

IN THE DISTRICT COURT IN AND FOR WATER DIVISION NO. 4  
STATE OF COLORADO

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER DIVISION  
NO. 4

Pursuant to C.R.S. 37-92-302, as amended, you are notified that the following is a resume of all applications filed in the Water Court during the month of January 2023.

The names, address of applicant, source of water, description of water right or conditional water right involved, and description of the ruling sought are as follows:

**The water right claimed by this application may affect in priority any water right claimed or heretofore adjudicated within this division, and owners of affected rights must appear to object and protest within the time provided by statute, or be forever barred.**

**CASE NO. 2023CW1 (REF NO. 01CW195, 16CW16).** Applicant: Richard and Becky Lightfoot, 19500 G Rd., Delta, CO 81416. Application for Finding of Reasonable Diligence: Moffat Spring – SE1/4NE1/4SW1/4 of Section 22, T15S, R95W, 6<sup>th</sup> P.M., 2,640 feet west of the east section line and 1,425 feet north of the south section line. Source: Uncompahgre River. Appropriation Date: 09/24/2001. Amount Claimed: .50 c.f.s. conditional for irrigation of 20 acres. The application on file with the Water Court contains and outline of the work performed during the diligence period. **DELTA COUNTY.**

**CASE NO. 2023CW2 (REF NO. 16CW54).** Applicant: Mark Queen, 32179 L Rd., Hotchkiss, CO 81419. Application to Make Absolute: Queen Pond – SW1/4NE1/4SE1/4 of Section 11, T12S, R91W, 6<sup>th</sup> P.M., 1,745 feet from the south section line and 1,006 feet from the east section line. Source: Willow Creek, Hubbard Creek, North Fork Gunnison River, Gunnison River. Appropriation Date: 08/02/2016. Amount Claimed: 4.00 acre-feet conditional for piscatorial, recreation and wildlife. The application on file with the Water Court contains a detailed outline of the work performed during the diligence period. **DELTA COUNTY.**

**CASE NO. 2023CW3 (REF NO. 16CW64, 10CW57, 03CW242).** Applicant: Robert R Stuplich, 38958 Highway 92, Crawford, CO 81415. Application for Finding of Diligence: Miller Spring – NE1/4SW1/4SW1/4 of Section 26, T15S, R92W, 6<sup>th</sup> PM. 670 feet from the south section line and 1,050 feet from the west section line. Source: Alum Gulch, North Fork Gunnison River, Gunnison River. Appropriation Date: 12/02/2003. Amount Claimed: 0.006 c.f.s. conditional for domestic use in one single family dwelling. The application on file with the Water Court contains a detailed outline of the work performed during the diligence period. **DELTA COUNTY.**

**CASE NO. 2023CW3000 – Civil Complaint**

**CASE NO. 2023CW3001;** Mesa County - Gunnison River; Anthony D. Perri and Laura Perri; c/o John R. Pierce, DUFFORD WALDECK, 744 Horizon Court, Suite 300, Grand Junction, CO 81506, (970) 248-5865; APPLICATION TO MAKE CONDITIONAL WATER RIGHTS ABSOLUTE; Name, address, and telephone number of applicant: Anthony D. Perri and Laura Perri; 620 Canyon Creek Road; Grand Junction, CO 81507; (970) 243-2244; Request to make absolute: Name of structure: Ashleigh Spring; Description of conditional water right: Case number and date of original decree: Case No. 2015CW3113 on January 4, 2017; Legal description: 1,861 feet from the south section line and 996 feet from the east section line in the NE1/4 of the SE1/4 of Section 27, Township 15 South, Range 101 West, of the Sixth Principal Meridian (UTM coordinates: Easting: 0181649.01, Northing: 4291766.90, Zone 13); Source: Beaver Creek, tributary to Gill Creek, tributary to West Creek; Appropriation date: October 10, 2015; Amount: 0.033 c.f.s. (15 g.p.m.), conditional; Use: Stock watering, wildlife watering directly from spring, pond filling of Tyson Pond; Outline of what has been done toward completion of appropriation

and application of water to beneficial use: The full flow of water from the Ashleigh Spring has been applied to beneficial use for stock watering, wildlife watering directly from the spring, and filling of the Tyson Pond; If claim to make absolute: Date water applied to beneficial use: October 31, 2021; Amount applied to beneficial use: 0.033 c.f.s. (15 g.p.m.); Use: Stock watering, wildlife watering directly from spring, pond filling of Tyson Pond; Request to make absolute: Name of structure: Alyssa Spring; Description of conditional water right: Case number and date of original decree: Case No. 2015CW3113 on January 4, 2017; Subsequent decrees awarding diligence: NA; Legal description: 1,789 feet from the south section line and 1,034 feet from the east section line in the NE1/4 of the SE1/4 of Section 27, Township 15 South, Range 101 West, of the Sixth Principal Meridian (UTM coordinates: Easting: 0181635.58, Northing: 4291745.72, Zone 13); Source: Beaver Creek, tributary to Gill Creek, tributary to West Creek; Appropriation date: October 10, 2015; Amount: 0.033 c.f.s. (15 g.p.m.), conditional; Use: Stock watering, wildlife watering directly from spring, pond filling of Tyson Pond; Outline of what has been done toward completion of appropriation and application of water to beneficial use: The full flow of water from the Alyssa Spring has been applied to beneficial use for stock watering, wildlife watering directly from the spring, and filling of the Tyson Pond; If claim to make absolute: Date water applied to beneficial use: October 31, 2021; Amount applied to beneficial use: 0.033 c.f.s. (15 g.p.m.); Use: Stock watering, wildlife watering directly from spring, pond filling of Tyson Pond; Request to make absolute: Name of structure: Tyson Pond; Description of conditional water right: Case number and date of original decree: Case No. 2015CW3113 on January 4, 2017; Subsequent decrees awarding diligence: NA; Legal description: 1,916 feet from the south section line and 1,133 feet from the east section line in the NE1/4 of the SE1/4 of Section 27, Township 15 South, Range 101 West, of the Sixth Principal Meridian (UTM coordinates: Easting: 0181606.99, Northing: 4291783.70, Zone 13); Source: Surface flows from the Ashleigh Spring and the Alyssa Spring, as well as surface water tributary to Beaver Creek, tributary to Gill Creek, tributary to West Creek; Appropriation date: September 30, 2015; Amount: 5.0 a.f. conditional; Use: Fire protection, recreation, stock watering, wildlife watering directly from pond, piscatorial; Surface area of high-water line: 1.9 acres; Total capacity: 5.0 a.f.; Outline of what has been done toward completion of appropriation and application of water to beneficial use: The Tyson Pond has been constructed to the full decreed capacity and has been filled for all beneficial uses; If claim to make absolute: Date water applied to beneficial use: October 31, 2021; Amount applied to beneficial use: 5.0 a.f.; Use: Fire protection, recreation, stock watering, wildlife watering directly from pond, piscatorial. With regard to any conditionally decreed amounts not made absolute in this case, Applicants request a finding of reasonable diligence. (5 pages) **MESA COUNTY.**

