

DISTRICT COURT, WATER DIVISION 7, COLORADO

WATER RESUME

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER DIVISION NO. 7

Pursuant to C.R.S. 37-92-302, you are notified that the following is a resume of all water right applications filed in the Office of the Water Clerk during the month of March 2021, for each county affected.

W-1603-76F, W-1603-76J, 02-CW-85, 02-CW-86; La Plata County, Water Division No. 7, Colorado. REPORT OF THE UNITED STATES OF AMERICA, THE UTE MOUNTAIN UTE TRIBE AND THE SOUTHERN UTE INDIAN TRIBE ON THE PROGRESS IN APPLYING THEIR RESERVED WATER RIGHTS TO BENEFICIAL USE. The United States of America, acting for the benefit of the Ute Mountain Ute Tribe and the Southern Ute Indian Tribe, and the Ute Mountain Ute Tribe and Southern Ute Indian Tribe (collectively “Tribes”) hereby report on the progress in applying each Tribe’s reserved water rights in these cases to beneficial use, as required by the *Findings of Fact, Conclusions of Law, and Decree*, Case Nos. W-1603-76F, W-1603-76J, 02CW85 and 02CW86 (Nov. 9, 2006), *as amended, Order Amending November 9, 2006 Decree* (Feb. 8, 2007) (“2006 Judgment and Decree”). This filing is not an application for finding of reasonable diligence nor is this filing required to make the reserved water right absolute pursuant to C.R.S. § 37-92-301(4)(a)(I). “Once the federal right has been quantified, that amount is then outside the state appropriation system. It is reasonable, however, to require the United States to appear [periodically] to report its progress in applying reserved water to beneficial use.” *United States v. City and County of Denver*, 656 P.2d 1, 34-35 (Colo. 1982). **1. Applicant:** The United States of America for the benefit of the Tribes, by its attorney, Andrew “Guss” Guarino, U.S. Department of Justice, ENRD/Indian Resources Section, 999 18th Street, South Terrace – Suite 370, Denver, CO 80202, (303) 844-1343. **The Ute Mountain Ute Tribe:** The Ute Mountain Ute Indian Tribe by its attorney Peter Ortego, General Counsel, P.O. Box 128, Towaoc, CO 81334, (970) 564-5640. **The Southern Ute Indian Tribe:** The Southern Ute Indian Tribe by its attorney, Greg H. De Bie, Meyer, Walker Condon & Walker, P.C., 1007 Pearl Street, Suite 220, Boulder, CO 80302, (303) 442-2021. **2. Name of structures:** The Animas La-Plata Project (“ALP”), as described below and in the *Findings of Fact, Conclusions of Law and Decree*, Case No. 07CW55 (Jan. 16, 2008). **3. Description of the reserved water rights: A. Date of Original Decrees:** Dec. 19, 1991 (Case Nos. W-1603-F and W-1603-J). **B. Date of Amended Decree:** *Findings of Fact, Conclusions of Law, and Decree*, Case Nos. W-1603-76F, W-1603-76J, 02CW85 and 02CW86 (Nov. 9, 2006), *as amended, Order Amending November 9, 2006 Decree* (Feb. 8, 2007) (“2006 Judgment and Decree”). **C. Source:** Animas River (Case No. W-1603-76F) and La Plata River (Case No. W-1603-76J). **D. Uses:** Present and future municipal and industrial uses. **E. General Description:** The federal reserved rights for each Tribe on the Animas and La Plata Rivers are set forth in detail in the 1991 Consent Decrees in Case Nos. W-1603-76F and W-1603-76J, as amended by the 2006 Judgment and Decree. In general, each Tribe is entitled to receive and beneficially use on that part of its Reservation within the State or within the boundaries of the Animas-La Plata Water Conservancy District, an allocation of water from the ALP (as measured at Ridges Basin Reservoir (aka Lake Nighthorse) and Ridges Basin Dam or at the point on the Animas River where diversions are made to the Durango Pumping Plant), consistent with the Colorado Ute Settlement Act Amendments of 2000, Pub. L. No. 106-554, 114 Stat. 2763 (2001), for present and future municipal and industrial uses with an average annual depletion not to exceed 16,525 acre-feet of water. **4. A description of the progress in applying each Tribe’s reserved water rights in these cases to beneficial use: A. Purpose of this Notice:** In the 2006 Judgment and Decree, in which it amended the underlying 1991 Consent Decrees in Case Nos. W-1603-F and W-1603-J, the Court required the United States and each Tribe to: file a report to this Court in January of the year 2009, and every sixth year thereafter, demonstrating progress in applying its reserved water rights to beneficial use. All persons who

