and conference calls as-needed.

c. **Management Committee in Phase III.** The Parties presently anticipate that the Management Committee will continue into Phase III as the governing and decision-making body for the ISF Augmentation Plan, although the precise structure and make-up of the governing body shall be determined by the Parties at the conclusion of Phase II. The Parties expect, however, that the Management Committee's role will evolve in Phase III to primarily involve: (a) broad policy questions regarding the operation of the ISF Augmentation Plan; (b) fundraising and the general financial position and expenditures to implement the ISF Augmentation Plan; (c) necessary water infrastructure alterations, measurement and related issues within the Plan segment(s); (d) decisions concerning the protection and defense of the ISF Augmentation Plan; and (e) such other matters as are necessary for the oversight and operation of the ISF Augmentation Plan. The Parties further anticipate that overall operation of the ISF Augmentation Plan will be overseen by the Management Committee consistent with the goals and guiding principles set forth herein. This will include decisions regarding the protection and defense of the ISF Augmentation Plan in Water Court or in SWSP proceedings. To assure that efforts toward protection and defense of the ISF Augmentation Plan are coordinated, consistent, and not unnecessarily disruptive or costly to the Parties and to other water users, the Parties agree that the protection and defense of the Plan in Water Court and in SWSP proceedings is the right and obligation of the Management Committee, and no individual Party shall take it
upon themselves to defend the Plan in Water Court or in SWSP proceedings without the authorization to do so of the Management Committee. The foregoing notwithstanding, any Party who has contributed/dedicated water rights to the Plan or has a contractual interest in the water rights included in the Plan may participate in Water Court and in SWSP proceedings for the purpose of protecting and defending such water rights or contractual interests, and for all other purposes, but shall not independently/autonomously seek to protect or defend the ISF Augmentation Plan or Plan operations. Day-to-day operation and administration of the ISF Augmentation Plan, including communications with the Water Commissioner and other water users, and including headgate operations and accounting, are anticipated to be undertaken by staff/representative(s) of the Association at the direction of the Management Committee, which may require a separate agreement with the Association.

d. **Water Trust as Plan and Fiscal Agent in Phase II.** Water Trust shall act as the ISF Augmentation Plan fiscal agent of the Plan during Phase II, as set forth in this Paragraph 4.d.

i. **Water Trust Role.** Water Trust agrees to provide the staffing, office space, and office equipment to assist in the fulfillment of Phase II Tasks and the Plan more generally, subject to Water Trust Board of Director's review and budgeting authority, and any other limitations herein. Water Trust office space and equipment remain property of the Water Trust. Water Trust Executive Director remains the supervisor of Water Trust staff and Water Trust staff remain employees solely of Water Trust. Water Trust staff will engage in fundraising to support Phase II, the Draft Application, and the Plan. Exercising its own discretion, but subject to the approval of the Management Committee, which approval shall not be unreasonably withheld, the Water Trust may pursue Additional Water Rights for use in the Plan to be brought to the Management Committee, and funds for the operation of the ISF Augmentation Plan from government and private grants, corporate funding campaigns, individual donors, and other larger fund-building campaigns. Water Trust, in coordination with the Parties, agrees to assist in the accomplishment of the Phase II goals and task set forth herein, including developing and implementing legal strategies, acquiring water, water rights, and interests in water, and hiring consultants.

ii. **Water Trust to Hold Monies for the Plan.** Water Trust shall establish and hold all monetary resources for Phase II Tasks, in the Management Committee Account with a financial institution that is acceptable to the Management Committee. The monetary resources for the Phase II Tasks shall not be intermingled with any other funds or monetary resources, which may be accomplished either by the use of a separate
account with a financial institution or by accounting for the monetary resources for the Phase II Tasks as being separate funds.

iii. **Financial Reporting.** Water Trust shall provide a financial report, in writing, to the Management Committee at its meetings including the Management Committee Account balance, anticipated expenditures and withdrawals, including Water Trust reimbursements, and anticipated revenues. In addition, Water Trust shall provide to any Member any documents or other information regarding the Management Committee Account upon request.

iv. **Debt.** With the prior approval of the Management Committee, the Water Trust may incur debt associated with the implementation of the Plan. However, no Party hereto shall be liable for any debts incurred by Water Trust under this Agreement without their written and express authorization.

v. **Unused Funds.** If, upon termination of this Agreement pursuant to Paragraph 6, there are funds in the Management Committee Account that have not been spent, are not required to be returned to the granting entity pursuant to that grant's agreement, and are not needed to pay any outstanding obligations, the Management Committee shall confer regarding how such funds may be used or refunded.

e. **Operational Funding.** The Parties agree that, due to its unique position among the Parties, Water Trust may reimburse itself from the Management Committee Account for its time and resources spent on the Plan. Water Trust shall provide the Management Committee with an accounting of such reimbursements, in the form of detailed accounting provided to the Management Committee, which shall include, among other relevant information as may be requested by the other Parties from time to time, a specification of: (a) the costs incurred by Water Trust; (b) the hours spent by Water Trust staff on the Plan; (c) the rate(s), as may change from time to time, claimed for Water Trust staff; and (d) a description of the associated task so claimed by Water Trust.

f. **Payment for Water.** It is generally intended that no compensation shall be paid for the inclusion of the Seed Water Rights in the Plan, although actual compensation shall be determined between the Water User and the CWCB on a case-by-case basis, provided that such a transaction is permissible under the charters, ordinances, rules and regulations, and other legal authorities governing such Parties. If compensation for such Seed Water Rights is required, the Management Committee will determine how to proceed. As articulated in the guiding principles, it is envisioned that this Plan will allow Additional Water Rights to be added to the Plan upon approval of the Management Committee, with the idea being that the Plan be capable of
utilizing temporary water supplies (including temporary water supplies from local ATM projects, Agricultural Water Protection Water Rights, and temporary administratively approved sources) and serve as a potential revenue source for Poudre River Basin water users willing to lease water supplies to the Plan. Accordingly, the Management Committee may consider compensating for Additional Water Rights included in the Plan. However, no Party is obligated herein to contribute to any future requested compensation.