**CASE NO. 2023CW3002** (Ref. Case Nos. 04CW86, 12CW48, 18CW3039). Gunnison County. Applicants: Kirk R. Fry and Nancy G. Fry Revocable Trust; Jim and Helen Wood Legacy Trust; Mark Robert Graupman; David Lee Graupman; and Anne Winfield Witte, all c/o Nancy Fry, 970-210-0789, nancyafry@gmail.com. Please direct all correspondence to Law of the Rockies, Kendall K. Burgemeister, Atty. Reg. #41593 525 North Main Street Gunnison, CO 81230, 970-641-1903, kburgemeister@lawoftherockies.com. APPLICATION FOR PLAN FOR AUGMENTATION AND CHANGE OF WATER RIGHTS. Summary of Application. The FRY-WOOD-GRAUPMAN WELL FIELD and FRY-ATWOOD WELL FIELD, as described below, were originally decreed in Case No. 04CW86, together with Plans for Augmentation that relied upon water rights decreed to the Marshall No. 2 Ditch and Wilson No. 2 Ditch, and a contract with the Upper Gunnison River Water Conservancy District, as the sources of augmentation water. The plans required dry up of 2 acres of land historically irrigated by the Marshall No. 2 Ditch and 1 acre of land historically irrigated by the Wilson No. 2 Ditch. The 04CW86 plans for augmentation were adjudicated before UGRWCD's 03CW49 plan for augmentation was decreed. The Applicants desire to vacate the 04CW86 plans for augmentation, restore the Marshall No. 2 and

Wilson No. 2 water rights to their full historical use prior to the 04CW86 decree, and to augment the FRY-WOOD-GRAUPMAN WELL FIELD and FRY-ATWOOD WELL FIELD water rights by participation in UGRWCD's 03CW49 plan for augmentation. Description of Subject Water Rights. The following water rights and plans for augmentation were originally decreed by the District Court, Water Division 4, in Case No. 04CW86, on May 2, 2006. FRY-WOOD-GRAUPMAN WELL FIELD. Legal Description: Within the Fry-Wood-Graupman Property, a tract of land containing 28.51 acres, located in Township 50 North, Range 1 East, N.M.P.M., Section 8: SW1/4NE1/4, SE1/4NE1/4, NW1/4SE1/4; in Gunnison County. Source: Groundwater tributary to the Gunnison River. Appropriation Date: January 5, 2001. Amount: 60 gallons per minute (gpm). Use: domestic and irrigation of lawn and garden irrigation of approximately 0.46 acres (up to 5,000 square feet of lawn and garden on each of four individual lots in the Fry-Wood-Graupman subdivision). FRY-ATWOOD WELL FIELD. Legal Description: Within the Fry-Atwood Property, a tract of land containing approximately 31.54 acres, located in Township 50 North, Range 1 East, N.M.P.M., Section 8: NW1/4SE1/4 and SW1/4NE1/4; in Gunnison County. Source: Groundwater tributary to the Gunnison River. Appropriation Date: January 5, 2001. Amount: 30 gpm. Use: domestic and irrigation of lawn and garden irrigation of approximately 0.23 acres (up to 5,000 square feet of lawn and garden on each of two individual lots in the Fry-Atwood subdivision). FRY-WOOD-GRAUPMAN WELL FIELD PLAN FOR AUGMENTATION. Source of augmentation water to be changed in this case: Structure: Marshall No. 2 Ditch (WDID 5900623). Decree: Civil Action No. 1325, September 14, 1906, District Court, Gunnison County. Point of Diversion as described in Civil Action No. 1325: East bank of the Gunnison River at a point from which the Northwest corner of Section 8, Township 50 North, Range 1 East of the New Mexico Principal Meridian bears North 48°24' West 480 feet. Actual Point of Diversion Described in 04CW86: The headgate for the Marshall No. 2 Ditch is located in the NW1/4 of the NW1/4 of Section 9, Township 50 North, Range 1 East, N.M.P.M., at a point approximately 275 feet East of the West section line, and 275 feet South of the North section line, of said Section 9. Point of Diversion per Division of Water Resources: UTM 336783.2E, 4276052.2N, NAD 83, Zone 13. Source: Gunnison River. Total Amount Decreed to Priority 67: 11.75 cfs; amount claimed by Applicants in 04CW86: 1.071 cfs; Amount dedicated to plan for augmentation in 04CW86: 0.163 cfs. Date of Appropriation: May 15, 1888. Decreed use: Irrigation of 470 acres. Historical use of Applicants' interest: Irrigation of approximately 12.3 acres of land as illustrated on Figure 2 of the 04CW86 Decree. FRY-ATWOOD WELL FIELD PLAN FOR AUGMENTATION Source of augmentation water to be changed in this case: Structure: Wilson No. 2 Ditch (WDID 5900710). Decree: Civil Action No. 1325, September 14, 1906, District Court, Gunnison County. Legal description of point of diversion: East bank of the Gunnison River at a point whence the East quarter corner of Section 8, Township 50 North, Range 1 East of the New Mexico Principal Meridian bears South 10°18' East 1193 feet. Division of Water Resources' Point of diversion: UTM 336565.1E, 4275655.2N, NAD 83, Zone 13. Source: Gunnison River. Amount decreed to Priority 134: 1.125 cfs; amount claimed by applicants in 04CW86: 0.833 cfs; amount dedicated to 04CW86 plan for augmentation: 0.037 cfs. Date of Appropriation: April 20, 1900. Decreed use: Irrigation of 45 acres of land. Historical use of Applicants' interest: Irrigation of approximately 22.5 acres of land illustrated on Figure 2 of the 04CW86 Decree. Relief Requested. Applicants desire to vacate the 04CW86 plan for augmentation and restore their Marshall No. 2 Ditch and Wilson No. 2 Ditch water rights to the full irrigation use that existed prior to entry of the 04CW86 Decree. The FRY-WOOD-GRAUPMAN WELL FIELD and FRY-ATWOOD WELL FIELD water rights will be augmented by participation in UGRWCD's 03CW49 plan for augmentation. The owner of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored: The FRY-WOOD-GRAUPMAN WELL FIELD and FRY-ATWOOD WELL FIELD are on

land owned by Applicants. No modifications to the Marshall No. 2 or Wilson No. 2 diversion structures are proposed. **GUNNISON COUNTY.**

