

**DISTRICT COURT, WATER DIVISION 6, COLORADO
TO ALL PERSONS INTERESTED IN WATER APPLICATIONS
IN WATER DIVISION 6**

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following pages comprise a resume of Applications and Amended Applications filed in the office of Water Division 6, during the month of **May, 2022**.

2022CW3036, in an unnamed tributary to Trout Creek, tributary to Yampa River in ROUTT COUNTY, COLORADO, **APPLICATION FOR FINDING OF REASONABLE DILIGENCE** 1. **Applicant:** Patricia Marlene Walsh [“Applicant Walsh”], P.O. Box 773183, Steamboat Springs, CO 80477, mwalsh@zirkel.us, 970.879.1643. Direct all pleadings and court-related documents to Claire E. Sollars, Esq., Colorado Water Matters, PLLC, P.O. Box 881302, Steamboat Springs, CO 80488-1302, Claire@ColoradoWaterMatters.com, 970-875-3370. 2. **Names and Types of Structures:** Marlene’s Spring (spring), Mickey’s Spring (spring) and Troy’s Pond (reservoir). 3. **Descriptions of Conditional Water Rights:** A. **Original Decree:** March 26, 2001, Routt County District Court, Water Division No. 6, Case No. 1998CW75. The Water Court awarded conditional water rights for Marlene’s Spring, Mickey’s Spring and Troy’s Pond. The legal descriptions stated in the original decree were corrected in the subsequent diligence Case 2015CW3020. B. **Subsequent Diligence Decrees:** i. On May 22, 2009, in Routt County District Court, Water Division No. 6, Case No. 2007CW25, the Water Court entered a decree through which Applicant Walsh’s conditional water rights remained in full force and effect. ii. On May 22, 2016, in Routt County District Court, Water Division No. 6, Case No. 2015CW3020, the Water Court entered a decree through which Applicant Walsh’s conditional water rights for Marlene’s Spring (0.033 cfs), Mickey’s Spring (0.011 cfs), and Troy’s Pond (4.5 acre-feet) remained in full force and effect, and adjudicated 0.5 acre-feet of Troy’s Pond as absolute for stock water, wildlife water, aesthetics, and recreation. In addition, the Water Court corrected the legal descriptions. iii. During the last diligence period, Applicant Walsh decided to not develop Marlene’s Spring and Mickey’s Spring and thus relinquishes those water rights. 4. **Legal Descriptions of Points of Diversion and Dam Centerline as decreed in Case No. 2015CW3020 (all structures are located in Section 31, Township 6 North, Range 85 West, of the 6th P.M., in Routt County, Colorado), UTM coordinates Zone 13, NAD83:** Troy’s Pond: SW4 NW4, 332825 mE, 4478113 mN. 5. **Source of Water:** Troy’s Pond: unnamed tributary to Trout Creek, tributary to Yampa River. 6. **Appropriation Date and Amounts:** September 1, 1998 - 5.0 acre-feet (of which 0.5 acre-feet was decreed absolute in Case 2015CW3020). 7. **Uses:** stock water, wildlife water, aesthetics, recreation. 8. **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 past diligence period, Applicant Walsh conducted additional site investigations to verify the location of Troy’s Pond and assessed expansion of the structure. Applicant Walsh incurred approximately \$1,500 for legal fees and costs (including filing fees and anticipated publication fees) for the preparation and filing of this Application for Finding of Reasonable Diligence. 9. **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:** Applicant Walsh, either individually or jointly with her husband Micheal Dale Walsh, owns the land where the water rights are located and upon which the water rights will be used. 10. **Remarks:** Applicant Walsh determined development of Marlene’s Spring and Mickey’s Spring is not feasible and thus relinquishes those conditional water rights. Applicant Walsh requests the Water Court enter a decree in which it: A. finds Applicant Walsh exercised reasonable diligence in the development of the remaining conditional rights of Troy’s Pond and continues the conditional rights in full force and effect throughout the next diligence period; B. corrects the legal description of Troy’s Pond as having UTM coordinates 332854 mE and 4478144 mN; and C. cancels the conditional water rights of Marlene’s Spring and Mickey’s Spring.

2022CW3040, in Willow Creek, tributary to Elk River, tributary to Yampa River in ROUTT COUNTY, COLORADO, **APPLICATION FOR FINDING OF REASONABLE DILIGENCE** 1. **Applicant:** Carman Apprill Duvall and Larry Thomas Duvall, as Co-Trustees of the Carman Apprill Duvall Trust dated September 6, 2001, as Amended and Restated (“Duvall Trust”) with an address of PO Box 126 Captiva, FL 33924, tom@truckmovers.com. Direct all pleadings and court-related documents to Claire E. Sollars, Esq., Colorado Water Matters, PLLC, P.O. Box 881302, Steamboat Springs, CO 80488-1302, Claire@ColoradoWaterMatters.com, 970-875-3370. 2. **Name and Type of Structure:** Snowy Mountain Ranch Pond C (reservoir). 3. **Descriptions of Conditional Water Right:** A. **Original Decree:** March 27, 2008, Routt County District Court, Water Division No. 6, Case No. 2003CW098, the Water Court awarded absolute storage water rights for Snowy Mountain Ranch Pond A (0.78 acre-feet), Snowy Mountain Ranch Pond B (0.88 acre-feet), and conditional storage rights for Snowy Mountain Ranch Pond C in the amount of 2.73 acre-feet.

B. Subsequent Diligence Decrees: On May 22, 2016, in Routt County District Court, Water Division No. 6, Case No. 2014CW3011, the Water Court determined 0.1 acre-foot of the conditional water right had been perfected and continued the remaining 2.63 acre-feet conditional right. 4. **Legal Description (as decreed in Case No. 2014CW3011):** SW¼ NE¼ of Section 19, Township 10 North, Range 85 West, of the 6th P.M., approximately 1710 feet South of the North section line and 2,500 feet West of the East section line, Routt County, Colorado; UTM coordinates 334359 mE and 4520056 mN (Zone 13, NAD83). 5. **Source of Water:** On-channel pond of Willow Creek, tributary to Elk River, tributary to Yampa River. 6. **Appropriation Date and Amounts:** June 1, 1996 - 2.73 acre feet (conditional), of which 0.1 acre-feet was decreed absolute in Case 2014CW3011. 7. **Uses:** stock water, piscatorial, recreation, wildlife water, aesthetics. 8. **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:** Duvall Trust purchased the real property and water rights in March 2020. After spending its time and resources on needed repairs, including the domestic water supply system, Duvall Trust retained legal counsel to assist with its plans to increase the storage capacity of Snowy Mountain Ranch Pond C. Duvall Trust is reviewing a proposal for the expansion and will be meeting with Colorado Parks and Wildlife and Colorado Water Conservation Board staff members. Duvall Trust anticipates securing the funding and project partners in 2022. To date, Duvall Trust has expended approximately \$3,000 for legal fees and costs, which includes the preparation and filing of this Application for Finding of Reasonable Diligence. Duvall Trust submits its actions taken and the expenses it incurred establish a finding of reasonable diligence in developing the conditional water rights. 9. **Name and Address of Landowner on which Structures and Places of Use are Located:** Duvall Trust owns the land where the Snowy Mountain Ranch Ponds are located and upon which the water rights are and will be used. 10. **Remarks or Other Pertinent Information:** Duvall Trust respectfully requests the Water Court enter a decree in which it finds Duvall Trust has exercised reasonable diligence in developing the Snowy Mountain Ranch Pond C conditional water right, and continues the conditional water right in full force and effect throughout the next diligence period.

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

You are hereby notified that you will have until the last day of **July, 2022** to file with the Water Court 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 be served on the Applicant or the Applicant's Attorney, with an affidavit or certificate of such service being filed with the Water Court, as prescribed by Rule 5, C.R.C.P. The filing fee for the Statement of Opposition is \$192.00, and should be sent to the Clerk of the Water Court, Division 6, 1955 Shield Dr. Unit 200, Steamboat Springs, CO 80487.

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TO ALL PERSONS INTERESTED IN WATER APPLICATIONS
IN WATER DIVISION 6**

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following pages comprise a resume of Applications and Amended Applications filed in the office of Water Division 6, during the month of **June, 2022**.

2022CW12 (22CW2048) (1979CW31; W-1218-77) Routt County. Protest to Final Abandonment List. **Applicant:** Michael Hogue, 26185 UW 40, Steamboat Springs, CO 80487, mlh@springsips.com, 970-846-5649. **Structure:** Hogue Res. **Date of Original Decree:** February 22, 1979. **Case No.:** W-1218-77, Water Division 6. **Legals:** Reservoir is located at a point whence the NW corner of the NE ¼ NE ¼ of S9, T6N, R85W bears South 15° 25' West, 254.5 feet. **Source:** Unnamed Trib to Hogue Res Trib to Yampa River. **Decreed Use:** Wildlife refuge, fish and waterfowl, irrigation, gravel washing, commercial and all other beneficial uses. **Appropriation Date:** August 31, 1973. **Decreed Amount:** 54.39 Acre Feet. **Amount and Use or Uses Listed as Having Been Abandoned:** 54.39 Acre Feet for wildlife refuge, fish and waterfowl, irrigation, gravel washing, commercial and all other beneficial uses. **Former District Number and Page Number Listed on Abandonment List:** Water District 58 on page 5 of the 2021 revised abandonment list. **Factual and Legal Basis for this Protest:** Water decreed in Case No. 1979CW31 has been continuous use since 1973. The water decreed in Case No. W-1218-77 has been beneficially used as allowed in the decree since 1973. The landowner and the operator of the gravel pit will attest to the history of water use associated with the dynamic and ever-changing water requirements of the gravel operation. Decrees to store water in ponds and pits connected to alluvial formations were commonly issued by the Water Court in the early years after passage of the

1969 Water Administration Act. The fact that these early decrees no longer fit in DWR's current rules and regulations related to ground water should not subject water rights to abandonment that have been in continuous use as allowed in the original decrees. **Owner:** Applicant

