

**DISTRICT COURT, WATER DIVISION 1, COLORADO
JUNE 2022 WATER RESUME PUBLICATION**

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN WATER DIV. 1

Pursuant to C.R.S. 37-92-302, you are notified that the following is a resume of all water right applications, protests to final revised abandonment list and certain amendments filed in the Office of the Water Clerk during the month of **JUNE 2022** for each County affected.

2022CW8 may be published in future resume.

2022CW9 and bifurcated protest Case No. 21CW3216, Protestant: FORT COLLINS/I-25 INTERCHANGE CORNER, LLC (FCIC), Jeannie Cox, P.O. Box 7388, Colorado Springs, CO 80933, 719-540-5800, jeannie@contrarianholdings.com. Serve all pleadings on: Scott E. Holwick and Casey J. Weaver, Lyons Gaddis, P.C., P.O. Box 978, Longmont, CO 80502-0978, (303)776-9900 sholwick@lyonsgaddis.com, cweaver@lyonsgaddis.com. **PROTEST TO FINAL ABANDONMENT LIST INVOLVING A WATER RIGHT IN LARIMER COUNTY. 2. Describe the Water Right:** **A.** Name of Structure: The Kitchell and Ladd Ditch. **B.** Date of Original Decree: April 11, 1882 in Case No. CA-320 in Larimer County District Court. **C.** Decreed Legal Description of Structure Location: Said Ditch being on the South-west quarter of Section No. Ten (10), Township No. Seven, North, Range No. Sixty-eight, West, length near one mile. **D.** Source of Water: Cooper Slough, a tributary of the Cache la Poudre River. **E.** Decreed Use or Uses: Irrigation and Domestic. **F.** Appropriation Date: October 1, 1875. Decreed Amount: 2.95 cfs (ABSOLUTE). **G.** Amount and Use or Uses Listed as Having Been Abandoned: 2.95 cfs for all decreed uses. **H.** Former District Number and Page Number Where Listed on Abandonment List: The Abandonment List does not identify a Former District Number for the Water Right, but the Water Right is listed on Page 22 of 44 of the Abandonment List. **3. State factual and legal basis for this Protest :** The decreed location of the diversion structure for the Kitchell and Ladd Ditch (**Ditch**) does not correspond to its actual location. The December 3, 2019 Structure Status and Inventory Report, obtained from CDSS and attached hereto and incorporated herein as **Exhibit 1**, upon which the Division of Water Resources presumably relied when placing the Water Right on the Abandonment List, correctly notes that the Ditch's diversion structure does not exist at its decreed location. In the original decree, the Ditch was correctly described as diverting from the Cooper Slough, but erroneously described both the Cooper Slough and the point of diversion for the Water Right as being in the Southwest quarter of Section No. Ten (10), Township No. Seven, North, Range No., Sixty-eight, West. The correct point of diversion for the Water Right is instead in Section No. 9, at the quarter section line separating the Southwest and Southeast quarters of Section No. 9. See map depicting the actual location of the point of diversion for the Water Right attached hereto and incorporated herein as **Exhibit 2**. The Cooper Slough traditionally meandered southward through Sections No. 4, 9, and 16, but at no point strays as far East as Section No. 10. In 2013, FCIC acquired the parcel located in Section 16, Township 7 North, Range 68 West of the 6th P.M., in Larimer County, Colorado, in the northwest quadrant of Prospect Road and I-25 in Fort Collins (a/k/a Larimer County Assessor Parcel No. 8716400001) (**Property**). See Special Warranty Deed dated April 11, 2013, recorded in the real property records of Larimer County on April 15, 2013 at Reception No. 20130028184 attached hereto and incorporated herein as **Exhibit 3**. FCIC also acquired the Water Right with the Property. See Quit Claim Deed (Water Rights) dated April 11, 2013, recorded in the real property records of Larimer County on April 15, 2013 at Reception No. 20130028185 attached hereto and incorporated herein as **Exhibit 4**. Since 2013, FCIC has leased the Water Right and the Property to Robert Becker, Jr., to farm. Mr. Becker has used the Water Right, along with FCIC's Lake Canal shares, a well, and C-BT project water to irrigate the Property. Mr. Becker similarly leased the Water Right and the Property from FCIC's predecessor(s)-in-interest since approximately 1995. Mr. Becker's affidavit detailing his use of the Water Right on the Property is attached hereto and incorporated herein as **Exhibit 5**. The Water Right has been used continually on the Property for decades. At no time has the Water Right been abandoned, nor has its current owner, FCIC, evidenced any intent to abandon the Water Right. To the contrary, FCIC is working with the City of Fort Collins to develop the Property and the Water Right will be an element in the non-

potable system for the development. **4. Remarks:** Now that the erroneous point of diversion has been brought to its attention, subsequent to filing this Protest, FCIC will file an application for a simple change in surface point of diversion pursuant to § 37-92-305(3.5), C.R.S. Accordingly, FCIC respectfully requests that the Court order the Water Right removed from the Abandonment List.

2022CW10 and Bifurcated Protest Case No. 21CW3216. Protestant/Owner: MORGAN BENEDICT, 8400 W County Road 18 E, Loveland, Colorado, 80537. Please send all future correspondence and pleadings to Daniel K. Brown, Esq., and Whitney Phillips Coulter, Esq., Fischer, Brown Bartlett, Larsen & Irby, P.C., 1319 E. Prospect Road, Fort Collins, CO 80525. **PROTEST TO FINAL ABANDONMENT LIST IN LARIMER COUNTY.** 2. Describe the Water Right: A. Name of Structure: Cole Well No. 1, Permit No. 054179-F, decreed in Case Number W-7671-74, Water Division 1 (“Cole Well”). B. Date of Original Decree: February 14, 1977. C. Decreed Legal Description of Structure Location. Cole Well No. 1 is located in the NW 1/4 of the SE 1/4 of Section 23, Township 5 North, Range 70 West of the 6th P. M., Larimer County, Colorado, at a point 180 feet North and 450 feet East of the SW Corner of NW 1/4 of SE 1/4 of said Section 23. A map showing the location of the Cole Well is attached hereto as Exhibit A. D. Source of water: groundwater E. Decreed use or uses: irrigation of 15 acres in Section 23, Township 5 North, Range 70 West of the 6th P. M., Larimer County, Colorado. F. Appropriation Date and Amount: April 30, 1956 for .21 cfs G. Amount and use or uses listed as having been abandoned: .21 cfs for all decreed uses H. District Number and Page Number where listed on Abandonment List: District 4, page number 8. 3. The factual and legal basis for this Protest include but are not limited to the following: The Colorado Supreme Court “has consistently held that a finding of abandonment requires the concurrence of two elements: a sustained period of non-use and an intent to abandon.” *East Twin Lakes Ditches and Water Works, Inc. v. Board of County Com'rs of Lake County* (“*East Twin Lakes*”), 76 P.3d 918, 921 (Colo. 2003). A 10-year period of non-use raises the presumption of abandonment and “shifts the burden of going forward to the water rights owner but is insufficient in and of itself to prove abandonment.” *Id.* at 921. “The critical element of abandonment is intent.” *Haystack Ranch v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000). A water right holder may not simply say that he or she does not intend to abandon the right; there must be evidence of the intent to beneficially use the water. *Southeastern Colorado Water Conservancy Dist. v. Twin Lakes Associates, Inc.*, 770 P.2d 1231, 1238 (Colo. 1989). Such evidence may include, as relevant to the Cole Well: “filing documents to protect, change, or preserve the right.” *East Twin Lakes*, 76 P.3d 918 at 922. Mr. Benedict has not intended and does not now intend to abandon the Cole Well water right. He has taken measures to preserve the water right while also complying with Division of Water Resources (“DWR”) requirements, making clear that he did not intend to abandon the water right for the Cole Well, as described in more detail below. When Mr. Benedict purchased the property on which the Cole Well exists in 1995, Mr. Benedict's predecessors, Edwin and Nola Cole, provided the irrigation pump and pipe, and that equipment has been kept for future use. The Coles also provided documents related to the Cole Well, including information about its inclusion in GASP. It was Mr. Benedict’s understanding that he could use the Cole Well for irrigation on his property, and he did so for several years. In 2008, Mr. Benedict began working with Poudre Valley REA (“PVREA”) to relocate and bury an overhead powerline on his property. Exhibit B. PVREA agreed to reroute four secondary service lines to several structures on the property, including a line to service the Cole Well pump. Exhibit B. Mr. Benedict’s understanding was that the secondary service lines would be installed underground, as indicated in PVREA’s letter to him. Exhibit B. Based on the PVREA letter and his discussions with Terry Fielding, a PVREA engineering representative, it was Mr. Benedict’s understanding that the secondary service from the custom transformer near Larimer County Road 18E to the pump house for the Cole Well would be trenched for its entire length. However, PVREA did not trench the last approximately fifty feet (a utility pole and an overhead line were installed instead to connect the secondary line to the pump house. Exhibit C. Strong winds separated the overhead line from the pump house after its installation by a PVREA subcontractor. Despite Mr. Benedict’s repeated requests that the line be repaired, PVREA has disputed that it is responsible for the line it installed. Exhibit D. As such, there remains a contractual dispute regarding the line servicing the Cole Well pump. In 2013, the Thompson River flood filled in the Cole Well with silt and debris, and the water level prevented access

to the intake pipe. Exhibit E and Exhibit F. Without a power source connected to the Cole Well, repairing it after the flood would have been pointless. Exhibit E. In May of 2017, Mr. Benedict received a letter from the DWR with the subject being “Notice of Potential Violation – South Platte Measurement Rules.” Exhibit G. The letter notified Mr. Benedict of the requirement that his well either have a totalizing flow meter or that he provide proof that the well is inactive, either by removing the well pump or by having electrical service to the well disconnected. Mr. Benedict received a reminder letter from the DWR in October of 2017 (Exhibit H) and a Cease and Desist letter in May of 2018 (Exhibit I). On September 29, 2017, Mr. Benedict sent a letter to Rod Bledsoe with PVREA that he is willing to disconnect electrical service to the well but “that the disconnect should not be a permanent or irreversible action.” Exhibit J. Mr. Benedict met with Mr. Bledsoe on his property on October 18, 2017, and followed up via email, stating that he did not want the removal of the cable line to “be used as evidence of abandonment of the well.” Exhibit K. On November 23, 2017, Mr. Benedict followed up with Mr. Bledsoe to reiterate the DWR’s requirement that the service provider disconnect the power to the well and to emphasize that he wanted the disconnection to be “non-permanent.” Exhibit D. On November 27, 2018, Mr. Bledsoe replied via email and confirmed that PVREA would leave its equipment in place while disconnecting the power to the well. Exhibit D. On November 27, 2017, Mr. Benedict replied via email and reiterated his intent not to disconnect the power permanently in order to be able to irrigate with the well in the future. Exhibit D. On November 29, 2017, Mr. Benedict emailed Mr. Bledsoe and others at PVREA to state that he did not want the transformer to be removed as he was concerned that could be “used by the DWR as evidence of abandonment of our well.” Exhibit L. Mr. Benedict stated in that email that he might decide to irrigate his land with the well in the future and also that, in the event he sells his property, he intends to convey the well to be used for irrigation. Exhibit L. Mr. Benedict requested that the line be disconnected at the utility pole and the junction box thereon be locked. Exhibit L. On December 1, 2017, Mr. Benedict sent an email to DNR_DIV1SPGWM@state.co.us. Exhibit E. He stated that PVREA’s connection to the Cole Well was faulty and had not worked properly since it was installed. Exhibit E. He stated that the Big Thompson River flood in 2013 “filled the well with silt and debris,” causing it to be inoperable. Exhibit E. He stated that he did “not want a permanent disconnection that would devalue the potential sale of this property.” Exhibit E. On December 1, 2017, Kyle Bobst, Deputy Groundwater Commissioner, responded to Mr. Benedict stating that because Mr. Benedict’s well was not in an augmentation plan, his options were to “get a well test or file the well as inactive.” Exhibit E. He stated that it sounded “like the well might already be inactive, but a field visit would need to be conducted in order to make a final determination.” Exhibit E. On December 4, 2017, Mr. Benedict met on his property with Justin Bieri and Kyle Bobst from the DWR. Exhibit M and Exhibit N. Mr. Benedict then informed PVREA that the line serving the Cole Well needed to be disconnected. Exhibit M. On May 22, 2018, Mr. Bieri sent a message indicating that he had received confirmation that PVREA would remove service to the well that week. Exhibit M. Mr. Benedict then submitted a notarized and completed Form 7, Dated June 6, 2018, confirming that the power to the Cole Well had been disconnected. Exhibit O. Mr. Benedict emailed Mr. Bieri, requesting confirmation that the DWR had received the Form. Exhibit P. Mr. Bieri responded, confirming that the Form 7 had been received and stating that Mr. Bobst would be inspecting the well. Exhibit P. Mr. Bobst inspected the Cole Well on August 9, 2018, posted a “Do Not Divert” tag in the well house. Exhibit Q. He marked the “Inactive Well (Form 7)” option on the tag. Exhibit Q. In sum, the information provided herein and the exhibits attached hereto show that Mr. Benedict has not intended to abandon the Cole Well water right and that he took steps to protect it by complying with DWR requirements. He worked with PVREA and the DWR to disconnect power to the well and filed a Form 7 while also making sure that power was not permanently disconnected and by making clear that his intent was not to abandon the well. As such, the Cole Well should be removed from the final 2020 Abandonment List. Mr. Benedict may provide additional evidence and information as the case progresses. This Protest consists of (7) pages, plus exhibits.