may be affected by any proposed use shall be notified of the proceeding. *Id.* at Section III.3.e. and f. The *Order Amending November 9, 2006 Decree* (Feb. 8, 2007), clarifies at ¶1.b. that “notification shall be done through the resume process.” **B. Progress in Applying these Reserved Water Rights to Beneficial Use:** The reserved water rights that the United States holds in these cases for the Tribes are to be served through the ALP, which the United States Congress authorized in 1968 in Public Law No. 90-537, the Colorado River Basin Project Act, and addressed more recently in the Colorado-Ute Settlement Act Amendments of 2000, Title 3 of P.L. 106-554. Construction of the Colorado component of the ALP as authorized by Congress is complete. Completion of construction and other activities, described below, are essential prerequisites to providing Project water to the Tribes. The Project consists of four main features: the Ridges Basin Dam; the Ridges Basin Inlet Conduit; the Durango Pumping Plant; and the Navajo Nation Municipal Pipeline. The first three features must be completed to provide a full and sustainable water supply to the Tribes. The construction of these three features is complete and the Project has the ability to deliver water. The initial filling of Ridges Basin Reservoir behind Ridges Basin Dam is an essential prerequisite to providing a water supply to the Tribes. Reservoir filling began on May 4, 2009 and was completed June 29, 2011. Additional information on the ALP Project and associated water rights is found in the Revised Findings of Fact, Conclusions of Law, Judgment and Decree, No. 13CW3011 (Nov. 10, 2016), and the approved Settlement Agreement in that case, which are both incorporated by reference. In that case, the Court decreed as absolute certain water rights necessary to meet the ALP Project purposes, including the Animas River direct flow right at the Durango Pumping Plant diversion point and storage right at Ridges Basin Reservoir. Also, pursuant to the Settlement Agreement, the Southwestern Water Conservation District conveyed these water rights to the Animas-La Plata Operation, Maintenance and Replacement Association (“Association”) (the Tribes are members of this Association). Necessary to providing Project water to the Tribes is finalizing the necessary operation and maintenance (O&M) and water delivery Contracts. An O&M contract between the Association and the U.S. Bureau of Reclamation was executed on December 30, 2009. In addition, the Bureau of Reclamation has executed the Repayment Contract with the Southern Ute Indian Tribe on January 14, 2016. This contract outlines the terms of use of ALP water for the Tribe. Similar repayment contract negotiations have commenced between the Bureau of Reclamation and the Ute Mountain Ute Tribe but have not been completed. The Ute Mountain Ute Tribe will not be able to utilize ALP water until an appropriate agreement is struck.

21CW12 Carol E. Wiley & Daughters Family LLLP, c/o Janet Wiley, PO Box 542, Durango, CO 81302; **Milt Wiley Memorial Park Well**; Animas River; La Plata County; Date of original decree, 8/27/08; Case no., 07CW61; SW1/4SW1/4SE1/4, Section 32, T35N, R9W, NMPM; 54 feet from South, 2168 feet from East; Groundwater tributary to Animas River; Appropriation date, 8/21/14; 0.033 cfs (15 gpm), Conditional made Absolute for irrigation of 0.07 acres, 0.0784 cfs (35 gpm) Conditional for irrigation of 4.18 acres; Irrigation; Depth, 100 feet; Date water applied to beneficial use, 8/27/08; Easting 245166.40, Northing 4126673.61; Work towards completion of project outlined in application. Application to Make Absolute in Whole or in Part (9 pages including exhibits)

21CW3013 District Court, Water Division 7, La Plata County, Colorado, 1060 E. 2nd Ave, Durango, CO 81301, 970-247-2304, CONCERNING THE APPLICATION FOR FINDING OF REASONABLE DILIGENCE in the Animas River or its tributaries, in La Plata County. Applicant: TIERRA HERMOSA LLC, 1500 CR 500, Durango, CO 81301, 214-914-5837. Name of structures: Warner Reservoir No. 1, Warner Reservoir No.4 and the North Pond Second Refill (Warner Reservoir No. 9) Type: Reservoir Date of Original Decree: May 4, 1998 Case No. 1996CW107 Court: Water Division No. 7. Subsequent decrees awarding findings of diligence: Date of Decree: January 14, 2009 Case No. 2004CW34 Court: Water Division No. 7. Date of Decree: May 23, 2015 Case No. 2014CW3044. Court: Water Division No. 7. Legal description: WARNER RESERVOIR NO. 1 FIRST REFILL: Point #1, THE PLACE OF BEGINNING, is N 68° 10' E, 1320' from the SW Corner of Section 6, T37N, R8W; thence S 26° 18' E, 72.3' to point #2; thence S 56° 00' E, 160' to point #3; thence S 59° 15' E, 265' to point #4; thence N 81° 45' E, 105' to point #5; thence N 53° 00' E, 190' to point #6; thence N 62° 30' E, 80' to point #7;

thence N 69° 45' W, 225' to point #8; thence N 57° 00' W, 155' to point #9; thence S 88° 45' W, 90' to point #10; thence N 78° 15' W, 280' to point #11; thence S 8° 30' W, 90' to point #1, the place of beginning. WARNER RESERVOIR NO. 4 FIRST REFILL: Point #1, THE PLACE OF BEGINNING, is N 45° 00' E, 1410' from the SW Corner of Section 6, T37N, R8W; thence S 87° 00' E, 45' to point #2; thence N 4° 30' E, 135' to point #3; thence N 64° 30' W, 50' to point #4; thence S 3° 52' W, 154' to point #1; the place of beginning. NORTH POND SECOND REFILL (WARNER RESERVOIR NO. 9): From SE corner of Section 1 (also NE corner of Section 12) T37N, R9W, N.M.P.M., the dam is 2,500 feet north and 310 feet east; in Section 6, T37N, R8W, N.M.P.M., extrapolated from USGS Quad maps, sections are not identified. Source of water: (i) & (ii) Elbert Creek through Carter Ditch & Extension; (iii) Elbert Creek; Appropriation Date: (i) & (ii) July 31, 1995; (iii) August 31, 1995 Amount: (i) 23.2 acre feet; (ii) 5.5 acre feet; (iii) 10.8 acre feet; Use: (i) Augmentation, fish culture and recreation; (ii) fish culture, recreation; (iii) augmentation, recreation. The Applicant has continued to make improvements to the property by way of additional buildings, installing sprinkler systems, discussions with the Division of Water Resources, legal and engineering expenses in the approximate amount of \$45,000 to date; b) Because of the dry climate during the last several years, the Applicant was unable to refill the Warner Reservoirs Nos. 1 and 4, or the second refill for the North Pond. Warner Reservoir No. 1: La Plata County, SW/4SW/4, Section 6, Township 37 N, Range 8 W, N.M.P.M. 100 feet from S and 1100 feet from W Section lines, Street Address: 1500 CR 200, Durango, CO 81301. Warner Reservoir No. 4: La Plata County, SW/4SW/4, Section 6, Township 37 N, Range 8 W, N.M.P.M. 1100 feet from S and 500 feet from W Section lines, Street Address: 1500 CR 200, Durango, CO 81301. North Pond (Warner Reservoir No. 9): La Plata County, SW/4NW/4, Section 6, Township 37 N, Range 8 W, N.M.P.M. 3700 feet from S and 300 feet from W Section lines, Street Address: 1500 CR 200, Durango, CO 81301. Attorney for Applicant: Frank J. Anesi, Reg. 1365, 835 E 2nd Ave, #220, Durango, CO 81301, 970-247-9246 (7 pages)