2022CW3042 (22CW2048), ROUTT COUNTY. PROTEST TO FINAL ABANDONMENT LIST OF FETCHER LANDS LLLP AND THE COLORADO CATTLEMEN'S AGRICULTURAL LAND TRUST. 1. Name, mailing address, and telephone number of Protestants: A. Fetcher Lands LLLP, c/o Jay Fetcher, P.O. Box 866, Clark, CO 80428, Telephone: (970) 879-3719, fetcher@gmail.com. B. Colorado Cattlemen's Agricultural Land Trust ("CCALT"), c/o Megan Knott, Stewardship Director, P.O. Box 773014, Steamboat Springs, CO 80487, Telephone: (720) 557-8272, megan@ccalt.org. C. Please send all pleadings and correspondence to: David L. Kueter, #26136, Holsinger Law, LLC, 1800 Glenarm Place, Suite 500, Denver, Colorado 80202, Telephone: (303) 722-2828, dkueter@holsingerlaw.com. **2. Describe the Water Right:** A. Name of Structure: Fetcher Enlargement and Extension of the Murphy Enlargement and Extension of the Hoover and Jacques Ditch, a/k/a the Hoover Jacques Ditch. B. Date of Original Decree: December 31, 1972, Case No. W0124-72. C. Decreed Legal Description of Structure Location: The headgate is located on the NW or right bank of the Elk River at a point whence the NW corner of the SW1/4 SW1/4 of Section 23, Township 9 North, Range 85 West, 6th P.M. bears S. 69 degrees 25 minutes W. 3,608 feet. The Fetcher extension starts at a point on the Murphy ditch whence the NW corner of the SW1/4 NE1/4 (Pt. 5 of Tract 69) bears N. 0 degrees 34 minutes W. 51.6 feet. See **Exhibit A**. D. Source of water: Elk River. E. Decreed uses: Irrigation. F. Appropriation Date: April 23, 1972. G. Decreed Amount: 2.5 c.f.s. H. Amount and uses listed as having been abandoned: 2.5 c.f.s., for all decreed uses. I. Former District Number and Page Number where listed on Abandonment List: District 58, Page 5 of the Revised Abandonment List of Water Rights in Water Division 6, dated December 20, 2021. J. State factual and legal basis for this Protest: i. Fetcher Lands LLLP is the owner of the water right, which is subject to a conservation easement held by CCALT. ii. The water right has been used consistently for irrigation during the past ten years. See user diversion records attached as **Exhibit B** and affidavits attached as **Exhibit C**. iii. During the past ten years Fetcher Lands LLLP has maintained the ditch and expended approximately \$1,000.00 in maintaining the ditch. iv. There are seven water rights decreed for diversion at the Hoover Jacques Ditch, which water rights are in different ownership. The Division of Water Resource's practice is to attribute diversions first to the most senior water right decreed to a structure and then to other priorities in order of seniority. However, where the various priorities are in distinct ownership, each owner is entitled to take their decreed amount regardless of whether the other owners are taking theirs at the same time. As a result, the maximum reported monthly diversions in DWR's records is not indicative of whether full use is being made of each individual priority decreed to the ditch. v. In 2015, Fetcher Lands LLLP executed the attached Amendment to Amended and Restated Deed of Conservation Easement for the Fetcher Lands (the "Amendment", **Exhibit D** hereto). The Amendment included a corrected exhibit listing the water rights subject to the conservation easement, which exhibit includes the Murphy Enlargement of the Hoover Jacques Ditch. Conveyance of an interest in a water right is indicative of a lack of intent to abandon the right. *East Twin Lakes v. Lake County*, 76 P.3d 918, 922 (Colo. 2003). Inclusion of the Murphy Enlargement of the Hoover Jacques Ditch in the Amendment demonstrates that there has been no intent to abandon the right. (Number of pages of Protest: 27, including 22 pages of exhibits.)

2022CW3043 (2016CW07), Soda Creek, tributary to Yampa River, in ROUTT COUNTY, COLORADO, Application for Finding of Reasonable Diligence and to Make Absolute (Surface) 1. Applicant: Mark and Cari Hermacinski, PO Box 774543, Steamboat Springs, Colorado 80477, hermoboat@gmail.com, 970-846-1066 **2. Names of Structure:** A. **Surface Structure:** Soda Creek at Hidden Valley **3. Description of Conditional Rights:** A. **Original Decree:** Issued on December 30, 2016, in Case No. 2016CW07, Water Court, Water Division No. 6. B. **Subsequent Diligence Decrees:** None (pending application is the first application for diligence and to make absolute). C. **Legal Descriptions of Structures (as provided in most recent decree):** NE1/4 of the SE1/4, Section 8, T6N, R84W of the 6th PM, Routt County, Colorado, at a point 2800 feet from the North line and 1200 feet from the East line of said Section 8. Also known as 700 Princeton Avenue (f/k/a 864 Pahwintah Street), Steamboat Springs, CO 80487. **Points of Diversions of Surface Structures (as Decreed):** UTM coordinates, Easting 345054.41 m, Northing 4484162.34 m, Zone 13, Soda Creek Overlook, Lot 1 D. **Source of Water:** Soda Creek, tributary to Yampa River E. **Appropriation Dates:** May 17, 2016 F. **Amounts and Uses:** 0.0021 cfs (conditional), irrigation not to exceed 2.006 acres within Section 8, Township 6 North, Range 84 West of the 6th Principal Meridian as depicted on Exhibit 1, 4. **Detailed Outline of Work Done Toward Completion or For Completion of Appropriation and Beneficial Use, including Expenditures:** During the past diligence period, Mark and Cari Hermacinski consulted with an engineer to evaluate development of its conditional water right. Expenditures throughout the past diligence period for the engineer and development of Soda Creek Pump at Hidden Valley, exceed \$10,000.00. Mark and Cari Hermacinski submit their

actions taken and the expenses they incurred establish reasonable diligence for its conditional right. 5. ***If Claim to Make Absolute in Whole or in Part:*** A. ***Date Water Applied to Beneficial Use, Amount, and Uses:*** Mark and Cari Hermacinski completed construction of Soda Creek Pump at Hidden Valley in the fall of 2019. B. ***Supporting Evidence that Water Diverted In-Priority and Applied to Beneficial Uses:*** Soda Creek Pump at Hidden Valley was completed in the fall of 2019 and began irrigating the 2.06 acres in May 2020. Pursuant to Colorado Revised Statute 37-92-301, Mark and Cari Hermacinski claim an absolute right in the amount of 0.0021 cfs for all decreed purposes. C. ***Description of Places of Use:*** In-situ uses at Soda Creek Pump at Hidden Valley and irrigation use on the Hermacinski property as previously decreed. 6. ***Actual Location of Decreed Structure if Different from Decree:*** NE1/4 of the SE1/4, Section 8, T6N, R84W of the 6th PM, Routt County, Colorado, at a point 2800 feet from the North line and 1200 feet from the East line of said Section 8. Also known as 700 Princeton Avenue (f/k/a 864 Pahwintah Street), Steamboat Springs, CO 80487. UTM coordinates, Easting 345054.41 m, Northing 4484162.34 m, Zone 13, Soda Creek Overlook, Lot 1 7. ***Name and Address of Landowner on which Structures and Places of Use are Located:*** Mark and Cari Hermacinski own the land where the Soda Creek Pump at Hidden Valley is located and upon which the water rights have been and will be used. 8. ***Remarks or Other Pertinent Information:*** Mark and Cari Hermacinski respectfully requests the Water Court enter a decree in which it: (1) awards Mark and Cari Hermacinski an absolute water right in the amount of 0.0021 cfs for Soda Creek Pump at Hidden Valley for all previously-decreed uses and (2) finds Mark and Cari Hermacinski exercised reasonable diligence towards development of the conditional water rights for Soda Creek Pump at Hidden Valley

22CW3051, (05CW18), (14CW3045). DISTRICT COURT, WATER DIVISION NO. 6, STATE OF COLORADO, 1955 Shield Drive, Unit 200, Steamboat Springs, CO. 80487. CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE YAMPA GHOST RANCH, LLC, IN ROUTT COUNTY, COLORADO. **APPLICATION FOR A FINDING OF REASONABLE DILIGENCE.** 1. **Name and Address of Applicant.** Yampa Ghost Ranch, LLC, 6300 Sprint Parkway, Suite 200, Overland Park, Kansas 66211. All pleadings should be directed to: Glenn E. Porzak, Porzak Law, LLC, 1111 Spruce Street, Suite 303, Boulder, Colorado 80302, (303) 589-0909. 2. **Name of Structure:** Coal View Pump. 3. **Description of Conditional Water Right:** A. **Name of Structure:** Coal View Pump. B. **Original Decree:** Decreed by the District Court in and for Water Division No. 6, State of Colorado (the “Water Court”) on December 24, 2008, in Case No. 05CW18. A subsequent finding of reasonable diligence occurred in Case No. 14CW3045 on June 9, 2016. C. **Legal description of the point of diversion:** The point of diversion is located in the NE1/4 NW1/4 of Section 14, T. 6 N., R. 87 W. of the 6th P.M. at a point 1,210 feet from the North section line and 1,840 feet from the West section line of said Section 14. A map showing the approximate location of the point of diversion is attached hereto as Exhibit A. D. **Source:** Yampa River. E. **Date of Appropriation:** May 23, 2005. F. **Amount:** 1.0 cfs, conditional. G. **Use:** Irrigation of 40 acres in the NE1/4 NW1/4 of Section 14, T. 6 N., R. 87 W. of the 6th P.M. These acres are depicted on the map attached as Exhibit A. 4. **Request for Finding of Diligence.** On November 3, 2020, the subject water right was purchased by the Applicant, together with approximately 7,000 acres of land, including the lands that are to be irrigated by this water right and that are the decreed place of use. Given the extent of this acquisition and work on other water rights associated with the lands that were purchased, Applicant intends to commence diversions and use of the Coal View Pump this summer. In the interim, Applicant complied with the Division of Water Resources order dated November 19, 2019, and removed the dam and obstruction on the Yampa River. 5. **Land Ownership.** The Applicant is the owner of the land on which the Coal View Pump is located. WHEREFORE, the Applicant seeks a decree that grants a finding of reasonable diligence for the subject conditional water right and such other relief as the Court may provide.

2022CW3052 (22CW2048) ROUTT COUNTY PIRTLAW PARTNERS, LTD., c/o Robert L. Waltrip, PO Box 130548, 1929 Allen Parkway, Houston, TX 77219-0548. c/o Thomas W. Korver, Hayes Poznanovic Korver LLC, 700 17th Street, Suite 1800, Denver, CO 80202. PROTEST TO FINAL REVISED ABANDONMENT LIST IN ROUTT COUNTY. II. Water right description: A. **Name of structure:** Gibraltar Ditch, WDID 5700539; Second Enlargement. B. **Date of original decree:** Adjudicated December 31, 1972, in Case No. W0165-72, in the District Court in and for Water Division No. 6 (the “Water Court”). C. **Location and legal description:** The location of the headgate as decreed in Case No. W0165-72 is at a point from which the SE Corner of Section 9, Township 6 North, Range 87 West of the 6th P.M. bears S 89° 23’ 11” W a distance of 1728.05 feet. The location following a breach in the Ditch is in the S1/2 of Section 9, Township 6 North, Range 87 West of the 6th P.M. 2294 feet from the East line of Section 9 and 479 feet from the South line of Section 9, as described on the Division of Resources CDSS at UTM: Northing: 4483999.0; Easting: 317583.0 (NAD 1983 Zone 13 North) shown on the map attached to the protest, available for inspection at the Division 6 Water Clerk or via Colorado Courts E-filing. D **Source of water:** Yampa River, tributary of the Colorado River. E. **Decreed use or uses:** Irrigation, stock water and all other beneficial uses. F.