2022CW11 and bifurcated protest Case No. 21CW3216. MAGNESS LAND HOLDINGS, LLC, Attn: Matt Gallaher, 4643 S. Ulster St., Ste. 1400, Denver, CO 80237. Please direct all pleadings and correspondence to William H. Caile, Esq., and Hayley K. Siltanen, Esq., Holland & Hart LLP, 555 17th

St., Ste. 3200, Denver, CO 80202-3921, (303) 295-8000, whcaile@hollandhart.com, hksiltanen@hollandhart.com. **PROTEST TO FINAL ABANDONMENT LIST IN WELD COUNTY.**

2. Water Right Description: a. Name of Structure: Lorenz Well 1-R14191. b. Date of Original Decree: Decree entered December 3, 1975, in Case No. W-6275, Water Division 1. c. Decreed Legal Description of Structure Location: Located in the SW1/4-SW/14 of Section 30, Township 3 North, Range 66 West, 6th P.M., Weld County, Colorado, at a point 1063 feet North and 80 feet East of the Southwest Corner of said Section 30. A map depicting the decreed location of the structure is attached to the application as Exhibit A. d. Source: South Platte River. e. Decreed Use(s): Irrigation of 100 acres in the SW1/4 of Section 30, Township 3 North, Range 66 West, 6th P.M., Weld County, Colorado. f. Appropriation Date: May 1, 1935. g. Decreed Amount: 1.444 c.f.s. h. Amount and Use(s) Listed as Having Been Abandoned: 1.444 c.f.s. for all decreed uses. i. Page Number on Abandonment List: The subject Lorenz Well 1-R14191 right is listed on page 21 of 39 on the Division Engineer's Final Revised Abandonment List for Water Division 1. 3. Factual and Legal Basis for this Protest: a. In this case, as described below, Magness only stopped using Lorenz Well 1-R14191 due to policies then in place at the Central Colorado Water Conservation District ("Central") regarding augmentation plan coverage for the well. Based on recent discussions with Central, Magness understands that current policies may again allow for augmentation of the well by Central. As such, Magness intends to utilize the well in the future. At no time did Magness intend to abandon the water right for the well. b. The 100 acres authorized to be irrigated by Lorenz Well 1-R14191, formerly part of the "Lorenz Farm," are located within the service area boundaries of Central's Well Augmentation Subdistrict ("WAS"). c. Historically, Magness held WAS Contract No. 184, which Covered Lorenz Well 1-R14191 and Lorenz Well 2-R14192. In 2006, Central implemented a policy change that required contract holders to reduce the number of wells covered by WAS contracts to one well per contract. In order to maintain WAS augmentation coverage for other wells that it owned, Magness surrendered WAS Contract No. 184 in its entirety. d. Lorenz Well 1-R14191 is capable of irrigating land currently owned by Magness, and Magness intends to utilize the well for this purpose in the future. Magness has had discussions with Central regarding inclusion of the well under a new WAS contract and understands that this is now legally feasible. Magness did not intend to abandon the water right for Lorenz Well 1-R14191, and only stopped using the well as a temporary measure in response to the above-described restriction on WAS augmentation coverage. Magness reserves the right to provide additional evidence of intent to utilize and not to abandon the subject water right (6 pages incl. exhibit)

2022CW12 and Bifurcated Protest Case No. 21CW3216. Protestant/Owner: RICKY AND PAMELA ORNELAS, 16799 County Road 39.7, Julesburg, Colorado, 80737. Please send all future correspondence and pleadings to Daniel K. Brown, Esq., and Whitney Phillips Coulter, Esq., Fischer, Brown Bartlett, Larsen & Irby, P.C., 1319 E. Prospect Road, Fort Collins, CO 80525. **PROTEST TO FINAL ABANDONMENT LIST IN SEDGWICK COUNTY.** 2. Describe the Water Right: A. Name of Structure: Hodges Well-13456-R B. Date of Original Decree: W-3057, entered November 8, 1973 C. Decreed Legal Description of Structure Location. Well No. 1- 13456 is located in the NW 1/4 of NE 1/4 of Section 29, Township 12 North, Range 44 West of the 6th P. M., Sedgwick County, Colorado, at a point 1083 feet South and 2623 feet West of the NE Corner of said Section 29. A map showing the location of the Hodges Well is attached hereto as Exhibit A. D. Source of water: South Platte River E. Decreed use or uses: Irrigation of approximately 46 acres in the NE 1/4 of Section 29, Township 12 North, Range 44 West of the 6th P. M., Sedgwick County, Colorado. F. Appropriation Date and Amount: August 3, 1954, for 1.81 cfs G. Amount and use or uses listed as having been abandoned: 1.81 cfs for all decreed uses H. District Number and Page Number where listed on Abandonment List: Dist. 64, page 16. 3. State factual and legal basis for this Protest: The Colorado Supreme Court "has consistently held that a finding of abandonment requires the concurrence of two elements: a sustained period of non-use and an intent to abandon." East Twin Lakes Ditches and Water Works, Inc. v. Board of County Com'rs of Lake County ("East Twin Lakes"), 76 P.3d 918, 921 (Colo. 2003). "The critical element of abandonment is intent." Haystack Ranch v. Fazzio, 997 P.2d 548, 552 (Colo. 2000). A water right holder may not simply say that he or she does not intend to abandon the right; there must be evidence of the intent to beneficially use the water. Southeastern

Colorado Water Conservancy Dist. v. Twin Lakes Associates, Inc., 770 P.2d 1231, 1238 (Colo. 1989). Such evidence may include, among other things: “(1) repair and maintenance of diversion structures; (2) attempts to put the water to beneficial use; and (7) economic or legal obstacles to exercising the water right.” East Twin Lakes, 76 P.3d 918 at 922. Mr. and Mrs. Ornelas have not and do not now intend to abandon the water right associated with the Hodges Well. During the time period relevant to these proceedings, January 1, 2010, through December 31, 2019 (“Relevant Time Period”), they have worked to repair the Hodges Well and to add the well to an augmentation plan so they can legally utilize it. To that end, they worked with the Julesburg Irrigation Company to add a recharge pond on their property to the Julesburg Irrigation Company’s Plan, decreed in Water Division One Case No. 95CW283/03CW450. Mr. and Mrs. Ornelas began working on a plan to get their well operational in 2017. At that time, their well was not working due to what they believe to be a faulty pump. In June of 2017, they contacted Larry Frame, Superintendent of the Julesburg Irrigation Company, to learn what they would need to do to get their well running and into an augmentation plan. Exhibit B. Mr. and Mrs. Ornelas told Mr. Frame that their well was not working at the time but that they intended to repair and use it. Exhibit B.

Mr. Frame told them they could join the Julesburg Irrigation Districts recharge plan and then could join the Lower South Platte Water Conservancy District’s Augmentation Plan. Exhibit B. He told them to reach out to Joe Frank, General Manager of the Lower South Platte Water Conservancy District, to learn how to add their well to that augmentation plan and the associated fees. Exhibit B. Mr. Frame also suggested they contact Sargent Irrigation in Ogallala, NE, about repairing the well. Mr. Ornelas contacted Sargent Irrigation and spoke to someone in charge of drilling. He stated that they could come out and see if the well was operable or would need work. He stated that at the minimum there could be problems with the casing, collapse, and it was possible that it would be necessary to re-drill the well to make it useable. They could test the well for \$1,000 with their own motor to see if it would pull water. He said that if there were any issues, repair costs could run from \$15,000 to \$30,000 if the well needed to be re-drilled. Mr. and Mrs. Ornelas talked with Mr. Frank on August 10, 2017, about the process involved and the associated fees to join their augmentation plan. Exhibit C. Mr. Frank told them that, in total, including past fees and anticipated future fees, adding the well to the plan would require an initial deposit of \$10,725. Exhibit C. Mr. and Mrs. Ornelas took that into consideration in addition to the likely costs of repair. Additionally, they talked with Mr. Frank about installing a recharge pond on their property, and he advised that they talk with Mr. Frame about working with Julesburg Irrigation District for that purpose. Mr. and Mrs. Ornelas then talked with Mr. Frame, who advised putting a recharge pond on their property to bring water to the table, meaning that they could offset some of their depletions with the pond. Exhibit B. Ultimately, Mr. and Mrs. Ornelas decided that they wanted to take the steps necessary to add the Hodges Well to the South Platte Water Conservancy District’s Augmentation Plan. They continued to save money and decided that the recharge pond was where they needed to start. In the fall of 2021, Mr. Frame informed them that there were other individuals wanting to add ponds into Julesburg Irrigation Company’s plan, and it would be a good time for them to get their pond approved. The Division of Water Resources approved the addition of their pond, the Ricky Ornelas Pond, to the Julesburg Irrigation Company plan on May 9, 2022. Exhibit D. In sum, the information provided herein and exhibits attached hereto show that Mr. and Mrs. Ornelas have not and do not now intend to abandon the Hodges Well water rights. They have worked to repair the well and have taken steps toward adding their well to an augmentation plan, including gaining approval to add a recharge pond on their property to the Julesburg Irrigation Company’s plan. Mr. and Mrs. Ornelas may provide additional evidence and information as the case progresses. This Protest consists of five (5) pages, plus exhibits.

2022CW13 and bifurcated protest Case No. 21CW3216. PROTESTANT/OWNER: TOWN OF CASTLE ROCK, Mark Marlowe, Director of Castle Rock Water 175 Kellogg Court Castle Rock, CO 80109 mmarlowe@crgov.com (720) 733-6002; Serve all pleadings on: Madoline Wallace-Gross, Anthony J. Basile, and Casey Weaver, Lyons Gaddis, P.C., P.O. Box 978, Longmont, CO 80502-0978, (303)776-9900, mwg@lyonsgaddis.com; abasile@lyonsgaddis.com; cweaver@lyonsgaddis.com. **PROTEST TO**

FINAL REVISED ABANDONMENT LIST IN DOUGLAS COUNTY. PROTEST AS TO HIGH LINE DITCH WATER RIGHTS.

2. Describe the Water Rights: A portion of Priority Nos. 57, 73, and 102, originally decreed to the High Line - East Plum Creek Ditch (“High Line Ditch Water Rights”). **3. Name of Structures:** Young Well 5-11941 (WDID 0808126); Young Well 6 (WDID 0808127); and Young Well 7 (WDID 0808128). **4. Original Adjudication:** District Court, Douglas County, entered December 10, 1883. **5. Supplemental Adjudications:** 5.1. Case No. 81CW49, District Court, Water Division No. 1 entered December 31, 1984. 5.2. Case No. 95CW240, District Court, Water Division No. 1 entered December 31, 1996. 5.3. Case No. 00CW78, District Court, Water Division No. 1 entered April 22, 2002. 5.4. Case No. 12CW296, District Court, Water Division No. 1 entered April 19, 2016. **6. Decreed Legal Descriptions of Structure Locations.** A map is attached as **EXHIBIT A.** 6.1. **Young Well 5-11941:** Located in the NW 1/4 of the NW 1/4, Section 34, Township 8 South, Range 67 West of the 6th P.M., Douglas County, Colorado, at a point 830 feet South of the North section line and 1,220 feet East of the West section line; 6.2. **Young Well 6:** Located in the NW 1/4 of the NW 1/4, Section 34, Township 8 South, Range 67 West of the 6th P.M., Douglas County, Colorado, at a point 810 feet South of the North section line and 1,150 feet East of the West section line; 6.3. **Young Well 7:** Located in the NE 1/4 of the NW 1/4, Section 34, Township 8 South, Range 67 West of the 6th P.M., Douglas County, Colorado, at a point 1,150 feet South of the North section line and 1,600 feet East of the West section line. **7. Source of water:** East Plum Creek, tributary to the South Platte River. **8. Decreed use or uses:** Irrigation, storage, augmentation, and exchange uses. **9. Appropriation Dates:**

<i>Priority Nos.</i>	<i>Appropriation Dates</i>
57	September 1, 1871
73	June 30, 1873
102	June 30, 1878

10. Decreed Amounts:

<i>Priority Nos.</i>	<i>Originally Decreed Amounts (c.f.s./absolute)</i>	<i>Protestant’s Interest in the Originally Decreed Amounts (c.f.s.)</i>
57	3.52	0.585
73	1.4	0.233
102	15.08	0.848
Totals	20.0	1.665

11. Amount and use or uses listed as having been abandoned: The Final Revised Abandonment List (“Abandonment List”) describes all amounts and uses as having been abandoned. **12. Former District Number and Page Number where listed on Abandonment List:** Former Water District 8; Division 1 – South Platte Abandonment List, Page 44. **13. State factual and legal basis for this Protest:** The State Engineer appears to conflate the Young Well Nos. 5 to 7 with the underlying High Line Ditch Water Rights in the Abandonment List. 13.1. Protestant owns portions of Priorities No. 57, 73, and 102, which were originally decreed to the High Line - East Plum Creek Ditch. 13.2. In Case No. 81CW49, Protestant’s interest in the High Line Ditch Water Rights were quantified and the historical consumptive use (“HCU”) was changed for diversion at alternate points of diversion at the Young Wells. 13.3. In Case Nos. 95CW240 and 00CW78, the HCU attributable to Protestant’s interest was designated for augmentation purposes for post-pumping depletions of Protestant’s wells. 13.4. In Case No. 09CW166, Protestant identified the HCU as a source of substitute supply in exchanges. 13.5. In Case No. 12CW296. Protestant changed the HCU for storage in Chatfield Reservoir. 13.6. Case No. 19CW3231, Protestant identified and designated the HCU as an augmentation source. 13.7. The HCU, consequently, has been available for augmentation and can now be both stored in, and exchanged from, Chatfield Reservoir. 13.8. As a result of Protestant’s prosecution of Case Nos. 95CW114, 95CW240, 00CW78, 09CW166, 12CW296 and 19CW3231, the HCU attributable to the High Line Ditch Water Rights was available as an augmentation source during the relevant ten-year period. **EXHIBIT B** is a report from Protestant’s engineers proving the HCU has been used for beneficial purposes. 13.9. During the ten years in question, Protestant defended the water right in tens of water court cases. The undertakings cost Protestant millions of dollars in legal, engineering,

