

**Appendix B-**  
**Estes Park's Applications for Water Right, Case Numbers 18CW3229, 19CW3065, and**  
**19CW3080**

<p>DISTRICT COURT, WATER DIVISION 1,          COLORADO          Court Address:          P.O. Box 2038          Greeley, Colorado 80632</p> <hr/> <p><b>2ND CORRECTED APPLICATION FOR WATER          RIGHT AND APPROPRIATIVE RIGHT OF          EXCHANGE, OF THE TOWN OF ESTES PARK,          Applicant</b></p> <p>IN LARIMER COUNTY</p>	<p style="text-align: center;"><b>Δ COURT USE ONLY Δ</b></p>
<p>Attorneys for the Town of Estes Park:          Petrock Fendel Poznanovic, P.C.          Frederick A. Fendel, III, #10476          Matthew S. Poznanovic, #29990          Eric K. Trout, #48640          700 Seventeenth Street, Suite 1800          Denver, Colorado 80202          Telephone: (303) 534-0702  <a href="mailto:rick@petrockfendel.com">rick@petrockfendel.com</a>  <a href="mailto:matt@petrockfendel.com">matt@petrockfendel.com</a>  <a href="mailto:eric@petrockfendel.com">eric@petrockfendel.com</a></p>	<p style="text-align: center;">Case Number: 18CW3229</p>
<p style="text-align: center;"><b>2ND CORRECTED APPLICATION FOR WATER RIGHT AND APPROPRIATIVE          RIGHT OF EXCHANGE</b></p>	

1. Name, address, and telephone number of Applicant:

Town of Estes Park  
 PO Box 1200  
 Estes Park, CO 80517  
 (970) 577-3630

2. Summary of application: Estes Park’s potable water supply is derived from a 1994 renewal of an Agreement with the United States Bureau of Reclamation for 500 acre feet per year from the Colorado Big Thompson project (“Reclamation contract”), 1217 CBT units (“CBT water”) and 3 units of the Windy Gap project (“Windy Gap water”) under allotment contracts with the Northern Colorado Water Conservancy District and the Municipal Subdistrict, certain local water rights, and an augmentation plan and exchange decreed in Case No. 97CW126. Transmountain water is delivered to Estes Park out of CBT project facilities directly to the Mary’s Lake water treatment plant, and by exchange to the Glacier Creek Pipeline and water treatment plant. Estes Park’s 97CW126 rights are diverted at the Glacier Creek Pipeline. Estes Park plans to build a new water

treatment plant replacing the Glacier Creek plant, which will divert from both the existing Glacier Creek Pipeline point of diversion on Glacier Creek and a new point of diversion downstream on the Big Thompson River. This application seeks to confirm a water right for and right of exchange to the new point of diversion, and a decree for the existing exchange to the Glacier Creek Pipeline. The sources of substitute supply for the exchange are direct releases of any of Estes Park's transmountain water from CBT project facilities to Lake Estes, and reuse of return flow from prior use of Windy Gap water discharged by the Estes Park Sanitation District and the Upper Thompson Sanitation District.

### **WATER RIGHT**

3. Structure: Big Thompson Intake
  - 3.1 Location: in the NE¼, section 4, Township 4 North, Range 73 West, 6<sup>th</sup> P.M., Larimer County, generally within a reach approximately 200 feet downstream of the confluence with Glacier Creek;
  - 3.2 Source: Big Thompson River;
  - 3.3 Amount: 10 cfs, conditional;
  - 3.4 Priority date: December 28, 2018. The appropriation was initiated by planning by the town including development of a water system master plan in 2015, entered in to contract for acquisition of property for the proposed intake in 2018, action of the Board of Trustees, and filing of this application;
  - 3.5 Use: All municipal uses within and without the Town of Estes Park, with the right to fully consume the water by initial use, reuse, successive use or disposition following first use or any subsequent use.