21CW3014 La Plata County, Application for A Finding of Reasonable Diligence. Applicant, Paul Praxmarer, 26 South Chestnut, Arlington Heights, IL 60005. Please direct all correspondence to Amy N. Huff, Colorado Water & Land Law, LLC, 679 E. 2nd Avenue, Ste 11B, Durango, Colorado 81301. (970) 403-1770, amy@waterland-law.com **1. Structure:** Lower Willow Bog **(a) Prior Decree:** Case No. 06CW131, WD #7 **(b) POD:** NW ¼ SW ¼ of S21, T37N, R8W, NMPM, 2200± ft. from the S Section line and 530 ft. from the W Section line of said S21. **(c) Source:** Unnamed spring, tributary to the Animas River. **(d) App. Date:** 12/29/2000 **(e) Amt:** 0.011 cf (5 gpm) Conditional **(f) Uses:** Irrigation of up to 2 acres located in the Redtail Mountain Ranches Subdivision, stock watering, fire protection, and filling and refilling ponds/water features for recreation; aesthetics, piscatorial and the aforementioned purposes **2. Structure:** SW Corner Spring **(a) Prior Decree:** Case No. 06CW131, WD#7 **(b) POD:** NW ¼ NW ¼ of S29, T37N, R8W, NMPM, 346± ft from N Section line and 902 ft from W Section line of said S29. **(c) Source:** Unnamed spring, tributary to the Animas River **(d) App Date:** 12/29/2000 **(e) Amt:** 0.011 cf (5 gpm) Conditional **(f) Uses:** Irrigation of up to 2 acres in Lot 1 of the Redtail Mountain Ranches Subdivision, stock watering, fire protection, and filling and refilling ponds/water features for recreation; aesthetics, and piscatorial and the aforementioned purposes. **3. Detailed Outline of what has been done for completing the appropriation:** Applicant acquired the water rights described herein and the associated real property on November 21, 2020. Since acquiring the real property and water rights, Applicant has inspected the properties and is considering site plans for his anticipated development Applicant intends to place the water conditionally decreed to the Lower Willow Bog and to the SW Corner Spring to beneficial use withing a reasonable time according to the terms of the decree entered in Case No. 06CW131. During the diligence period, Applicant's Lots No. 20 and No. 1 were leased for grazing and livestock were watered by the source springs that are decreed for Lower Willow Bog and the SW Corner Spring. **4. Landowner.** Applicant owns the affected land. **4. Remarks.** See Application. (6 pages including exhibits)

21CW3015 MONTEZUMA COUNTY, WATER DIVISION 7, WATER DISTRICT NO. 32:

1) Applicant: Dolores Water Conservancy District (“District”), Ken Curtis, General Manager, P.O. Box 1150, Cortez CO 81321 (970) 565-7562; **2) Attorney:** Adam T. Reeves, Esq., Maynes, Bradford, Shipp & Sheftel, LLP, 835 East 2nd Avenue, Suite 123, Durango, CO 81301; **3) Structures:** A. DWCD Simon Draw Diversions 1 and 2, as Alternate Points of Diversion (PODs) to each other or to be used in combination’ **(i)** Locations: DWCD Simon Draw Diversion #1: NE1/4SW1/4, Section 21, T36N, R15W; N 37 Deg. 21 min. 47 sec.; W 108 Deg. 30 min. 41 sec.; DWCD Simon Draw Diversion #2: SW1/4SW1/4 Section 20, T36N, R15W, ; N 37 Deg. 21 min. 31 sec.; W 108 Deg. 32 min. 11 sec.; **(ii)** Source: Simon Draw, tributary to McElmo Creek, tributary to the San Juan River; **(iii)** Appropriation Date: December 22, 2003; **(iv)** Amount: 10.0 c.f.s., Conditional, at either POD or both PODs together, but not to exceed 10.0 c.f.s combined; **(v)** Uses: **(1)** Irrigation of up to 1,000 Acres, described as Sections 26, 27, 28, 32, 33, 34, and 35, T36N, R15W; and Sections 1, 2, 3, 4, 5, T35N, R15W, N.M.P.M., and depicted on the maps attached to the Application as Exhibit A. (Fairgrounds Land); **(2) Supplemental irrigation:** 20 acres of the Simon Draw Wetlands Area (Tracts 2, 3 and 4), together with up to 100 acres of uplands operated by the Bureau of Reclamation, located one-half mile East of Totten Reservoir, in the E 1/2 of Section 20 and W 1/2 of Section 21, T36N, R15W, N.M.P.M. (“Wetlands/Uplands”), up to 7,800 Acres of the Ute Mountain Ute (“UMU”) Land described below, and up to 1,434 Acres of the “McElmo Land”; UMUT Land: T33½N, R19W, Sections 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 36; T33½N, R19W, Sections 31, 32, 33, 34, 35, 36; T33N, R19W, Sections 1, 12, 13, 14; T33N, R18W, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 15; T33½N, R20W, Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 23, 24, 25, 26, 27, 34, 35; T34N, R19W, Sections 6, 7, 8, 9; T34N, R20W, Sections 1, 10, 11, 12; McElmo Land: irrigated lands in McElmo Canyon consisting of: T35N, R17W, Sections 1, 2, 3; T36, R17W, Sections 31, 32, 33, 34; T36N, R18W, Sections 31, 32, 33, 34, 35, 36; T36N, R19W, Sections 31, 32, 33, 34, 36; T35N, R19W, Sections 1, 2, 3, 4; Applicant explicitly acknowledges that the duty of water for the McElmo Lands is one cfs to 65 Acres; **(3) Storage year round in Totten Reservoir** for irrigation of Fairgrounds, as described above, and Supplemental irrigation of the UMUT Land, the Wetlands/Uplands, and McElmo Land, as described above, municipal, industrial, domestic, livestock, incidental wildlife watering, fire protection, commercial, exchange as set forth in the decree in Case 99CW46, and augmentation within the boundaries of the District as it now exists and may be expanded; **(vi)** Owners of land on which diversions will be located: **(1)** DWCD Simon Draw, Diversion 1; Christopher J. and Jenny L. Todacheeny, 10286 Road 29, Cortez, CO 81321; DWCD Simon Draw, Diversion 2; **(2)** Curtis and Lucy Cowan, 27881 Hwy. 160, Cortez, CO 81321; **(B) DWCD Ritter Draw Diversion:** **(i)** Location: **(1)** POD: NW1/4NE1/4 Section 18, T36N, R15W, N.M.P.M., N 37 Deg. 23 min. 0.5 sec.; W 108 Deg. 32 min. 26.8 sec.; **(ii)** Source: Ritter Draw, tributary to McElmo Creek, tributary to San Juan River; **(iii)** Appropriation Date: December 22, 2003; **(iv)** Amount: 10.0 cfs, Conditional; **(v)** Uses: same as in Paragraph 2(a)(v) for DWCD Simon Draw Diversions 1 and 2; **(vi)** Owners of land on which diversions will be located: TIPTON, SCOTT R. EXEMPT TRUST 1/2 INT & TIPTON, JOE D. JR. & MERRIE JOE 1/2 INT, PO Box 846, Cortez, CO 81321; **(C) Refill right for Totten Reservoir:** **(i)** Totten Reservoir information from previous decrees: **(1)** Location: In the N1/2, N/2 SE/4 Section 20, T36N, R15W, N.M.P.M.; **(2)** Sources: By diversion: from the Dolores River through Main No. 1 Canal (a part of the Ditch numbered “Ditch No. 21-Dolores”, decreed in Case No. 967). Water delivered through McPhee Reservoir via the Dolores Tunnel and the Towaoc/Highline Canal will be diverted from the Canal into the Rocky Ford Inlet Ditch and delivered to Totten Reservoir; **(a)** Pursuant to law, the Reservoir is now filled from the Dolores Tunnel, located in the NE ¼, SE ¼, Section 7, T37N, R 15W, NMPM, being 1868 feet from the South section line and 922 feet from the East section line of said Section 7. Zone 12: 717394 Easting/4150641 Northing. Zone 13: 186822 Easting/4153695 Northing; **(3)** Decree: Case 967, District Court, Montezuma County; **(4)** Amount, Decree Date. Appropriation Date: **(a)** 3,000 AF (made absolute in Case W-27); **(b)** March 22, 1963; **(c)** February 1, 1951 (Priority 62-3); **(d)** Decreed uses: Irrigation; Domestic, stock and other beneficial use added in 1963; **(e)** 400 AF; **(f)** December 18, 1933; stream priority 9 – Reservoir Dist 34; Reservoir No. 5 Dolores; **(g)** April 25, 1907 (Priority D-9R); **(h)** Decreed use: Irrigation; **(5)** In Case No. 99CW69, the Court approved using Totten Reservoir as replacement water for exchanges; **(ii)** Totten Reservoir

Right Applied For Herein: **(1)** Sources in addition to sources at Paragraph 2(c)(i)(2) above: **(a)** Simon Draw Diversions, tributary to McElmo Creek tributary to the San Juan River (See Paragraph 2(a) above); **(b)** Ritter Draw Diversions, tributary to McElmo Creek (See Paragraph 2(b)(i) above); **(2)** Amount: Two refills, each of 3,400 AF, Conditional; **(3)** Rate of Fill: **(a)** From the Simon Draw Diversions 1 and 2, not to exceed 10 c.f.s. combined; **(b)** From the Ritter Draw Diversion, not to exceed 10 c.f.s.; **(4)** Appropriation Date: December 22, 2003; **(5)** Uses: Storage year-round in Totten Reservoir for irrigation and supplemental irrigation, municipal, industrial, domestic, irrigation of wetlands described in the "Supplemental Irrigation" section of Paragraph 2(a)(v)(2), above, livestock and incidental wildlife watering, fire protection, commercial, exchange as decreed in Case 99CW69, and augmentation within the boundaries of the Dolores Water Conservancy District, as it exists today and may expand in the future; **(6)** This case allows for two refill rights under the 2003 priority, which would be the first and second refill for the initial fill right decreed in Case 967. The applicant may concurrently fill the senior and the junior storage rights by paper filling the senior right in order to take advantage of uses decreed to the junior right that are not allowed under the senior storage right. **3.** Outline of what has been done toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: DWCD has spent \$63,482 on continued operations, maintenance and replacements of Totten Dam & Reservoir and its associated facilities which comprise part of the integrated system for the eventual diversions from the water rights identified herein. These activities include dam safety monitoring of long term movement surveys, short term settlement surveys, regular piezometer readings and routine visual inspections. Additional water quality (salinity) testing for ultimate diversions under these water rights have also continued throughout this period. Other costs relate to weed control, minor repairs and normal storage and release operations of Totten Reservoir into McElmo Creek. (37 pages including exhibits)