infrastructure, and administrative fees and costs. 13.10. Protestant acknowledges that it does not use the Young Wells. Protestant specifically abandoned the alternate points of diversion via a notice filed in Case No. 81CW49. See attached as **EXHIBIT C. Protest as to Ball Ditch Water Right** 14. **Describe the Water Right:** A portion of Priority No. 50, originally decreed from West Plum Creek Ditch (“Ball Ditch Water Right”). 15. **Name of Structure:** Ball Ditch (WDID 0801213). 16. **Original Adjudication:** District Court, Douglas County, entered December 10, 1883. 17. **Supplemental Adjudications:** 17.1. Case No. W-7604-74, District Court, Water Division No. 1 entered November 3, 1976. 17.2. Case No. 09CW166, District Court, Water Division No. 1 entered October 2, 2013. 17.3. Case No. 12CW296, District Court, Water Division No. 1 entered April 19, 2016. 18. **Decreed Legal Descriptions of Structure Locations.** A map is attached as **EXHIBIT A.** 18.1. **Original Location:** Located in the NW 1/4 of the NW 1/4, Section 26, Township 8 South, Range 68 West of the 6th P.M., Douglas County, Colorado. 18.2. **Alternate Point of Diversion:** Hounshell Sump No. 1 in the SE 1/4 SE 1/4, Section 23, Township 8 South, Range 68 West of the 6th P.M., Douglas County, Colorado. 19. **Source of water:** West Plum Creek, tributary to the South Platte River. 20. **Decreed use or uses:** 20.1. **Original:** Irrigation. 20.2. **Changed Use:** All municipal uses, industrial, augmentation, exchange and replacement purposes with a right to fully consume the consumptive portion during first use. 21. **Appropriation Date:** April 19, 1872. 22. **Decreed Amount:** 3.0 c.f.s., of which Protestant’s changed interest is 0.1429 c.f.s. 23. **Amount and use or uses listed as having been abandoned:** The Abandonment List identifies 0.7295 c.f.s. for all uses as the decreed amount at “Alternate Point(s),” but does not identify the alternate point(s). The Abandonment List describes 0.4285 c.f.s. to be abandoned, leaving 0.3010 c.f.s. valid. 24. **Former District Number and Page Number where listed on Abandonment List:** Former Water District 8; Division 1 – South Platte Abandonment List, Page 3. 25. **State factual and legal basis for this Protest:** The Abandonment List is not clear as to exactly what alternate point is subject to the abandonment of 0.4285 c.f.s., but Protestant’s water right should not be included on the Abandonment List. 25.1. Protestant owns 0.1429 c.f.s. of the original 3.0 c.f.s. decreed to the Ball Ditch (“Ball Ditch Interest”). 25.2. Prior to the Protestant’s acquisition of its Ball Ditch Interest, that same 0.1429 c.f.s. was changed in Case No. W-7604-74, District Court, Water Division No. 1, to allow diversion at the Hounshell Sump No. 1. 25.3. Upon acquiring the Ball Ditch Interest, Protestant, in Case No. 09CW166, District Court, Water Division No. 1, changed all the 0.1429 c.f.s. to quantify the HCU, change the use to municipal and other uses use, and allow for storage of the consumptive use in Chatfield Reservoir. 25.4. Protestant does not use the Hounshell Sump No. 1. Instead, Protestant’s interest is administered at USGS gage 006708600 “West Plum Creek near Perry Park.” 25.5. Protestant’s use of its Ball Ditch Interest is in accordance with the terms and conditions of the Decree entered in Case No. 09CW166. 25.6. The HCU, consequently, has been available for augmentation and can now be both stored in, and exchanged from, Chatfield Reservoir. 25.7. As a result of Protestant’s prosecution of Case Nos. 09CW166, 12CW296 and 19CW3231, the HCU attributable to the Ball Ditch Water Right was available as an augmentation source during the relevant ten-year period. **EXHIBIT B** is a report from Protestant’s engineers proving the HCU has been used for beneficial purposes. 25.8. During the ten years in question, Protestant defended the water right in tens of water court cases. The undertakings cost Protestant millions of dollars in legal, engineering, infrastructure, and administrative fees and costs. 25.9. Additionally, in relation to its Ball Ditch Interest, Protestant objected to the Division Engineer’s initial abandonment list in June of 2021. In response, the Division Engineer reduced the amount to be abandoned but did not fully remove the Ball Ditch from the Abandonment List. However, the Division Engineer also stated in a responsive letter to Protestant: “Please be advised that we are not proposing to include Castle Rock’s interest, as described in Case Nos. W-7604 and 09CW166, on the final abandonment list.” See **EXHIBIT D.** Accordingly, Protestant’s Ball Ditch Interest should not be included in any amount abandoned and should not be on the Abandonment List. 26. **Relief:** Based on the information provided, Protestant requests: 1) removal of the High Line Ditch Water Rights, to the extent that they are alternate points of diversion for the Young Wells, from the abandonment list; 2) removal of the Ball Ditch Water Right, to the extent Protestant’s interest is included in the alternate point, from the abandonment list; and 3) both the High Line Ditch Water Rights and the Ball Ditch Water Right continue to be administered in accordance with their respective decrees as identified herein. The applicable facts plainly reveal that Protestant has not

abandoned its water rights. The inclusion of these water rights on the Abandonment List is, consequently, inappropriate. Number of pages in protest: 8, excluding exhibits.

2022CW14 and bifurcated protest Case No. 21CW3216. PROTESTANT/OWNER: 1.1 FARMLAND RESERVE, INC. (“Protestant”), 79 South Main Street, Suite 1000, Salt Lake City, UT 84111. With a copy to: Steve Sims, Courtney Shephard, Brownstein Hyatt Farber Schreck, LLP, 410 Seventeenth Street, Suite 2200, Denver, CO 80202-4432, Telephone: (303) 223-1149, E-mails: ssims@bhfs.com; cshephard@bhfs.com. 1.2 Farmland Reserve, Inc. is authorized to act on behalf of the owner. Protestant is the water management entity for all water rights used on the farms irrigated by the Two E Well water rights proposed for inclusion on the abandonment list and described below. The Church of Jesus Christ of Latter-day Saints fka Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints (“Owner”) owns the farms irrigated by the Two E Well water rights. The Owner has attached to this Protest a statement of Protestant’s authority to litigate this protest on its behalf. **PROTEST TO FINAL ABANDONMENT LIST INVOLVING WATER RIGHTS IN WELD COUNTY. 2. DESCRIPTION OF WATER RIGHTS INCLUDED ON ABANDONMENT LIST.** The water rights described in paragraphs 2.1 through 2.12 are collectively referred to as the “Subject Water Rights.” **2.1. Name of structure: Two E Well No. 1-6202F.** 2.1.1. Original decree: W3949. 2.1.2. Legal description: In the SE1/4 of the NE1/4 of Section 8, Township 3 North, Range 64 West of the 6th P.M., Weld County, Colorado at a point 2,110 feet south and 1,060 feet west of the NE corner of said Section 8. 2.1.3. Source: South Platte River. 2.1.4. WDID: 0108677. 2.1.5. Uses: Irrigation. 2.1.6. Appropriation date: October 31, 1964. 2.1.7. Amount: 1.81 cfs. 2.1.8. Amount and uses listed as having been abandoned: 1.81 cfs; all decreed uses. 2.1.9. District number and page number where listed on Abandonment List: Water District 1, page 34 of Abandonment List. **2.2. Name of structure: Two E Well No. 2-7061.** 2.2.1. Original decree: W3949. 2.2.2. Legal description: In the SW1/4 of the SW1/4 of Section 17, Township 3 North, Range 64 West of the 6th P.M., Weld County Colorado at a point 1,150 feet east and 50 feet north of the SW corner of said Section 17. 2.2.3. Source: South Platte River. 2.2.4. WDID: 0108688. 2.2.5. Uses: Irrigation. 2.2.6. Appropriation date: August 30, 1938. 2.2.7. Amount: 2.00 cfs. 2.2.8. Amount and uses listed as having been abandoned: 2.00 cfs; all decreed uses. 2.2.9. District number and page number where listed on Abandonment List: Water District 1, page 34 of Abandonment List. **2.3. Name of structure: Two E Well No. 3-10852F.** 2.3.1. Original decree: W3949. 2.3.2. Legal description: In the SW1/4 of the NE1/4 of Section 8, Township 3 North, Range 64 West of the 6th P.M., Weld County, Colorado at a point 2,589 feet south and 2,140 feet west of the NE corner of said Section 8. 2.3.3. Source: South Platte River. 2.3.4. WDID: 0108694. 2.3.5. Uses: Irrigation. 2.3.6. Appropriation date: April 30, 1966. 2.3.7. Amount: 1.11 cfs. 2.3.8. Amount and uses listed as having been abandoned: 1.11 cfs; all decreed uses. 2.3.9. District number and page number where listed on Abandonment List: Water District 1, page 34 of Abandonment List. **2.4. Name of structure: Two E Well No. 4-7062.** 2.4.1. Original decree: W3949. 2.4.2. Legal description: In the SE1/4 of the SW1/4 of Section 17, Township 3 North, Range 64 West of the 6th P.M., Weld County, Colorado at a point 2,040 feet east and 45 north of the SW corner of said Section 17. 2.4.3. Source: South Platte River. 2.4.4. WDID: 0108695. 2.4.5. Uses: Irrigation. 2.4.6. Appropriation date: May 30, 1940. 2.4.7. Amount: 1.36 cfs. 2.4.8. Amount and uses listed as having been abandoned: 1.36 cfs; all decreed uses. 2.4.9. District number and page number where listed on Abandonment List: Water District 1, page 34 of Abandonment List. **2.5. Name of structure: Two E Well No. 7-6571.** 2.5.1. Original decree: W3949. 2.5.2. Legal description: In the SW1/4 of the SW1/4 of Section 8, Township 3 North, Range 64 West of the 6th P.M., Weld County, Colorado at a point 1,100 feet east and 36 feet north of the SW corner of said Section 8. 2.5.3. Source: South Platte River. 2.5.4. WDID: 0108698. 2.5.5. Uses: Irrigation. 2.5.6. Appropriation date: April 30, 1954. 2.5.7. Amount: 1.81 cfs. 2.5.8. Amount and uses listed as having been abandoned: 1.81 cfs; all decreed uses. 2.5.9. District number and page number where listed on Abandonment List: Water District 1, page 34 of Abandonment List. **2.6. Name of structure: Two E Well No. 8-6572.** 2.6.1. Original decree: W3949. 2.6.2. Legal description: In the SW1/4 of the SE1/4 of Section 8, Township 3 North, Range 64 West of the 6th P.M., Weld County Colorado at a point 1,395 feet west and 50 feet north of the SE corner of said Section 8. 2.6.3. Source: South Platte River. 2.6.4. WDID: 0108699. 2.6.5. Uses: Irrigation. 2.6.6.

Appropriation date: August 30, 1934. 2.6.7. Amount: 1.04 cfs. 2.6.8. Amount and uses listed as having been abandoned: 1.04 cfs; all decreed uses. 2.6.9. District number and page number where listed on Abandonment List: Water District 1, page 34 of Abandonment List. **2.7. Name of structure: Two E Well No. 9-6570.** 2.7.1. Original decree: W3949. 2.7.2. Legal description: In the SE1/4 of the SW1/4 of Section 8, Township 3 North, Range 64 West of the 6th P.M., Weld County, Colorado at a point 1,800 feet east and 50 feet north of the SW corner of said Section 8. 2.7.3. Source: South Platte River. 2.7.4. WDID: 0108700. 2.7.5. Uses: Irrigation. 2.7.6. Appropriation date: April 30, 1955. 2.7.7. Amount: 1.17 cfs. 2.7.8. Amount and uses listed as having been abandoned: 1.17 cfs; all decreed uses. 2.7.9. District number and page number where listed on Abandonment List: Water District 1, page 34 of Abandonment List. **2.8. Name of structure: Two E Well No. 11-6573R.** 2.8.1. Original decree: W3949. 2.8.2. Legal description: In the SE1/4 of the SW1/4 of Section 8, Township 3 North, Range 64 West of the 6th P.M., Weld County, Colorado at a point 2,510 feet east and 45 feet north of the SW corner of said Section 8. 2.8.3. Source: South Platte River. 2.8.4. WDID: 0108679. 2.8.5. Uses: Irrigation. 2.8.6. Appropriation date: July 30, 1934. 2.8.7. Amount: 1.36 cfs. 2.8.8. Amount and uses listed as having been abandoned: 1.36 cfs; all decreed uses. 2.8.9. District number and page number where listed on Abandonment List: Water District 1, page 34 of Abandonment List. **2.9. Name of structure: Two E Well No. 12-6569.** 2.9.1. Original decree: W3949. 2.9.2. Legal description: In the SW1/4 of the NE1/4 of Section 8, Township 3 North, Range 64 West of the 6th P.M., Weld County, Colorado at a point 2,580 feet south and 1,650 feet west of the NE corner of said Section 8. 2.9.3. Source: South Platte River. 2.9.4. WDID: 0108680. 2.9.5. Uses: Irrigation. 2.9.6. Appropriation date: August 22, 1960. 2.9.7. Amount: 1.58 cfs. 2.9.8. Amount and uses listed as having been abandoned: 1.58 cfs; all decreed uses. 2.9.9. District number and page number where listed on Abandonment List: Water District 1, page 34 of Abandonment List. **2.10. Name of structure: Two E Well 13-7064.** 2.10.1. Original decree: W3949. 2.10.2. Legal description: In the SE1/4 of the NW1/4 of Section 17, Township 3 North, Range 64 West of the 6th P.M., Weld County, Colorado at a point 2,340 feet east and 12 feet north of the W1/4 corner of said Section 17. 2.10.3. Source: South Platte River. 2.10.4. WDID: 0108681. 2.10.5. Uses: Irrigation. 2.10.6. Appropriation date: May 30, 1942. 2.10.7. Amount: 1.35 cfs. 2.10.8. Amount and uses listed as having been abandoned: 1.35 cfs; all decreed uses. 2.10.9. District number and page number where listed on Abandonment List: Water District 1, page 34 of Abandonment List. **2.11. Name of structure: Two E Well No. 16-7068.** 2.11.1. Original decree: W3949. 2.11.2. Legal description: In the SW1/4 of the SE1/4 of Section 19, Township 3 North, Range 64 West of the 6th P.M., Weld County Colorado at a point 2,400 feet west and 40 feet north of the SE corner of said Section 19. 2.11.3. Source: South Platte River. 2.11.4. WDID: 0108684. 2.11.5. Uses: Irrigation. 2.11.6. Appropriation date: May 30, 1955. 2.11.7. Amount: 1.58 cfs. 2.11.8. Amount and uses listed as having been abandoned: 1.58 cfs; all decreed uses. 2.11.9. District number and page number where listed on Abandonment List: Water District 1, page 34 of Abandonment List. **2.12. Name of structure: Two E Well No. 17-7066.** 2.12.1. Original decree: W3949. 2.12.2. Legal description: In the SW1/4 of the NE1/4 of Section 17, Township 3 North, Range 64 West of the 6th P.M., Weld County, Colorado at a point 2,890 feet east and 15 feet north of the W1/4 corner of said Section 17. 2.12.3. Source: South Platte River. 2.12.4. WDID: 0108685. 2.12.5. Uses: Irrigation. 2.12.6. Appropriation date: May 30, 1954. 2.12.7. Amount: 1.00 cfs. 2.12.8. Amount and uses listed as having been abandoned: 1.00 cfs; all decreed uses. 2.12.9. District number and page number where listed on Abandonment List: Water District 1, page 34 of Abandonment List. **3. FACTUAL AND LEGAL BASIS FOR THE PROTEST. 3.1. Factual Basis.** 3.1.1. The Owner's predecessors in title appropriated the Subject Water Rights between 1934 and 1974. Some of the wells were among the most senior well rights developed in the South Platte Basin. 3.1.2. The Owner acquired the Subject Water Rights and the associated farms between 1976 and 1980. The Owner used the Subject Water Rights until 2003 during a time when the State allowed the Subject Water Rights to operate without priority administration under a C.R.S. § 37-80-120 plan known as Groundwater Appropriators of the South Platte ("GASP"). 3.1.3. In February 2002, the Supreme Court concluded in *Empire Lodge Homeowners' Association v. Moyer* that the State Engineer did not have authority to authorize out of priority diversions under C.R.S. § 37-80-120 plans like GASP. 39 P.3d 1139 (Colo. 2001), *as modified on denial of reh'g* (Feb. 11, 2002). 3.1.4. Following the *Empire Lodge* decision, GASP and the State Engineer proposed South Platte River Basin Rules under

C.R.S. § 37-92-501, which gave the State Engineer authority to unilaterally approve replacement plans for out-of-priority groundwater depletions by pre-1972 wells. However, in December 2002, the water court rejected the rulemaking. In April 2003, the Supreme Court affirmed the decision in *Simpson v. Bijou Irrigation Co.*, which ended GASP just prior to the beginning of the 2003 irrigation season. 69 P.3d 50 (Colo. 2003).