5. **MONETARY RESOURCES FOR PHASE II.**

a. **MONETARY CONTRIBUTIONS BY THE PARTIES.** The monetary resources for Phase II will include monetary contributions from some of the Parties. Except as outlined herein, nothing in this Agreement shall require any Party to contribute or obligate any funds.

i. **Initial Contributions.** Fort Collins hereby agrees to provide twenty thousand dollars ($20,000) to the Water Trust for the purposes of this Agreement, and in particular the Phase II Tasks. Northern Water hereby agrees to provide twenty thousand dollars ($20,000) to Water Trust for the purposes of this Agreement, and in particular the Phase II Tasks. Greeley hereby agrees to provide twenty thousand dollars ($20,000.00) to Water Trust for the purposes of this Agreement, and in particular the Phase II Tasks. Thornton hereby agrees to provide twenty thousand dollars ($20,000.00) to the Water Trust for the purposes of this Agreement, and in particular the Phase II Tasks. Any Party may provide additional funds to the Water Trust for the purposes of this Agreement, and in particular the Phase II Tasks, which shall be documented in writing with a copy to all Parties. The monetary contributions under this Paragraph 4.a are subject to annual appropriations and, upon making such initial contributions, the contributing Party shall have no ongoing obligations except as expressly set forth herein.

ii. **Subsequent Contributions.** The Parties may further contribute additional funds to Water Trust for the purposes of this Agreement. Any Party making such a contribution shall notify the other Parties of such contribution.

b. **FUNDRAISING/MONETARY CONTRIBUTIONS BY NON-PARTIES.** The Parties intend to seek additional monetary resources for the Plan through various fundraising activities including seeking grants.

c. **DEPOSIT.** Water Trust will deposit all monetary funds in the Management Committee Account.
d. **NON-MONETARY CONTRIBUTIONS BY THE PARTIES.** Nothing herein shall preclude the Parties from contributing non-monetary resources to the Plan, including water, staff and consultant time, but no water right of any Party may be used or operated under the ISF Augmentation Plan without the written and express authorization of the owner of that water right.

6. **TERM, TERMINATION, WITHDRAWAL, AND ASSIGNMENT.**

   a. **TERM.** This Agreement shall remain in effect until terminated by the Parties or completion of Phase II.

   b. **TERMINATION.** This Agreement shall terminate automatically upon a determination by the Management Committee not to proceed with the ISF Augmentation Plan. This Agreement shall also terminate if the Water Users withdraw pursuant to Paragraph 6.c such that there is only one Water User remaining.

   c. **WITHDRAWAL.** Each Party, in its sole discretion, shall be entitled to withdraw from this Agreement upon written notice to the remaining Parties, but shall continue to be subject to the Common Interest Agreement

      i. **Withdrawal by the Association, Fort Collins, Northern Water, Thornton, Greeley or CPW.** If the Association, Fort Collins, Thornton, Northern Water, Greeley or CPW withdraws from this Agreement, the following terms and conditions shall apply. Said Party shall not be entitled to reimbursement for any funds provided to Water Trust for the purposes of this Agreement pursuant to Paragraph 5.a. Said Party shall be entitled to retain any information acquired pursuant to this Agreement. Said withdrawal shall not affect said Party's rights to enforce other contracts or agreements with any of the other Parties and with respect to the Plan. Upon withdrawal, said Party shall have no further liability or obligations hereunder.

      ii. **Withdrawal by Water Trust.** If Water Trust withdraws from this Agreement, the following terms and conditions shall apply. Water Trust shall account for any funds in the Management Committee Account. Water Trust shall then transfer those funds to an account identified by the remaining Parties for their use for the Plan to the extent that such funds are not needed to meet existing obligations. Water Trust shall be entitled to retain any information acquired pursuant to this Agreement.

      iii. **Withdrawal by the CWCB.** If the CWCB withdraws from this Agreement, the following terms and conditions shall apply. CWCB and all co-applicants in Water Court shall cancel the ISF Decree for the ISF Augmentation Plan, or, if still pending, shall dismiss the Draft
Application. CWCB and the other Parties shall terminate this MOA and all other agreements related to the Plan.

d. **ASSIGNMENT BY WATER TRUST.** If Water Trust assigns this Agreement under Paragraph 16, Water Trust shall account for any funds in the Management Committee Account Water Trust shall then transfer those funds to the assignee in an account identified by the remaining Parties for their use for the Plan to the extent that such funds are not needed to meet existing obligations. Water Trust shall also transfer all documents and files pertaining to the Plan, either as originals or copies, to the assignee, subject to the assignee agreeing to execute the Common Interest Agreement.