**CASE NO. 2023CW3003 OURAY COUNTY, Application for Findings of Reasonable Diligence.** Applicant: Jack Clark, Jr.; *please direct all correspondence to Applicant's attorneys:* Mary Elizabeth Geiger, Garfield & Hecht, P.C., 910 Grand Avenue, Suite 201, Glenwood Springs, CO 81601, (970)947-1936, [megeiger@garfieldhecht.com](mailto:megeiger@garfieldhecht.com). *Applicant requests findings of reasonable diligence with regard to the following water right:* **Greyhound Mine Spring.** *Information from Prior Decree:* Case No. 10CW55, entered on October 13, 2010, in the District Court in and for Water Division No. 4. *Legal description of point of diversion:* The water emerges from the Greyhound mine portal which is located on the Greyhound Mine placer which is located in the SE ¼ NW ¼ SW ¼ Section 36, Township 43 North, Range 8 West, and N.M.P.M. on land owned by Applicant. A copy of a topographic map showing the location of the land and mine is attached hereto. *Source:* Water tributary to Red Mountain Creek and the Uncompaghre River. *Date of initiation of appropriation:* July 15, 1956. *Date water applied to beneficial use:* July 15, 1956 (for all uses except milling). *Amount:* 0.11 c.f.s. (50 g.p.m.). *Uses:* absolute for mining, domestic and animal watering. Conditional for milling. *Name and address of owner of land on which point of diversion is located:* Applicant. Applicant respectfully requests that the Court enter an order finding that the Applicant has been reasonably diligent in the development of the above-described conditional water rights for the Greyhound Mine Spring for milling purposes (remaining uses are already absolute) for 0.11 c.f.s., continuing the same in full force and effect and that the Court award such other and further relief it may deem appropriate. Application includes a detailed outline of work performed during the diligence period toward the development of the remaining conditional use (4 pages). **OURAY COUNTY.**

**CASE NO. 2023CW3004.** Concerning the application for water rights of **SUNRISE BUILDING, LLC IN THE UNCOMPAHGRE RIVER OF ITS TRIBUTARIES; OURAY COUNTY; Application for Conditional Water Rights. First Claim: Surface Diversion and Capture of Seepage, Wastewater and Spring Water.** Name, mailing address, email address, and telephone number of applicant: Sunrise Building LLC, PO Box 631, Ridgway, CO 81432. Send all Pleadings and Correspondence to: Hockersmith & Whitmore, LLC. P.O. Box 646, Ouray, CO 81427-0646, [marti@ouraylaw.com](mailto:marti@ouraylaw.com), 970.325.4414. Name of structure: Sunrise Ranch Spring #1. Legal description of point of diversion: Sunrise Ranch Spring #1 is located in the SE1/4 of the SW1/4 of Section 33, Township 49 N, Range 8W, N.M.P.M. 810 feet from the south section line and 2,586 feet from the west section line. X: 257931 Y: 4260699 UTM Zone 13 NAD83. As shown on Exhibit A. *Source:* Spring water as well as seepage and wastewater from the South Canal. *Date of appropriation:* October 29, 2022. *How appropriation was initiated:* On the ground site visit and location of water and structures by representatives of Applicant. *Date water applied to beneficial use:* N.A. (Conditional). *Amount claimed in cubic feet per second:* Conditional **0.5 cfs**. If claiming an absolute water right, application shall include supporting evidence that applicant diverted water in-priority and applied such water to the beneficial uses claimed in the amounts claimed. *List All Uses or Proposed Uses:* Storage in ponds, irrigation, piscatorial. If irrigation, complete the following: Number of acres historically irrigated 64 acres Only historically irrigated lands will be irrigated, as generally depicted on Exhibit B. The water claimed in this application will be used to supplement historically irrigated lands. Does the Applicant intend to use this water right to supplement irrigation on an area of land already irrigated under another water right. Water from Sunrise Ranch Spring #1 will be used to fill the ponds described in Claim 2, as well as for irrigation (shown above) and piscatorial uses in the ponds. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new or existing 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.

The applicant must notify these persons that the applicant is applying for this water right, and certify to the Court that the applicant has done so by no later than 14 days after filing this application. The certification form is on page 4 of this form. All structures are located on land owned by the Applicant. Remarks or any other pertinent information: **Second Claim:** Sunrise Ponds #1-7. Applicant is claiming the following ponds: Names of Ponds: Sunrise Ranch Pond #1, Sunrise Ranch Pond #2, Sunrise Ranch Pond #3, Sunrise Ranch Pond #4, Sunrise Ranch Pond #5, Sunrise Ranch Pond #6, and Sunrise Ranch Pond #7. Legal description of location of pond centroids. Attach legal description if necessary. **See Exhibit A for a map of pond locations and see Exhibit C for legal descriptions and UTM coordinates for each pond.** Source: Spring water, seepage, and wastewater tributary to the Uncompahgre River, to the extent that such water would actually reach the Uncompahgre River. Shares in Uncompahgre Valley Water Users' Association are also used to fill Ponds # 1 through 7, but water attributable to those shares will be stored only as operating detention for irrigation, meaning that the water will be stored for seventy-two (72) hours or less prior to be used for irrigation. Providing operating detention allows for improved irrigation operations. If filled from a ditch: N/A. Date of appropriation: October 29, 2022. How appropriation was initiated: On-site visit by representatives of Applicant and their consulting engineer/hydrologist. Date water applied to beneficial use: N/A. Amount claimed: See the amounts claimed for each pond in the attached Exhibit C. In acre feet (one acre-foot is the amount of water required to cover an area of one acre to a depth of one foot, and is equal to approximately 325,900 gallons) Conditional 73.0 (acre feet). If filled from a ditch, rate of diversion in cubic feet per second (cfs) (1 cfs = 448.8 gallons per minute (gpm)) for filling the reservoir: 0.5 cfs. If claiming an absolute water right, application shall include supporting evidence that confirms the capacity of the reservoir and that applicant diverted water in-priority and applied such water to the beneficial uses claimed in the amounts claimed. List All Uses or Proposed Uses: Storage for livestock watering, fire mitigation, irrigation, recreational, piscatorial and augmentation. If irrigation, complete the following: Number of acres historically irrigated 64; proposed to be irrigated 64 acres. Does the Applicant intend to use this water right to supplement irrigation on an area of land already irrigated under another water right? Legal description of irrigated acreage, shown on Exhibit B. Mark the location of the irrigated acreage on a USGS topographic map and attach to this application a legible 8 ½ x 11 inch copy of the applicable portion of the map. Water stored for irrigation will be used to irrigate lands shown on Exhibit B. Water attributable to UVWUA shares will be used to irrigate lands historically irrigated with those shares. Other water stored will be used as supplemental irrigation water for those acres. If non-irrigation, describe purpose fully. Mark location of use on a USGS topographic map and attach to this application a legible 8 ½ x 11-inch copy of the applicable portion of the map. See Exhibit A for locations of use of water for non-irrigation purposes. Those uses include watering of stock on the property, fire mitigation for structures either existing or constructed on the property, recreation, piscatorial and future augmentation purposes associated with the property. Surface area of high-water line: Please see, Exhibit C Total for ponds 1 through 7 equals 9.0 Acres). Vertical height of dam in feet measured vertically from the elevation of the lowest point of the natural surface of the ground where that point occurs along the longitudinal centerline of the dam up to the crest of the emergency spillway of the dam: less than 10 feet. Length of dam in feet: Ranges from one half to one whole circumference of each pond dependent upon excavation required at each pond location. Please see Exhibit C for the dam lengths for each pond. (feet) Total capacity of reservoir in acre feet: **73.0** (acre feet). Total Calculated Active capacity: 65.45 Total Calculated Dead storage: 7.27 acre feet. Please see Exhibit C for the calculated active storage and dead storage amounts for each pond. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new or existing 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. The applicant

must notify these persons that the applicant is applying for this water right, and certify to the Court that the applicant has done so by no later than 14 days after filing this application. Applicant owns all of the lands on which these structures will be constructed or are currently located. **OURAY COUNTY.**