3.1.5. Immediately following the *Simpson v. Bijou* decision, the State curtailed the Subject Water Rights with little warning and owners of water rights without associated senior surface water rights had few options to allow their well rights to continue to operate out of priority. 3.1.6. Prior to the *Simpson v. Bijou* decision and again in 2004, the General Assembly amended the Water Right Determination and Administration Act of 1969 Act to require administrative curtailment of South Platte Basin wells beginning January 1, 2006. (Codified at C.R.S. § 37-92-308). The amendments allowed South Platte Basin wells to operate only if included in a water court approved plan for augmentation, a state engineer approved C.R.S. § 37-92-308 substitute water supply plan or under their own priorities without augmentation. The General Assembly did not require the wells to join a plan for augmentation, modify the abandonment provisions of C.R.S. §§ 37-92-401 and 402 to require the curtailed wells to be abandoned if not included in a plan for augmentation, or remove the availability element that needed to be proven to allow a rebuttal presumption of abandonment to arise upon failure to apply a water right to beneficial use. 3.1.7. The Owner briefly joined Central Colorado Water Conservancy District's Well Augmentation Subdistrict ("WAS") between 2002 and 2005 in an attempt to permit out-of-priority operation through the terms of its C.R.S. § 37-92-308 substitute water supply plan. However, during that same time period, the amount of water WAS allocated to its members pursuant to the substitute water supply plan was not sufficient to allow the Owner to grow an irrigated crop. As a result, the Owner consolidated its senior water supply to reduce the amount of irrigated crops it grew and grew dry-land crops on the other formerly irrigated lands while it evaluated the potential to operate the Two E Wells under their own priorities without augmentation. 3.1.8. The Owner is an entity with perpetual existence formed to provide welfare for people in need of food assistance, which is a perpetual need. The need for agricultural products grown on the Owner's farms currently can be met with both irrigated and non-irrigated crops. Owner has no intention to abandon the Subject Water Rights. Instead, Owner intends to reoperate the wells after inclusion of the Subject Water Rights in an augmentation group that meets its water needs in an economic manner as its demands for additional irrigated ground changes over time.

3.2. Legal Basis. Protestant states the following legal basis in the alternative and/or cumulatively:

3.2.1. The State cannot establish by clear and convincing evidence that it is entitled to a rebuttable presumption of abandonment. 3.2.2. The State cannot prove the elements of C.R.S. § 37-92-402(11) creating the rebuttable presumption are met because there is no evidence showing that the water was legally and physically available to Owner and needed by Owner in all of the relevant ten-year period. 3.2.3. The Subject Water Rights were not legally available to the Owner during the relevant ten-year period because they were out of priority for all or parts of the relevant ten-year period and the Owner was legally barred from diverting the Subject Water Rights during that time even though it desired to do so. 3.2.4. There is no legal duty in C.R.S. §§ 37-92-308, -401, or -402 for Protestant to obtain a plan for augmentation to permit it to operate its water rights out of priority. In fact, C.R.S. § 37-92-308 contemplates operation of wells on their own priority without augmentation. 3.2.5. Even though the Owner preferred to irrigate its lands to increase the productivity of its farm, the Owner was forced to switch to dry-land cropping to maintain some farm productivity due to the administrative curtailment of the Subject Water Rights. Irrigation water was therefore not needed on the Owner's land during all or parts of the relevant ten-year period to meet the water demands for its dry-land crops. 3.2.6. Any period of alleged non-use in the relevant ten-year period is excusable because:

3.2.6.1. The Subject Water Rights were out of priority for all or parts of the relevant ten-year period and it was illegal for the Owner to divert the Subject Water Rights during that period. 3.2.6.2. The Subject Water Rights do not result in instantaneous depletions to the nearest stream and have a lagged depletion into the future. Because of the lagged depletions it is impossible for Protestant to estimate when the right will be in priority even though there have been times the water right was in priority in all or parts of the irrigation season during the relevant ten-year period. In most years during the relevant ten-year period, the Subject Water rights have been out of priority for all or substantial parts of the irrigation season, particularly the hottest months of July and August, making it impossible to grow an

irrigated crop during that time period. 3.2.6.3. Augmentation water has not been available in sufficient quantity to make the Subject Water Rights economically viable. 3.2.6.4. Owner did not have a legal duty to operate its wells out of priority or to obtain a plan for augmentation for the Subject Water Rights once administratively curtailed in 2002. 3.2.7. The Owner has never abandoned and does not intend to abandon the Subject Water Rights. Owner has manifested its intention not to abandon its water right by authorizing water management entities to operate the water rights used on the farms, continuing to cultivate crops on the farmland, by not selling or leasing the lands formerly irrigated by the Subject Water Rights, by maintaining the ability to re-irrigate the lands formerly irrigated by the Subject Water Rights, by consolidating its remaining irrigation supply on its most productive lands, by changing the crops grown on its lands to dry-land crops not needing irrigation, and continuing to explore feasible alternatives to join augmentation groups that would allow re-irrigation of the lands formerly irrigated by the Subject Water Rights. 3.2.8. In the event the Court finds that a presumption of abandonment has arisen due to ten years of non-use of the Subject Water Rights, the Owner contends that it has rebutted the presumption by evidence of its explanation of why the water was not diverted and applied to beneficial use during the relevant ten-year period, by providing numerous excuses for non-use set forth in Section 3.2.6. of this Protest and by evidence of its intent not to abandon the Subject Water Rights described in Section 3.2.7. Wherefore, Protestant on behalf of the Owner, respectfully requests that the Court delete the Subject Water rights from the Division 1 Abandonment List and such further relief as the Court determines is just. This Protest consists of fourteen (14) pages.

2022CW15 and Bifurcated Protest Case No. 21CW3216. Protestant/Owner: GERALD AND JANET ROTH, 32100 WCR 49, Greeley, CO 80631. Please send all future correspondence and pleadings to Daniel K. Brown, Esq., and Whitney Phillips Coulter, Esq., Fischer, Brown Bartlett, Larsen & Irby, P.C., 1319 E. Prospect Road, Fort Collins, CO 80525. **PROTEST TO FINAL ABANDONMENT LIST IN WELD COUNTY**. 2. Describe the Water Rights: 2.1 Name of Structures: Roth Wells decreed in Case No. W-6964, Water Division 1: Roth Well 22168; Roth Well No. 2-11331; Roth Well No. 4-11330; Roth Well No. 5-11329; Roth Well No. 6-2849-F; Roth Well No. 7-2848-F (“Roth Wells”). 2.1.1. Date of Original Decree: July 6, 1976, as corrected on April 12, 1982. Amendments to the Original Decree were entered on May 2, 1978, and June 22, 1978. 2.1.2. Decreed Legal Description of Structure Location. A map showing the location of the Roth Wells is attached hereto as Exhibit A. 2.1.2.1. Roth Well 22168 (as a replacement of Roth Well No. 1-11327 and Roth Well 3-11326): NW 1/4 of Section 30, Township 6 N, Range 64 W of the 6th. P.M., Weld County, Colorado, at a point 1000 feet south and 1500 feet East of the NW corner of said Section 30. 2.1.2.2. Roth Well 2-11331: SW 1/4 of the SW 1/4 of Section 19, Township 6 N, Range 64 W of the 6th. P.M., Weld County, Colorado, at a point 75 feet North and 10 feet East of the SW Corner of said Section 19. 2.1.2.3. Roth Well 4-11330: NW 1/4 of the NW 1/4 of Section 30, Township 6 N, Range 64 W of the 6th. P.M., Weld County, Colorado, at a point 10 feet South and 1050 feet East of the NW Corner of said Section 30. 2.1.2.4. Roth Well 5-11329: SE 1/4 of the SW 1/4 of Section 19, Township 6 N, Range 64 W of the 6th. P.M., Weld County, Colorado, at a point 600 feet North and 1600 feet East of the SW Corner of said Section 19. 2.1.2.5. Roth Well 6-2849-F: NE 1/4 of the NW 1/4 of Section 30, Township 6 N, Range 64 W of the 6th. P.M., Weld County, Colorado, at a point 10 feet South and 1750 feet East of the NW Corner of said Section 30. 2.1.2.6. Roth Well 7-2848-F: SW 1/4 of the SW 1/4 of Section 19, Township 6 N, Range 64 W of the 6th. P.M., Weld County, Colorado, at a point 800 feet North and 300 feet East of the SW Corner of said Section 19. 2.1.3. Source of water: groundwater tributary to the South Platte River. 2.1.4. Decreed use: irrigation of 400 acres in the N 1/2 of Section 30 and the SW 1/4 of Section 19, all in Township 6 N, Range 64 W of the 6th. P.M., Weld County, Colorado, 2.1.5. Appropriation Date and Amount: 2.1.5.1. Roth Well 22168: April 30, 1949, for .56 cfs; April 30, 1938, for .56 cfs 2.1.5.2. Roth Well 2-11331: July 31, 1954, for 1.43 cfs 2.1.5.3. Roth Well 4-11330: May 31, 1932, for .78 cfs 2.1.5.4. Roth Well 5-11329: December 31, 1921, for 1.16 cfs 2.1.5.5. Roth Well 6-2849-F: December 5, 1960, for .67 cfs 2.1.5.6. Roth Well 7-2848-F: February 16, 1961, for 2.22 cfs. 2.1.6. Amount and use or uses listed as having been abandoned: All uses and amounts are listed for each well. 2.1.7. District Number and Page Number where listed on Abandonment List: District 1, page 29. 2.2. Name of Structure: Stolte/Denton Well 1-938, decreed

in Case No. W-6448, Water Division 1. 2.2.1. Date of Original Decree: June 22, 1976 2.2.2. Decreed Legal Description of Structure Location. SW 1/4 of the NW 1/4 of Section 30, Township 6 N, Range 64 W of the 6th. P.M., Weld County, Colorado, at a point 10 feet East and 9 feet North of the W 1/4 Corner of said Section 30. A map showing the location of the Stolte/Denton Well 1-938 is attached hereto as Exhibit A. 2.2.3. Source of water: groundwater tributary to the South Platte River 2.2.4. Decreed use: Irrigation of 105 acres in the W 1/2 of SW 1/4 and the S 1/2 of NW 1/4, all in Section 30, Township 6 N, Range 64 W of the 6th. P.M., Weld County, Colorado 2.2.5. Appropriation Date and Amount: July 9, 1940, for 1.777 cfs 2.2.6. Amount and use or uses listed as having been abandoned: All uses and amounts are listed 2.2.7. District Number and Page Number where listed on Abandonment List: District 1, page 32. 3. State factual and legal basis for this Protest: The Colorado Supreme Court “has consistently held that a finding of abandonment requires the concurrence of two elements: a sustained period of non-use and an intent to abandon.” *East Twin Lakes Ditches and Water Works, Inc. v. Board of County Com'rs of Lake County (“East Twin Lakes”)*, 76 P.3d 918, 921 (Colo. 2003). A 10-year period of non-use raises the presumption of abandonment and “shifts the burden of going forward to the water rights owner but is insufficient in and of itself to prove abandonment.” *Id.* at 921. “The critical element of abandonment is intent.” *Haystack Ranch v. Fazio*, 997 P.2d 548, 552 (Colo. 2000). A water right holder may not simply say that he or she does not intend to abandon the right; there must be evidence of the intent to beneficially use the water. *Southeastern Colorado Water Conservancy Dist. v. Twin Lakes Associates, Inc.*, 770 P.2d 1231, 1238 (Colo. 1989). Such evidence may include, among other things: “(1) repair and maintenance of diversion structures,” “(5) filing documents to protect, change, or preserve the right” and “(7) economic or legal obstacles to exercising the water right.” *East Twin Lakes*, 76 P.3d 918 at 922. The Roths have not and do not now intend to abandon the water rights associated with their seven wells described above. As discussed in more detail below, between January 1, 2010, and December 31, 2019 (the “Relevant Time Period”), the Roths have complied with requirements of the Division of Water Resources (“DWR”), including installing plates between each well’s discharge pipe and the underground pipeline system to prevent diversion of water. However, they have also kept the well structures and pumps intact. Several of the pump motors remain intact, and the Roths have stored the three motors that they have removed on their property. Similarly, they have requested that Public Service Company of Colorado (“PSCO”) leave transformers intact and power lines connected to the well structures. PSCO has recently replaced electrical poles with transformers at each well’s location to allow for future power service. Meter sockets also remain in place at all but one well’s location (Roth Well 2 – 11331, which remains connected via an underground line), and meters remained at those locations until July 23, 2010, when PSCO removed all old meters and did not install new meters on inactive sites. Mr. Roth is the second generation in his family to farm on these properties, and the third and fourth Roth generations still live and work on the properties. The wells have historically been an integral part of the irrigation system. The wells are connected to an underground pipeline system, which system remains intact, and which the Roths have maintained and repaired during the Relevant Time Period. Since the Roths have not been able to utilize these wells, their irrigation water supply has decreased substantially, forcing them to change their cropping plan to include less water-intensive crops, including winter wheat. They have also let fields lie fallow during some years. Further, their lack of well water has prevented them from continuing a partnership with a local produce farmer because those produce crops require well water. As a result, their income from the farm has suffered. Thus, they still have a need for the wells and have not intended to abandon them. The Roths received a letter dated May 22, 2017, the subject of which was “Notice of Potential Violation, South Platte Well Measurement Rules” regarding four of their wells: 22168, 11329, 2849, and 938. Exhibit B. They did not receive a similar letter regarding their other three wells: 11331, 11330, and 2848. On August 17, 2017, the Roths filed a Form 11 – Variance Request form related to the wells described in the DWR Letter. Exhibit C. In that request, they stated that they had rendered the wells inoperable at the direction of the DWR by installing a solid plate between the discharge pipe or each of those wells and the underground pipelines, and as such, they were requesting a variance to allow them to keep electrical services, motors, and pumps intact so that they or future owners could use the wells. Exhibit C. Regarding Roth Well 22168, the well still has all equipment, including an active meter box, needed for electrical connection, but the power line is currently disconnected. Exhibit D. The well meter, well casing,