### **EXCHANGE**

4. Estes Park claims an appropriative right of exchange as follows:
  - 4.1 Points of diversion:
    - 4.1.1 Big Thompson Intake, described above;
    - 4.1.2 Glacier Creek Pipeline, located on the South Bank of Glacier Creek in the NE 1/4 SE 1/4 NW 1/4, Section 5, T4N, Range 73 W, of the 6th P.M., Larimer County, Colorado.

4.2 Points of release of substitute supply:

- 4.2.1 Lake Estes, located in the NW¼, section 30, T5N, R72W, 6<sup>th</sup> P.M., Larimer County, for direct releases of Reclamation contract water, CBT, and Windy Gap water and for reusable Windy Gap effluent discharged by the Estes Park Sanitation District;
- 4.2.2 Upper Thompson Sanitation District wastewater plant, which discharges to the Big Thompson River immediately downstream of Lake Estes in the NE¼, section 29, T5N, R72W, 6<sup>th</sup> P.M., Larimer County, for reusable Windy Gap effluent discharged by the Upper Thompson Sanitation District;

4.3 Sources of substitute supply:

- 4.3.1 Reclamation Contract water, CBT water, and Windy Gap water delivered to Lake Estes
- 4.3.2 Return flow of Windy Gap water after prior use by Estes Park. Return flow accrues as wastewater treated and discharged by the Estes Park Sanitation District and the Upper Thompson Sanitation District;

4.4 Amount:

- 4.4.1 4 cfs absolute exchange to Glacier Creek Pipeline
- 4.4.2 Exchange to Big Thompson Intake: 10 cfs conditional exchange of releases directly to Lake Estes, 6 cfs conditional exchange of wastewater, combined from both plants. To the extent an exchange is operated while this case is pending, Estes Park may claim up to the full amount absolute without additional notice.

4.5 Priority date:

- 4.5.1 The exchange to the Glacier Creek Pipeline is an existing exchange claimed pursuant to C.R.S 37-92-305(10) with a priority date of March 31, 1997.
- 4.5.2 Exchange to Big Thompson Intake: December 28, 2018. The appropriation was initiated by planning by the town including development of a water system master plan in 2015, entered in to contract for acquisition of property for the proposed intake in 2018, action of the Board of Trustees, and filing of this application;

- 4.6 Use: All uses for which the substitute supply is decreed, including municipal, irrigation, industrial, and recreational uses. Where the substitute supply is Windy Gap water, either for first use or for reuse, the water diverted by exchange will have the right to use, reuse, successively use and dispose of any water remaining after first use and subsequent uses.
5. A map of the facilities and exchange reach is filed with this application.
6. Owners of land on which facilities are located:
  - 6.1 Big Thompson Intake and Glacier Creek Pipeline: Estes Park
  - 6.2 Lake Estes: United States of America  
c/o Bureau of Reclamation  
Eastern Colorado Area Office  
11056 West County Road 18E  
Loveland, Colorado 80537
  - 6.3 Upper Thompson Sanitation District wastewater treatment plant:  
  
Upper Thompson Sanitation District  
PO Box 568  
Estes Park, CO 80517

Wherefore, the Town of Estes Park prays for a decree approving its claimed water right and rights of exchange, and for such other and further relief as is justified by the evidence and the law.

Dated December 28, 2018.

PETROCK FENDEL POZNANOVIC, P.C.

By: /s/ Eric K Trout  
Eric K. Trout, #48640

ATTORNEYS FOR THE TOWN OF ESTES PARK

*ALL ORIGINAL SIGNATURES ON FILE AT THE OFFICES OF PETROCK FENDEL  
POZNANOVIC, P.C.*

**VERIFICATION**

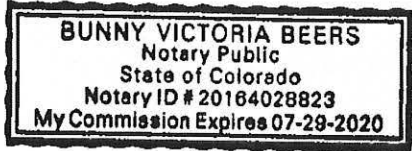
STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF BOULDER                )

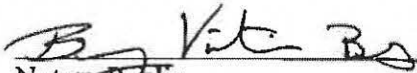
Chris Eshelman, Water Superintendent for the applicant, being first duly sworn upon oath, state that I have read the foregoing application and that the same is true and correct to the best of my knowledge.