7. **REMEDIES.** Withdrawal pursuant to Paragraph 6.c and other any other remedy available at law shall be the exclusive remedies for any breach of this Agreement.

8. **FISCAL CONTINGENCY.** Notwithstanding any other provision of this Agreement to the contrary, the obligations of Fort Collins, Northern Water, Thornton, and Greeley (in this paragraph, “Governmental Entity”), in fiscal years after the fiscal year of this Agreement shall be subject to appropriation of funds sufficient and intended therefor, with the Governmental Entity having the sole discretion to determine whether the subject funds are sufficient and intended for use under this Agreement, and the failure of the Governmental Entity to appropriate such funds shall be grounds for the Governmental Entity to withdraw from this Agreement pursuant to Paragraph 6.c. Likewise, all commitments by the CWCB are subject to sufficient funds being appropriated for such commitments, at the sole discretion of the CWCB.

9. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is entered into between the Parties for the purposes set forth herein. It is the intent of the Parties that they are the only beneficiaries of this Agreement and the Parties are only benefitted to the extent provided under the express terms and conditions of this Agreement and there are no third-party beneficiaries.

10. **GOVERNING LAW AND ENFORCEABILITY.** This Agreement shall be construed in accordance with the laws of the State of Colorado. The Parties recognize that the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, as well as the Parties respective bylaws, city charters and codes, and rules and regulations, impose certain legal constraints on each Party and that the Parties intend to carry out the terms and conditions of this Agreement subject to those constraints. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law.

11. **WAIVER.** A waiver of a breach of any of the provisions of this Agreement shall not constitute a waiver of any subsequent breach of the same or another provision of this Agreement. Nothing in this Agreement shall be construed as any waiver of governmental immunity of the Parties who are Governmental Entities or the CWCB or any other governmental provisions of State law.
12. **NOTICES.** All notices or other communications hereunder shall be sufficiently given and shall be deemed given when mailed or e-mailed, addressed as follows:

| To Association: | Fischer, Brown, Bartlett & Gunn, P.C.  
|                | 1319 East Prospect Rd.  
|                | Fort Collins, CO 80525  
|                | danbrown@fbgpc.com  
| To Fort Collins: | City Manager  
|                | City Hall West  
|                | 300 LaPorte Avenue; P.O. Box 580  
|                | Fort Collins, Colorado 80522-0580  
| With copy to:   | Fort Collins City Attorney  
|                | 300 LaPorte Avenue; P.O. Box 580  
|                | Fort Collins, Colorado 80522-0580  
|                | epotyondy@fcgov.com  
| and:            | Fort Collins Utilities  
|                | Attn: Water Resources Manager  
|                | 700 Wood Street P.O. Box 580  
|                | Fort Collins, Colorado 80522-0580  
| and:            | Natural Areas Department  
|                | 745 Hoffman Mill Road  
|                | Fort Collins, Colorado 80524  
|                | jstokes@fcgov.com; dfiggs@fcgov.com  
| To Water Trust: | Director of Programs  
|                | 1420 Ogden Street, Suite A2  
|                | Denver, Colorado 80218  
| To Northern Water: | General Manager  
|                  | 220 Water Avenue  
|                  | Berthoud, Colorado 80513  
| To Greeley:     | Greeley Water and Sewer Department  
|                | Attn: Deputy Director of Water Resources  
|                | 1001 11th Avenue, Second Floor  
|                | Greeley, Colorado 80631  
| With copy to:   | Greeley City Attorney’s Office  
|                | Attn: Environmental and Water Resources  
|                | 1100 10th Street, Suite 401  
|                | Greeley, Colorado 80631  

Page 20 of 30
13. **CONSTRUCTION.** This Agreement shall be construed according to its fair meaning as it was drafted by the Parties together. Headings in this Agreement are for convenience and reference only and shall in no way define, limit, or prescribe the scope or intent of any provision of this Agreement.

14. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the Parties regarding the matters addressed herein. This Agreement binds and benefits the Parties and their respective successors and assigns. Covenants or representations not
contained in this Agreement regarding the matters addressed herein shall not bind the Parties.

15. **REPRESENTATIONS.** Each Party represents to the other parties that it has the power and authority to enter into this Agreement and the individual signing below on behalf of that Party has the authority to execute this Agreement on its behalf and legally bind that Party.

16. **ASSIGNMENT.** No Party may assign any rights or delegate any duties under this Agreement without the written consent of all other Parties.

17. **INTERGOVERNMENTAL AGREEMENT.** The Parties that are Governmental Entities agree this Agreement is an intergovernmental agreement pursuant to Article XIV, Sec. 18 of the Colorado Constitution and C.R.S. 29-1-201 est. seq. inclusive.

18. **NO OPERATING OBLIGATION.** Nothing in this Agreement shall be deemed or construed as creating any obligation on any of the Parties to operate their water rights or their raw or treated waterworks systems in any particular manner. Each party retains sole and exclusive discretion concerning the operation of their water rights and waterworks systems.