pump and pump motor remain intact. Exhibit D. The plate between the discharge pipe and the underground pipeline is still in place. Exhibit C. Regarding Roth Well 5- 11329, the power line remains connected underground, and an active meter box remains. Exhibit E. The well casing, meter, and pump remain intact. Exhibit E. The motor has been removed and stored on the Roths' property. Exhibit F. The plate between the discharge pipe and the underground pipeline is still in place. Exhibit C. Regarding Roth Well 6-2849, the power line remains connected underground, and the meter box remains, though it is inactive. Exhibit G. The well casing, meter, and pump remain intact. Exhibit G. The motor has been removed and stored on the Roths' property. Exhibit F. The plate between the discharge pipe and the underground pipeline is still in place. Exhibit C. Regarding the Denton/Stolte Well – 1-938, the power line remains connected, and the meter socket remains. Exhibit H. The well casing, meter, and pump remain intact. Exhibit H. The motor has been removed and stored on the Roths' property. Exhibit F. The plate between the discharge pipe and the underground pipeline is still in place. Exhibit C. Because the Roths did not receive a letter similar to the May 22, 2017, letter from the DWR for the remaining three wells, they did not file a variance request for those wells. However, they have kept those wells intact in the same manner. Regarding Roth Well 2 – 11331, the power line remains connected underground. Exhibit I. The well casing and submersible pump remain intact. Exhibit I. The plate between the discharge pipe and the underground pipeline is still in place. Exhibit C. Regarding Roth Well 4 – 11330, the power line has remained connected to the well until recently, when the line was disconnected, apparently by a crash. Exhibit J. The line remains hanging on the electrical pole. Exhibit J. The meter socket remains, although it has been knocked over. Exhibit J. The well casing and submersible pump remain intact. Exhibit J. The plate between the discharge pipe and the underground pipeline is still in place. Exhibit C. Regarding Roth Well 7 – 2848, the power line remains connected to the well, and the meter socket remains. Exhibit K. The well casing, meter, pump, and pump motor remain intact. Exhibit K. The plate between the discharge pipe and the underground pipeline is still in place. Exhibit C. The Roths have also gathered information during the Relevant Time Period to determine their options for augmenting their wells in order to legally be able to utilize the wells. Their wells were originally included in GASP. After GASP dissolved, all of their wells were included in the Lower Poudre Augmentation Company Plan (“LPAC Plan”), operated by the New Cache La Poudre Irrigating Company, from 2004 to 2006. Exhibit L. The Roths had several discussions during the Relevant Time Period with Dale Trowbridge, General Manager of the New Cache La Poudre Irrigating Company, about adding their wells back into the LPAC Plan, what that would cost, and the requirement that they dedicate their shares for surface water to the plan. Exhibit M. It is the Roths' understanding that adding their wells back into the plan would cost nearly \$380,000. Exhibit N. It is also the Roths' understanding that they would be required to dedicate their surface water shares in the New Cache La Poudre Irrigating Company to the LPAC Plan, and they are concerned about jeopardizing their surface water supply by doing so. Exhibit N. In sum, the information provided herein and exhibits attached hereto show that the Roths have not and do not now intend to abandon the water rights decreed to their wells described herein. The Roths have complied with DWR requirement to prevent diversion of water from their wells, responded to the DWR's letter in the form of a Variance Request, and have kept the well structures and related equipment. They have also gathered information regarding the requirements to add their wells back into the LPAC Plan. The Roths may provide additional evidence and information as the case progresses. This Protest consists of seven (7) pages, plus exhibits.

2022CW3081 APPLICATION FOR UNDERGROUND WATER RIGHTS AND ADJUDICATION OF DENVER BASIN GROUNDWATER, IN DOUGLAS COUNTY. I. Name, Address, and Telephone Number of Applicants. GLENN P. PALUCH AND REGAN R. PALUCH, 19410 Bright Wing Trail, Colorado Springs, Colorado 80908, (303) 517-5298. **Name, Address, and Telephone Number of Attorneys for Applicants.** Steven T. Monson, #11329, Emilie B. Polley, #51296, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, Phone Number: (719) 471-1212. **II. Summary of Application.** Applicants are seeking an adjudication quantifying the amount of Denver Basin groundwater underlying their property. **III. Application for Underground Water Rights.** A. Property Description. Applicants' property is located

in the E1/2 NE1/4 of Section 21, Township 10 South, Range 65 West of the 6th P.M., County of Douglas, State of Colorado, also known as 13171 and 13375 South Delbert Road, Elbert, CO 80106, containing 70 acres, as described on attached **Exhibit A** (“Applicants’ Property”). **B. Proposed Wells:** Applicants have applied for and received full exempt domestic well permit nos. 326591 and 326592, permitted under C.R.S. 37-92-602(1)(b), to be constructed to the Upper Dawson aquifer underlying the Applicants’ Property (‘Exempt Well Permits”). The Exempt Well Permits are attached as **Exhibit B**. **1. Water Source.** The groundwater to be withdrawn from the Upper Dawson aquifer underlying the Applicants’ Property is not nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Upper Dawson aquifer will require the replacement of actual stream depletions. **2. Nontributary.** The groundwater that will be withdrawn from the Lower Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying the Applicants’ Property is nontributary. **C. Estimated Rates of Withdrawal and Ground Water Available.** **1. Estimated Rates of Withdrawal.** The actual pumping rates for any well constructed on the property will vary according to aquifer conditions and well production capabilities and any limitations imposed pursuant to a subsequently entered augmentation plan, not to exceed 100 g.p.m. The Applicants request the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed will be determined by topography and actual aquifer conditions. **2. Estimated Annual Average Amounts of Groundwater Available.** Applicants request an absolute water right for the withdrawal of all legally available groundwater in the Denver Basin aquifers underlying the Applicants’ Property. Said amount may be withdrawn over the 100 year life of the aquifers as set forth in § 37-90-137(4)(b)(I), C.R.S. Applicants estimate that the following values and average annual amount is representative of the Denver Basin aquifers underlying the Applicants’ Property:

Aquifer	Average Saturated Thickness (Feet)	Total Water Adjudicated (Acre Feet)	Average Annual Withdrawal (Acre Feet)
Upper Dawson (NNT)	303.0	4,242	42.42
Lower Dawson (NT)	166.2	2,327	23.27
Denver (NT)	268.5	3,195	31.95
Arapahoe (NT)	309.0	3,678	36.78
Laramie-Fox Hills (NT)	189.0	1,985	19.85

Decreed amounts may vary based upon the State’s Determination of Facts. Pursuant to § 37-92-305(11), C.R.S., the Applicants further request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from the aquifer. The amount of groundwater in the Upper Dawson aquifer will be reduced by the maximum appropriation for the Exempt Well Permits. **D. Requested Uses:** The Applicants request the right to use the ground water for beneficial uses upon the Applicants’ Property consisting of domestic, commercial, indoor and outdoor irrigation, stock water, industrial, recreation, piscatorial, wildlife, fire protection, and for storage and augmentation associated with such uses. Provided, however, Applicant shall only be entitled to construct a well or use water from the not nontributary Upper Dawson aquifer for non-exempt purposes pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not nontributary aquifer in accordance with § 37-90-137(9)(c.5), C.R.S. **E. Well Fields:** Applicants request that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicants’ Property through any combination of wells. Applicants therefore request that these wells be treated as a well field. **F. Averaging of Wells:** Applicants request that they be entitled to withdraw an amount of ground water in excess of the average annual amount, so long as the sum of the total withdrawals from all the wells does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average

annual volume of water which the Applicants are entitled to withdraw from the Denver Basin aquifers underlying the Applicants' Property. G. Name and Address of Owner of Land Upon Which Wells are to Be Located: The land upon which the current wells and any future wells may be constructed is owned by the Applicants. **IV. Remarks.** Additional remarks are as follows: A. Applicants request a finding that they have complied with § 37-90-137(4), C.R.S., and that the ground water requested herein is legally available for withdrawal by nontributary wells upon an entry of a decree approving an augmentation plan pursuant to § 37-90-137(9)(c.5), C.R.S. B. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. C. Any wells constructed pursuant to a future decree for a plan for augmentation shall be installed and metered as reasonably required by the State Engineer. If a future augmentation plan is decreed, then each well must be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. D. The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' Property. E. There is a deed of trust for the benefit of a lender on the Applicants' Property, and the lender will be notified of the filing of this Application by certified or registered mail, return receipt requested, no later than 14 days after the filing of this Application. The Applicant will complete and file with the Court a Certificate of Notice as evidence that the required notices were given, in accordance with lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I).

2022CW3082 Name, mailing address, email address, and home telephone number of applicants: **DONNA FRITZLER** c/o Bill Fritzler Box 12, Route 1, Merino CO 80741; 970 522 4926; Bill Fritzler Box 12, Route 1, Merino, CO 80741; 970 522 4926; Attorney: Brammer Law Office, PC, PO Box 1827, Sterling, CO 80751; 970 521 0700; brammer@brammerlaw.com **APPLICATION FOR FINDING OF REASONABLE DILIGENCE IN LOGAN COUNTY.** II. Summary of Application. Applicants seek to find diligence on Fritzler Reservoir No. 2: Describe water right: A. Date of Original Decree: June 2, 2016 Case No. 12CW16 District Court Water Division No. 1. B. STORAGE RIGHTS – to Make CONDITIONAL; a. Location: Logan County, NE1/4 of the NE 1/4 of Section 23, Township 6 North, Range 54W of the 6th. P.M. approximately 200 feet from the north section line and 200 feet from the east section line of said Section 23. b. Source: Fritzler Spring (Natural Spring) and Fritzler Spring Reservoir (Fritzler Spring and surface runoff), as decreed in 05CW329 c. Appropriation Date: April 1, 2011; d. Surface Area: approximately 6 acres; e. Maximum Capacity: 25 acre-feet CONDITIONAL with right to fill and refill when water is legally available at the rate of 3 cfs, CONDITIONAL; f. Capacity: Active: 25 acre feet Dead: 0; g. Uses: i. Water for wildlife habitat via recharge of water delivered from the existing Fritzler Reservoir and Fritzler Spring decreed in 05CW329 into the newly constructed Fritzler Reservoir No. 2, shown on Exhibit 2. The Colorado Division of Wildlife assisted the Applicants in construction of the subject reservoir, which is used to assist in the management of waterfowl; ii. Recharge to the alluvial aquifer via infiltration of water delivered from Fritzler Reservoir and Fritzler Spring to the newly constructed Fritzler Reservoir No. 2; iii. Irrigation of up to 120 acres in the NE 1/4 of Section 23, Township 6 North, Range 54 West, 6th P.M. The irrigated parcel is owned by Applicants; iv. The augmentation use will consist of the in-priority deliveries of the subject water right into the alluvial aquifer to generate accretions in the South Platte River for assignment to the South Platte Ditch Plan for Augmentation as decreed in 04CW110, in which two of the applicants' wells are covered; v. Livestock watering of Applicants' livestock; h. Date water applied to beneficial use: Applicants have constructed Fritzler Reservoir No. 2 and livestock has watered at the Reservoir beginning in April 2012 when the Reservoir was constructed with the cooperation of the Colorado Division of Wildlife. k. This application seeks to make the above claimed right CONDITIONAL for the uses contained herein: 4. 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, during the previous diligence period: The Reservoir has been constructed and pipeline is completed to Reservoir 2. The flow meter has been purchased to determine the flow into Reservoir 2 to complete the beneficial use for augmentation and

irrigation. (See attached invoice, Exhibit 3.) See attached pictures of the Fritzler Spring Reservoir and the inlet to Reservoir 2. (Exhibits 4 and 5.) See attached map showing the location of Reservoir 2 which was constructed in 2012. 5. Names and addresses of 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. Applicants: 6. Remarks or any other pertinent information: All water diverted herein has been measured and/or diverted with the knowledge and consent of the Water Commissioner. The water has been put to the beneficial use of watering livestock and for wildlife habitat.