  
\_\_\_\_\_

Subscribed under oath before me on 12-28-2018.

My commission expires: 07-29-2020.



  
\_\_\_\_\_  
Notary Public

*ALL ORIGINAL SIGNATURES ON FILE AT THE OFFICES OF PETROCK FENDEL  
POZNANOVIC, P.C.*

<b>DISTRICT COURT, WATER DIVISION 1, COLORADO</b> Weld County Courthouse P.O. Box 2038 Greeley, CO 80632	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<b>APPLICATION TO MAKE ABSOLUTE OR IN THE ALTERNATIVE FOR A FINDING OF REASONABLE DILIGENCE, OF THE TOWN OF ESTES PARK, Applicant</b>  IN LARIMER COUNTY	
<i>Attorneys for the Applicants:</i> Frederick A. Fendel, III, #10476 Matthew S. Poznanovic, #29990 Eric K Trout, #48640 Petrock Fendel Poznanovic, P.C. 700 17th Street, Suite 1800 Denver, CO 80202 P: 303-534-0702 F: 303-534-0310 <a href="mailto:rick@petrockfendel.com">rick@petrockfendel.com</a> <a href="mailto:matt@petrockfendel.com">matt@petrockfendel.com</a> <a href="mailto:eric@petrockfendel.com">eric@petrockfendel.com</a>	<p style="text-align: center;">Case No. 19CW____</p> <p style="text-align: center;">(Original Case No. 97CW126)</p>
<b>APPLICATION TO MAKE ABSOLUTE OR IN THE ALTERNATIVE FOR A FINDING OF REASONABLE DILIGENCE</b>	

1. Name, address, and telephone number of Applicant:

Town of Estes Park  
PO Box 1200  
Estes Park, CO 80517  
970-577-3630

2. Description of conditional rights of exchange decreed January 2001 in Case No. 97CW126:

2.1 Points of Diversion (Exchange-To Points):

2.1.1 The Glacier Creek Pipeline located on the south bank of Glacier Creek in the NE1/4 SE1/4 NW1/4, Section 5, Township 4N, Range 73W, 6th P.M., Larimer County, Colorado.

- 2.2 Points of Substitute Supply (Exchange-From Points):
- 2.2.1 The Estes Park Sanitation District Wastewater Treatment Plant outfall discharges in to the Big Thompson River in the NW1/4 NW1/4, Section 30, Township 5N, Range 73W, 6th P.M., Larimer County, Colorado.
  - 2.2.2 The Upper Thompson Sanitation District outfall discharges in to the Big Thompson River in the NW1/4 NE1/4, Section 29, Township 5N, Range 73W, 6th P.M., Larimer County, Colorado.
  - 2.2.3 Windy Gap water delivered directly to the Big Thompson River.
- 2.3 Priority Date: March 31, 1997
- 2.4 Amount: 6.2 cfs
- 2.5 Uses: All municipal uses, including domestic, irrigation, commercial, industrial, mechanical, fire protection, maintenance and replacement of storage losses, and disposition of return flows.
- 2.6 Source of Substitute Supply: Substitute supplies will consist of Windy Gap water delivered directly to the Big Thompson River or reusable municipal return flows of Windy Gap water. Applicant owns three (3) units of Windy Gap water pursuant to an allotment contract with the Municipal Subdistrict, Northern Colorado Water Conservancy District. The Windy Gap project delivers transmountain water from the Colorado River via the facilities of the Colorado Big Thompson project. The Colorado River water rights were decreed in CA 1768, Grand County District Court, and Case Nos. W-4001, 80CW108, and 89CW298, District Court, Water Division 5. Applicant's three (3) units of Windy Gap water represent an entitlement to 300 acre-feet of water per year.
- 2.7 A separate exchange to the point of diversion of the following rights on Fall River was also decreed in Case No. 97CW126. The conditional exchange on Fall River is hereby abandoned.
- 2.7.1 The Estes Park Cascade Diversion on the north bank of Fall River, a tributary of the Big Thompson River, located in the NE1/4 NW1/4 SW1/4, Section 17, Township 5N, Range 73W, 6th P.M., Larimer County, Colorado.