Appropriation date: June 1, 1954. G. Decreed amount: 40.68 cubic feet per second of time (“cfs”). H. Amount listed as having been abandoned: 10.0180 for irrigation and stock uses, and 40.68 cfs for all other beneficial uses. I. Former district number and page number where listed on the abandonment list: The Gibraltar Ditch is located in former Water District No. 57 and appears on page 4 of the Division 6 Final Revised Abandonment List. III. **Factual and legal basis for protest.** Gibraltar Ditch Priority No. 21 was decreed in the amount of 19.66 cfs for irrigation use from the Yampa River, with a September 22, 1892 adjudication date and a March 8, 1888 appropriation date. Gibraltar Ditch Priority No. 177 was decreed in the amount of 19.66 cfs for irrigation use from the Yampa River, with a July 12, 1948 adjudication date and a March 8, 1888 appropriation date. The Gibraltar Ditch Second Enlargement was decreed in the amount of 40.68 cfs for irrigation, stock water and all other beneficial uses from the Yampa River, with a December 21, 1972 adjudication date and a June 1, 1954 appropriation date. Pirtlaw protests the inclusion of 10.422 cfs of the 40.68 cfs Gibraltar Ditch Second Enlargement water right for “all other beneficial uses” as decreed in Case No. W0165-72. Pirtlaw incorporates herein by this reference its Statement of Objection, dated June 16, 2021, which is attached to the protest as Exhibit A, and is available for inspection at the office of the Division 6 Water Clerk or via Colorado Courts E-filing. Pirtlaw owns 10.422 cfs of the 40.68 cfs Gibraltar Ditch Second Enlargement. None of Pirtlaw’s interest in the Gibraltar Ditch Second Enlargement should be found abandoned. The statutory presumption of abandonment is not applicable because Pirtlaw’s interest in the Gibraltar Ditch has been historically and fully diverted, and its Second Enlargement water right has been applied to several beneficial uses other than stock water and irrigation. Pirtlaw rebutted any presumption of abandonment with evidence showing that Pirtlaw never intended to permanently discontinue the use of its interest in the Gibraltar Ditch Second Enlargement water right, and the Division Engineer’s Office assured Pirtlaw representatives that it would not lose any of its interest in the Gibraltar Ditch through abandonment. None of Pirtlaw’s 10.422 cfs interest in the Gibraltar Ditch Second Enlargement water right should be abandoned for any of the uses decreed in Case No. W0165-72. A. The Statutory Presumption of Abandonment is Not Applicable to the Gibraltar Ditch “Abandonment of a water right” is defined as “the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or part of the water available thereunder.” C.R.S. § 37-92-103(2) (2011). Abandonment is an issue of fact that depends upon the “particular circumstances of each case.” *People v. City of Thornton*, 775 P.2d 11, 18 (Colo. 1989). The abandonment of a water right “must be established by a preponderance of the evidence.” *Consolidated Home Supply Ditch and Reservoir Co. v. Town of Berthoud*, 896 P.2d 260, 266 (Colo. 1995). In making the initial abandonment determinations, the Division Engineer must “investigate the circumstances relating to each water right for which the available water has not been fully applied to a beneficial use and in such cases shall be guided by the criteria set out in section 37-92-402(11).” C.R.S. § 37-92-401(1)(c) (2011). Section 37-92-402(11) provides as follows: For the purposes of procedures under this section, failure for a period of ten years or more to apply to a beneficial use the water available under a water right when needed by the person entitled to use the same shall create a rebuttable presumption of abandonment of a water right with respect to the amount of such available water which has not been so used; except that such presumption may be waived by the division engineer or the state engineer if special circumstances negate an intent to abandon. The Colorado Supreme Court has emphasized that this statutory provision requires that the water must have been available under the water right and that the water must have been needed by its owner during the ten-year period. *See Thornton*, 775 P.2d at 18. In this case, and as more fully described below, Pirtlaw has placed the entirety of its interest in the Gibraltar Ditch to beneficial use when available, and the Second Enlargement water right has been placed to beneficial uses proposed for abandonment. B. The Gibraltar Ditch Has Been Applied to Beneficial Uses Proposed for Abandonment. Attached to the Protest as Exhibit B is an affidavit by Pirtlaw’s Ranch Manager, Brent Romick, which describes the condition and historic use of the Gibraltar Ditch by Pirtlaw, and is available for inspection at the office of the Division 6 Water Clerk or via Colorado Courts E-filing. The salient points of Mr. Romick’s affidavit are that: Pirtlaw has historically diverted its full interest in the Gibraltar Ditch and continues to do so, including the Gibraltar Ditch Second Enlargement proposed for abandonment. Pursuant to the decreed purpose of “all other beneficial uses,” during the period at issue Pirtlaw has used a portion of the Gibraltar Ditch water right for several uses, including road maintenance under an agreement with the Routt County Road and Bridge Department, road construction and dust suppression, to support Pirtlaw’s equestrian facilities, industrial purposes, and animal health protection. During the relevant time period, Pirtlaw has been developing plans for future operation and development of the Wolf Mountain Ranch and which would include use of the Second Enlargement water right for additional beneficial purposes such as fire protection, fish and wildlife, aesthetics, hydropower, augmentation, recreation, and domestic uses. During the relevant time period, Pirtlaw has been investigating other mechanisms to maximize use of the Gibraltar Ditch in order to ensure full diversions of its interest in the water right, including the Second Enlargement. In October 2013, the Gibraltar Ditch headgate at the location of the Second Enlargement water right became unusable as a result of additional changes in the channel of the Yampa River and due to a substantial breach in the embankment of the Ditch. The Ditch owners relocated the diversion

structure, and in 2015 received approval to administer the Gibraltar headgate location as a legal point of diversion for the Gibraltar Ditch water rights, including the Second Enlargement. In 2016, further erosion of a portion of the Yampa River bank again necessitated emergency repairs due to a breach risk on the banks of the Yampa River adjacent to the Gibraltar Ditch. The Ditch owners installed boulders and riprap at 3 foot thickness and up to 7 feet in height over 300 linear feet along the Yampa River at the breach risk site. In 2019, Pirtlaw received an “Order to Install Headgate and/or Measuring Device” on the Gibraltar Ditch. The Ditch owners installed a newly designed measuring flume in early 2021 and made additional repairs to the Ditch. The repairs to the Gibraltar Ditch system were made to support all water rights decreed for diversion in the Ditch and all decreed uses of the Ditch. Pirtlaw discussed the proposed abandonment of the Gibraltar Ditch Second Enlargement water right with the Division Engineer’s Office before issuance of the Revised Final Abandonment List and was assured that Pirtlaw would not lose any of its water rights. Pirtlaw has used its full interest in the Gibraltar Ditch water right on Wolf Mountain Ranch for all decreed beneficial uses when available, including the Second Enlargement. C.R.S. § 37-92-402(11). There has been no abandonment of the Gibraltar Ditch Second Enlargement water right, permanently or temporarily, and certainly no demonstration of abandonment by a preponderance of the evidence. *Consolidated*, 896 P.2d at 266. The relocation of the Gibraltar Ditch diversion, the installation of an accurate measuring device, the shoring of Ditch embankments, and the general maintenance and operation of the Gibraltar Ditch and Pirtlaw’s use of its full interest in the Ditch on Wolf Mountain Ranch for decreed purposes demonstrate that Pirtlaw has not abandoned its interest in any of the priorities for the Gibraltar Ditch water right for all decreed uses. *Thornton*, 775 P.2d at 18. Finally, the diversion records maintained by CDWR show full use of the water right, including the Second Enlargement. Pirtlaw reserves the right to introduce other evidence of historic use at any trial of this matter. C. Pirtlaw has No Intent to Abandon Any of the Beneficial Uses of the Gibraltar Ditch. Once the presumption of abandonment has been established, the burden shifts to the water right owner to rebut the presumption. *See Thornton*, 775 P.2d at 18. To rebut the presumption of abandonment, “the owner must establish some fact or condition that excuses the nonuse or shows the owner’s intent not to abandon the water right.” *Haystack Ranch, LLC v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000). The Colorado Supreme Court has repeatedly held that the critical element in making an abandonment determination is intent. *See Haystack Ranch*, 997 P.2d at 552 (“The critical element of abandonment is intent.”); *Beaver Park Water, Inc. v. City of Victor*, 649 P.2d 300, 302 (1982) (“[I]ntent is the very essence of abandonment.”). “[E]vidence sufficient to show that during the period of nonuse the owner never intended to discontinue permanently the use of the water available under the water right will rebut the statutory presumption of abandonment.” *Thornton*, 775 P.2d at 18. Abandonment is an issue of fact that depends upon the “particular circumstances of each case.” *See Thornton*, 775 P.2d at 18. The following activities have been cited as evidence to rebut a presumption of abandonment arising from nonuse: testimony by the water right owner that he or she never intended to abandon the water right, *see Thornton*, 775 P.2d at 19; actual good faith efforts to sell the water right, *see Thornton*, 775 P.2d at 21; use of water available from an alternative source in place of the water right, *see Beaver Park*, 649 P.2d at 302; continued maintenance of the facilities that were to use the water right, *see Beaver Park*, 649 P.2d at 302; mortgaging of the water right, *see Beaver Park*, 649 P.2d at 302; and conveyance and transfer of the water right, *see Beaver Park* at 302-303. A reasonable justification for nonuse has been found where “economic, financial or legal difficulties” prevented the use of the water right. *Hallenbeck v. Granby Ditch and Reservoir Co.*, 420 P.2d 419, 426 (1966). Attempts to repair a ditch and divert water and the filing of legal documents with regard to the water right are inconsistent with an intent to abandon. *E. Twin Lakes Ditches & Water Works, Inc. v. Bd. of County Comm’rs*, 76 P.3d 918 (Colo. 2003). In this case, and as evidenced by the affidavit of Mr. Romick, Pirtlaw never intended to abandon the Gibraltar Ditch Second Enlargement water right for any decreed beneficial use. Pirtlaw reserves the right to introduce other evidence of its intent at any trial of this matter. IV. **Conclusion:** The Gibraltar Ditch Second Enlargement water right should not have been included on the Abandonment List or the Final Revised Abandonment List for Water Division No. 6. The statutory presumption of abandonment is not applicable because Pirtlaw has historically diverted and applied to beneficial use its interest in the uses of the Ditch proposed for abandonment. Moreover, even if a portion of Pirtlaw’s interest in the water right could have been presumed abandoned, the presumption is rebutted by evidence that Pirtlaw never intended to permanently discontinue the beneficial uses of its interest in the Gibraltar Ditch Second Enlargement. Pirtlaw therefore respectfully requests that Pirtlaw’s 10.422 cfs interest in the Gibraltar Ditch Second Enlargement water right for “all other beneficial uses” as decreed in Case No. W0165-72 be removed from the Revised Abandonment List. 5 pages.