21CW3016 District Court, Water Division No. 7, La Plata County, Colorado, 1060 E. 2nd Ave, Durango, CO 81301, 970-247-2304. CONCERNING THE APPLICATION FOR FINDING OF REASONABLE DILIGENCE FOR THE WATER RIGHTS OF APPLICANT, ANIMAS RIVER HOLDINGS LLC, 6010 E. 117th St, Tulsa, OK 74137, in the Animas River or its Tributaries, in La Plata County, Colorado. Name of structure: Dyar-McCoy Diversion Station, Sugnet Enlargement. Date of Original Decree: September 6, 1995 Case No. 94CW98 Court: District Court, Water Division 7, Colorado. Subsequent decrees awarding findings of diligence: Date of Decree: March 5, 2015 Case No. 03CW71 Court: District Court, Water Division 7, Colorado; Date of Decree: March 5, 2015 Case No. 14CW35 Court: District Court, Water Division 7, Colorado. Legal description: In the NE1/4 SE1/4SE1/4, Section 9, T35 N, R9W, NMPM, being 1040 feet from the South section line and 310 feet from the East section line of said Section 9. Source of water: Reid Ditch Runoff & Spring Creek Runoff, Animas River Drainage; Appropriation Date: July 30, 1994 Amount: 1.5 cfs Use: Irrigation of 50 to 90 acres including wetlands improvement, fire protection and stock water. An outline of work completed and amount expended for completion of a beneficial use are attached to the Application as Exhibit 1 – Statement of Prior Owner, Exhibit 2 -GIS Map, Exhibits 3A and 3B, Recorded Deeds. Date water applied to beneficial use: See Statement of Prior Owner attached to the Application. Amount:1.5 cfs. Use: Pasture, grazing, gardening, landscaping / development and pond; Exhibit 2, GIS Map, depicts location of area irrigated. Location of the structure: La Plata County, NE1/4SE1/4, Section 9, Township 35 N, Range 9W, N.M.P.M. 1040 feet from the South property line and 310 feet from the East property line. Attorneys for Applicant: Anesi Law Firm, Nicholas F. Anesi, 835 E Second Ave, #220, Durango, CO 81301, 970-247-9246 (10 pages including exhibits)

21CW3018 (06CW72 and 14CW3001) **APPLICATION OF INDIAN SHADOW RANCH, LLC, FOR REASONABLE DILIGENCE AND TO MAKE A PORTION OF A CONDITIONAL WATER RIGHT ABSOLUTE, IN LA PLATA COUNTY, COLORADO. 1. Name and address of Applicant:** Indian Shadow Ranch, LLC, 78 N. Bay Blvd., The Woodlands, TX 77380. Please send all correspondence and pleadings to Lee H. Johnson and Katrina B. Fiscella, Carlson, Hammond &

Paddock, LLC, 1900 N. Grant Street, Suite 1200, Denver, CO 80203. **2. Name of Structures:** CRV Lakes Water Storage Right, CRV Well Field Water Right, CRV Exchange Right, CRV Lakes No. 1, 2 and 4, Infiltration Gallery/Wells A and B, Keller Ditch headgate, Brown Brothers Ditch and La Plata Irrigating Ditch headgate. A map created in the Case No. 06CW72 proceeding setting forth the general location of the relevant structures and the approximate boundary of the Indian Shadow Ranch, (the "Property"), is attached as Exhibit A. **3. Description of conditional water rights:** In Case No. 06CW72, CRV Indian Shadow Preserve, L.P. ("CRV") adjudicated several conditional water rights; namely, the CRV Lakes Water Storage Right, the CRV Well Field Water Right, and an appropriative right of exchange involving interests in the Brown Brothers Ditch (the "CRV Exchange Right"). Additional information concerning these water rights is set forth below: A. **CRV Lakes Water Storage Right:** (1) Date of original decree: January 4, 2008, (amended March 28, 2011). Case No.: 06CW72 Court: District Court, Water Division No. 7. (2) Subsequent findings of diligence: Case No. 14CW3001, entered on April 6, 2015, Water Court, Water Division No. 7. (3) Location: CRV Lake No. 1 is located in the NE¹/₄NE¹/₄ of Section 10, Township 35 North, Range 11 West of the N.M.P.M., with a total capacity of up to 30 acre feet. CRV Lake No. 2 is located in the NW¹/₄SW¹/₄, Section 11, Township 35 North, Range 11 West of the N.M.P.M. CRV Lake No. 4 is located in the SW¹/₄SE¹/₄ and the SE¹/₄SE¹/₄ of Section 3, and portions of the NE¹/₄NE¹/₄ and NW¹/₄NE¹/₄ of Section 10, Township 35 North, Range 11 West of the N.M.P.M. CRV Lake No. 1 is constructed and was conveyed to the Applicant during the diligence period. The Applicant is also the owner of the Keller Ditch. CRV Lake No. 1 is filled via diversions at the Keller Ditch headgate, located in the NW¹/₄SE¹/₄ of Section 3, Township 35 North, Range 11 West of the N.M.P.M. in La Plata County, Colorado, and/or the CRV Well Field, located as described in paragraph 3.B.(2), below. (4) Source: The La Plata River and its alluvium. (5) Appropriation date: September 22, 2006. (6) Amount: 30 acre feet, conditional. (7) Use: Pursuant to the decree in Case No. 06CW72, the decreed uses include domestic, agricultural, commercial, irrigation, fire protection, recreational, piscatorial, augmentation purposes, including the replacement of historical return flows, and other water supply purposes related to the Indian Shadow development on the Property. When augmenting or replacing out-of-priority depletions, this water right may be fully consumed. B. **CRV Well Field Water Right:** (1) Date of original decree: January 4, 2008, (amended March 28, 2011). Case No.: 06CW72 Court: District Court, Water Division No. 7. (2) Subsequent findings of diligence: Case No. 14CW3001, entered on April 6, 2015, Water Court, Water Division No. 7. (3) Location: The CRV Well Field consists of two separate infiltration galleries/wells that withdraw water from the alluvium of the La Plata River. Infiltration Gallery/Well A is located within 50 feet of the east bank of the La Plata River in the NE¹/₄SE¹/₄ of Section 10, Township 35 North, Range 11 West of the N.M.P.M. Infiltration Gallery/Well B is located within 50 feet of the east bank of the La Plata River in the NE¹/₄NE¹/₄ of Section 10, Township 35 North, Range 11 West of the N.M.P.M. The infiltration galleries/wells associated with the CRV Well Field are constructed and were conveyed to the Applicant during the diligence period. Pursuant to the terms of the decree in 06CW72, the CRV Well Field will be administered as a surface water diversion. (4) Source: The La Plata River and its alluvium. (5) Appropriation date: September 22, 2006. (6) Amount: 0.25 c.f.s., conditional. (7) Use: Pursuant to the decree in Case No. 06CW72, the decreed uses include domestic, agricultural, commercial, irrigation, fire protection, recreational, piscatorial and water supply purposes related to the Indian Shadow development on the Property. C. **CRV Exchange Right:** (1) Date of original decree: January 4, 2008, (amended March 28, 2011). Case No.: 06CW72 Court: District Court, Water Division No. 7. (2) Subsequent findings of diligence: Case No. 14CW3001, entered on April 6, 2015, Water Court, Water Division No. 7. (3) Location: The CRV Exchange Right is a conditionally decreed appropriative right of exchange involving an exchange on the La Plata River. The source of substitute supply is a 0.25 c.f.s. interest in the Brown Brothers Ditch water right, administered as Priority No. 2 in the La Plata River basin. This 0.25 c.f.s. interest in the Brown Brothers Ditch water right was the subject of a change of use proceeding in Case No. 06CW72. The downstream terminus of the exchange reach is at the Brown Brothers Ditch diverting at the La Plata Irrigating Headgate located on the East Bank of the La Plata River from which stream said ditch derives and diverts its water at a point 954 feet S., 49", 0' W., from NE corner of the NE¹/₄SW¹/₄, Section 14,