**CASE NO. 2023CW3005 CITY OF GUNNISON** (c/o Jennifer M. DiLalla, Joshua B. Boissevain, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Blvd., Suite 240, Boulder, CO 80302, (303) 443-8782) **APPLICATION FOR SIMPLE CHANGE IN SURFACE POINT OF DIVERSION UNDER C.R.S. § 37-92-305(3.5) IN GUNNISON COUNTY** 1. Name, address, and telephone number of applicant: City of Gunnison, a Colorado Municipal Corporation, c/o David Gardner, Director of Public Works, 1100 W. Virginia Ave., Gunnison, CO, 81230, (970) 641-8020 2. Decreed water right for which change is sought: 2.1 Name of structure: Gunnison Town Pipeline (WDID: 5900931) ("Town Pipeline"). 2.2 Date of original decree and all relevant subsequent decrees: Civil Action 2021, entered Apr. 29, 1941, in the District Court for the County of Gunnison; Case No. 81CW308, entered Jan. 5, 1989 in the District Court for Water Division No. 4 ("81CW308 Decree"). 2.3 Legal description – original point of diversion: Intake gallery on the east bank of the Gunnison River at a point whence the E1/4 corner of Sec. 35, T50N, R1W of the N.M.P.M. bears S. 85° 58' East 3,823.2 feet. (UTM: 330576.0 East, 4268929.0 North.) The decreed location is shown the maps attached as **Exhibits A and B-1**, labeled as "Town Pipeline" and "Gunnison Town Pipeline," respectively. All UTM coordinates given in this Application are NAD 83, Zone 13. 2.4 Legal descriptions – alternate points of diversion (as shown on **Exhibits B-1 and B-2**): Under the 81CW308 Decree, the water right decreed to the Town Pipeline may be diverted at the following structures as alternate points of diversion: 2.4.1 Gunnison Town Ditch (WDID: 5900572): On the south bank of the Gunnison River at a point whence the E1/4 corner of Sec. 24, T50N, R1W of the N.M.P.M. bears S. 56° 30' East 1,760 feet. (UTM: 333114.0 East, 4272361.0 North.) 2.4.2 O'Fallon Ditch (WDID: 5901037): On the east bank of the Gunnison River at a point whence the E1/4 corner of Sec. 33, T51N, R1E of the N.M.P.M. bears North 85° East 1,565 feet. (UTM: 337649.6 East, 4278134.4 North.) 2.4.3 Gunnison Well Nos. 1 through 6: Located as follows within the City of Gunnison: 2.4.3.1 Well No. 1 (WDID: 5905000): 6th St. & Virginia Ave. (UTM: 331072.3 East, 4268216.3 North.) 2.4.3.2 Well No. 2 (WDID: 5905001): 9th St. & Gothic Ave. (UTM: 331042.0 East, 4268506.0 North.) 2.4.3.3 Well No. 3 (WDID: 5905002): 9th St. & Ohio Ave. (UTM: 331079.0 East, 4268397.0 North.) 2.4.3.4 Well No. 4 (WDID: 5905003): 9th St. & Gunnison Ave. (UTM: 331085.0 East, 4267761.0 North.) 2.4.3.5 Well No. 5 (WDID: 5905004): 9th St. & Rio Grande Ave. (UTM: 331037.0 East, 4267161.0 North.) 2.4.3.6 Well No. 6 (WDID: 5905005): 10th St. & Virginia Ave. (UTM: 331109.0 East, 4268119.0 North.) 2.4.4 Gunnison Well Nos. 7 through 13, Gunnison Sewer Plant Well, and Gunnison Dump Well: Located within the County of Gunnison as follows: 2.4.4.1 Well No. 7 (WDID: 5905006; Permit No. 10857-F): NE1/4 NE1/4 of Sec. 35, T50N, R1W of the N.M.P.M. (UTM: 331423.0 East, 4269611.0 North.) 2.4.4.2 Well No. 8 (WDID: 5905007; Permit No. 21363-F): NW1/4 NW1/4 of Sec. 36, T50N, R1W of the N.M.P.M. (UTM: 331942.0 East, 4269267.0 North.) 2.4.4.3 Well No. 9 (WDID: 5905008; Permit No. 21362-F): SW14 NE1/4 of Sec. 35, T50N, R1W of the N.M.P.M. (UTM: 331285.0 East, 4269173.0 North.) 2.4.4.4 Well No. 10 (WDID: 5905943; Permit No. 53045-F): 60 feet North of the South section line and 70 feet West of the East section line in the SE1/4 SE1/4 of Sec. 26, T50N, R1W of the N.M.P.M., Gunnison County. (UTM: 331690.0 East, 4269638.0 North.) 2.4.4.5 Well No. 11 (WDID: 5905944): 1,350 feet South of the North Section line and 2,700 feet West of the East Section line of Sec. 35, T50N, R1W of the N.M.P.M., Gunnison County. (UTM: TBD East, TBD North.) 2.4.4.6 Well No. 12 (WDID: 5905945): The originally decreed location is 2,650 feet North of the South Section line and 2,350 feet East of the West Section line of Sec. 35, T50N, R1W of the N.M.P.M., Gunnison County. (UTM: TBD East, TBD North.) The Well No. 12 Alternate Point decreed in Case No. 21CW3071 will be