- 2.7.2 The Estes Park Cascade Diversion Enlargement on the north bank of Fall River, a tributary of the Big Thompson River, located in the NE1/4 NW1/4 SW1/4, Section 17, Township 5N, Range 73W, 6th P.M., Larimer County, Colorado.

**CLAIM TO MAKE ABSOLUTE**

3. Applicant operated the Glacier Creek Pipeline exchange described in paragraphs 2.1 – 2.6 above pursuant to and in compliance with the 97CW126 decree at a maximum rate of 4 cfs. The exchange first operated May 1997, and has operated every year since. The maximum rate of exchange of 4 cfs first occurred July 13, 1998. Estes Park has since exchanged 4 cfs many times.

**ALTERNATE CLAIM FOR A FINDING OF REASONABLE DILIGENCE**

4. During the diligence period, Applicant undertook the following efforts related to its conditional rights of exchange and the underlying water rights:
- 4.7 Applicant has used the exchange to the Glacier Creek Pipeline every year since the 97CW126 decree was entered.
- 4.8 Applicant has maintained the Glacier Creek Pipeline, the Glacier Creek water treatment plant, and its integrated connected facilities comprising its entire water treatment and delivery system routinely at significant cost including staff and management time, has worked on all on-going aspects of securing the long-term ability to deliver and continue to use the water rights.
- 4.9 Other activities, expenses, and planning.

Applicant requests that the exchange described herein be made absolute to the extent of 4.0 cfs, and for such other and further relief as is appropriate, or in the alternative for a finding of reasonable diligence and an order continuing its conditional right of exchange.

Dated: April 11, 2019

PETROCK FENDEL POZNANOVIC, P.C.

//s// Eric K Trout  
Frederick A. Fendel, III  
Matthew S. Poznanovic  
Eric K Trout  
*Attorneys for the Applicants*

**VERIFICATION**

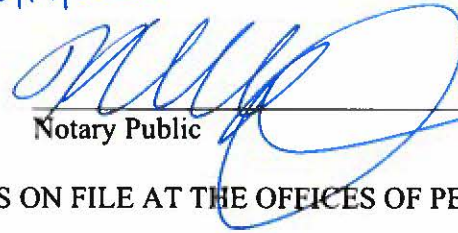
STATE OF COLORADO           )  
  ) ss.  
COUNTY OF LARIMER         )

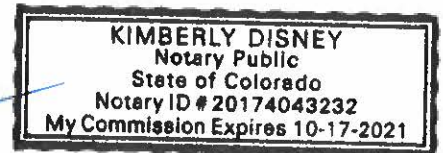
Chris Eshelman, Water Superintendent for the Town of Estes Park, being first duly sworn under oath, deposes and says that he has read the foregoing application, knows the contents thereof, and that the same is true to the best of his knowledge.

  
\_\_\_\_\_

Subscribed under oath before me on 4 11, 2019.

My commission expires: 10/17/2021

  
\_\_\_\_\_  
Notary Public



ORIGINAL SIGNATURES ON FILE AT THE OFFICES OF PETROCK FENDEL  
POZNANOVIC, P.C.