Township 35 North, Range 11 West of the N.M.P.M. in La Plata County, Colorado. The exchange reach operates upstream from said La Plata Irrigating Headgate to the CRV Well Field, located as described in paragraph 3.B.3, above, and further upstream to the Keller Ditch headgate, located as described in paragraph 3.A.3. Water diverted by exchange may be used directly in accordance with the augmentation plan adjudicated in 06CW72 or stored in the CRV Lakes via either the CRV Well Field and/or the Keller Ditch. (4) Source: The La Plata River and its alluvium. (5) Appropriation date: September 22, 2006. (6) Amount: 0.25 c.f.s., conditional. (7) Use: Pursuant to the decree in Case No. 06CW72, the decreed uses include agricultural, commercial, irrigation and water supply purposes related to the Indian Shadow development on the Property. Such uses include, but are not limited to, domestic, irrigation of lawns, gardens and parks, fire protection, recreational, wildlife, piscatorial, augmentation and replacement of historical return flows from the 20 Acres, exchange, use as a substitute supply, and to meet replacement, return flow, or other obligations related to other decreed water rights, and storage in CRV Lakes for these purposes. **4. Detailed outline of what has been done toward completion of the appropriation and application to a beneficial use.** A. As set forth in paragraph 35 of the decree in Case No. 06CW72, the conditional water rights, including the CRV Lakes Water Storage Right, the CRV Well Field Water Right and the CRV Exchange Right (the “Subject Water Rights”) are part of an integrated water supply system pursuant to C.R.S. § 37-92-301(4)(b). Applicant took title to the Property, and the related water rights and relevant structures, by deed dated August 16, 2016. Since taking title to the Property and related water rights and relevant structures, the Applicant has applied a steady application of effort to complete the conditional appropriations in a reasonably expedient and efficient manner under all the facts and circumstances. B. As noted, Applicant’s predecessor in title caused CRV Lake No. 1 to be constructed and lined in accordance with the requirements of the decree in Case No. 06CW72. CRV Lake No. 1 is fully operational, and during the diligence period, Applicant caused water to be diverted through the Keller Ditch into CRV Lake No. 1 in priority and in accordance with the terms and conditions set forth in the decree. During the diligence period, CRV Lake No. 1 has been filled to its capacity of 30 acre feet. Applicant incurred costs associated with these efforts during the diligence period. C. During the prior diligence period, Applicant’s predecessor in title obtained well permits and caused the CRV Well Field to be constructed in accordance with the requirements set forth in the decree in Case No. 06CW72. Infiltration Gallery/Wells A and B are now functional and have been used during the diligence period for pump testing purposes and limited landscape irrigation purposes. Commencing in June of irrigation years during the diligence period, Applicant diverts water at the CRV Well Field at a flow rate of 20 gallons per minute for landscape irrigation purposes. In most instances, these diversions are made by exchange. In June of 2019, however, based on then existing administrative calls and the priority system, these diversions were made in priority under the junior CRV Well Field Water Right. As a result, Applicant seeks to make absolute 0.04 c.f.s. (20 gpm) of the CRV Well Field Water Right. Applicant also seeks diligence as to the remainder of the CRV Well Field Water Right at this time, but reserves the right to make some or all of the CRV Well Field Water Right absolute to the extent diversions occur in priority and water is beneficially used in accordance with the requirements of the decree in Case No. 06CW72 during the pendency of this proceeding. Applicant incurred costs associated with these efforts during the diligence period. D. During the diligence period, Applicant operated and maintained the Keller Ditch. The Keller Ditch has an independent senior water right that is not the subject of this application. The ditch structure is also used, however, to fill CRV Lake No. 1 under the CRV Lakes Water Storage Right and is the upstream terminus of the CRV Exchange Right. As such, the Keller Ditch is part of the integrated water supply system. Applicant incurred costs associated with these efforts during the diligence period. E. During the diligence period, Applicant operated and maintained CRV Lake No. 1. Applicant has incurred costs associated with these efforts during the diligence period. Applicant has also released water from storage in CRV Lake No. 1 for augmentation purposes during the diligence period. F. During the diligence period, Applicant has diverted water into CRV Lake No. 1 and applied the resulting stored water to decreed beneficial uses, including recreation, piscatorial and augmentation purposes. **5. Water applied to beneficial use (See Exhibit B):** A. At various times during the diligence period and when in priority, Applicant diverted water under the CRV Lakes Water Storage