located on the City's Van Tuyl Ranch in the NE1/4, the SE1/4, the E1/2 of the SW1/4, and the E1/2 of the SE1/4 of Sec. 26, T50N, R1W of the N.M.P.M., in Gunnison County. 2.4.4.7 Well No. 13 (WDID: 5905935): NE1/4 SE1/4 Sec. 26, T50N, R1W, N.M.P.M., on the City's Van Tuyl Ranch. (UTM: 331567.9 East, 4270393.8 North, Zone 13, NAD 83.) 2.4.4.8 Sewer Plant Well (WDID: 5905936; Permit No. 2886-F): NE1/4 SW1/4 of Sec. 2, T49N, R1W of the N.M.P.M. (UTM: 330642.4 East, 4266987.3 North.) 2.4.4.9 Dump Well (WDID: 5905937; Permit No. 32421): NE1/4 SE1/4 of Sec. 25, T50N, R1W of the N.M.P.M. (UTM: 333127.1 East, 4270180.9 North.) 2.4.5 Unnamed points of diversion: 2.4.5.1 (WDID: 5901568): On the East bank of the Taylor River in Sec. 22, T51N, R1E of the N.M.P.M., 1,700 feet north of the south section line and 3,700 feet east of the west section line of said Sec. 22. (UTM: 339320.2 East, 4281315.7 North.) In the Colorado Decision Support System ("CDSS") online database, this point of diversion is identified as "Gunnison Town Alt Divr 1." 2.4.5.2 (WDID: 5901569): On the East bank of a side channel of the Gunnison River in the SE1/4 NW1/4 of Sec. 35, T50N, R1W of the N.M.P.M., whence the NW corner of said section bears North 39.7° West a distance of 3,054 feet. (UTM: 330690.3 East, 4269032.2 North.) In the CDSS online database, this point of diversion is identified as "Gunnison Town Alt Divr 2." 2.5 Decreed source of water: Gunnison River. 2.6 Appropriation date: April 1, 1883. 2.7 Amount: 15 cfs. 2.8 Decreed uses: Municipal, domestic, fire prevention, irrigation, and commercial purposes. 2.9 Amount of water to be changed: Entirety of the water right. 3. Detailed description of proposed change in surface point of diversion: Under and in accordance with C.R.S. § 37-92-305(3.5) ("Section 305(3.5)"), the City seeks to change the decreed surface diversion point to a new surface diversion point located upstream and on City property. The City seeks no other change to its decreed water right. 3.1 How the proposed change meets the definition of a simple change in surface point of diversion: Section 305(3.5)(a)(II) defines "simple change in a surface point of diversion" as "a change in the point of diversion from a decreed surface diversion point to a new surface diversion point that is not combined with and does not include any other type of change of water right and for which there is no intervening surface diversion point or inflow between the new point of diversion and the diversion point from which a change is being made," and excludes from that definition "a change of point of diversion from below or within a stream reach for which there is an intervening surface diversion point or inflow or decreed in-stream flow right to an upstream location within or above that reach." 3.1.1 Change from a decreed surface diversion point to a new surface diversion point: The City's requested change is from the decreed surface diversion point for the Town Pipeline to the new surface diversion point labeled as "Town Pipeline\_POD\_2023" on **Exhibit A**. 3.1.2 No combination with or inclusion of other change of water right: The City seeks no other change to the Town Pipeline water right. 3.1.3 No intervening surface diversion point or inflow: As shown on the map attached as **Exhibit A**, there is no intervening surface diversion point and no inflow between the new point of diversion and the decreed point of diversion from which the change is being made. 3.1.4 No change to an upstream location within a decreed instream flow reach: There is no decreed instream flow water right in the reach of the Gunnison River between the decreed surface diversion point and the proposed new surface diversion point upstream. 3.2 Applicant's burden of proof: Applicant bears the burden of proving that the simple change in a surface point of diversion will not (i) result in diversion of a greater flow rate or amount of water than has been decreed to the water right and, without requantifying the water right, is physically and legally available at the diversion point from which a change is being made; or (ii) injuriously affect the owner of or persons entitled to use water under a vested water right or decreed conditional water right. 3.2.1 No diversion of greater flow rate than decreed to the Town Pipeline, or than is physically and legally available at the diversion point from which the change is being made: In any proposed ruling or proposed decree submitted to the Court for entry, the City will include a term and condition limiting diversion under the Town Pipeline water right at the changed point of diversion to the amount of water legally and physically available to the water right at its originally decreed point

of diversion. 3.2.2 No injury to vested or decreed conditional water rights: As shown on the map attached as **Exhibit A**, there are no surface water rights decreed to divert from the Gunnison River in the reach between the decreed point of diversion and the proposed new point of diversion upstream; there also are no tributary inflows to the Gunnison River in that reach. The City's in-priority diversion of the 15 cfs decreed to the Town Pipeline at the proposed new point of diversion therefore will have exactly the same impact on the stream and on other water rights as would the City's in-priority diversion of that water right at the originally decreed point of diversion. Accordingly, the proposed simple change in surface point of diversion will not injure vested water rights or decreed conditional water rights. 4. Location of new surface point of diversion: The new surface point of diversion will be located on the bank of the Gunnison River in the NE1/4 NW1/4 of Sec. 35, T50N, R1W of the N.M.P.M., 1,009 feet south of the North section line and 3,428 feet west of the East section line of said Sec. 35, in Gunnison County, as shown and labeled as "Town Pipeline\_POD\_2023 on **Exhibit A**. (UTM: 330658.79 East, 4269297.59 North.) The proposed new surface point of diversion is located on the City's Van Tuyl Ranch. 5. Names and addresses of 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: 5.1 The City owns the land on which the new diversion structure described in paragraph 4 above will be located. The address is 379 County Rd. 14, Gunnison, CO, 81230. 5.2 There will be no new storage structure constructed and no existing diversion or storage structure modified under this Application. WHEREFORE, Gunnison requests that the Court enter a decree granting this Application and approving a simple change in surface point of diversion for the Town Pipeline in accordance with Section 305(3.5). **GUNNISON COUNTY.**

**CASE NUMBER: 2023CW3006** (Former Cases No. 15CW3056 08CW44; 01CW222; 94CW179; 88CW124; 84CW155; 80CW148; W-617; W-617(76); W-228; C-5873). **GUNNISON COUNTY. 1. Applicant:** Mountain Coal Company, L.L.C. Attorneys for Mountain Coal Company, LLC: Mason H. Brown and Sarah B. Wiedemann, Carlson Hammond & Paddock, L.L.C., 1900 N. Grant Street, Suite 1200, Denver, Colorado 80203. Phone Number: (303) 861-9000. E-Mail: mbrown@chp-law.com, swiedemann@chp-law.com. **APPLICATION FOR FINDING OF REASONABLE DILIGENCE AND TO MAKE CONDITIONAL WATER RIGHTS ABSOLUTE. 2. Name of Structure:** 2.1. Snowshoe Dam and Reservoir. 2.2. Snowshoe Pipeline. **3. Describe conditional water right (as to each structure) including the following information from previous decree:** 3.1. Date of Original Decree: August 11, 1969, Civil Action No. C-5873, District Court in and for Delta County, Colorado. 3.2. Subsequent decrees: 3.2.1. Decrees finding reasonable diligence or making rights absolute have been entered by the District Court in and for Water Division No. 4 in Case No. W-228 on March 25, 1971; Case No. W-617 on November 22, 1972; Case No. 617(76) on November 4, 1976; Case No. 80CW148 on October 2, 1980; Case No. 84CW155 on April 2, 1985; Case No. 88CW124 on September 21, 1989; Case No. 94CW179 on November 22, 1995; Case No. 01CW111 on April 23, 2002; Case No. 08CW44 on July 20, 2009; and Case No. 15CW3056 on January 4, 2017. 3.2.2. By decree of the District Court in and for Water Division No. 4 dated December 15, 1981, in Case No. 80CW458, a change of water right was approved to allow storage of fifty (50) acre-feet of the Snowshoe Dam and Reservoir water right at Applicant's Sedimentation Ponds 1, 2, and 3, and Fresh Water Ponds 1 and 2, all of which are located near the site of Applicant's mining operation. This fifty (50) acre-feet of water is diverted from the North Fork Gunnison River by the Mt. Gunnison Pipeline. 3.2.3. By decree of the District Court in and for Water Division No. 4 dated January 4, 2017, in Case No. 15CW3056, 14.39 acre-feet of the 50 acre-feet Snowshoe Dam and Reservoir water right changed for storage in the Alternate Storage Ponds pursuant to Case No. 80CW458 was made absolute for mined land reclamation, sedimentation and pollution control, mining, industrial, commercial, manufacturing, domestic, municipal and