2022CW3056: (22CW3048) PROTEST TO FINAL REVISED ABANDONMENT LIST OF WATER RIGHTS CONCERNING DEQUINE DITCH AND DEQUINE DITCH ALT. POINT #1 in ROUTT COUNTY, COLORADO. 1. **Protestant-Owner:** Dequine Family, LLC, a Colorado limited liability company, 22100 County Road 16, Oak Creek, CO 80467, loudequine@gmail.com, 970.736.2652. All pleadings and court-related documents are to be sent to Claire E. Sollars, Esq., Colorado Water Matters, PLLC, P.O. Box 881302, Steamboat Springs, CO 80488,

Claire@ColoradoWaterMatters.com, 970.875.3370. 2. **Description of Water Rights:** A. **Name of Structures:** Dequine Ditch (WDID 5801282), Dequine Ditch Alt. Point #1 (WDID 5801288). B. **Date of Original Decree:** July 16, 1996, Case No. 95CW0035, Water Court, Water Div. 6, Colorado. C. **Decreed Legal Description of Structure Location:** Dequine Ditch - SW¹/₄ SW¹/₄ of Section 11 Township 3 North, Range 84 West of the 6th P.M. at a point 500 feet East of the West Section line and 1200 feet North of the South Section line of said Section. Dequine Ditch Alt. Point #1 - NW¹/₄ SW¹/₄ of Section 11 Township 3 North, Range 84 West of the 6th P.M. at a point 2600 feet South of the North Section line and on the West line of said Section. Both structures are located in Routt County, Colorado. D. **Source of water:** Both structures - Morrison Creek, tributary to Yampa River. E. **Decreed uses:** Both structures - Irrigation and livestock. F. **Appropriation Date:** Both structures - Aug. 31, 1991. Decreed Amount: 1.25 cfs Absolute (each structure). G. **Amounts and Uses Listed as Having Been Abandoned:** Dequine Ditch - 0.60 cfs; Dequine Ditch Alt. Point #1 - 0.61 cfs; all decreed uses for both structures. H. **Former District Number and Page Number Where Listed on Abandonment List:** Both structures - Water District 58; Dequine Ditch - WDID 5801282; Dequine Ditch Alt. Point #1 - WDID 5801288; both structures listed on Page 3 of 9. 3. **Factual and Legal Basis for this Protest:** Abandonment of a water right is defined as “the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or a part of the water available thereunder.” C.R.S. § 37-92-103(2) (emphasis added). If established, see *C.R.S. § 37-92-402(11)*, a presumption of intent to abandon “is insufficient in and of itself to prove abandonment.” *East Twin Lakes Ditches & Water Works, Inc. v. Bd. of County Comm’rs of Lake County*, 76 P.3d 918, 921 (Colo. 2003) (citations omitted). Intent to abandon “remains the touchstone of the abandonment analysis.” *Id.* Colorado courts consider various factors when evaluating intent. *See East Twin Lakes Ditches*, 76 P.3d at 922, 923-24; *Wolfe v. Jim Hutton Educational Foundation*, 344 P.3d 855, 861 (Colo. 2015) (intent to not abandon includes diverting a water right at an undecreed point of diversion). As demonstrated in the *Statements of Objection to Decennial Abandonment List* (Exhibit 1 and Exhibit 2 (incorporated herein by reference)) and *Points and Authorities* (Exhibit 3 (incorporated herein by reference)), Dequine Family LLC did not intend to and has not abandoned any portion of the decreed water rights. The efforts of Dequine Family, LLC to fully utilize and protect the Dequine Ditch and Dequine Ditch Alt. Point #1 Water Rights include: (1) significant investment to develop and improve its irrigation systems, including Flying Horse Pond; (2) opposing Water Div. 6 Case 2016CW3016; (3) working with Colorado Cattlemen’s Agricultural Land Trust to place the Flying Horse Ranch and all the water rights under a Conservation Easement (*see* Exhibit 4, *Deed of Conservation Easement for the Flying Horse Ranch* (dated Nov. 21, 2021)); (4) working with Division of Water Resources to install additional pumping stations and totalizing flow meters; and (5) filing applications with the Water Court to protect existing water rights and acquire new ones to continue the agricultural practices of Flying Horse Ranch. 4. **Remarks:** Dequine Family, LLC respectfully requests the Water Court enter an order (1) confirming Dequine Family, LLC has not abandoned and did not intend to abandon any portion of the Dequine Ditch and Dequine Ditch Alt. Point #1 Water Rights; (2) mandating Dequine Ditch and Dequine Ditch Alt. Point #1 Water Rights be removed from the Final Revised Abandonment List of Water Rights in Water Division 6, and (3) providing for other relief as deemed appropriate.

2022CW3059 (21CW3048). ROUTT COUNTY, YAMPA RIVER. **PROTEST TO FINAL ABANDONMENT LIST. 1. Protestant/Owner.** Bruchez Ranch LLC, P.O. Box 1895, Hayden CO 81639, 970-756-1388, robbruchez@gmail.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 Right.** a. Name of Structure: Gibraltar Ditch. b. Original Decree at Issue in Abandonment List: *In the Matter of the Application for Water Rights of Willard B. Hein, Josephine Chambers Linger, Albert Bruchez, Richard P. Warrick and Florence E. Warrick in the Yampa River in Routt County*, Case No. W-165, Water Division 6 (December 21, 1972). c. Decreed legal description of structure: at a point from which the SE Corner of Section 9, Township 6 North, Range 87 West of the 6th P.M. bears South 89 degrees, 23 minutes, 11 seconds West a distance of 1,728.05 feet. **Exhibit A** shows the location of the structure. d. Source of Water: Yampa River. e. Decreed Uses: Irrigation, stockwater and all other beneficial uses. f. Appropriation Date: June 1, 1954. g. Decreed Amount: 40.68 cfs. h. Amount or uses listed as having been abandoned: 40.68 cfs, “all” uses. i. Former Water District Number 57. j. Listed on Division 6 Abandonment List on page 4. 3. **Legal Standards.** Abandonment of valuable property rights is 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.** For at least the last twenty years, water diverted under the Subject Water Right described in paragraph 2 has been used for irrigation, stock, and other beneficial uses. Irrigation and stock use occurs on the lands served by the Gibraltar Ditch. The Division Engineer included a separate listing for irrigation and stock uses for the Subject Water Right in the Final Abandonment List that shows a remaining amount of 30.662 cfs. Bruchez Ranch understands this separate listing to indicate that the Division Engineer is not proposing to abandon its interest in the Subject Water Right for irrigation and stock uses. Bruchez Ranch and other co-owners of the Gibraltar Ditch have used the Subject Water Right for irrigation and stock uses every year and Bruchez Ranch intends to continue those uses. In addition to irrigation and stock uses, Routt County has pumped water from the Gibraltar ditch each year for road uses. This water was diverted pursuant to the Subject Water Right, which is decreed for “all other beneficial uses.” The County uses a trailer mounted pump to fill 4,000- and 7,500-gallon trucks, which then apply a magnesium chloride solution to county roads. In addition, Protestant is aware that a co-owner of the Gibraltar Ditch, Wolf Mountain Ranch, facilitated use of the Subject Water Right for oil and gas exploration. Finally, upon information and belief, the Subject Water Right has been used for firefighting uses. These uses eliminate any presumption of abandonment of “all” uses of the Subject Water Right, which would require 10 years of non-use. Instead, the historical uses demonstrate that the Subject Water Right has not been abandoned. In addition, the uses are objective evidence of Bruchez Ranch’s ongoing intent to use the Subject Water Right for its decreed beneficial uses. As additional objective evidence of intent not to abandon, during the past 10 years, the owners of the Gibraltar Ditch have invested substantial effort in maintaining and repairing structures necessary to divert the Subject Water Right. Those efforts are documented in the Statement of Objection prepared by a co-owner of the Gibraltar Ditch and filed with the Division Engineer during June 2020. *See Exhibit B* (Protestant reserves the right to introduce attachments to the Statement of Objection or other evidence of the activities described therein). In addition, there is an agreement with West Routt Fire District to use water diverted under the Subject Water Right for firefighting purposes, and a written authorization for Routt County to use water for its roads. These documents are clear evidence of intent to use the Subject Water Right for its decreed uses. WHEREFORE, Protestant respectfully requests that the Court remove the Gibraltar Ditch, second enlargement water right for “all other beneficial uses” in the amount of 30.662 cubic feet per second from the Division 6 abandonment list. (Protest includes 6 pages plus 2 exhibits).

22CW3062 (22CW3048) ROUTT COUNTY Protest to Final Abandonment List. Protestant: Nottingham Land & Livestock LLLP, c/o Michael Nottingham, c/o Keller Law LLC, PO Box 771222, Steamboat Springs, CO 80477; 877-529-2125. Structure: Ellis and Kitchens Ditch (WDID 4400614). Date of Decree: December 21, 1982, 81CW311, District Court in and for Water Division No. 6, State of Colorado. Decreed Legal Description of Structure Location: Original point of diversion is at a point from which the E ¼ Corner of Sec. 20, T. 9 N., R. 88 W., 6th P.M., bears S 68° 35’ W a distance of 1,545 feet. Alternate point of diversion is a point 1,860 feet from the N Section line and 390 feet from the west section line of Sec. 33, T. 9 N., R. 88 W., 6th P.M. Source of water: North Fork Elkhead Creek, a tributary to Elkhead Creek, a tributary to Yampa River. Decreed use or uses: All decreed uses, including without limitation irrigation and stock watering. Appropriation date: 10/16/1966. Amount decreed: 6.00 cubic feet per second (cfs) absolute; amount listed for abandonment 2.66 cfs. The structure is located in Water Dist. 44 and the water right is listed on Page 3 of the Div. 6 Final Abandonment List. Protest: Protestant’s use of, and intent to use, the water right to the full extent of its physical and legal availability warrants its removal from the Final Abandonment List in its entirety and continued ownership by Protestant in the amount of 6.00 cfs. Remarks: See Court file for more detailed information like complete legal and factual basis for protest. The deadline for an entry of appearance is August 31, 2022 for any person desiring to participate in the protest in support or opposition.