Right at the Keller Ditch headgate in accordance with the requirements of the decree in Case No. 06CW72. These diversions, the paper filling of the reservoir in times of free river, and the carry-over of stored amounts from year to year, have been sufficient to account for a fill of the entirety of CRV Lake No. 1, up to a capacity of 30 acre feet. Applicant subsequently beneficially used the resulting water for decreed uses. As a result, Applicant seeks to make the entire 30 acre feet of the CRV Lakes Water Storage Right absolute in this proceeding. B. In June of 2019, in times of free river, Applicant diverted 20 gpm (0.04 c.f.s.) of water at the CRV Well Field and beneficially used the resulting water for decreed uses. As a result, Applicant seeks to make 0.04 c.f.s. of the CRV Well Field absolute, and seeks a finding of diligence as to the remaining 0.21 c.f.s. C. During multiple times during the diligence period, and specifically in April of 2018, with the approval of the Water Commissioner, Applicant diverted 0.25 c.f.s. of water by exchange via the Keller Ditch pursuant to the CRV Exchange Right and stored the resulting 0.47 acre feet of water in the CRV Lake and beneficially used the resulting water for decreed uses. As a result, Applicant seeks to make 0.25 c.f.s. of the CRV Exchange Right absolute in this proceeding. **6. 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:** New diversion and storage structures (CRV Well Field and CRV Lake No. 1) were constructed during the prior diligence period, but all on lands owned by the Applicant. No modification to any existing diversion or storage structure is needed to complete the conditional appropriations and none are contemplated at this time. As a result, additional notice requirements by certified or register mail, as set forth in § 37-92-302(2)(b), C.R.S., do not apply in this instance. **WHEREFORE**, Applicant requests the Court to enter its decree and ruling as follows: A. To make the entire 30 acre feet of the CRV Lakes Water Storage Right ABSOLUTE; B. To make 0.04 c.f.s. of the CRV Well Field Water Right ABSOLUTE; C. To make the entire 0.25 c.f.s. of the CRV Exchange Right ABSOLUTE; D. For a finding of reasonable diligence as to remaining conditional portions of the CRV Well Field Water Right, and, to the extent the Court determines that some amount less than the full 30 acre feet of the CRV Lakes Water Storage Right or the full 0.25 c.f.s. of the CRV Exchange Right, should be made absolute in this proceeding, a finding of reasonable diligence as to any such remaining conditional amount associated with said rights; and, E. To make absolute any portions of the conditionally decreed Subject Water Rights that are diverted in priority and applied to beneficial use during the pendency of this proceeding. (14 pages including exhibits)

21CW3019 CITY OF DURANGO, APPLICATION FOR FINDING OF REASONABLE DILIGENCE AND TO MAKE ABSOLUTE in LA PLATA COUNTY. 1. Name, address, e-mail address and telephone number of applicant: City of Durango, c/o José Madrigal, City Manager, 949 E. 2nd Avenue, Durango, Colorado 81301, E-mail: jose.madrigal@durangogov.org, 970-375-5009. Please send all pleadings and correspondence to Paul F. Holleman and John D. Buchanan, Buchanan Sperling & Holleman PC, 1525 Spruce Street, Suite 200, Boulder, Colorado 80302. 2. Name of structure: Durango Boating Park. 3. Describe conditional water right (as to each structure) including the following information from previous decree: A. Original Decree: Case No. 2006CW9 entered by the District Court, Water Division 7 on November 30, 2007 (the “06CW9 Decree”). B. Subsequent decrees awarding findings of diligence: Case No. 13CW3028 entered by the District Court, Water Division 7 on June 4, 2015. C. Legal description: The Durango Boating Park is located in the channel of the Animas River near the intersection of Santa Rita Drive and Highway 160 in Durango, Colorado, and is approximately 1183 feet in length. Although the reach of the Durango Boating Park is approximately 1183 feet, the recreational in-channel diversion water rights are located at the control structures described below (“Control Structures”). Each of the Control Structures is designed to perform at various rates of flow and will control the entire range of flows set forth in paragraph 3.F. below, for the beneficial uses described in paragraph 3.G. below. The reach of the Animas River which constitutes the Durango Boating Park includes the following Control Structures for which recreational in-channel diversion water rights are decreed: (1) Structure 5 (Smelter): Located in the SW 1/4 of the SW 1/4, Section 29, Township