[Remainder of Page Left Blank Intentionally]
CACHE LA Poudre Water Users Association, a Colorado non-profit corporation

By: ___________________________ Date: ___________________________

ATTEST:

By: ___________________________

[Remainder of Page Left Blank Intentionally]
CITY OF FORT COLLINS, COLORADO, a Colorado home rule municipality

By: ____________________________
    Darin A. Atteberry, City Manager

Date: ____________________________

ATTEST:

By: ____________________________
    City Clerk

APPROVED AS TO LEGAL FORM:

By: ____________________________
    Eric Potyondy
    City Attorney's Office

[Remainder of Page Left Blank Intentionally]
COLORADO WATER TRUST, a Colorado non-profit organization

By: ________________________________
    Andy Schultheiss, Executive Director

Date: ______________________________

ATTEST:

By: ________________________________

[Remainder of Page Left Blank Intentionally]
NORTHERN COLORADO WATER CONSERVANCY DISTRICT, a political subdivision of the State of Colorado

By: ___________________________ Date: ___________________________
    Brad Wind, General Manager

ATTEST:

By: ___________________________

[Remainder of Page Left Blank Intentionally]
CITY OF GREELEY, COLORADO, a home rule municipality

By: ___________________________ Date: ___________________________
Roy Otto, City Manager

AS TO LEGAL FORM:

By: ___________________________
City Attorney's Office

[Remainder of Page Left Blank Intentionally]
CITY OF THORNTON, COLORADO, a Colorado home rule municipality

By: ______________________________________________  Date: __________________________
    Kevin S. Woods, City Manager

ATTEST:

______________________________
Kristen N. Rosenbaum, City Clerk

APPROVED AS TO FORM:

______________________________
Luis A. Corchado, City Attorney

[Remainder of Page Left Blank Intentionally]
COLORADO WATER CONSERVATION BOARD, an agency of the STATE OF COLORADO

By: ____________________________ Date: ____________________________

ATTEST:

By: ____________________________

[Remainder of Page Left Blank Intentionally]
COLORADO PARKS AND WILDLIFE, an agency of the STATE OF COLORADO

By: ___________________________ Date: ___________________________

ATTEST:

By: ___________________________

[Remainder of Page Left Blank Intentionally]
DISTRICT COURT, WATER DIVISION NO. 1
Weld County Courthouse
901 9th Avenue P.O. Box 2038
Greeley, Colorado 80631

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

CACHE LA Poudre Water Users Association, City of Fort Collins, City of Greeley, Colorado Water Trust, Northern Colorado Water Conservancy District, City of Thornton, and Colorado Water Conservation Board

IN LARIMER AND WELD COUNTIES, COLORADO.

Attorneys for Cache la Poudre Water Users Association:
Dan Brown, #30799
Fischer, Brown, Bartlett & Gunn. P.C.
1319 E. Prospect Road
Fort Collins, CO 80525
Telephone: (970) 407-9000
Email: danbrown@fbgpc.com

Attorneys for City of Fort Collins:
Eric R. Potyondy, #38243
Fort Collins City Attorney’s Office
300 LaPorte Avenue
Fort Collins, CO 80521
Telephone: (970) 416-2126
Email: epotyondy@fcgov.com

Attorneys for City of Greeley:
Dan Biwer, #46308
1100 10th Street, Suite 401
Greeley, CO 80631
Telephone: (970) 350-9291
Email: Daniel.Biwer@Greeleygov.com

△ COURT USE ONLY △

Case Number: 20__CW__

DRAFT FOR DISCUSSION PURPOSES ONLY
DRAFT FOR DISCUSSION PURPOSES ONLY

Attorneys for the Colorado Water Trust:
Zach Smith, #41575
1420 Ogden Street, Suite A2,
Denver, Colorado 80218
Telephone: (720) 570-2897
Email: zsmith@coloradowatertrust.org

Attorneys for the Northern Colorado Water Conservancy District:
Lisa Thompson, #35923
Trout Raley
1120 Lincoln St., Suite 1600,
Denver, CO, 80203-2141
Telephone: (303) 861-1963
Email: lthompson@troutlaw.com

Attorneys for the City of Thornton:
David C. Taussig, #16606
Alan E. Curtis, #34571
White and Jankowski, LLP
511 Sixteenth Street, Suite 500
Denver, Colorado 80202
Telephone: (303) 595-9441
Email: davet@white-jankowski.com

Attorneys for Colorado Water Conservation Board:
Cynthia H. Coffman, Attorney General
Ema L. G. Schultz, #40117 (Counsel of Record)
Jennifer L. Mele, #30720 (Counsel of Record)
Natural Resources and Environment Section
Colorado Department of Law
1300 Broadway 7th Floor
Denver, CO, 80203
Telephone: 720-508-6307
Email: ema.schultz@coag.gov

APPLICATION FOR APPROVAL OF A PLAN FOR AUGMENTATION FOR INSTREAM FLOW PURPOSES ON THE CACHE LA POUDRE RIVER
DRAFT FOR DISCUSSION PURPOSES ONLY

1. Name, mailing address, email address, and telephone number of Applicants.

Cache la Poudre Water Users Association
1319 East Prospect Rd.
Fort Collins, CO 80525
Telephone: (970) 407-9000
Email: danbrown@fbgpc.com

City of Fort Collins ("Fort Collins")
c/o John Stokes, Director of Natural Areas Department
1745 Hoffman Mill Road (80524)
P.O. Box 580
Fort Collins, CO 80522
Telephone: (970) 416-2815
Email: jstokes@fcgov.com

City of Greeley ("Greeley")
c/o Jennifer Petzelka, Water Resources Operations Manager
1001 11th Avenue, Second Floor
Greeley, CO 80631
Telephone: (970) 350-9859
Email: jennifer.petzelka@greeleygov.com