2022CW3063 (21CW3048) Routt County. Protest to Final Abandonment List. **Name, mailing address, e-mail address and telephone number of Proteatant/Applicant:** RSC Resources, LP c/o Sherri Sweers, Steamboat Lawyers Group, PLLC, PO Box 775565, Steamboat Springs, CO 80477, (970)879-7611. **Name of Structure:** Baalhorn Ditch **Legal Description:** South Bank of Spring Creek (of Trull Creek), a tributary of the Elk River at a point whence the W1/4 corner of Section 32, Township 7 North, Range 85 West of the 6th P.M. bears North 40 degrees 21 minutes West 1331 feet. **Date of Appropriation:** February 1, 1952. **How approp. was initiated:** Application for Surface Water Rights filed on February 1, 1952. **Date water applied to beneficial use:** February 1, 1952. **Amount:** 1.5 cfs. **Use:** This is a ditch used for irrigation and stock watering. **Remarks:** From the headgate, an overflow channel from Strawberry Pond transports water to a grass pasture of approximately 22 acres where it was and is beneficially used for irrigation during the growing season and again later in the fall to promote vegetative growth. The Baalhorn Ditch was placed on the 2020 Abandonment List p. 2 Admin No. 37688.37286, WDID 5800516 **Description of place of use where water is applied to beneficial use:** 25410 County Road 42, Steamboat Springs, CO 80487.

2022CW3064, in an unnamed tributary, tributary to Elk River, tributary to Yampa River in ROUTT COUNTY, COLORADO, **APPLICATION FOR FINDING OF REASONABLE DILIGENCE AND TO MAKE ABSOLUTE IN PART 1.** **Name, address, telephone number of applicant:** Hansi Hagemeister Trust and The Martin Hagemeister Trust (“Hagemeisters”), c/o Hansi Hagemeister, 60 Valley Circle, Mill Valley, CA 94941, hansj@jps.net, 415-847-1957. Direct all pleadings and court-related documents to Claire E. Sollars, Esq., P.O. Box 881302, Steamboat Springs, CO 80488-1302, Claire@ColoradoWaterMatters.com, 970-875-3370. 2. **Names of Surface Structures:** Asparagus Spring and Asparagus Pond. 3. **Description of Conditional Rights:** A. **Original Decree:** Issued on April 27, 2009, in Case No. 2006CW051, Routt County District Court, Water Division No. 6. B. **Subsequent Decree Awarding Finding of Diligence:** Issued June 28, 2016, Water Court, Water Division No. 6, Case No. 2015CW3015. C. **Legal Description of Point of Diversion and Dam Centerline:** both structures are located in the NW4 NE4 of Section 27, Township 7 North, Range 85 West of the 6th P.M. Routt County, Colorado. Asparagus Spring UTM coordinates: 338800 mE and 4489475 mN. Asparagus Pond UTM coordinates: 338813 mE and 4489484 mN. 4. **Source of Water:** Both structures are located within an unnamed tributary, tributary to Elk River, tributary to Yampa River. Asparagus Pond will be located off-channel and water from Asparagus Spring will be conveyed to Asparagus Pond. 5. **Appropriation Date:** July 1, 1994 (both structures). 6. **Amounts and Uses:** A. Asparagus Spring: 0.045 cfs, conditional, for fire-fighting and fire protection, domestic, wildlife watering, livestock watering, aesthetics and recreation, and irrigation. Asparagus Spring may also be used to fill, refill, and provide freshening flows to Asparagus Pond. Through this application, Hagemeisters relinquish the conditional uses of aesthetics and recreation. B. Asparagus Pond: 5.0 acre-feet, conditional, for fire-fighting and fire protection, domestic, wildlife watering, livestock watering, aesthetic, and recreation (fishing, swimming, wildlife and avian viewing, ice skating, etc.), piscatorial, and irrigation. Asparagus Pond may be refilled once, providing water is legally and physically available. The amount of refill may exceed one time if Asparagus Pond water is used for fire-fighting or fire protection. C. Irrigation: Irrigation will not exceed 5 acres and will be located in the vicinity of Asparagus Spring and Pond. 7. **Asparagus Pond - Dimensions and Capacity:** Surface Area – 0.55 acre; Maximum Height of dam – 10.0 ft. (construction will involve excavation); Length of Dam: 150 ft; Total capacity not to exceed 5.0 acre feet, all dead storage. 8. **Detailed Outline of Work Done Toward Completion or For Completion of Appropriation and Beneficial Use, including Expenditures:** During the past diligence period, Hagemeisters developed Asparagus Spring. Spring flow was measured at approximately 3 gpm (0.007 cfs) and the water is piped to a storage tank for use by livestock and wildlife. Hagemeisters spent approximately \$20,000.00 during the last diligence period to develop Asparagus Pond and for professional services (engineering and legal). Hagemeisters submit the actions taken and the expenses incurred establish reasonable diligence for the remaining conditional rights of both Asparagus Spring and Asparagus Pond; the Water Court previously determined the structures are integrated. See C.R.S. § 37-92-301(4)(b), (d). 9. **If Claim to Make Absolute in Whole or in Part:** A. **Date Water Applied to Beneficial Use, Amount, and Uses:** Hagemeisters completed construction of Asparagus Spring on June 20, 2022. Hagemeisters used a bucket and stopwatch to measure approximately 3 gallons per minute (0.007 cfs) of spring flow from the pipeline. Spring flow is piped to a stockwater tank for wildlife and livestock watering on Hagemeisters’ property. B. **Supporting Evidence that Water Diverted In-Priority and Applied to Beneficial Uses:** Asparagus Spring was completed in June 2022 at which time the Elk River was not under administration. Spring flow is piped to a stockwater tank. 10. **Name and address of owner of land on which structures and places of use are located:** Hagemeister owns the land where the water rights are located and upon which the water rights will be used. 11. **Remarks:** Hansi Hagemeister Trust and The Martin Hagemeister Trust respectfully request the Water Court enter a decree in which it: (1) awards Hagemeisters an absolute right for Asparagus Spring as claimed in the Application, (2) finds that Hagemeisters have exercised reasonable diligence

towards development of the remaining conditional water rights, and (3) continues the remaining conditional rights for Asparagus Spring and Asparagus Pond in full force and effect throughout the next diligence period.

22CW3065 ROUTT COUNTY, APPLICATION FOR FINDING OF REASONABLE DILIGENCE AND TO MAKE ABSOLUTE, IN PART, AND FOR PARTIAL CHANGE IN POINT OF DIVERSION.

- Name, address, and telephone number of Applicant: Storm Mountain Ranch Association, 33560 Rodeo Drive, Steamboat Springs, CO 80487; with copy to Wayne F. Forman and Dulcinea Z. Hanuschak, Brownstein Hyatt Farber Schreck, LLP, 410 17th Street, #2200, Denver, CO 80202, (303) 223-1100, wforman@bhfs.com, dhanuschk@bhfs.com.
- Claim for Reasonable Diligence and to Make Absolute, In Part.
 - Name of structure: G. Phillips Ditch, Storm Mountain Enlargement (“Phillips Ditch Enlargement”).
 - Description of water right: The Phillips Ditch Enlargement was originally decreed by the Court in Water Division No. 6 in Case No. 97CW75 (decree entered April 26, 2000). The Court made subsequent findings of reasonable diligence or determinations that the rights should be made absolute in Case No. 15CW3019 (decree entered June 2, 2016), Case No. 06CW14 (decree entered May 26, 2009), and Case No. 00CW27 (decree entered June 15, 2002).
 - Point of Diversion: The headgate is located on the South bank of Walton Creek in the NE ¼ NW ¼ of Section 11, Township 5 North, Range 84 West of the 6th P.M. at a point 981 feet from the North Section Line and 2,023 feet from the West Section line of said Section 11. See Exhibit A.
 - Source: Walton Creek, tributary to the Yampa River.
 - Uses: recreation, fishery, aesthetics, domestic, irrigation, and stock water.
 - Locations of Use:
 - Srednicki Upper Pond.
 - Location: Srednicki Upper Pond Outlet: SW ¼ NW ¼ of Section 11, Township 5 North, Range 84 West of the 6th P.M., UTM X=348554.95, UTM Y = 4474619.30, Zone 13, at a point approximately 1,490 feet from the North Section Line and 800 feet from the West Section Line of Said Section 11. See Exhibit B.
 - Surface Area: 0.30 acres.
 - Volume: 2.15 acre-feet.
 - Dam Height: 2.0 feet.
 - Dam Length: 284 feet.
 - Srednicki Lower Pond.
 - Location: Srednicki Lower Pond Outlet: SW ¼ NW ¼ of Section 11, Township 5 North, Range 84 West of the 6th P.M., UTM X = 348486.54, UTM Y= 4474623.15, Zone 13, at a point approximately 1,485 feet from the North Section Line and 575 feet from the West Section Line of said Section 11. See Exhibit B.
 - Surface Area: 0.32 acres.
 - Volume: 2.10 acre-feet.
 - Dam Height: 4.0 feet.
 - Dam Length: 290 feet.
 - Fill Rate and Beneficial Uses: The Srednicki Ponds are filled at a rate of 0.74 c.f.s., as measured on June 14, 2021, for all decreed beneficial uses.
 - Link Pond.
 - Location: Link Pond Outlet: NW ¼ SE ¼ of Section 10, Township 5 North, Range 84 West of the 6th P.M., UTM X = 347854.82, UTM Y = 4474274.35, Zone 13, at a point approximately 1,480 feet from the East Section Line and 2,570 feet from the South Section Line of said Section 10 (PLSS base on BLM Section Lines). See Exhibit C.
 - Surface Area: 0.60 acres.
 - Volume: 4.25 acre-feet.
 - Dam Height: 4.5 feet.
 - Dam Length: 30 feet.
 - Fill Rate and Beneficial Uses: The Link Pond is filled at a rate of 0.40 c.f.s., as measured on June 14, 2021, for all decreed beneficial uses.
 - Stevens Pond System.
 - Location: Pond System Outlet: NW ¼ NW ¼ of Section 11, Township 5 North, Range 84 West of the 6th P.M., UTM X = 348537.8, UTM Y= 4474741.9, Zone 13. See Exhibit D.
 - Surface Area: 0.64 acres.
 - Volume: 2.21 acre-feet.
 - Dam Height: 4.0 feet.
 - Dam Length: 140 feet.
 - Rate of Fill: Up to 1.4 c.f.s. (conditional).
 - Ogilvie Water Feature.
 - Location: Water Feature Inlet: NW ¼ SE ¼ of Section 10, Township 5 North, Range 84 West of the 6th P.M., UTM X = 347660.2, UTM Y= 4474066.6, Zone 13. See Exhibit E.
 - Rate of Fill: Up to 0.5 c.f.s. (conditional).
 - Amount: 6 c.f.s. total, of which 1.14 c.f.s. are claimed as absolute, comprised of 0.74 c.f.s. diverted through the Srednicki Lateral and 0.40 c.f.s. through the Link Lateral. 4.86 c.f.s. remain conditional.
 - Date of appropriation: November 3, 1997; the 1.14 c.f.s. claimed as absolute was placed to beneficial use on and before June 14, 2021.
- Plan to Make Further Amounts of the Phillips Ditch Absolute. Paragraph 19 of the decree in Case No. 15CW3019 provides that: “Applicant shall submit with its [next] diligence application a plan describing how it intends to complete the appropriation of the remaining conditional portion of the right by the end of the following diligence period.” Applicant’s plan to complete the appropriation of the remaining 4.86 c.f.s. conditional portion of the Phillips Ditch Enlargement includes diverting up to 1.40 c.f.s. into the Stevens Pond System and up to 0.50 c.f.s. into the Ogilvie Water Feature. Applicant does not seek a finding of diligence on the remaining 2.96 c.f.s. and agrees that this amount may be cancelled.
- Detailed outline of activity during the diligence period: During the relevant diligence period, Applicant has devoted considerable time by its Ranch Manager and has made substantial expenditures, including engineering and legal costs, towards placing the Phillips Ditch Enlargement to beneficial use. The following summary of Applicant’s diligence activities is not exclusive and may be supplemented with additional evidence of these or of other diligence activities:
 - Applicant has expended over \$20,892.00 in legal fees with its water counsel to advise on the development of the Phillips Ditch Enlargement conditional water right.
 - The Applicant has engaged Leonard Rice Engineers, Inc. (“LRE Water”) as its consulting engineers to assist with water rights planning to put the Phillips Ditch to beneficial use. Among other things, LRE Water has taken flow measurements, advised the Applicant on water structures and strategies to maximize