irrigation (pursuant to land reclamation) based on diversion of the water right into Fresh Water Pond No. 1 and Sedimentation Pond No. MB-5E. 3.3. Legal Description: 3.3.1. Snowshoe Dam and Reservoir: Snowshoe Dam and Reservoir will be constructed on Anthracite Creek downstream from the confluence of Snowshoe Creek, Coal Creek, and Anthracite Creek, which are all tributary to the North Fork Gunnison River. The initial point of survey is at the intersection of the dam axis with the stream channel from which point the northeast corner of Section 8, Township 13 South, Range 89 West of the 6<sup>th</sup> P.M. bears North 3,675 feet. Pursuant to the change of water rights decree entered in Case No. 80CW458, fifty (50) acre-feet of the Snowshoe Dam and Reservoir water right may be diverted to storage from the North Fork Gunnison River by the Mt. Gunnison Pipeline, which is described below. The fifty (50) acre-feet may be stored in the following storage facilities (collectively, the "Alternate Storage Ponds"):

3.3.1.1. Sedimentation Pond No. 1: Located at a point whence the Southeast corner of Section 9, Township 13 South, Range 90 West of the 6<sup>th</sup> P.M. bears South 87°17'30" East a distance of 1,050.3 feet. Said reservoir has a high water line elevation of 6,302.06 feet, and a surface area at high water line of 1.51 acres. Said reservoir has a capacity of 13.66 acre-feet. 3.3.1.1.1. Sedimentation Pond No. 1 is now informally known as New Fresh Water Pond. 3.3.1.2. Sedimentation Pond No. 2: Located at a point whence the Southeast corner of Section 9, Township 13 South, Range 90 West of the 6<sup>th</sup> P.M. bears South 145°2'09" East a distance of 765.8 feet. Said reservoir has a capacity of 9.61 acre-feet. 3.3.1.2.1. In Case No. 09CW108, the Sedimentation Pond No. 2 water right was changed for storage in Sedimentation Pond No. MB-5E described below and Sedimentation Pond No. 2 no longer exists. 3.3.1.3. Sedimentation Pond No. 3: Located at a point whence the Southeast corner of Section 9, Township 13 South, Range 90 West of the 6<sup>th</sup> P.M. bears South 302°3'26" East a distance of 991.3 feet. Said reservoir has a capacity of 0.23 acre-feet. 3.3.1.4. Fresh Water Pond No. 1: The initial point of survey of Fresh Water Pond No. 1 is on the dam axis at a point in the East ½ of Section 9, Township 13 South, Range 90 West of the 6<sup>th</sup> P.M., from whence the Southeast corner of said Section 9 bears South 79°05'01" East 1,610.65 feet. Said reservoir has a capacity of 9.98 acre-feet. 3.3.1.5. Fresh Water Pond No. 2: The initial point of survey of Fresh Water Pond No. 2 is on the dam axis in the East ½ of Section 9, Township 13 South, Range 90 West of the 6<sup>th</sup> P.M., from whence the Southeast corner of said Section 9 bears South 59°30'52" East 2,443.43 feet. Said reservoir will have a capacity of 9.98 acre-feet. 3.3.1.5.1. In Case No. 09CW108, the Fresh Water Pond No. 2 structure was enlarged and replaced by Sedimentation Pond No. MB-5E. Sedimentation Pond No. MB-5E has a capacity of 19.59 acre-feet. 3.3.2. Snowshoe Pipeline: Snowshoe Pipeline will be located at the outlet of the Snowshoe Dam and Reservoir as described above. From the intake, the Pipeline will extend westerly along the North Fork Gunnison River a distance of approximately 5.5 miles. 3.3.3. Mt. Gunnison Pipeline: Mt. Gunnison Pipeline is located on the South Bank of the North Fork Gunnison River at a point which bears North 34° 08' East 1,217 feet from the South ¼ corner of Section 9, Township 13 South, Range 90 West of the 6<sup>th</sup> P.M. 3.4. Source: Anthracite Creek, Snowshoe Creek, and Coal Creek. Fifty (50) acre-feet of the Snowshoe Dam and Reservoir right may be diverted from the North Fork Gunnison River. 3.5. Appropriation Date: November 17, 1967. 3.6. Amount: 3.6.1. Snowshoe Dam and Reservoir: 50,000 acre-feet with a refill right of 25,000 acre-feet. 3.6.1.1. Of the 50 acre-feet Snowshoe Dam and Reservoir water right changed for storage in the Alternate Storage Ponds in Case No. 80CW458, 14.39 acre-feet are absolute and 35.61 acre-feet are conditional. 3.6.2. Snowshoe Pipeline: 70 c.f.s. 3.7. Use: Mining and processing of coal and coal products and beneficial uses incidental thereto. Pursuant to the change of water right decree in Case No. 80CW458, fifty (50) acre-feet of the Snowshoe Dam and Reservoir right were decreed for the purposes of mined land reclamation, sedimentation and pollution control, mining, industrial, commercial, manufacturing, domestic, municipal and irrigation (pursuant to land reclamation). 3.8. The water rights that are the subject of this application, as described in paragraph 3, above, are hereafter referred to as the "Subject Water Rights." 3.9.