Colorado Water Trust

c/o Karen Wogsland, Director of Programs
1420 Ogden St., Suite A2
Denver, CO 80218
Telephone: 720-570-2897
Email: kwogsland@coloradowatertrust.org

Northern Colorado Water Conservancy District

c/o General Manager
220 Water Avenue
Berthoud, Colorado 80513
Telephone: (970) 622-2320
Email: bind@northernwater.org

City of Thornton ("Thornton")
c/o Water Resources Division
12450 Washington Street
Thornton, Colorado 80241
Telephone: (720) 977-6600
Email: emily.hunt@cityofthornton.net
Colorado Water Conservation Board ("CWCB")
1313 Sherman St., Room 718
Denver, CO 80203
Telephone: (303) 866-3441
Email: Kaylea.White@state.co.us

2. **General Description of Application.** The Cache la Poudre River ("Poudre River") is one of the hardest working rivers in the State. Co-Applicants and others have been exploring options to improve the Poudre River as a healthy, working river. One of those efforts focused on preserving and improving flows in the Poudre, particularly downstream of the canyon mouth to the confluence of the South Platte River, at times when flows would improve the ecological health of the river, while ensuring that such options would not injuriously affect the owners of or persons entitled to use water under vested water rights or decreed conditional water rights. As a result, the Co-Applicants and other parties have entered into various agreements related to this matter, which may be revised or amended in the future.

Pursuant to those agreements and this Application, Co-Applicants seek judicial approval of a plan for augmentation, as defined in C.R.S. §37-92-103(9), "to increase the supply of water available for beneficial use" in and along the Poudre River from the canyon mouth to its confluence with the South Platte River ("Poudre Flows Plan" or "Plan"). Such beneficial use includes the preservation and improvement of the natural environment to a reasonable degree as authorized pursuant to the Water Right Determination and Administration Act, C.R.S. §§37-92-101 et seq. See C.R.S. §37-92-102(3). This will be accomplished through operation of the Poudre Flows Plan as described in this Application. The Plan will not injuriously affecting the owners of or persons entitled to use water under vested water rights or decreed conditional water rights.

This Application is based on the CWCB’s authority to acquire interests in water rights through contractual arrangements pursuant to C.R.S. §37-92-102(3) and to file applications in Water Court, utilizing the water rights it acquires, including applications for plans for augmentation. *Id.* CWCB does not by this application seek an appropriative instream flow water right pursuant to C.R.S. §37-92-102(3).

3. **Need for Augmentation.** Co-Applicants will augment flows in six defined segments of the Poudre River from the canyon mouth at the Canyon Gage to the Poudre River’s confluence with the South Platte River ("Augmented Segments"), as set forth below:

<table>
<thead>
<tr>
<th>Segment</th>
<th>Upper Boundary</th>
<th>Lower Boundary</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Canyon Gage</td>
<td>Larimer and Weld Canal Diversion</td>
</tr>
<tr>
<td>B</td>
<td>Larimer and Weld Canal Diversion</td>
<td>Spring Creek Confluence</td>
</tr>
<tr>
<td>C</td>
<td>Spring Creek Confluence</td>
<td>New Cache la Poudre Ditch Diversion</td>
</tr>
<tr>
<td>D</td>
<td>New Cache la Poudre Ditch Diversion</td>
<td>County Road 17 Crossing</td>
</tr>
</tbody>
</table>
DRAFT FOR DISCUSSION PURPOSES ONLY

<table>
<thead>
<tr>
<th>E</th>
<th>County Road 17 Crossing</th>
<th>59th Avenue Bridge</th>
</tr>
</thead>
<tbody>
<tr>
<td>F</td>
<td>59th Avenue Bridge</td>
<td>South Platte River Confluence</td>
</tr>
</tbody>
</table>

A map showing the approximate location of the Augmented Segments are shown on Exhibit A to this Application.

The canyon mouth is in the NW1/4 of Section 15, Township 8 North, Range 70 West. (All legal locations herein are based on the 6th P.M.) The Poudre River then flows through the following sections: Section 15, Township 8 North, Range 70 West; Sections 14, 13, 24, and 25, Township 8 North, Range 70 West; Sections 30, 29, 32, 33, and 34, Township 8 North, Range 69 West; Sections 3, 2, 12, and 13, Township 7 North, Range 60 West; Sections 18, 17, 20, 21, 28, 27, and 34; Township 7 North, Range 68 West; Sections 3, 2, 11, 14, 13, and 24, Township 6 North, Range 68 West; Sections 19, 20, 29, 28, 33, 34, 35, and 36, Township 6 North, Range 67 West; Sections 31, 32, 33, 34, 35, 26, and 36, Township 6 North, Range 66 West; Sections 31 and 32, Township 6 North, Range 65 West; Sections 5, 4, 9, 10, 11, and 1, Township 5 North, Range 65 West; and Section 6, Township 5 North, Range 64 West. The confluence of the Poudre River and the South Platte River is in the SW1/4 of Section 6, Township 5 North, Range 64 West.