2022CW3083 (16CW3001, C.A. 20716) CITY OF LONGMONT c/o Public Works and Natural Resources Department, 1100 South Sherman Street, Longmont, Colorado 80501. c/o David S. Hayes, Eric K Trout, Hayes Poznanovic Korver LLC, 700 17th Street, Suite 1800, Denver, Colorado 80202, (303) 825-1980. **APPLICATION FOR FINDING OF REASONABLE DILIGENCE IN BOULDER AND WELD COUNTIES.** 2. **Name of structures.** Liberty Pipeline and Liberty Reservoir. 3. **Description of conditional water rights.** A. **Liberty Pipeline:** i. **Decrees:** Conditional Miscellaneous Priority No. 63, was decreed by the District Court for Boulder County in Civil Action No. 20716, on February 25, 1971. Findings of reasonable diligence were subsequently made in decrees in Case Nos. W-6890 on November 29, 1976, 80CW334 on October 21, 1981, 84CW336 on December 3, 1986, 88CW201 on January 30, 1990, 96CW019 on November 27, 1996, 02CW278 on September 25, 2003, 09CW131 on January 27, 2010, and 16CW3001 on June 28, 2016. ii. **Location:** The proposed headgate for the Liberty Pipeline is described as being at a point on the North bank of St. Vrain Creek approximately 1,680 feet south and 1,010 feet west of the NW corner of Section 11, Township 2 North, Range 69 West of the 6th P.M., Boulder County, Colorado; the as-built location is at a point whence the NW corner of Section 11, Township 2 North, Range 69 West of the 6th P.M. bears N 65E30' W 2000 feet. The line of the pipeline runs easterly approximately 3,218 feet to the main pumping station, thence northeasterly approximately 6,200 feet to the south bank of the Oligarchy Ditch. Water will then be conveyed in the Oligarchy Ditch approximately 9105 feet northeasterly to the point the Oligarchy Ditch crosses the intersection of 9th Avenue and County line Road #1, a point where a booster pumping station will be located, thence N 0E5'46" W 6654 feet on the road right of way to the intersection with Weld County Road No.28 (a point where the alternate pipeline describe below will branch), thence E 1000 feet, thence N 56E55' E 800 feet, thence S 68E50' E 1400 feet, thence S 54E50' E 1300 feet, thence S 47E30' E 1500 feet, thence E 5550 feet E to the point of discharge into Liberty Reservoir. An alternate branch of the pipeline commences at the above describe point (approximately 6654 feet north of the proposed booster pumping station), thence N 10,010 feet to the point where the Highline Ditch (sic: Highland Ditch) crosses the E line of Section 13, Township 3 North, Range 69 West of the 6th P.M. Figures depicting the location of the subject structures are attached to the application as Exhibit A are available for inspection at the office of the Division 1 Water Clerk or via Colorado Courts E-filing. iii. **Source:** The source of the water supply for the Liberty Pipeline is St. Vrain Creek, its tributaries, surplus flows of the City of Longmont water distribution system, sanitary sewer collection system, stormwater and wastewater collection system and all increased flows created by the change in consumptive use of supply waters and all increased surplus stormwater created by the urbanization of agricultural land, and seepage or flood waters. iv. **Appropriation date:** November 13, 1964. v. **Amount:** 20 c.f.s., conditional. vi. **Use:** Municipal, domestic, agricultural, industrial and power purposes, including domestic use, fire protection, street sprinkling, watering of parks, lawns and grounds, mechanical uses, use in exchange or augmentation plans and any other municipal use. B. **Liberty Reservoir:** i. **Decree:** Conditional Miscellaneous Priority No. 54, was decreed by the District Court for Boulder County in Civil Action No. 20716, on February 25, 1971. Findings of reasonable diligence were subsequently made in Case Nos. W-6890 on November 29, 1976, 80CW334 on October 21, 1981, 84CW336 on December 3, 1986, 88CW201 on January 30, 1990, 96CW019 on November 27, 1996, 02CW278 on September 25, 2003, 09CW131 on January 27, 2010, and 16CW3001 on June 28, 2016. ii. **Location:** The place of storage is in Sec. 28, T.3N., R.68W. of the 6th P.M. The initial point of survey of the Liberty Reservoir high water line is located at a point whence the

SW Cor. of Sec. 28, T.3N., R.68W. of the 6th P.M. bears south 71°30' West 800 feet. Figures depicting the location of the subject structures are attached as Exhibit A. iii. Source: The source of the water supply for the Liberty Reservoir is St. Vrain Creek, its tributaries, surplus flows of the City of Longmont water distribution system, sanitary sewer collection system, stormwater and wastewater collection system and all increased flows created by the change in consumptive use of supply waters and all increased surplus stormwater created by the urbanization of agricultural land, and seepage of flood waters. iv. Appropriation date: November 13, 1964. v. Amount: 1,515.8 acre-feet, conditional. vi. Use: Municipal, domestic, agricultural, industrial and power purposes, including domestic use, fire protection, street sprinkling, watering of parks, lawns and grounds, mechanical uses, storage reserve exchanges, and any other municipal use. **4. Detailed outline of work done to complete project and apply water to beneficial use.** The conditional water rights decreed in Case No. 20716 for the Liberty Pipeline and Liberty Reservoir are an integral part of the City of Longmont's water supply system, wastewater treatment system, stormwater collection system, and effluent exchange and reuse plan. Longmont is developing these systems in accordance with a long-term, phased development program to meet the expanding water demands of Longmont. The Liberty Pipeline and Liberty Reservoir will allow the City to enhance the yield of its water supply through downstream storage and exchanges, to capture its reusable water, and to maximize its options for treatment of wastewater and collection of its stormwater. During the applicable Diligence Period (June 2016 to the present), Longmont has spent considerable time and money in the development of its integrated water system and large expenditures of money will be required in the future to continue this development. Longmont's efforts to develop its water system and the conditional water rights that are the subject of this Application during the Diligence Period support a finding of reasonable diligence. These efforts include the work detailed in the affidavit of Nelson F. Tipton, Water Resources Analyst for Longmont, attached to the application as Exhibit B, available for inspection at the office of the Division 1 Water Clerk or via Colorado Courts E-filing. The efforts detailed in the affidavit are not intended to be all inclusive and may be supplemented by additional evidence at any hearing in this matter. **5. Name(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.** A. Liberty Pipeline headgate: Applicant. B. Liberty Reservoir: Qualls Inv. Co. 2031 Weld County Rd. 28, Longmont, CO 80504. Hergenreder North 80, LLC, 2130 Weld County Rd. 28. Longmont, CO 80504. United Power Inc. 500 Cooperative Way, Brighton, CO 80603. B. Leslie Slater Trust # 1 & #2, P.O. Box 2316, Homer, AK 99603-2316. Myra Jane Silengo, 2498 State Hwy. 66, Longmont, CO 80504. **WHEREFORE**, Longmont respectfully requests that the Court enter an order finding reasonable diligence for and continuing in full force and effect the conditional water rights described in Paragraph 3 above.

2022CW3084 Applicant: THE TOWN OF WINDSOR, 301 Walnut Street, Windsor, CO 80550. Please send correspondence and pleadings to: Bradley C. Grasmick and David L. Strait, Lawrence Custer Grasmick Jones & Donovan, LLP, 5245 Ronald Reagan Blvd., Suite 1, Johnstown, CO 80534; Phone: (970) 622-8181; brad@lcwaterlaw.com; dstrait@lcwaterlaw.com. **APPLICATION FOR FINDING OF REASONABLE DILIGENCE AND TO MAKE ABSOLUTE, IN LARIMER AND WELD COUNTIES.** 2. Description of Conditional Water Right: 2.1. Name of Structure: Kyger Reservoir 2.2. Summary: A storage water right was decreed to Kyger Reservoir in Case No. 14CW3074 for a first fill of 1,256.7 acre-feet with 609.8 acre-feet of that first fill made absolute, and 646.9 acre-feet of the first fill and one refill up to 1,256.7 acre-feet remaining conditional ("Kyger Reservoir Storage Right"). 2.3. Legal Description: Kyger Reservoir is located in the SE/4 of Section 13, Township 6 North, Range 68 West, 6th P.M., Larimer County, Colorado. 2.4. Appropriation Date: July 8, 2013 2.5. Date of Original Decree: June 28, 2016 in Case No. 14CW3074, District Court, Water Division No. 1. 2.6. Structures Used to Fill Reservoir and Points of Diversion: 2.6.1. Greeley No. 2 Canal (a/k/a New Cache Ditch). The headgate of the Greeley No. 2 Canal is located in the SE/4NE/4 of Section 11, Township 6 North, Range 68 West, 6th P.M. Larimer County, Colorado. 2.6.2. The Kyger Reservoir Pump Station, located at the north bank of the Cache la Poudre River in the S/2 of Section 13, Township 6 North, Range 68 West, 6th P.M. Larimer

County, Colorado. 2.7. Source: Cache La Poudre River 2.8. Diversion Amounts: From the Greeley No. 2 Canal, 20cfs conditional. From the Kyger Pump Station, 20cfs, absolute. 2.9. Surface Area at High Water Line: 93.98 acres. 2.10. Volume; Capacity of Reservoir: 1,397.4 acre-feet. Active Capacity: 1256.7 acre-feet. Dead Storage: 0 acre-feet. 2.11. Uses: Municipal, augmentation, agricultural, industrial, irrigation, fire suppression, dust suppression and emergency response. Water stored in Kyger Reservoir can be used within Windsor's service area as the same may exist now or from time to time may be expanded to serve proximate areas and outside the same pursuant to agreements between Windsor and others who take delivery of water from the Windsor's water system. Water stored in Kyger Reservoir may be used within the augmentation plan decreed in Case No. 02CW301. Water stored in Kyger Reservoir may also be released to the Cache la Poudre River and diverted at the Greeley No. 2 Canal by exchange at a rate of 20cfs for use either directly from or after storage in Kern Reservoir which is located in SW 1/4 of the SE 1/4 of Section 16, Township 6 North, Range 67 West of the 6th P.M., Weld County, Colorado. 3. Outline of Work Toward Completion of Appropriation During the Diligence Period: 3.1. Windsor was decreed the Kyger Reservoir Storage Right June 28, 2016 in Case No. 14CW3074, District Court, Water Division No. 1. 3.2. During the diligence period, Windsor expended the following sums in relation to the Kyger Reservoir Storage Right: 3.2.1. Windsor spent \$2,456,359.80 on the design and construction of the Kyger Pump station. 3.2.2. Windsor paid \$2,145,262 to the CWCB for the loan on Kyger Reservoir. 3.2.3. Windsor has spent \$368,707.03 on engineering services during the diligence period which includes the monthly decree accounting and coordination of inflows and outflows of Kyger Reservoir. 3.2.4. Windsor spent \$182,235.71 on legal costs related to Windsor's non-potable system including legal expenses for Kyger Reservoir. 3.3. Windsor diverted and beneficially used the following volumes of water under the Kyger Reservoir Storage Right during the diligence period: 3.3.1. Under the first fill right, Windsor has diverted and stored up to the maximum amount of 1,256.7 acre-feet each year since 2016, including 609.8 acre-feet of the first fill right decreed conditional in Case No. 14CW3074. 3.3.2. Under the refill right, Windsor has diverted and stored a maximum of 513.0 acre-feet in 2019. 3.3.3. Exhibit A, attached hereto, further details the amounts Applicant has stored under the Kyger Reservoir Storage Right since 2016. 4. Claim for Finding of Reasonable Diligence: As described in Paragraph 3 hereto, Windsor has taken various steps in developing the Kyger Reservoir Storage Right for beneficial use. Pursuant to C.R.S. § 37-92-301(4), Windsor requests the Court find that Windsor has been reasonably diligent with respect to completing the appropriation of the Kyger Reservoir Storage Right, decreed in Case No. 14CW3074, and order the same to continue as conditional in the amounts of 743.7 acre-feet under the refill right. 5. Claim to Make Absolute: As described in Paragraph 3 hereto, Windsor has diverted and stored water under the Kyger Reservoir Storage Right, in the total amount of 1,256.7 acre-feet under the first fill right, including 609.8 acre-feet of the first fill right decreed conditional in Case No. 14CW3074; and the amount of 513.0 acre-feet under the refill right, and has applied the same to beneficial use. Pursuant to C.R.S. § 37-92-301(2), Windsor hereby requests a decree making the Kyger Reservoir Storage Right, decreed in Case No. 14CW3074, absolute in the amounts of 1,256.7 acre-feet under the first fill right, and 513.0 acre feet under the refill right. 6. Name and Addresses of Owners or Reputed Owners of Land/Structures: Windsor owned the lands upon which Kyger Reservoir is located. The New Cache la Poudre Irrigating Company owned the Greeley No. 2 Canal, P.O. Box 104 Lucerne, CO 80646. Kern Reservoir and Ditch Company owns Kern Reservoir, 301 Walnut Street, Windsor, Colorado 80550. WHEREFORE, Windsor requests the Court to enter a decree finding as follows: (1) Windsor has been reasonably diligent in the development of the Kyger Reservoir Storage Right; (2) Windsor has diverted and beneficially used the Kyger Reservoir Storage Right, in the amounts of 1,256.7 acre-feet under the first fill right, and 513.0 acre feet under the refill right, and is entitled to a decree making that amount of the appropriation absolute; (3) that the Kyger Reservoir Storage Right remain conditional in the amount of 743.7 acre-feet under the refill right; (4) all pursuant to C.R.S. § 37-92-301(2) and C.R.S. § 37-92-301(4); and (5) granting such other and further relief as the Court finds just. The original format of this application is five pages in length and includes one exhibit.