<p><b>DISTRICT COURT, WATER DIVISION 1, COLORADO</b> Weld County Courthouse P.O. Box 2038 Greeley, Colorado 80632</p>	
<p><b>APPLICATION FOR APPROPRIATIVE RIGHT OF EXCHANGE OF THE TOWN OF ESTES PARK, Applicant</b></p> <p>IN LARIMER COUNTY</p>	<p><b>▲ COURT USE ONLY ▲</b></p>
<p><i>Attorneys for Applicant:</i> Petrock Fendel Poznanovic, P.C. Frederick A. Fendel, III, #10476 Matthew S. Poznanovic, #29990 Eric K. Trout, #48640 700 Seventeenth Street, Suite 1800 Denver, Colorado 80202 P: 303-534-0702 F: 303-534-0310 <a href="mailto:rick@petrockfendel.com">rick@petrockfendel.com</a> <a href="mailto:matt@petrockfendel.com">matt@petrockfendel.com</a> <a href="mailto:eric@petrockfendel.com">eric@petrockfendel.com</a></p>	<p>Case Number: 19CW _____</p>
<p><b>APPLICATION FOR APPROPRIATIVE RIGHT OF EXCHANGE</b></p>	

1. Name, address, and telephone number of Applicant:

Town of Estes Park (“Estes Park” or “Applicant”)  
PO Box 1200  
Estes Park, CO 80517  
970-577-3630

2. Summary of application: Estes Park’s potable water supply is derived in part from a 1994 renewal of an agreement with the United States Bureau of Reclamation for 500 acre feet per year from the Colorado Big Thompson (“CBT”) project (“Reclamation Contract”), 1217 CBT units (“CBT Water”) under an allotment contract with the Northern Colorado Water Conservancy District, and 3 Windy Gap (“Windy Gap Water”) units under an allotment contract with the Municipal Subdistrict, Northern Colorado Water Conservancy District. Transmountain water is or will be delivered to Estes Park out of CBT project facilities directly to the Mary’s Lake Water Treatment Plant, and by exchange to the Glacier Creek water treatment plant at its existing Glacier Creek Pipeline intake and its proposed Big Thompson Intake.

Exchange of Windy Gap water from Lake Estes and exchange of return flow to the Glacier Creek pipeline was decreed in Case No. 97CW126, and is the subject of pending Case No. 19CW3065. Exchange from all three sources to the Big Thompson Intake from Lake Estes and the two wastewater treatment plants serving Estes Park's service area, and exchange of Reclamation Contract water and CBT water to the Glacier Creek Pipeline are the subject of Case No. 18CW3229.

From time to time, the Bureau of Reclamation releases water for Estes Park downstream near the mouth of the Big Thompson canyon. This application seeks to confirm two rights of exchange from two downstream locations to the Big Thompson Intake (conditional) and the Glacier Creek Pipeline (an existing exchange). The sources of substitute supply for the exchanges from the downstream locations are direct releases of CBT Water, Windy Gap water, and Reclamation Contract water.

### **APPLICATION FOR APPROPRIATIVE RIGHT OF EXCHANGE**

3. Estes Park claims an appropriative right of exchange as follows:

4.1 Points of diversion:

4.1.1 Big Thompson Intake, located in the NE 1/4, Section 4, Township 4 North, Range 73 West of the 6th P.M., Larimer County, Colorado, generally within a reach approximately 200 feet downstream of the confluence with Glacier Creek.

4.1.2 Glacier Creek Pipeline, located on the south bank of Glacier Creek in the NE 1/4 SE 1/4 NW 1/4, Section 5, Township 4 North, Range 73 West of the 6th P.M., Larimer County, Colorado.

4.2 Points of release of substitute supply:

4.2.1 Bottom of Big Thompson Canyon 1 ("BBTC 1"), located in the SE 1/4 SW 1/4, Section 3, Township 5 North, Range 70 West of the 6th P.M., Larimer County, Colorado, at Lat: 40°25'17.38"N, Long: 105°13'31.37"W.