The Canyon Gage is located in the NW1/4 of Section 15, Township 8 North, Range 70 West. The Larimer and Weld Canal Diversion is located in the SW1/4 of Section 34, Township 8 North, Range 69 West. The Spring Creek Confluence is located in the SW1/4 of Section 17, Township 7 North, Range 68 West. The New Cache la Poudre Ditch Diversion is located in the NE1/4 of Section 11, Township 6 North, Range 68 West. County Road 17 Crossing is located along the section line between Sections 28 and 29, Township 6 North, Range 67 West. The 59th Avenue Bridge is located along the section line between Sections 33 and 34, Township 6 North, Range 66 West. The South Platte River Confluence is located in the SW1/4 of Section 6, Township 5 North, Range 64 West.

The Augmented Segments will be augmented under the Poudre Flows Plan to preserve and improve the natural environment to a reasonable degree up to the rates of flow (in cubic feet per second ("cfs")) set forth in the following table.

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<td>Up to 10</td>
<td>10 - 40</td>
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</table>
These flow rates were quantified by Colorado Parks and Wildlife in its *Flow Quantification Report for the Cache la Poudre River in Larimer and Weld Counties*, dated July 2018. The specific length of the Poudre River wherein flows will be augmented at any specific time will depend on the Introduction Point and Terminal Point (as defined in Paragraph 5 below) for each Augmentation Source (as defined in Paragraph 4 below), included in the Poudre Flows Plan.

At a regularly scheduled board meeting on January 1, 2018 the CWCB board determined that using acquired water, including the Augmentation Sources listed below, up to the above flow rates are appropriate to preserve and improve the natural environment to a reasonable degree. In addition to the other claims set forth in this Application, the CWCB seeks confirmation from the Court of the CWCB’s determination that using acquired water rights, including the Augmentation Sources listed below, up to the flow rates listed above are appropriate to preserve and improve the natural environment to a reasonable degree.

4. **Water Rights to Be Used for Augmentation ("Augmentation Sources").** Applicants intend to include the following expressly identified “Seed Water Rights” as Augmentation Sources in the Poudre Flows Plan. Co-Applicants seeks confirmation from the Court that the uses of these Seed Water Rights in the Poudre Flows Plan are in conformance with the applicable decree and will be subject to the terms and conditions of those decrees.

4.1. **Fort Collins’ 1992CW129 and 2005CW323 Southside Ditch Companies Changed Water Rights.** Water rights, all sourced from the Poudre River, represented by certain shares owned by Fort Collins in the Arthur Irrigation Company, Larimer County Canal No. 2 Irrigating Company, New Mercer Ditch Company, and Warren Lake Reservoir Company, were quantified and changed in Case No. 1992CW129 and Case No. 2005CW323, Water Division No. 1, among other things, to include various new uses including augmentation use. The following information concerning these sources can be found in the decrees entered in Case No. 1992CW129 and Case No. 2005CW323: the dates of the original decrees and all relevant subsequent decrees, the types of water rights, legal descriptions of each point of diversion and storage structure, the sources of water, the appropriation dated, the decreed amounts, and the decreed uses. A more complete description of these water rights is shown on Exhibit B to this Application. The locations of the structures are shown on Exhibit C to this Application. Exhibit D to this Application is the current agreement between the CWCB and Fort Collins regarding these water rights, which may be revised or amended in the future.
4.2. Greeley's 1999CW232 and 2015CW3163 Greeley Irrigation Company Changed Water Rights. Water rights represented by shares owned by Greeley in the Greeley Irrigation Company ("GIC"). Greeley quantified and changed the type, manner, and use of certain of its GIC shares in Case Nos. 1999CW232 and 2015CW3163, Water Division No. 1. More specifically, Greeley changed these GIC shares to include alternate points of re-diversion and places of storage, and to include a number of additional uses beyond irrigation, including augmentation. A more complete description of the water rights to be included by Greeley in the Poudre Flows Plan via agreement with the CWCB is shown on Exhibit E to this Application. The locations of the structures are shown on Exhibit F to this Application. Exhibit G to this Application is the current agreement between the CWCB and Greeley regarding these water rights, which may be revised or amended in the future.

4.3. Thornton's TNP Decree. The TNP Decree adjudicated in the Findings of Fact, Conclusion of Law, Judgment and Decree on Remand in Consolidated Cases No. 86CW401, 86CW402, 86CW403, and 87CW332 ("TNP Decree") changed Thornton's interests represented by shares in the Water Supply and Storage Company ("WSSC") for native water rights in the Poudre River Basin and transmountain water rights as described in attached Exhibit H to this Application, which was Exhibit B to the TNP Decree (WSSC Water Rights). The TNP Decree also changed Thornton's interests represented by shares in the Jackson Ditch Company ("JDC") for native water rights in the Poudre River Basin as described in attached Exhibit I to this Application, which was Exhibit C to the TNP Decree (JDC Water Rights). The TNP Decree changed the WSSC and JDC to alternate types and places of use including among other things, augmentation in the Poudre and South Platte basins pursuant to the terms of the decree in paragraphs 11.3.1 and 11.3.2. The Poudre River Exchange in Case No. 86CW401, the WSSC Ditch Exchange in Case No. 86CW402, and the 1986 Appropriations in 86CW403 from the TNP Decree will not be part of or included in this Plan.