the use of the Phillips Ditch Enlargement, surveyed the capacity of ponds at which the Phillips Ditch Enlargement will be used and prepared design plans for the Ogilvie Water Feature at which the Phillips Ditch Enlargement will be used. The Applicant spent \$28,949.10 on engineering services provided by LRE Water and by Applicant's previous consulting engineers, Resource Engineering, Inc. for engineering services related to water rights and water resources on the Storm Mountain Ranch. 4.3. In June, 2021, Applicant's Ranch Manager, consulting engineers, and water counsel attended a site visit during which measurements were taken of flows into the Link, Srednicki, and Stevens ponds and additional development of the Phillips Ditch Enlargement was discussed. 4.4. Applicant's Ranch Manager has expended dozens of hours consulting with water counsel, the Applicant's consulting engineers and the homeowners about the development of the subject conditional water right and related water-rights planning matters. 4.5. For many years, water diverted under the Phillips Ditch Enlargement conditional water rights has been applied to beneficial use at the Link, Srednicki and Stevens ponds as described above. 5. Claim for Partial Change of Point of Diversion for the Phillips Ditch Enlargement. 5.1. Applicant seeks a partial change in the point of diversion for that portion of the Phillips Ditch Enlargement diverted into the Stevens Pond System (described in Paragraph 2.6.5). The changed point of diversion is described as follows and is shown on Exhibit F. 5.1.1. Location information in UTM Format: 5.1.1.1. UTM coordinates: Easting 348727.1m; Northing 4474777.5m. 5.1.1.2. Zone: 13. 5.1.1.3. Source of UTM's: Handheld GPS device. 5.1.1.4. Accuracy of location displaced on GPS device: 1-100 cm. 5.1.2. Changed Amount: 1.40 c.f.s. 5.1.3. Source: Walton Creek, tributary to the Yampa River. 5.1.4. Uses: recreation, fishery, aesthetics, domestic, irrigation, and stock water. No change in the beneficial uses is sought by this Application. 6. Land on which the subject structures are located, on which the water will be stored, or on which the water will be placed to beneficial use is owned by: Bill and Marsha Link 33465 Flying L Lane, Steamboat Springs, CO 80487; Richard and Virginia Srednicki, 33575 Dream Catcher Trail, Steamboat Springs, CO 80487; Bruce Ogilvie, Two Lincoln Tower, 10485 NE 6th St. Apt. 2929, Bellevue, WA 98004; Mark and Mary Stevens, One Steamboat Place, 2250 Apres Way Unit 701, Steamboat Springs, CO 80487. WHEREFORE, Applicant requests the entry of a decree: making the Phillips Ditch Enlargement conditional water right absolute in the amount of 1.14 c.f.s.; continuing that right in full force and effect for an additional 1.90 c.f.s.; and changing 1.40 c.f.s. of the right to the above-described point of diversion on Walton Creek into the Stevens Pond System. Applicant requests that any portions of said right not made absolute as requested by this Application be continued as conditional, with the exception of the 2.96 c.f.s. which may be cancelled as discussed in Paragraph 3 of this Application. (Application -- 7 pages; Exhibits A - F -- 6 pages)

22CW3066 and bifurcated protest Case No. (21CW3048) ROUTT COUNTY. Protest to Final Abandonment List. Protestant: Twentymile Coal, LLC, Attn: Miranda Kawcak, 29515 Routt County Road 27, Oak Creek, CO 80467. 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. 2. Water Right Description: a. Name of Structure: Boettler Ditch. b. Date of Original Decree: November 15, 1962, in Civil Action No. 3081, District Court for Routt County. c. Decreed Legal Description of Structure Location: Left or west bank of Fish Creek whence the Northeast corner of Section 10, Township 5 North, Range 86 West, 6th P.M., bears North 61°44' East 1400 feet. A map depicting the decreed location of this structure is attached to the application as Exhibit A. d. Source: Fish Creek, a tributary of Trout Creek. e. Decreed Use(s): Irrigation and storage for year-round use for mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. f. Appropriation Date: October 15, 1953. g. Decreed Amount: 4.34 c.f.s. h. Amount and Use(s) Listed as Having Been Abandoned: 4.34 c.f.s. for all decreed uses. i. Page Number on Abandonment List: The subject Boettler Ditch right is listed on page 2 of 9 on the Division Engineer's Final Revised Abandonment List for Water Division 6. 3. Factual and Legal Basis for this Protest: a. The subject Boettler Ditch right is included in and an integral part of Twentymile's augmentation plan decreed in Case No. W-1502-78, as amended in Case No. 90CW99, Water Division 6 (the "Augmentation Plan"). The Augmentation Plan was approved to allow operation of the Foidel Creek Mine (a/k/a Twentymile Mine), which Twentymile continues to operate under Colorado Division of Mining, Reclamation and Safety ("DRMS") Permit No. C-1982-056. On September 12, 2018, DRMS approved Twentymile's application to approve Permit No. C-1982-056 for an additional five-year period. The Augmentation Plan and the direct flow water rights used for augmentation under that plan, including the Boettler Ditch, are necessary, among other things, to maintain a reliable water supply for continued and anticipated future mining operations, and in order to assure the ability to meet any downstream call on the Yampa River system or the tributaries of Trout, Fish, Middle or Foidel Creeks. b. To date, there have been only infrequent calls on the Yampa River system or its tributaries, and Twentymile has not fully implemented the Augmentation Plan since it was first decreed in 1981. Nonetheless, during the last several years, Twentymile has expended substantial resources preparing to implement the Augmentation Plan if and when required. c. Twentymile has been reasonably diligent in pursuing the appropriative rights of exchange

described in paragraph 9.e of the decree in Case No. 90CW99 (the “Exchanges”), which are also components of the Augmentation Plan. The Exchanges allow Twentymile to store water for augmentation purposes in any one or a combination of storage rights owned by Twentymile in exchange for water introduced into the Trout Creek system from any one or a combination of ditch rights, including the subject Boettler Ditch water right. In 2014, Twentymile obtained findings of reasonable diligence for the Exchanges in Case No. 11CW21, Water Division 6, and a further application for finding of reasonable diligence was filed and prosecuted in Case No. 20CW3042. d. Twentymile, through its attorneys, has also monitored the monthly resumes of water right applications in Water Division 6, and has submitted Statements of Opposition where deemed necessary or advisable for full protection of the water rights in the Augmentation Plan, including the Boettler Ditch. Twentymile reserves the right to provide additional evidence of intent to utilize and not to abandon the subject Boettler Ditch water right. Any person who may be affected by the subject matter of this protest or by any ruling thereon and desiring to participate in any hearing pursuant to C.R.S. § 37-92-401(6) must file an entry of appearance by August 31, 2022. (5 pages incl. exhibit)

22CW3069 and bifurcated protest Case No. 21CW3048 ROUTT COUNTY. Protest to Final Abandonment List.