Maps depicting the location of the Subject Water Rights and the Alternate Storage Ponds are attached as **Exhibits 1 and 2**. 3.10. Integrated System: The Subject Water Rights are part of an integrated water system comprising all water rights decreed and used for development and operation of the West Elk Mine. Accordingly, reasonable diligence in the development of one component of the system comprises reasonable diligence in the development of all components. **4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** 4.1. Background: Applicant owns and operates the West Elk Mine (the "Mine"), located south of the North Fork Gunnison River near Somerset, Colorado. The Subject Water Rights were appropriated to provide water for the operation of the Mine facility. 4.1.1. Applicant owns and operates the West Elk Mine (the "Mine"), located south of the North Fork Gunnison River near Somerset, Colorado. The Subject Water Rights were appropriated and have been exercised, in part, to provide water for the operation of the Mine facility. A mining and exploration program for the Mine property was begun by Applicant's predecessors during the late 1960's, and continued through the 1970's. Preliminary permits were issued in 1981. Construction began in 1981 on surface facilities, coal handling facilities, and portals for the Mine. Coal production from the "F" Seam began in 1982. Beginning in 1991, Applicant began development of the "B" Seam, and purchased and installed longwall mining facilities. Longwall mining production of the "B" Seam began in 1992; production from the Mine increased substantially as a result. In response to increased water demand at the Mine, Applicant has engaged in substantial improvement of its water supply facilities and capabilities. In 2004, Applicant filed its application with the Colorado Division of Minerals and Geology for a permit to mine the "E" Seam reserves in Applicant's Federal Lease No. C-1362. That Permit Revision, No. PR 10, was approved on July 7, 2006. The associated Surface Mining Control and Reclamation Act ("SMCRA") Permit, No. C-1980-007, was revised with Permit Revision No. PR-10 and was approved on July 7, 2006. The mine reserves were further expanded with Federal Lease COC-67232, approved by Colorado Division of Reclamation, Mining and Safety ("CDRMS") with SMCRA Permit Revision No. PR-12 on March 21, 2008, and with the modifications of Federal Lease Nos. C-1362 and COC-67232, approved by the CDRMS with Permit Revision No. PR-15 on November 15, 2018. As coal production has increased, and increases in the future, water demand for the Mine increases as well. 4.1.2. In 2008, Applicant commissioned Wright Water Engineers, Inc. ("WWE") to perform a conceptual feasibility study for constructing and filling the Snowshoe Reservoir. WWE evaluated streamflow data and estimated available water for filling the Snowshoe Reservoir and concluded that the hydrology of Anthracite Creek and the existing topography of the decreed location could support the filling of Snowshoe Reservoir. 4.2. Diligence Activities since the last Finding of Reasonable Diligence: 4.2.1. In November of 2008, Applicant ceased mining operations in the "B" Seam and began longwall mining in the "E" Seam pursuant to SMCRA Permit Revision Nos. PR-10-10, P-12, and PR-15. During the diligence period, Applicant has continued to mine the "E" Seam. Since mine operations are a necessary prerequisite to the development of the Subject Water Rights, this mine development and activity constitutes diligence in the development of the Subject Water Rights. 4.2.2. In 2009, Applicant filed an application with the U.S. Bureau of Land Management ("BLM") and Forest Service to expand its coal leases by 1,721 acres. The lease modifications would result in extending the existing Mine operations approximately 19 months beyond those currently approved; an additional 16-17 months of mining coal on adjacent private lands could also be realized by access gained through the lease modification areas. An Environmental Assessment was prepared analyzing the effects of the Forest Service consenting to the BLM leasing these additional acres, and the lease modifications were initially approved in November of 2011. In February 2012 that decision was reversed. After an Environmental Impact Statement was prepared, on August 2, 2012, the Forest Service again consented to the BLM modifying the leases. A Notice of Appeal was filed on September 24, 2012; on November 7, 2012, the Forest

Service reaffirmed its consent for the lease modifications; and on March 26, 2013, the BLM approved the lease modifications. The lease modifications were successfully challenged in September 2014 and as a result, a Supplemental Environmental Impact Statement was circulated in November 2015 and a final Supplemental Environmental Impact Statement was prepared and issued in August 2017. United States Forest Service and Bureau of Land Management/Department of the Interior ("DOI") Records of Decision were finalized and approved in December 2017, and modified Federal Coal Leases C-1362 and COC-67232 were issued on December 22, 2017. Subsequently, Applicant conducted coal exploration drilling within the modified leases and adjacent fee parcel. The SMCRA permit for these modified federal leases and for adjacent fee parcel was later submitted and then approved by the CDRMS with Permit Revision No. PR-15 in November 2018, and the Office of Surface Mining, Reclamation, and Enforcement and DOI approved the federal mine plan in March and April 2019, respectively. The OSM/DOI federal mine plan approval was overturned in November 2019. Thereafter, an additional Environmental Analysis was completed and a new federal mine plan approval was issued on January 13, 2020. Since the mine operations are a necessary prerequisite to the development of the Subject Water Rights, Applicant's efforts to expand its lease areas constitutes diligence in the development of the Subject Water Rights. 4.2.3. In 1987, as part of its Mine development, the Applicant adjudicated Case No. 86CW38, approving a Plan for Augmentation for certain Mine operations. Applicant is required by the decree in that case to prepare and provide the State Engineer and/or Division Engineer a summary report recomputing the so-called contribution factors for the augmentation plan at certain time intervals. In the spring of 2017, during the diligence period, Applicant completed analyses of the contribution factors for submittal to the State and Division Engineer pursuant to the Decree in Case No. 86CW38. Since the Subject Water Rights are part of a unified and integrated water supply system, of which the Augmentation Plan forms a part, the Applicant's efforts in compliance with the Augmentation Plan constitutes diligence with regard to the Subject Water Rights. 4.2.4. Pursuant to the Plan for Augmentation decreed in Case No. 86CW38, Applicant is required to furnish annual reports of streamflow data to the Division Engineer from certain stream gauges. Applicant provided this data annually during the diligence period. Since the Subject Water Rights are part of a unified and integrated water supply system, of which the Augmentation Plan forms a part, the Applicant's efforts in compliance with the Augmentation Plan constitutes diligence with regard to the Subject Water Rights. 4.2.5. Applicant owns various interests in ditch and reservoir companies and the water derived therefrom is used to augment mining operations. During the diligence period, Applicant paid funds in the form of ditch assessments to the Minnesota Canal and Reservoir Company, the Turner Ditch Company, the Lone Cabin Ditch and Reservoir Company, and the Fire Mountain Canal and Reservoir Company. Said funds are used, in part, to maintain the ditches necessary for operation of Applicant's augmentation plans decreed in Cases No. 86CW38 and 97CW244. Since the Subject Water Rights are part of a unified and integrated water supply system, of which the above water rights form a part, Applicant's expenditure of funds to the ditch and reservoir companies constitutes diligence with regard to the Subject Water Rights. 4.2.6. During the diligence period, in August 2015, Applicant completed engineering, design, and construction of a buried water distribution pipeline from Sedimentation Pond No. MB-5E to the B North Panels Sealed Sump and the Applicant's Coal Preparation Plant facility. Because construction of this pipeline improved the management and distribution of water throughout the Mine, and because the Subject Water Right may be stored in Sedimentation Pond No. MB-5E, Applicant's construction of the pipeline constitutes diligence in the development of the Subject Water Rights. 4.2.7. During the diligence period, in November 2017, Applicant completed permitting and construction of a new 185,000-gallon portable water storage tank used to store treated water from the Mt. Gunnison Pipeline for subsequent use in operation of the Mine. Since mine operations are a necessary prerequisite to the development of the Subject Water Rights, these