4.4. Thornton's TNP by Exchange Decree. Thornton also adjudicated exchanges of TNP Decree water rights in Case No. 96CW1116 Findings of Fact, Conclusions of Law, Ruling and Decree entered October 20, 2005 ("TNP by Exchange Decree") The sources of water for the Plan are described in paragraph 15.1.1 as: (1) the WSSC and JDC water rights changed in the TNP Decree; and (2) Thornton's share of transmountain water excluding all water and return flows attributable to C-BT Project (collectively "TNP by Exchange Sources"). Exhibit to this Application is an Agreement for the Use of Certain Thornton Water Rights in the
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Poudre River ISF Augmentation Plan between Thornton and the CWCB effective January ___ 2019 that provides the CWCB with a contractual interest in the TNP Decree and the TNP by Exchange for use in the Poudre Flows Plan.

5. Additional or Alternative Water Rights to Be Used for Augmentation. Applicants further seek that any decree entered in this case include procedures to allow the use of additional or alternative Augmentation Sources pursuant to C.R.S. §37-92-305(8)(c). Specifically, Applicants seek a mechanism to add Augmentation Sources to the Plan after the decree is entered pursuant to C.R.S. § 37-92-305(8)(c) identified as “Added Water”. Applicants intend that the use of the Added Water delivered to the Poudre River will increase the supply of water in the Augmented Segments, including diverting, measuring, and delivering to the stream Added Water that is attributable to; (1) a water right that has been changed by decree or granted administrative approval to be legally available for augmentation use; (2) a nontributary, transmountain, or other developed water right that is legally available for augmentation use; or, (3) a water right decreed or administratively approved to be legally available for augmentation use. See, e.g., C.R.S. §§37-92-308, 37-92-309.


6.1. Applicants, in various combinations, are parties to certain contractual agreements related to the Poudre Flows Plan, which set forth the responsibilities of the parties, including work cooperatively on filing this Application and operation of the Poudre Flows Plan once in place, relying on the CWCB’s statutory authority to enter into leases and agreements to acquire interests in water to be used for instream flow purposes. See C.R.S. §37-92-102(3). The CWCB has acquired a contractual interest in the Seed Water Rights identified in Paragraph 4 above, pursuant to CWCB Rule 6 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, and will acquire or has acquired interests in water rights from certain parties and others for use in the Poudre Flows Plan.

6.2. Applicants intend to augment flows in the Poudre River from the canyon mouth to its confluence with the South Platte River. The use of the Augmentation Sources in this plan will be pursuant to agreements between the owner(s) of the Augmentation Sources and the CWCB. Applicants specifically intend to measure and deliver Added Water to the Poudre River at various points ("Introduction Points"). Once the Added Water has been measured and delivered to the stream at an Introduction Point, it will be used to augment stream flows to preserve and improve the natural environment to a reasonable degree. Subject to terms and
conditions that will not injuriously affect the owners of or persons entitled to use water under vested water rights or decreed conditional water rights, the Added Water will be shepherded downstream from the Introduction Points to various downstream points ("Terminal Points"). Between the specific Introduction Point and Terminal Point for each Augmentation Source, the Added Water will be placed to augmentation use in the stream and will be under the Applicants’ dominion and control and will thus not be available for use or diversion by others (including diversions by, under, or pursuant to exchanges, substitute water supply plans, plans for augmentation, or other means that cause a reduction to the Added Water within the stream segment(s), other than reductions caused by accounted for evaporation, transportation, and other losses). For Applicants to maintain dominion and control of the Augmentation Source, State water officials must be capable of administering the water past intervening headgates at times when those headgates are not legally entitled to divert all available flow in or "sweep" the river. Nothing herein is intended to compel existing water users to alter river headgate operations to bypass water they otherwise could lawfully divert unless by written agreement or consent. When the Augmentation Water reaches the Terminal Point, it may be reused or successively used for beneficial use in accordance with the applicable underlying decree(s) or administrative approval(s) for the Augmentation Sources, less any transit losses assessed by the Division Engineers that are incurred between the specific Introduction Point and Terminal Point. The Added Water will be measured as required by C.R.S. §37-92-502(5)(a) and the terms and conditions of any decree entered in this case.

6.3. This application does not include any claims for exchanges or changes of water rights.

7. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool.
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Dated this ___ day of __________, 20__.

FISCHER, BROWN, BARTLETT & GUNN, P.C.
Signature on file pursuant to C.R.C.P. 121 § 1-26(7)

By: ______________________________________
    Dan Brown (#30799)

Attorneys for the Applicant, Cache la Poudre Water
Users Association

FORT COLLINS CITY ATTORNEYS OFFICE
Signature on file pursuant to C.R.C.P. 121 § 1-26(7)

By: ______________________________________
    Eric R. Potyondy (#38243)

Attorneys for the Applicant, the City of Fort Collins

GREELEY CITY ATTORNEYS OFFICE
Signature on file pursuant to C.R.C.P. 121 § 1-26(7)

By: ______________________________________
    Dan Biwer (#46308)

Attorneys for the Applicant, the City of Greeley

COLORADO WATER TRUST
Signature on file pursuant to C.R.C.P. 121 § 1-26(7)

By: ______________________________________
    Zach Smith (#41575)

Attorneys for the Applicant, Colorado Water Trust

TROUT RALEY
Signature on file pursuant to C.R.C.P. 121 § 1-26(7)

By: ______________________________________
    Lisa Thompson (#35923)

Attorneys for the Applicant, Northern Colorado
Water Conservancy District
DRAFT FOR DISCUSSION PURPOSES ONLY