2022CW3085 BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLEAR CREEK AND CLEAR CREEK SCHOOL DISTRICT RE-1, Board of county commissioners of the county of Clear

Creek (the “County”), c/o Water Resources Department, P.O. Box 2000, Georgetown, Colorado 80444; (303) 679-2434; lleben@clearcreekcounty.us and Clear Creek School District RE-1 (“School District”), c/o Superintendent, P.O. Box 3399, 320 Hwy. 103, Idaho Springs, CO 80453, (303) 567-2980, Justin.Watanabe@ccsdre1.org. Please direct all correspondence concerning this Application to: Peter C. Johnson, Esq. and Andrea A. Kehrl, Esq., Vranesh and Raisch, LLP, 5303 Spine Road, Suite 202, Boulder, Colorado 80301; Telephone Number: (303) 443-6151; Email: pcj@vrlaw.com and aak@vrlaw.com; and James J. Petrock, Esq., Matthew S. Poznanovic, Esq. and Eric K. Trout, Esq., Hayes Poznanovic Korver LLC, 1999 Broadway, Suite 3200, Denver, Colorado 80202; Telephone Number: (303) 825-1980; Email: jjp@hpkwaterlaw.com; matt@hpkwaterlaw.com; and eric@hpkwaterlaw.com. **APPLICATION TO MAKE WATER RIGHTS ABSOLUTE AND FOR FINDINGS OF REASONABLE DILIGENCE IN CLEAR CREEK AND JEFFERSON COUNTIES.** The Applicants shall be referred to herein collectively as “Co-Applicants.” 2. Names of Appropriative Rights of Substitution and Exchange: Corral Creek Exchange and Yankee Creek Exchange (together, “Exchanges”). 3. Description of Conditional Water Rights: a. Date of Original Decree. The subject exchange water rights were originally decreed in Case No. 09CW41, Water Division 1, dated November 24, 2009. b. Subsequent decrees awarding findings of diligence: Diligence continuing the Corral Creek Exchange and Yankee Creek Exchange was awarded in Case No. 15CW3150, Water Division 1, dated June 28, 2016. c. Exchange reaches: i. The Corral Creek Exchange operates on Bear Creek and Corral Creek, a tributary of Bear Creek. The upstream terminus on Corral Creek is a pump station located in the NW1/4, Section 9, Township 5 South, Range 72 West, 6th P.M., Clear Creek County, Colorado; State Plane GPS coordinates, Northing 1655198.95, Easting 3012473.229; and UTM GPS coordinates, Northing 4387047.277, Easting 460892.443. The downstream terminus is the confluence of Witter Gulch and Bear Creek, located in the SW1/4, Section 1, Township 5 South, Range 72 West, 6th P.M., Clear Creek County, Colorado. ii. The Yankee Creek Exchange operates on Bear Creek and Yankee Creek, a tributary of Bear Creek. The upstream terminus on Yankee Creek is a pump station located in the SW1/4, Section 11, Township 5 South, Range 72 West, 6th P.M., Clear Creek County, Colorado; State Plane GPS coordinates, Northing 1653779.526, Easting 3022228.950; and UTM GPS coordinates, Northing 4386598.276, Easting 463862.469. The downstream terminus is the confluence of Witter Gulch and Bear Creek, located in the SW1/4, Section 1, Township 5 South, Range 72 West, 6th P.M., Clear Creek County, Colorado. iii. A map of the exchange reaches is provided as **Exhibit A**. d. Source of Substitute Supply: Water available under one-half share of the capital stock of the Warrior Ditch Company (“Warrior Half Share”). The Warrior Ditch Company water rights associated with the Warrior Half Share include: Bear Creek Priority No. 4 – December 1, 1861, 0.0385 cfs; Bear Creek Priority No. 14 – October 31, 1864, 0.0796 cfs; and Bear Creek Priority No. 16 – April 1, 1865, 0.0359 cfs; and up to 6.225 acre feet per year. The School District’s proportionate share of the Warrior Ditch Company’s Turkey Creek Priority is not a source of water for the Exchanges and will remain in the Warrior Ditch in accordance with the terms of decree entered in Case No. 80CW289, Water Division No. 1, dated May 7, 1982, and as amended by that Order Amending Decree, dated December 19, 1983 (together, “80CW289 Decree”). i. Decreed uses of Warrior Half Share. The Warrior Half Share was changed in Case No. 80CW289 for the School District’s municipal and domestic in-building use at an elementary school, and for storage for augmentation in the King Murphy School Pond (“School Pond”). The Warrior Half Share was subsequently changed in Case Nos. 06CW025 to authorize the School District’s lease of 1.5 acre-feet of water available under the Warrior Half Share to the County and to add the County’s uses of dust suppression, road compaction, and related maintenance purposes on roads located within Clear Creek County and within the Bear Creek drainage (“County Uses”) as additional decreed beneficial uses. In Case No. 09CW041, Co-Applicants were awarded three appropriative rights of exchange, including the subject Exchanges as described herein and the Golden Willow Bridge Exchange (previously made absolute), to deliver water available from the Warrior Half Share to the County Uses. ii. School Pond. Water available under the Warrior Half Share is stored in and released from School Pond, which is located on the following described land: A tract of land, located in the North 1/2 of Section 2, Township 5 South, Range 72 West, 6th P.M., County of Clear Creek, Colorado, more particularly described as follows: Commencing at the North Quarter corner of said Section 2; Thence Westerly along the North line of said Section 2, North 89°24’40” West a

distance of 168.23 feet to a point on a Southwesterly Right-of-Way line of Witter Gulch Road, said point being the True Point of Beginning; Thence Southeasterly along said Southwesterly Right-of-Way line, South 37°21'31" East a distance of 274.08 feet; Thence departing said Right-of-Way line, South 00°42'53" West a distance of 659.72 feet; Thence North 88°28'21" West a distance of 0.46 feet to a point on the Easterly Right-of-Way line of King Murphy Road; Thence Northwesterly along said Easterly Right-of-Way line the following eight (8) courses and distances: 1) North 25°23'21" West a distance of 199.70 feet; 2) North 15°55'21" West a distance of 194.99 feet; 3) North 21°29'21" West a distance of 59.01 feet; 4) North 30°09'21" West a distance of 71.99 feet; 5) North 36°23'21" West a distance of 79.73 feet; 6) North 08°32'21" West a distance of 120.74 feet; 7) North 11°05'21" West a distance of 86.54 feet; 8) North 03°14'39" East a distance of 125.28 feet to a point on said North line of Section 2; Thence Easterly along said North line, South 89°24'40" East a distance of 114.06 feet to the True Point of Beginning, containing 3.133 acres, more or less. e. Appropriation Date: March 24, 2009. f. Rate and Amount: i. Corral Creek Exchange: 250 gpm, CONDITIONAL. ii. Yankee Creek Exchange: 250 gpm, CONDITIONAL. iii. The Exchanges and the Golden Willow Bridge Exchange will divert up to 1.5 acre feet per year, cumulatively. g. Uses: All uses set forth in Case Nos. 08CW289, 06CW025, 09CW041, and 20CW3165, which include dust suppression, road compaction, and related maintenance purposes on roads located within Clear Creek County and within the Bear Creek drainage. 4. Absolute Claims: Co-Applicants diverted water under the Corral Creek Exchange and Yankee Creek Exchange at the flow rates listed below and put the water so diverted to all decreed uses in accordance with the requirements of all applicable decrees, and as directed by, and in full communication with, the Districts 9 & 80 Water Commissioner. Therefore, Co-Applicants seek a decree finding that the following water rights have been made absolute in their entirety: a. Corral Creek Exchange: Co-Applicants operated the Corral Creek Exchange on June 20, 2013, at a rate of 250 gpm, and thereby made the Corral Creek Exchange absolute up to the full decreed rate. b. Yankee Creek Exchange: Co-Applicants operated the Yankee Creek Exchange on June 27, 2013, at a rate of 250 gpm, and thereby made the Yankee Creek Exchange absolute up to the full decreed rate. c. Cumulative Amount: The Exchanges and the Golden Willow Bridge Exchange diverted a total of 1.5 acre feet, cumulatively, in 2010. Co-Applicants have exercised the Exchanges and the Golden Willow Bridge Exchange up to the full decreed amount. d. Remarks: Co-Applicants have operated the Exchanges on multiple occasions. If necessary, Co-Applicants reserve the right to demonstrate that the Exchanges have been made absolute at rates and/or amounts that are approximately equal to or less than those stated above, and/or based on operation of the Exchanges that occurred on any date prior to the date of filing this Application. e. Evidence: Co-Applicants' evidence in support of the absolute claims herein is provided in **Exhibit B**, and supporting information related thereto. 5. Claims for Findings of Reasonable Diligence: Should the Court determine that the Exchanges have not been made absolute, in full or in part, Co-Applicants seek findings of reasonable diligence as to any portion of the Exchanges that remain conditional. 6. Detailed outline of what has been done towards completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the previous diligence period: During the diligence period of November 24, 2015 through the date of filing this Application ("Diligence Period"), the following work has been done towards completion of the appropriation of the Exchanges: a. During the Diligence Period, the School District and the County, through its Road and Bridge Department, have operated the Exchanges, as described in paragraph 4, and as directed by, and in full communication with, the Districts 9 & 80 Water Commissioner, and have continued to operate the absolute Golden Willow Bridge Exchange. b. The County has used and maintained all equipment necessary to divert water at the Corral Creek and Yankee Creek diversion locations, as well as the Golden Willow Bridge diversion point. c. During the Diligence Period, the School District made substantial improvements to School Pond, which is the structure in which the substitute supply water for the two subject exchanges is stored. The School District has expended \$138,136.39 on design, construction, operations, and maintenance activities at or associated with School Pond and has dedicated significant staff resources to these projects during the Diligence Period. d. Co-Applicants filed and prosecuted Case No. 20CW3165, Water Division 1. Case No. 20CW3165 amended Co-Applicants' plan for augmentation in Case Nos. 08CW289, 06CW025, and 09CW041, including updating the operations of School Pond, which is now an off-channel reservoir. A decree was

entered in the case on April 14, 2022. e. The Exchanges are part of the Co-Applicants' respective integrated systems pursuant to § 37-92-301(4)(b), C.R.S. and work performed, effort, and cost expended on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system. f. Throughout the Diligence Period, the County has operated, managed, administered, and maintained accounting for the Basin-Wide Augmentation Plan, both for its own purposes and for plan participants who are included in the Basin-Wide Augmentation Plan. During the Diligence Period, the County included ten new plan participants into the Basin-Wide Augmentation Plan. g. The County has continued to install, maintain, and upgrade its water system, including but not limited to Green Lake and related facilities. h. The County has participated in numerous regional and statewide water planning efforts. The County continues to actively attend and exercise its voting membership duties on the South Platte River Basin Roundtable in preparation and adoption of the Update to the State Water Plan. Certain of the County's reservoirs were identified in the 2021 update to the Colorado Water Plan's Basin Implementation Plan for purposes of funding studies and construction of certain facilities through the Identified Project and Process. The County has also engaged in internal water planning efforts. i. Throughout the Diligence Period, the County monitored and participated in water quality matters on Bear Creek, as a member of the Bear Creek Watershed Association, and Clear Creek, particularly as they relate to the development and operation of the County's integrated system. j. The County has maintained its water rights portfolio during the diligence period, and prosecuted several Water Court applications related to its water rights, including: Clear Creek Reservoirs No. 2, 3, and 4 (Case No. 16CW3056, entered November 7, 2016); Upper Johnson Gulch Reservoir (Case No. 17CW3007, entered September 14, 2017); Grizzly Gulch Reservoir (Case No. 17CW3115, entered March 1, 2018); Green Lake (Case No. 18CW3184, entered June 25, 2019); Leavenworth Reservoirs Nos. 1 and 2 and Bakerville Reservoirs Nos. 1 and 2 (Case No. 19CW3095, entered November 19, 2019); Basin-Wide Augmentation Plan exchanges (Case No. 20CW3082, entered April 6, 2021); and amendment to King Murphy School Pond augmentation plan (Case No. 20CW3165, entered April 14, 2022). k. The County opposed approximately eight Water Court applications to protect its water rights during the Diligence Period. l. The County expended more than \$1,379,000, and has dedicated additional staff time towards the activities described above during the Diligence Period. 7. Continuing Need for Conditional Water Rights: Co-Applicants have a continuing need for the Exchanges at the full decreed diversion rates and volume, and maintain their intent to develop and put the Exchanges to all decreed beneficial uses. 8. 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: School Pond is located on property owned by the School District. The pump stations are located on road rights-of-way owned by Clear Creek County. WHEREFORE, Co-Applicants seek entry of a decree by the Court that makes the Exchanges absolute in their entirety, to their full decreed extent. Should the Court determine that the absolute claims cannot be approved, in whole or in part, Co-Applicants seek entry of a decree that includes findings of reasonable diligence for the remaining conditional portions of the Exchanges, continues those conditional rights for another diligence period, and confirms Co-Applicants' right to complete the appropriations to the full decreed extent. (11 pgs., 2 Exhibits)

2022CW3086 SARA D ADAMS AND CHRISTOPHER M ADAMS, 623 N 16th Pl, Brighton, CO 80601. James J. Petrock, Eric K. Trout, Hayes Poznanovic Korver LLC, 700 17th Street, Suite 1800, Denver, CO 80202. **APPLICATION FOR AMENDMENT OF A PRIOR DECREE IN ELBERT COUNTY**. Subject Property: 35.002 acres generally located in the S1/2 of Section 26, Township 6 South, Range 64 West of the 6th P.M., Elbert County, Colorado, as shown and described on **Exhibit A** ("Subject Property"). Applicants are the sole owners of the Subject Property, therefore notice to any mortgage and lien holders is not required under C.R.S. § 97-92-302(2)(b). Decree for Which Amendment is Sought: Case No. 1999CW152, District Court, Water Division 1, decreed on July 3, 2007 (the "99CW152 Decree"), decreed all of the Denver Basin groundwater underlying approximately 209.03 acres, which included the Subject Property. No statements of opposition were filed to the application in Case No. 1999CW152.

Subsequently, the Court entered an Order Granting Motion to Vacate a Portion of Water in the Denver Aquifer to Make Water Available for a Well Permit on February 1, 2017 (the “Order”). The Order vacated 4 acre-feet annually of Denver Aquifer groundwater from the 99CW152 Decree for use in an exempt well, leaving 88.4 acre-feet per year still adjudicated. Applicants’ Ownership of the Groundwater Underlying the Subject Property: Applicants are the owners of all the groundwater underlying the Subject Property as evidenced by the special warranty deed recorded June 30, 2022, at Reception No. 620845 in the records of the Elbert County Clerk & Records Office, attached as **Exhibit B**. The following *pro rata* amounts were conveyed to the Applicants and are based on a 100-year aquifer life:

Aquifer	Annual Amount (acre-feet)
Lower Dawson (NNT)	3.57
Denver (NNT)	14.81
Arapahoe (NT)	16.37
Laramie-Fox Hills (NT)	8.14

Requested Change to the 99CW152 Decree: Applicants request that 4 acre-feet annually of non-tributary Denver Aquifer groundwater be vacated from Applicants’ portion of the 99CW152 Decree, and be made available for the drilling of an exempt well, or any legally allowed exempt purpose, on the Subject Property. The Denver Aquifer groundwater will be allocated at 0.114 acre-feet per acre across the Subject Property. Jurisdiction: The Court has jurisdiction over the subject matter of this application pursuant to C.R.S. §§ 37-90-137(6), 37-92-203(1), 37-92-302(2). No other provisions of the 99CW152 Decree are changed herein. Applicants request the Court approve the above decree amendment, find that Applicants have complied with C.R.S. § 37-90-137(4) and water is legally available for withdrawal, find there will be no material injury to the owners of or persons entitled to use water under any vested water right or decreed conditional water right, and grant such other and further relief as is appropriate. 3 pages.