permitting and construction efforts constitute diligence in the development of the Subject Water Rights. 4.2.8. During the diligence period, in May 2018, Applicant completed engineering designs for a well, pumps and pipeline system to improve the withdrawal and distribution of water stored in the B North Panels Sealed Sump. Since the Subject Water Rights are part of a unified and integrated water supply system, of which the B North Panels Sealed Sump form a part, these efforts constitute diligence in the development of the Subject Water Rights. 4.2.9. During the diligence period, in 2016 and 2017, Applicant adjudicated Case No. 16CW3003, in which the Court found that Applicant diverted and placed to beneficial use the entire Fresh Water Pond No. 2 water right, making the entire water right absolute. Since the Subject Water Rights are part of a unified and integrated water supply system, of which the Fresh Water Pond No. 2 water right forms a part, the Applicant's efforts to develop that water right constitute diligence with regard to the Subject Water Rights. 4.2.10. Further, during the Diligence Period, in 2019, Applicant adjudicated Case No. 19CW3021, in which the court found reasonable diligence in the development of the remaining conditional portion for the Mt. Gunnison Pipeline water right originally decreed in Case No. W-2982. Since the Subject Water Rights are part of a unified and integrated water supply system, of which the Mt. Gunnison Pipeline water right forms a part, the Applicant's efforts to develop that water right constitutes diligence with regard to the Subject Water Rights. 4.2.11. During the diligence period, in 2020, Applicant adjudicated Case No. 20CW3026, in which the Court found reasonable diligence in the development of the conditional B North Panels Sealed Sump water right and continued the water right in full force and effect. Since the Subject Water Rights are part of a unified and integrated water supply system, of which the B North Panels Sealed Sump water right forms a part, the Applicant's efforts to develop those water rights constitutes diligence with regard to the Subject Water Rights. 4.2.12. Throughout the diligence period, Applicant diverted water at the Mt. Gunnison Pipeline's point of diversion into the Alternate Storage Ponds and subsequently applied the water to beneficial use in the course of Applicant's mining activities. **5. If claim to make absolute in whole or in part:** Throughout the diligence period, Applicant filled Fresh Water Pond No. 1 and Sedimentation Pond No. 1 (aka New Fresh Water Pond) and subsequently applied the diverted water to beneficial use in the course of Applicant's mining activities. These diversions were made in priority during times of free river and, at times, allocated to the Subject Water Right. From June 8, 2018, through October 20, 2018, Applicant diverted in excess of 15.25 acre-feet into Fresh Water Pond No. 1 and Sedimentation Pond No. 1 (representing 9.98 acre-feet stored in Fresh Water Pond No. 1 and 5.27 acre-feet stored in Sedimentation Pond No. 1). These diversions can be attributed to the Subject Water Right and were diverted in priority. As a result, Applicant seeks to make an additional amount of 0.86 acre-feet absolute as to the Subject Water Right. A summary of the relevant diversions is attached as **Exhibit 3.** **6. Names(s) and address(es) of owner(s) or reputed owners 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:** 6.1. The Survivors Trust under the Tennison Revocable Trust, 3552 E. Constitution Dr., Gilbert, AZ 85296 (Snowshoe Reservoir; Gunnison County Parcels No. 318300000104, 318300000106). 6.2. Theresa L. Kaiser, 27711 County Road 12, Somerset, CO 81434 (Snowshoe Reservoir; Gunnison County Parcel No. 318300000117). 6.3. Dark Canyon Meadow, LLC, 1601 Forum Pl. Ste. 307, West Palm Beach, FL 33401 (Snowshoe Reservoir; Gunnison County Parcel No. 318300000116). 6.4. United States Forest Service, P.O. Box 2000, Washington, DC 20013 (Snowshoe Dam and Reservoir; Gunnison County Parcels No: 318300000090, 318300000091). 6.5. United States Forest Service, 216 N. Colorado St., Gunnison, CO 81230 (Snowshoe Dam and Reservoir; Gunnison County Parcel No: 318300000026). 6.6. United States Bureau of Land Management, c/o Colorado State Office, 2850 Youngfield St., Lakewood, CO 80215 (Snowshoe Dam and Reservoir; Snowshoe Pipeline; Gunnison County Parcels No. 318300000058, 318300000031,

318300000009, 318300000041, 318300000039, 318300000038). 6.7. Bear Ranch, LLC, 1601 Forum Pl., Ste. 307, West Palm Beach, FL 33401 (Snowshoe Reservoir; Gunnison County Parcels No. 318300005002, 318300006001, 318300007001, 318300000115, 318300000084). 6.8. LPF Revocable Trust, P.O. Box 1861, Gypsum, CO 81637 (Snowshoe Reservoir; Gunnison County Parcel No. 31830000035). 6.9. Howerton Frank L Revocable Trust, 13238 S. Peoria Ave., Bixby, OK 74008 (Snowshoe Reservoir; Gunnison County Parcel No. 318300000093). 6.10. Series 213 Subsidiary LLC, P.O. Box 32734, Oklahoma City, OK 73123 (Snowshoe Reservoir; Gunnison County Parcel No. 318300000094). 6.11. Kenneth Edward Norris, et al., 61352 Tombstone Dr., Montrose, CO 81401 (Snowshoe Reservoir; Gunnison County Parcel No. 318300000033). 6.12. Chris Leverich, 555 E. Durant Ave., Ste. 4A, Aspen, CO 81611 (Snowshoe Reservoir; Gunnison County Parcel No. 318300000037). 6.13. Camp ID RA HA JE West, c/o Jeff Christianson, Director, 27862 County Road 12, Somerset, CO 81434 (Snowshoe Reservoir; Gunnison County Parcels No. 318300000099, 318300000100). 6.14. Anthracite Creek LLC, 401 S. Harbor Dr., Key Largo, FL 33037 (Snowshoe Reservoir; Gunnison County Parcel No. 318300000095). 6.15. Anthracite Legacy Cabin, LLLP, 349 Troyer Ave., Palisade, CO 81526 (Snowshoe Reservoir; Gunnison County Parcel No. 318300000040). 6.16. Reed J. Bumgarner, 1001 25 Rd., Grand Junction, CO 81505 (Snowshoe Reservoir; Gunnison County Parcels No. 318300000118, 318300000119). 6.17. Laura Harms, 326 April Harbour Dr., Montgomery, TX 77356 (Snowshoe Reservoir; Gunnison County Parcel No. 318300000008). 6.18. Mountain Coal Company, LLC, P.O. Box 591, 5174 State Highway 133, Somerset, CO 81434 (Sedimentation Ponds No. 1, 2, 3; Freshwater Ponds No. 1 and 2; Gunnison County Parcels No: 318500000054; 318500000009). **WHEREFORE**, Applicant respectfully requests the Court enter its decree and ruling as follows: A. To issue a finding that up to 15.25 acre-feet of the Subject Water Right has been made absolute by reason of diversion in priority and application of the resulting water to decreed beneficial uses and a finding of reasonable diligence with respect to the remaining conditional amounts of the Subject Water Right; B. In the alternative, to make a finding of reasonable diligence with respect to the remaining conditional Subject Water Rights originally decreed in Civil Action No. C-5873, and providing that a subsequent showing of diligence be made six years from the date of entry of a decree of diligence. **GUNNISON COUNTY.**

YOU ARE FURTHER NOTIFIED THAT you have until the last day of March 2023 to file with the Water Clerk a Verified Statement of Opposition setting forth facts as to why a certain application should not be granted or why it should be granted only in part or on certain conditions. A copy of such a Statement of Opposition must also be served upon the applicant or the applicant's attorney and an affidavit of certificate of such service shall be filed with the Water Clerk, as prescribed by C.R.C.P. Rule 5. (Filing fee: \$192.00; Forms may be obtained from the Water Clerk's Office or on our website at [www.courts.state.co.us](http://www.courts.state.co.us)). (This publication can be viewed in its entirety on the state court website at: [www.courts.state.co.us](http://www.courts.state.co.us)). FRED CASTLE, Water Clerk, Water Division 4, 1200 N. Grand Ave., Bin A, Montrose, CO 81401