35 North, Range 9 West, N.M.P.M., 670 feet east of the west section line and 360 feet north of the south section line of said section. (2) Structure 9 (Corner Pocket): Located in the SW 1/4 of the SW 1/4, Section 29, Township 35 North, Range 9 West, N.M.P.M., 650 feet east of the west section line and 80 feet north of the south section line of said section. (3) Structure 11 (Ponderosa): Located in the NW 1/4 of the NW 1/4, Section 32, Township 35 North, Range 9 West, N.M.P.M., 760 feet east of the west section line and 70 feet south of the north section line of said section. (4) Structure 12 (Clock Tower): Located in the NW 1/4 of the NW 1/4, Section 32, Township 35 North, Range 9 West, N.M.P.M., 1020 feet east of the west section line and 300 feet south of the north section line of said section. The location of the Durango Boating Park and the Control Structures are depicted on the as-built drawing attached to the application as Exhibit A. The legal descriptions of the final as-built structures set forth above have been verified by Parks and Recreation Department staff. The final locations for Control Structures 5, 11 and 12 described above vary somewhat from the locations described in the 06CW9 Decree, but are all within the 1183-foot stream reach described in that decree. The 06CW9 Decree provides that the precise location of the Control Structures may vary within said stream reach and that the final as-built locations may be described in this subsequent application. D. Source of water: Animas River. E. Appropriation date: February 23, 2006. F. Amounts: The following amounts, in cubic feet per second (“cfs”), are decreed for each of the Control Structures: January 1 through March 14, 185 cfs; March 15 through March 31, 250 cfs; April 1 through April 14, 400 cfs; April 15 through April 30, 850 cfs; May 1 through May 31, 1200 cfs; June 1 through June 14, 1400 cfs; June 15 through June 30, 1200 cfs; July 1 through July 14, 850 cfs; July 15 through July 31, 600 cfs; August 1 through August 14, 400 cfs; August 15 through September 30, 300 cfs; October 1 through December 31, 185 cfs. From April 16 through September 29 of each year, use of the Durango Boating Park recreational in-channel diversion water rights shall be limited each day to the period between 8:00 a.m. and 8:00 p.m., except during competitive events when the hours shall extend from 6:00 a.m. until midnight. From September 30 of each year until April 15 of the following year, use of the Durango Boating Park recreational in-channel diversion water rights shall be limited each day to the period between 10:00 a.m. and 6:00 p.m., except during competitive events when the hours shall extend from 6:00 a.m. until midnight. Competitive events during which the hours shall extend from 6:00 a.m. until midnight will be limited to no more than 8 events per calendar year, each event not to exceed 4 days in length, and Durango will provide at least 30 days advance written notice to the Division Engineer of such competitive events. Durango may place a call under the Durango Boating Park recreational in-channel diversion water rights outside of the hours described herein to ensure the availability of water at the Control Structures during the hours described herein. Each flow rate is a minimum stream flow for a particular recreational experience or set of particular recreational experiences. Thus, each flow rate also includes the right to call for any other lower flow rate specified above, even if the lower flow rate is specified for a different time period as further explained in the 06CW9 Decree. G. Use or proposed use: Boating, kayaking, rafting and canoeing. 4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the diligence period: The Durango Boating Park is an important amenity to the City of Durango, which is evident by the investment of \$2,724,648 between 2013 and 2020 in the construction, maintenance and repair of the Control Structures and work associated with the Boating Park, as detailed in the application on file with the water court. 5. If claim to make absolute in whole or in part: The four Control Structures in the Boating Park as described in paragraph 3 above have been constructed, maintained, and extensively used. Consistent with the 06CW9 Decree, the City is entitled to make absolute the flows available at the Control Structures at times when there was use of those flows at the Control Structures by boaters. To document that use, City of Durango employees observed the beneficial use of the Durango Boating Park water rights by boaters at the Control Structures during the last diligence period, and recorded the following data from their observations: the type and number of watercraft using the Boating Park; the date and time of their observations; the flow rate at the USGS gage no. 09361500 Animas River Durango, CO located approximately 1.25 miles upstream from the Boating Park; and the flow rate at the USGS gage no. 09362520 Animas River BLW Durango Pump

Plant located approximately one mile downstream from the Boating Park. The tables attached to the application as Exhibits B-1 through B-6 summarize the data recorded by the City of Durango employees. A. Date Water Applied to Beneficial Use: Water has been applied to beneficial use during each time period established in the 06CW9 Decree since the Control Structure were completed, as shown on Exhibits B-1 through B-6. B. Amount: The full flow rate decreed for each time period in paragraph 6.D of the 06CW9 Decree was beneficially used at the Control Structures in multiple years, as shown in Exhibits B-1 through B-6. In 2017, for example, watercraft used the Control Structures at or above the full decreed flow rate during each of the 12 decreed time periods. See Exhibit B-4. Applicant requests that the full flow rate for each of the 12 time periods decreed in paragraph 6.D. of the 06CW9 Decree be made fully absolute for each Control Structure. C. Uses: Boating, kayaking, rafting and canoeing. 6. 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: City of Durango. WHEREFORE, Applicant, City of Durango, requests the Court enter a decree determining that the Durango Boating Park water rights have been made absolute in full. To the extent the water rights are not made absolute in full, the City requests a finding that the City has exercised reasonable diligence in the development of the conditional water rights and continuing those conditional water rights in full force and effect for an additional diligence period. (16 pages including exhibits)

THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) 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 YOU HAVE until the last day of May 2021, to file with the Water Clerk, a verified Statement of Opposition, setting forth facts as to why a certain application should not be granted or why it should be granted only in part or on certain conditions. A copy of such Statement of Opposition must also be served upon the applicant or the applicant's attorney and an affidavit or certificate of such service shall be filed with the Water Clerk, as prescribed by Rule 5, CRCP. (Filing fee: \$192.00; Forms are available through the Office of the Water Clerk or on the Judicial web site at www.courts.state.co.us; Danene M. Etz, Water Court Specialist, 1060 E. 2nd Ave., Room 106, Durango, CO 81301; 970-385-6181)



Published: before April 30, 2021

Danene M. Etz, Water Court Specialist