4.2.2 Bottom of Big Thompson Canyon 2 ("BBTC 2"), located in the NW 1/4 NE 1/4, Section 10, Township 5 North, Range 70 West of the 6th P.M., Larimer County, Colorado, at Lat: 40°25'16.56"N, Long: 105°13'24.84"W.

4.3 Sources of substitute supply:

4.3.1 Reclamation Contract Water: Estes Park has Contract No. 4-07-60-W1075 with the Bureau of Reclamation to be supplied 500 acre-feet of water annually during the 12-month period from November 1 through October 31.

- 4.3.2 CBT Water: Estes Park owns 1217 units of Colorado Big Thompson Project water.
- 4.3.3 Windy Gap Water: Estes Park owns 3 units of Windy Gap project water.
- 4.3.4 Return flow of Windy Gap water after prior use by Estes Park. Return flow accrues as wastewater treated and discharged by the Estes Park Sanitation District and the Upper Thompson Sanitation District.
- 4.4 Amounts:
  - 4.4.1 10 c.f.s. conditional exchange to Big Thompson Intake.
  - 4.4.2 4 c.f.s. absolute exchange to Glacier Creek Pipeline.
  - 4.4.3 5.3 c.f.s. conditional exchange to Glacier Creek Pipeline.
- 4.5 Priority dates:
  - 4.5.1 Conditional exchange to the Big Thompson Intake: April 30, 2019. This appropriation was initiated by planning by Estes Park including the development of a Water System Master Plan in 2015, acquisition of an easement for the intake in 2019, action of the Board of Trustees, and filing of this application.
  - 4.5.2 Absolute exchange to Glacier Creek Pipeline: The appropriation was initiated by operation of the exchange on or before July 13, 1998.
    - 4.5.2.1 This is an existing exchange entitled to have its original priority date recognized and reserved pursuant to C.R.S. § 37-92-305(10).
  - 4.5.3 Conditional exchange to the Glacier Creek Pipeline: April 30, 2019. This appropriation was initiated by planning by Estes Park including the development of a Water System Master Plan in 2015, acquisition of an easement for the Big Thompson Intake in 2019, action of the Board of Trustees, and filing of this application.
- 4.6 Use: All uses for which the substitute supply is decreed, including municipal, irrigation, industrial, and recreational uses.
- 5. Owners of land on which facilities are located:
  - 6.1 Glacier Creek Pipeline: Estes Park.
  - 6.2 Big Thompson Intake: Estes Park owns an easement for the subject property.

- 6.3 BBTC 1: United States of America  
c/o Bureau of Reclamation  
Eastern Colorado Area Office  
11056 West County Road 18E  
Loveland, Colorado 80537
- 6.4 BBTC 2: Sisters of the West, LLLP.  
529 South 31st Street  
Colorado Springs, Colorado 80904

Estes Park prays for a decree approving its claimed rights of exchange, and for such other and further relief as is justified by the evidence and the law.

Dated: April 30, 2019

PETROCK FENDEL POZNANOVIC, P.C.

//s// Eric K Trout

Frederick A. Fendel, III

Matthew S. Poznanovic

Eric K. Trout

*Attorneys for Applicant*

**VERIFICATION**

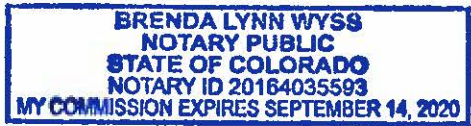
STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF LARIMER                 )

I, Chris Eshelman, Water Department Superintendent for the Applicant, being first duly sworn upon oath, state that I have read the foregoing application and that the same is true and correct to the best of my knowledge.

  
\_\_\_\_\_

Subscribed under oath before me on April 30, 2019.

My commission expires: September 14, 2020.



  
\_\_\_\_\_  
Notary Public

*This document was e-filed pursuant to C.R.C.P. 121 and a printed or printable copy with the original, electronic, or scanned signatures is available for inspection upon request at the offices of Petrock Fendel Poznanovic, P.C.*