WHITE AND JANKOWSKI, LLP
Signature on file pursuant to C.R.C.P. 121 § 1-26(7)

By: ______________________________________
    David C. Taussig (#16606)

Attorneys for the Applicant, City of Thornton

COLORADO ATTORNEY GENERAL’S OFFICE
Signature on file pursuant to C.R.C.P. 121 § 1-26(7)

By: ______________________________________
    Ema I. G. Schultz (#40117)
    Jennifer L. Mele (#30720)

Attorneys for the Applicant, Colorado Water Conservation Board
Colorado Water Conservation Board et al.
Case No. 20__CW___
Page 12

DRAFT FOR DISCUSSION PURPOSES ONLY

VERIFICATION
(Cache la Poudre Water Users Association)

STATE OF COLORADO
) ) ss.
) ) ss.
COUNTY OF LARIMER

I, ___________________, being first duly sworn, hereby state that I have read this Application, that I have personal knowledge of the facts stated and verify its contents to the best of my knowledge, information, and belief.

__________________________
The foregoing instrument was acknowledged before me in the County of Larimer, State of Colorado, this ___ day of __________, 201___, by the person whose signature appears above.

My commission expires: __________

__________________________
Notary Public
DRAFT FOR DISCUSSION PURPOSES ONLY

VERIFICATION
(City of Fort Collins)

STATE OF COLORADO )
) ss.
COUNTY OF LARIMER )

I, John Stokes, Director of the City of Fort Collins Natural Areas Department, being first duly sworn, hereby state that I have read this Application, that I have personal knowledge of the facts stated and verify its contents to the best of my knowledge, information, and belief.

The foregoing instrument was acknowledged before me in the County of Larimer, State of Colorado, this ___ day of ______, 201__, by the person whose signature appears above.

My commission expires: __________

______________________________
Notary Public
DRAFT FOR DISCUSSION PURPOSES ONLY

VERIFICATION
(City of Greeley)

STATE OF COLORADO

) ) ss.

COUNTY OF LARIMER

) )

I, ________________, being first duly sworn, hereby state that I have read this Application, that I have personal knowledge of the facts stated and verify its contents to the best of my knowledge, information, and belief.

_________________________________

The foregoing instrument was acknowledged before me in the County of Larimer, State of Colorado, this ___ day of ________, 201__, by the person whose signature appears above.

My commission expires: __________

_________________________________

Notary Public
DRAFT FOR DISCUSSION PURPOSES ONLY

VERIFICATION
(Colorado Water Trust)

STATE OF COLORADO
) ss.

COUNTY OF LARIMER
)

I, ________________, being first duly sworn, hereby state that I have read this Application, that I have personal knowledge of the facts stated and verify its contents to the best of my knowledge, information, and belief.

The foregoing instrument was acknowledged before me in the County of Larimer, State of Colorado, this ___ day of ________, 201__, by the person whose signature appears above.

My commission expires: __________

__________________________
Notary Public
Colorado Water Conservation Board et al.
Case No. 20__CW____
Page 16

DRAFT FOR DISCUSSION PURPOSES ONLY

VERIFICATION
(Northern Colorado Water Conservancy District)

STATE OF COLORADO

) ss.

COUNTY OF LARIMER

) )

I, _______________________, being first duly sworn, hereby state that I have read this Application, that I have personal knowledge of the facts stated and verify its contents to the best of my knowledge, information, and belief.

________________________

The foregoing instrument was acknowledged before me in the County of Larimer, State of Colorado, this ___ day of _________, 201___, by the person whose signature appears above.

My commission expires: __________

________________________
Notary Public
COLORADO WATER CONSERVATION BOARD et al.
Case No. 20___CW___

DRAFT FOR DISCUSSION PURPOSES ONLY

VERIFICATION
(City of Thornton)

STATE OF COLORADO
) ss.

COUNTY OF LARIMER
)

I, ______________, being first duly sworn, hereby state that I have read this Application, that I have personal knowledge of the facts stated and verify its contents to the best of my knowledge, information, and belief.

The foregoing instrument was acknowledged before me in the County of Larimer, State of Colorado, this ___ day of ________, 201__, by the person whose signature appears above.

My commission expires: __________

__________________________
Notary Public
DRAFT FOR DISCUSSION PURPOSES ONLY

VERIFICATION
(Colorado Water Conservation Board)

STATE OF COLORADO )
) ss.
COUNTY OF LARIMER )

I, __________________, being first duly sworn, hereby state that I have read this Application, that I have personal knowledge of the facts stated and verify its contents to the best of my knowledge, information, and belief.

____________________________________________________________

The foregoing instrument was acknowledged before me in the County of Larimer, State of Colorado, this ___ day of ________, 201__, by the person whose signature appears above.

My commission expires: ____________________________

____________________________________________________________

Notary Public
CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of ________________, 20__, I served a true and correct copy of the foregoing APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION FOR INSTREAM FLOW PURPOSES ON THE CACHE LA Poudre River by ICCES e-filing addressed to the following:

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<th>Division Engineers</th>
<th>Division 1 Water Engineer</th>
<th>State of Colorado DWR Division 1</th>
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<td>State Engineers</td>
<td>Colorado Division Of Water Resources</td>
<td>State of Colorado - Division of Water Resources</td>
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</table>

/s/ signature on file
Pursuant to C.R.C.P. 121, §1-26(7)