Protestant: Twentymile Coal, LLC, Attn: Miranda Kawcak, 29515 Routt County Road 27, Oak Creek, CO 80467. 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. 2. Water Right Description: a. Name of Structure: Last Chance Ditch. b. Date of Original Decree: November 15, 1962, in Civil Action No. 3081, District Court for Routt County. c. Decreed Legal Description of Structure Location: Westerly bank of Trout Creek whence the SE corner of Section 25, Township 3 North, Range 87 West, 6th P.M., bears South 70°44’20” East 4447.5 feet. A map depicting the decreed location of this structure is attached to the application as Exhibit A. d. Source: Trout Creek. e. Decreed Use(s): Irrigation, stock, and storage for year-round use for mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses f. Appropriation Date: October 1, 1954. g. Decreed Amount: 9.0 c.f.s. h. Amount and Use(s) Listed as Having Been Abandoned: 1.0 c.f.s. for all decreed uses. i. Page Number on Abandonment List: The subject Last Chance Ditch right is listed on page 5 of 9 on the Division Engineer’s Final Revised Abandonment List for Water Division 6. 3. Factual and Legal Basis for this Protest: a. The subject Last Chance Ditch right is included in and an integral part of Twentymile’s augmentation plan decreed in Case No. W-1502-78, as amended in Case No. 90CW99, Water Division 6 (the “Augmentation Plan”). The Augmentation Plan was approved to allow operation of the Foidel Creek Mine (a/k/a Twentymile Mine), which Twentymile continues to operate under Colorado Division of Mining, Reclamation and Safety (“DRMS”) Permit No. C-1982-056. On September 12, 2018, DRMS approved Twentymile’s application to approve Permit No. C-1982-056 for an additional five-year period. The Augmentation Plan and the direct flow water rights used for augmentation under that plan, including the Last Chance Ditch, are necessary, among other things, to maintain a reliable water supply for continued and anticipated future mining operations, and in order to assure the ability to meet any downstream call on the Yampa River system or the tributaries of Trout, Fish, Middle or Foidel Creeks. b. To date, there have been only infrequent calls on the Yampa River system or its tributaries, and Twentymile has not fully implemented the Augmentation Plan since it was first decreed in 1981. Nonetheless, during the last several years, Twentymile has expended substantial resources preparing to implement the Augmentation Plan if and when required. c. Twentymile has been reasonably diligent in pursuing the appropriative rights of exchange described in paragraph 9.e of the decree in Case No. 90CW99 (the “Exchanges”), which are also components of the Augmentation Plan. The Exchanges allow Twentymile to store water for augmentation purposes in any one or a combination of storage rights owned by Twentymile in exchange for water introduced into the Trout Creek system from any one or a combination of ditch rights, including the subject Last Chance Ditch water right. In 2014, Twentymile obtained findings of reasonable diligence for the Exchanges in Case No. 11CW21, Water Division 6, and a further application for finding of reasonable diligence was filed and prosecuted in Case No. 20CW3042. d. Twentymile, through its attorneys, has also monitored the monthly resumes of water right applications in Water Division 6, and has submitted Statements of Opposition where deemed necessary or advisable for full protection of the water rights in the Augmentation Plan, including the Last Chance Ditch. e. Twentymile likewise participated in the matter of the proposed instream flow appropriation for Trout Creek (“Trout Creek ISF”). In January 2019, the Colorado Water Conservation Board (“CWCB”) declared its intent to appropriate the Trout Creek ISF. Twentymile subsequently filed a Notice of Party Status to participate in the proceedings concerning the Trout Creek ISF proposal. Ultimately, Twentymile entered into a stipulation pursuant to which Staff for the CWCB agreed to reduce the recommended flow rates for the Trout Creek ISF. A key purpose of the terms in the stipulation was to protect Twentymile’s water rights in the Trout Creek watershed that could be impacted by the Trout Creek ISF, including but not limited to the Last Chance Ditch. f. Twentymile reserves the right to provide additional evidence of intent to utilize and not to abandon the subject Last Chance Ditch right. Any person who may be affected by the subject matter of this

protest or by any ruling thereon and desiring to participate in any hearing pursuant to C.R.S. § 37-92-401(6) must file an entry of appearance by August 31, 2022. (5 pages incl. exhibit)

22CW3070 and bifurcated protest Case No. 21CW3048 ROUTT COUNTY. Protest to Final Abandonment List.

Protestant: Twentymile Coal, LLC, Attn: Miranda Kawcak, 29515 Routt County Road 27, Oak Creek, CO 80467. 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. 2. Water Right Description: a. Name of Structure: Connell Ditch. b. Date of Original Decree: November 15, 1962 in Civil Action No. 3081, District Court for Routt County. c. Decreed Legal Description of Structure Location: left or westerly bank of Trout Creek whence NE corner of Section 36, Township 5 North, Range 86 West, 6th P.M., bears North 12°45' East 1452 feet. A map depicting the decreed location of this structure is attached to the application as Exhibit A. d. Source: Trout Creek. e. Decreed Use(s): Irrigation, domestic, stock, and storage for year-round use for mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. f. Appropriation Date: May 1, 1953. g. Decreed Amount: 13.0 c.f.s. h. Amount and Use(s) Listed as Having Been Abandoned: 13.0 c.f.s. for all decreed uses. i. Page Number on Abandonment List: The subject Connell Ditch right is listed on page 2 of 9 on the Division Engineer's Final Revised Abandonment List for Water Division 6. 3. Factual and Legal Basis for this Protest: a. The subject Connell Ditch right is included in and an integral part of Twentymile's augmentation plan decreed in Case No. W-1502-78, as amended in Case No. 90CW99, Water Division 6 (the "Augmentation Plan"). The Augmentation Plan was approved to allow operation of the Foidel Creek Mine (a/k/a Twentymile Mine), which Twentymile continues to operate under Colorado Division of Mining, Reclamation and Safety ("DRMS") Permit No. C-1982-056. On September 12, 2018, DRMS approved Twentymile's application to approve Permit No. C-1982-056 for an additional five-year period. The Augmentation Plan and the direct flow water rights used for augmentation under that plan, including the Connell Ditch, are necessary, among other things, to maintain a reliable water supply for continued and anticipated future mining operations, and in order to assure the ability to meet any downstream call on the Yampa River system or the tributaries of Trout, Fish, Middle or Foidel Creeks. b. To date, there have been only infrequent calls on the Yampa River system or its tributaries, and Twentymile has not fully implemented the Augmentation Plan since it was first decreed in 1981. Nonetheless, during the last several years, Twentymile has expended substantial resources preparing to implement the Augmentation Plan if and when required. c. Twentymile has been reasonably diligent in pursuing the appropriative rights of exchange described in paragraph 9.e of the decree in Case No. 90CW99 (the "Exchanges"), which are also components of the Augmentation Plan. The Exchanges allow Twentymile to store water for augmentation purposes in any one or a combination of storage rights owned by Twentymile in exchange for water introduced into the Trout Creek system from any one or a combination of ditch rights, including the subject Connell Ditch water right. In 2014, Twentymile obtained findings of reasonable diligence for the Exchanges in Case No. 11CW21, Water Division 6, and a further application for finding of reasonable diligence was filed and prosecuted in Case No. 20CW3042. d. Twentymile, through its attorneys, has also monitored the monthly resumes of water right applications in Water Division 6, and has submitted Statements of Opposition where deemed necessary or advisable for full protection of the water rights in the Augmentation Plan, including the Connell Ditch. e. Twentymile likewise participated in the matter of the proposed instream flow appropriation for Trout Creek ("Trout Creek ISF"). In January 2019, the Colorado Water Conservation Board ("CWCBC") declared its intent to appropriate the Trout Creek ISF. Twentymile subsequently filed a Notice of Party Status to participate in the proceedings concerning the Trout Creek ISF proposal. Ultimately, Twentymile entered into a stipulation pursuant to which Staff for the CWCBC agreed to reduce the recommended flow rates for the Trout Creek ISF. A key purpose of the terms in the stipulation was to protect Twentymile's water rights in the Trout Creek watershed that could be impacted by the Trout Creek ISF, including but not limited to the Connell Ditch. f. The decreed point of diversion of the Connell Ditch is located in the SE1/4-NE1/4 of Section 36, Township 5 North, Range 86 West, 6th P.M., within what is known as the "Lucky 8 Ranch." The Lucky 8 Ranch was established in 2014 and is currently a buffalo ranch. The ranch also offers agritourism tours and acts as a special event space. In connection with development of the ranch, the landowner, Dwayne Osadchuk, has made improvements to the Connell Ditch in the past five years. Specifically, Mr. Osadchuk has installed a new headgate and measuring flume for the Connell Ditch. g. Twentymile reserves the right to provide additional evidence of intent to utilize and not abandon the subject Connell Ditch right. Any person who may be affected by the subject matter of this protest or by any ruling thereon and desiring to participate in any hearing pursuant to C.R.S. § 37-92-401(6) must file an entry of appearance by August 31, 2022. (6 pages incl. exhibit)

22CW3071 and bifurcated protest Case No. 21CW3048 ROUTT COUNTY. Protest to Final Abandonment List.

Protestant: Twentymile Coal, LLC, Attn: Miranda Kawcak, 29515 Routt County Road 27, Oak Creek, CO 80467.

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.

2. Water Right Description: a. Name of Structure: Energy Well 3-2. i. Date of Original Decree: Decree entered on November 13, 1980, in Case No. W-1451-78, Water Division 6. ii. Decreed Legal Description of Structure Location: Located in the NW1/4-SE1/4 of Section 2, Township 5 North, Range 86 West, 6th P.M., at a point 1629 feet North of the South Section line and 1558 feet West of the East Section line. A map depicting the decreed location of this structure is attached to the application as Exhibit A. iii. Source: Fish Creek. iv. Decreed Use(s): Domestic, commercial, industrial (including dust suppression) and all other beneficial uses, including exchange, substitution, replacement, and augmentation. v. Appropriation Date: October 19, 1977. vi. Decreed Amount: 0.145 c.f.s. vii. Remarks: The Energy Well 3-2 water right was originally decreed for 0.446 c.f.s. or 200 g.p.m. of which 64.7 g.p.m. (the equivalent of 104.36 acre-feet per year) is non-tributary. In Case No. 1502-78, Water Division 6, only the tributary portions of the water right were included in the plan for augmentation. In Case No. 11CW37, Water Division 6, 0.301 c.f.s. was abandoned, which appears to correspond to the tributary portion of the water right. viii. Amount and Use(s) Listed as Having Been Abandoned: 0.145 c.f.s. decreed to the subject Energy Well 3-2 water right for all decreed uses. By decree entered on July 10, 1981, in Case No. W-1502-78, Water Division 6, the Energy Well 3-2 structure was decreed as an alternative point of diversion for several water rights, including but not limited to the water rights described in Paragraph 2.b, below (the "APOD Water Rights"). In addition to the 0.145 c.f.s. decreed to the Energy Well 3-2, the Division Engineer's Final Revised Abandonment List for Water Division 6 ("Final Abandonment List") includes the right to divert the APOD Water Rights at the Energy Well 3-2 alternate point of diversion.

b. Description of APOD Water Rights: i. Name of Structure: Last Chance Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation, stock, and storage for year-round use for mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: October 1, 1954. 5) Decreed Amount: 9.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 1.0 c.f.s. under the subject Last Chance Ditch water right from the Energy Well 3-2 alternate point of diversion for all decreed uses. ii. Name of Structure: Trout Creek Ditch No. 3. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: May 1, 1946. 5) Decreed Amount: 5.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 5.0 c.f.s. under the subject Trout Creek Ditch No. 3 water right from the Energy Well 3-2 alternate point of diversion for all decreed uses. Twentymile owns 4.23 c.f.s. of the 5.0 c.f.s. decreed to the subject Trout Creek Ditch No. 3 water right. Accordingly, this protest is limited to the right to divert 4.23 c.f.s. owned by Twentymile under the subject Trout Creek Ditch No. 3 water right from the Energy Area Pit Well alternate point of diversion. iii. Name of Structure: Connell Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation, domestic, stock, and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: May 1, 1953. 5) Decreed Amount: 13.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 5.34 c.f.s. under the subject Connell Ditch water right from the Energy Well 3-2 alternate point of diversion for all decreed uses. iv. Name of Structure: Boettler Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Fish Creek, a tributary of Trout Creek. 3) Decreed Use(s): Irrigation and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: October 15, 1953. 5) Decreed Amount: 4.34 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 4.34 c.f.s. under the subject Boettler Ditch water right from the Energy Well 3-2 alternate point of diversion for all decreed uses.