2022CW3087 APPLICATION FOR ADJUDICATION OF DENVER BASIN GROUNDWATER AND FOR APPROVAL OF PLAN FOR AUGMENTATION, IN EL PASO COUNTY. I. Name and

Address of Applicant: PAWEL POSORSKI, 6385 Vessey Road, Colorado Springs, CO 80908, (“Applicant”), Name and Address of Attorneys: David M. Shohet, #36675, Emilie B. Polley, #51296, W. James Tilton, #50213, MONSON, CUMMINS, SHOHEIT & FARR, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212, E-mail: dms@cowaterlaw.com; ebp@cowaterlaw.com; wjt@cowaterlaw.com

II. Summary of Application. Applicants seeks to utilize and construct up to two (2) non-exempt wells to the not-nontributary Dawson aquifer to provide water service to an equivalent number of single-family lots, based on an anticipated subdivision of Applicant’s approximately 6-acre parcel. Applicant therefore seeks to quantify the Denver Basin groundwater underlying the Applicant’s Property, and approval of a plan for augmentation for the use thereof. III. Application for Underground Water Rights. A. Legal Description of Wells. 1. Property Description. All wells will be located on Applicant’s approximately 6-acre property (“Applicant’s Property”) anticipated to be subdivided into two single-family residential lots. Applicant’s Property is depicted on the attached **Exhibit A** map, located in the NW1/4 of Section 6, Township 12 South, Range 65 West of the 6th P.M., and more particularly described as 6225 Vessey Rd., Colorado Springs, CO 80908, El Paso County, Colorado. 2. Existing Well. There is an existing domestic well with Division of Water Resources Permit No. 87817 (“Posorski Well No. 1), permit attached as **Exhibit B**. It is drilled to a total depth of 300 feet to the Dawson aquifer, and located 1420 feet from the North Section Line, and 2240 feet from the West Section Line. Upon approval of this plan for augmentation, this well will be re-permitted. 3. Proposed Wells. Applicant proposes that one additional well (one well per lot) will be located on the Applicant’s Property at a specific location not yet determined (“Posorski Well No. 2”) to be constructed to the Dawson aquifer, for a total of two wells on Applicant’s Property. B. Water Source. 1. Not-Nontributary. The ground water to be withdrawn from the Dawson and Denver aquifers underlying the Applicant’s Property is not-

nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson and Denver aquifers will require the replacement of actual stream depletions. 2. Nontributary. The groundwater that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's Property is nontributary. C. Estimated Rates of Withdrawal and Ground Water Available. 1. Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available. Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code §8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

AQUIFER	NET SAND (Feet)	Total Appropriation (Acre Feet)	Annual Avg. Withdrawal 100 Years (Acre Feet)	Annual Avg. Withdrawal 300 Years (Acre Feet)
Dawson (NNT)	402.1	484	4.84	1.61
Denver (NNT)	503.4	515	5.15	1.72
Arapahoe (NT)	232.9	238	2.38	0.79
Laramie Fox Hills (NT)	187.3	169	1.69	0.56

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. D. Requested Uses. The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, irrigation, stock water, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct wells or use water from the not-nontributary Dawson and Denver aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c.5). E. Well Fields. Applicant requests that he be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. F. Averaging of Withdrawals. Applicant requests that he be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. G. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are and will be located as well as the underlying groundwater is owned by the Applicant. IV. APPLICATION FOR PLAN FOR AUGMENTATION. A. Structures to be Augmented. The structures to

be augmented are the Posorski Wells Nos. 1 and 2, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson aquifer of the Denver Basin underlying the Applicant's Property as requested and described herein. B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Dawson aquifer from the Posorski Wells Nos. 1 and 2, together with water rights from the nontributary Arapahoe and Laramie-Fox Hills aquifers for any injurious post pumping depletions. C. Statement of Plan for Augmentation. Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by two wells proposed herein for two residential lots. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: 1. Uses. i. Household Use Only: 0.26 acre-feet annually within single family dwellings on two lots, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for each lot will therefore be 0.026 acre-feet per lot, with return flows of 0.234 acre-feet per lot, or a total of 0.468 acre-feet per year. ii. Landscape Irrigation: 0.05 acre feet annually per 1,000 square feet (2.18 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre-feet. iii. Horses (or equivalent livestock): 0.011 acre-feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. 2. The Posorski Wells Nos. 1 and 2 will each pump a maximum of 0.70 acre-feet of water per year per residence, for a maximum total of 1.41 acre-feet being withdrawn from the Dawson aquifer per year. Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.26 acre-feet of water per year per residence with the additional 0.44 acre-feet per year available for irrigation of lawn and garden and the watering of horses or equivalent livestock on each residential lot. 3. Depletions. Maximum stream depletions over the 300-year pumping period for the Dawson aquifer amounts to approximately 22.8% of pumping. Maximum annual depletions for total residential pumping from the wells are therefore 0.32 acre-feet in year 300. Should Applicants' pumping be less than the 1.41 total, as described herein, resulting depletions and required replacements will be correspondingly reduced. 4. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of the two residential wells. Depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.26 acre-feet per residence per year, 0.468 acre-feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be adequately augmented. 5. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Posorski Wells Nos. 1 and 2, Applicant will reserve up to the entirety of the nontributary Arapahoe and Laramie Fox Hills aquifers, as necessary, to replace any injurious post pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Arapahoe and Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a new well permit for the Posorski Wells Nos. 1 and 2 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. V. Remarks. A. This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. It is Applicant's intent to consolidate the instant matter filed in both Water Divisions 1 and 2 in Water Division 1 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient. B. Applicant requests a finding that he has complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal

by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). C. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. C. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. D. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. E. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required to demonstrate compliance under this plan of augmentation. F. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. G. Applicant will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), and such notice will be sent within 14 days of the filing of this application.

2022CW3088 bifurcated from Protest Case No. 21CW3216. PROTEST TO FINAL ABANDONMENT LIST CONCERNING WATER RIGHTS IN WELD COUNTY. 1. Protestant: L.G. EVERIST, INC., 7321 E. 88th Avenue, Suite 200, Henderson, CO 80640, (303) 287-4656, msnoteboom@lgeverist.com. Please direct communications to Matthew L. Merrill, MERRILL LAW LLC, (303) 947-4453 (telephone), matthew@merrillwaterlaw.com (email). 2. Description of the Subject Water Rights. a. Name of Structure: **Norgren Well No. 1-15331.** i. Original Decree: *In the Matter of the Application for Water Rights of Donald K. Norgren & Co. in Weld County*, Case No. W-5677, Water Division 1 (September 29, 1975). ii. Decreed legal description of structure: SW1/4 NW1/4 of Section 14, Township 3 North, Range 67 West of the 6th. P.M., Weld County, Colorado at a point 3,637 feet North and 50 feet East of the SW Corner of said Section 14. See **Exhibit A**. All subsequent references to Section 14 in this protest are to this same section. iii. Source of Water: Groundwater. iv. Decreed Uses: Irrigation of acreage specified in Original Decree. v. Appropriation Date: June 9, 1955. vi. Decreed Amount: 2.1826 cfs. vii. Amount or uses listed as having been abandoned: 2.1826 cfs, all decreed uses. viii. Former Water District Number 2. ix. Listed on Division 1 Abandonment List on page 25. b. Name of Structure: **Norgren Well No. 3-15333.** i. Original Decree: See paragraph 2.a.i above. ii. Decreed legal description of structure: SE1/4 SW1/4 of Section 14 at a point 20 feet North and 1,515 feet East of the SW Corner of Section 14. See **Exhibit A**. iii. Source of Water: Groundwater. iv. Decreed Uses: Irrigation of acreage specified in Original Decree. v. Appropriation Date: April 17, 1954. vi. Decreed Amount: 3.0846 cfs. vii. Amount or uses listed as having been abandoned: 3.0846 cfs, all decreed uses. viii. Former Water District Number 2. ix. Listed on Division 1 Abandonment List on page 25. c. Name of Structure: **Norgren Well No. 7-15337.** i. Original Decree: See paragraph 2.a.i above. ii. Decreed legal description of structure: SE1/4 SE1/4 of Section 14 at a point 541 feet North and 4,503 feet East of the SW Corner of Section 14. See **Exhibit A**. iii. Source of Water: Groundwater. iv. Decreed Uses: Irrigation of acreage specified in Original Decree. v. Appropriation Date: October 15, 1955. vi. Decreed Amount: 2.3608 cfs. vii. Amount or uses listed as having been abandoned: 2.3608 cfs, all decreed uses. viii. Former Water District Number 2. ix. Listed on Division 1 Abandonment List on page 25. 3. **Legal Standards.** Abandonment of valuable property rights are not favored under Colorado water law. *Williams v. Midway Ranches Property Owners Association, Inc.*, 938 P.2d 515, 527 (Colo. 1997). “[A] finding of abandonment requires the concurrence of two elements: a sustained period of non-use and an intent to abandon.” *E. Twin Lakes Ditches & Water Works, Inc. v. Bd. Of Cnty. Comm’rs of Lake Cnty.*, 76 P.3d 918, 921 (Colo. 2003). “[T]he element of intent remains the touchstone of the abandonment analysis.” *Id*; see also *City & County of Denver v. Snake River Water Dist.*, 788 P.2d 77, 776 (Colo. 1990) (“Intent is the critical element in determining abandonment”). Failure to apply water to beneficial use for a period of ten years, however, creates a rebuttable presumption of

abandonment, which shifts the burden onto the owner of the water right to rebut the presumption of abandonment. C.R.S. § 37-92-402(11); *Haystack Ranch, LLC v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000). A presumption of abandonment is rebutted when the owner “establish[es] some fact of condition that excuses the nonuse or shows the owner’s intent not to abandon the water right.” *Haystack Ranch*, 997 P.2d at 552. “[A] successful rebuttal requires objective and credible evidence, not merely subjective statements of intent by the water rights owner.” *E. Twin Lakes*, 76 P.3d at 921-22. “Abandonment is a question of fact depending on the particular circumstances of each case.” *Haystack Ranch*, 997 P.2d at 552. In determining whether an owner intended to abandon a water right, Colorado Courts have looked to a wide range of factors, such as: (1) repair and maintenance of diversion structures; (2) attempts to put the water to beneficial use; (3) active diversion records; (4) diligent efforts to sell the water right; (5) filing documents to protect, change, or preserve the right; (6) leasing the water right; and (7) economic or legal obstacles to exercising the water right. *E. Twin Lakes*, 76 P.3d at 922 (Colo. 2003). The above factors are not exclusive. For example, in *E. Twin Lakes*, after citing the above factors, the Court found a water right was not abandoned after more than 30 years of nonuse after recognizing a multitude of other mitigating factors. *Id.* at 922-925. **4. Basis of Protest.** L.G. Everist acquired the Subject Water Rights by deed recorded February 14, 2019, together with the land where they are decreed to be used for irrigation. Due to the overappropriated nature of the South Platte River basin, pumping by wells with junior priorities requires an augmentation plan or substitute water supply plan. *See, e.g., Well Augmentation Subdist. of Central Colo. Water Conservancy Dist. v. City of Aurora*, 221 P.3d 399, 405 (2009) (“[t]hese rulings had the effect of requiring an adjudicated augmentation plan for every large capacity well in the” overappropriated South Platte River basin). The Division of Water Resources records for the Subject Water Rights indicate that a curtailment order was issued to the prior owner during July, 2012. The recent period of non-use of the Subject Water Rights is due to legal prerequisites to operate them and does not indicate an intent to abandon. L.G. Everist’s predecessor in interest sold the water rights to L.G. Everist and L.G. Everist may be able to include the wells in an augmentation plan. L.G. Everist holds three contracts for augmentation water with the Groundwater Management Subdistrict of the Central Colorado Water Conservancy District (“GMS”). GMS operates a plan for augmentation decreed in Case No. 02CW335 (Div. 1). That plan for augmentation permits the addition of irrigation wells, and upon information and belief, the Subject Water Rights can be added to the GMS plan for augmentation upon agreement with GMS. L.G. Everist’s GMS contracts are currently assigned to three wells with Permit Nos. 6639-R, 12884-R, and 833-R on L.G. Everist’s Fort Lupton gravel mine parcels, located in Sections 19, 25, and 36 of Township 2 N, Range 66 W of the 6th P.M. However, L.G. Everist has mined those wells or land that they serve. L.G. Everist is negotiating with GMS to transfer the contracts to different structures. The discussions include transfer of the contracts to the Subject Water Rights. While it is not possible to use the Subject Water Rights to divert under their own priorities, L.G. Everist intends to use the Subject Water Rights in association with assignment of the GMS contracts. The recent period of non-use of the Subject Water Rights is justified based on the need to be included in a plan for augmentation and the recent acquisition of the property by L.G. Everist, which holds GMS contracts that are available to be assigned to new structures. WHEREFORE, Protestant respectfully requests that the Court remove the Subject Water Rights from the Division 1 Abandonment List. (Protest includes 6 pages plus 1 exhibit).

THE WATER RIGHTS CLAIMED BY THESE APPLICATIONS MAY AFFECT IN PRIORITY ANY WATER RIGHTS 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.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or an amended application, may file with the Water Clerk, P. O. Box 2038, Greeley, CO 80632, a verified Statement of Opposition, setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions. Such Statement of Opposition must be filed by the last day of **AUGUST 31, 2022** (forms available on www.courts.state.co.us or in the Clerk’s office), and must be filed

as an Original and include **\$192.00** filing fee. A copy of each Statement of Opposition must also be served upon the Applicant or Applicant's Attorney and an affidavit or certificate of such service of mailing shall be filed with the Water Clerk.

YOU ARE HEREBY NOTIFIED that any person who wishes to support or oppose a protest and/or may be affected by the subject matter of a protest or by a ruling thereon and desiring to participate in any protest hearing must file with the Water Clerk, P.O. BOX 2038, Greeley, CO 80632, an entry of appearance, under Water Court Rule 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List (forms available on www.courts.state.co.us or in the Clerk's office). Such Entry of Appearance must be filed by **AUGUST 31, 2022**. A copy of such entry of appearance must also be served upon the Opposer and the Applicant's attorney and an affidavit or certificate of such service of mailing shall be filed with the Water Clerk.