3. Page Number on Abandonment List: The Energy Well 3-2 water right and alternate point of diversion for the APOD Water Rights are listed on page 3 of 9 on the Final Abandonment List.

4. Factual and Legal Basis for this Protest: a. The Energy Well 3-2 water right and Energy Well 3-2 alternate point of diversion for the APOD Water Rights are included in and an integral part of Twentymile's augmentation plan decreed in Case No. W-1502-78, as amended in Case No. 90CW99, Water Division 6 (the "Augmentation Plan"). The Augmentation Plan was approved to allow operation of the Foidel Creek Mine (a/k/a Twentymile Mine), which Twentymile continues to operate under Colorado Division of Mining, Reclamation and Safety ("DRMS") Permit No. C-1982-056. On September 12, 2018, DRMS approved Twentymile's application to approve Permit No. C-1982-056 for an additional five-year period. The Augmentation Plan and the direct flow water rights used for augmentation under that plan, including the APOD Water Rights and their alternate point of diversion at the Energy Well 3-2, are necessary, among other things, to maintain a reliable water supply for continued and anticipated future mining operations, and in order to assure the ability to meet any downstream call on the Yampa

River system or the tributaries of Trout, Fish, Middle or Foidel Creeks. b. To date, there have been only infrequent calls on the Yampa River system or its tributaries, and Twentymile has not fully implemented the Augmentation Plan since it was first decreed in 1981. Nonetheless, during the last several years, Twentymile has expended substantial resources preparing to implement the Augmentation Plan if and when required. c. Twentymile has been reasonably diligent in pursuing the appropriative rights of exchange described in paragraph 9.e of the decree in Case No. 90CW99 (the “Exchanges”), which are also components of the Augmentation Plan. The Exchanges allow Twentymile to store water for augmentation purposes in any one or a combination of storage rights owned by Twentymile in exchange for water introduced into the Trout Creek system from any one or a combination of ditch rights, including from the Energy Well 3-2 alternate point of diversion for the APOD Water Rights. In 2014, Twentymile obtained findings of reasonable diligence for the Exchanges in Case No. 11CW21, Water Division 6, and a further application for finding of reasonable diligence was filed and prosecuted in Case No. 20CW3042. d. Twentymile, through its attorneys, has also monitored the monthly resumes of water right applications in Water Division 6, and has submitted Statements of Opposition where deemed necessary or advisable for full protection of the water rights in the Augmentation Plan, including the APOD Water Rights with decreed alternate points of diversion at Energy Well 3-2. e. Nontributary groundwater is not subject to appropriation in the same manner as tributary groundwater and is not administered within the priority system. *See, e.g.*, C.R.S. § 37-92-305(11). As such, it is not appropriate to include the nontributary portion of this water right on the Abandonment List. f. Finally, C.R.S. § 37-92-401(1)(a) provides that the respective Division Engineers shall prepare “a separate abandonment list comprising all *absolute water rights* that he or she has determined to have been abandoned in whole or in part and that previously have not been adjudged to have been abandoned.” (Emphasis added.) Energy Well 3-2 as an alternate point of diversion for the APOD Water Rights is not subject to inclusion in the decennial abandonment list contemplated by C.R.S. § 37-92-401. g. Twentymile reserves the right to provide additional evidence of intent to utilize and not to abandon the subject rights. Any person who may be affected by the subject matter of this protest or by any ruling thereon and desiring to participate in any hearing pursuant to C.R.S. § 37-92-401(6) must file an entry of appearance by August 31, 2022. (8 pages incl. exhibit)

22CW3072 and bifurcated protest Case No. 21CW3048 ROUTT COUNTY. Protest to Final Abandonment List.

Protestant: Twentymile Coal, LLC, Attn: Miranda Kawcak, 29515 Routt County Road 27, Oak Creek, CO 80467. 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. 2. Water Right Description: a. Name of Structure: Energy Well 6 (a/k/a “Old Energy Well No. 6”). i. Date of Original Decree: Decree entered on December 10, 1979, in Case No. W-1126-77, Water Division 6. ii. Decreed Legal Description of Structure Location: located at a point in the SW1/4-NW1/4 of Section 32, Township 5 North, Range 86 West, 6th P.M., which is 125 feet from the West line and 2180 feet from the North line of said Section 32. A map depicting the decreed location of this structure is attached to the application as Exhibit A. iii. Source: Foidel Creek. iv. Decreed Use(s): Industrial. v. Appropriation Date: November 1, 1975. vi. Decreed Amount: 0.0 c.f.s. vii. Amount and Use(s) Listed as Having Been Abandoned: By decree entered on September 7, 2016, in Case No. 11CW37, the 0.033 c.f.s. originally decreed to the subject Energy Well 6 water right was abandoned. By decree entered on July 10, 1981, in Case No. W-1502-78, Water Division 6, the Energy Well 6 was decreed as an alternate point of diversion for several water rights, including but not limited to the water rights described in Paragraph 2.b below (the “APOD Water Rights”). The Division Engineer’s Final Revised Abandonment List for Water Division 6 (“Final Abandonment List”) includes the right to divert the APOD Water Rights at the Energy Well 6 alternate point of diversion. b. Description of APOD Water Rights: i. Name of Structure: Last Chance Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation, stock, and storage for year-round use for mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: October 1, 1954. 5) Decreed Amount: 9.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 1.0 c.f.s. under the subject Last Chance Ditch water right from the Energy Well 6 alternate point of diversion for all decreed uses. ii. Name of Structure: Trout Creek Ditch No. 3.1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: May 1, 1946. 5) Decreed Amount: 5.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 5.0 c.f.s. under the subject Trout Creek Ditch No. 3 water right from the Energy Well 6 alternate point of diversion for all decreed uses. Twentymile owns 4.23 c.f.s. of the 5.0 c.f.s. decreed to the subject Trout Creek Ditch No. 3 water right. Accordingly, this protest is limited to the right to divert 4.23 c.f.s. owned by Twentymile under the subject Trout Creek Ditch No. 3 water right from the Energy Area Pit Well alternate point of diversion. iii. Name of Structure: Connell Ditch. 1) Date of Original Decree: Decree entered on

November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation, domestic, stock, and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: May 1, 1953. 5) Decreed Amount: 13.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 5.34 c.f.s. under the subject Connell Ditch water right from the Energy Well 6 alternate point of diversion for all decreed uses. iv. Name of Structure: Boettler Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Fish Creek, a tributary of Trout Creek. 3) Decreed Use(s): Irrigation and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: October 15, 1953. 5) Decreed Amount: 4.34 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 4.34 c.f.s. under the subject Boettler Ditch water right from the Energy Well 6 alternate point of diversion for all decreed uses. v. Name of Structure: Energy Area Pit Well (a/k/a “Energy Area 1 Pit”). 1) Date of Original Decree: Decree entered on November 2, 1979, in Case No. W-1392-77, Water Division 6. 2) Source: Foidel Creek. 3) Decreed Use(s): All industrial and commercial uses associated with coal mining operation. 4) Appropriation Date: December 31, 1962. 5) Decree Amount: 0.692 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 0.692 c.f.s. under the subject Energy Area Pit Well water right from the Energy Well 6 alternate point of diversion for all decreed uses. 3. Page Number on Abandonment List: The Energy Well 6 alternate point of diversion for the APOD Water Rights is listed on page 3 of 9 on the Final Abandonment List. 4) Factual and Legal Basis for this Protest: a. The Energy Well 6 alternate point of diversion for the APOD Water Rights is included in and an integral part of Twentymile’s augmentation plan decreed in Case No. W-1502-78, as amended in Case No. 90CW99, Water Division 6 (the “Augmentation Plan”). The Augmentation Plan was approved to allow operation of the Foidel Creek Mine (a/k/a Twentymile Mine), which Twentymile continues to operate under Colorado Division of Mining, Reclamation and Safety (“DRMS”) Permit No. C-1982-056. On September 12, 2018, DRMS approved Twentymile’s application to approve Permit No. C-1982-056 for an additional five-year period. The Augmentation Plan and the direct flow water rights used for augmentation under that plan, including the APOD Water Rights and their alternate point of diversion at Energy Well 6, are necessary, among other things, to maintain a reliable water supply for continued and anticipated future mining operations, and in order to assure the ability to meet any downstream call on the Yampa River system or the tributaries of Trout, Fish, Middle or Foidel Creeks. b. To date, there have been only infrequent calls on the Yampa River system or its tributaries, and Twentymile has not fully implemented the Augmentation Plan since it was first decreed in 1981. Nonetheless, during the last several years, Twentymile has expended substantial resources preparing to implement the Augmentation Plan if and when required. c. Twentymile has been reasonably diligent in pursuing the appropriative rights of exchange described in paragraph 9.e of the decree in Case No. 90CW99 (the “Exchanges”), which are also components of the Augmentation Plan. The Exchanges allow Twentymile to store water for augmentation purposes in any one or a combination of storage rights owned by Twentymile in exchange for water introduced into the Trout Creek system from any one or a combination of ditch rights, including from Energy Well 6 alternative point of diversion for the APOD Water Rights. In 2014, Twentymile obtained findings of reasonable diligence for the Exchanges in Case No. 11CW21, Water Division 6, and a further application for finding of reasonable diligence was filed and prosecuted in Case No. 20CW3042. d. Twentymile, through its attorneys, has also monitored the monthly resumes of water right applications in Water Division 6, and has submitted Statements of Opposition where deemed necessary or advisable for full protection of the water rights in the Augmentation Plan, including the APOD Water Rights with decreed alternate points of diversion at Energy Well 6. e. Finally, C.R.S. § 37-92-401(1)(a) provides that the respective Division Engineers shall prepare “a separate abandonment list comprising all *absolute water rights* that he or she has determined to have been abandoned in whole or in part and that previously have not been adjudged to have been abandoned.” (Emphasis added.) Energy Well 6 as an alternative point of diversion for the APOD Water Rights is not subject to inclusion in the decennial abandonment list contemplated by C.R.S. § 37-92-401. f. Twentymile reserves the right to provide additional evidence of intent to utilize and not to abandon the subject rights. Any person who may be affected by the subject matter of this protest or by any ruling thereon and desiring to participate in any hearing pursuant to C.R.S. § 37-92-401(6) must file an entry of appearance by August 31, 2022. (8 pages incl. exhibits)

22CW3074 and bifurcated protest Case No. 21CW3048 ROUTT COUNTY. Protest to Final Abandonment List. Protestant: Twentymile Coal, LLC, Attn: Miranda Kawcak, 29515 Routt County Road 27, Oak Creek, CO 80467. 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. 2. Water Right Description: a. Name of Structure: Energy Area Pit Well (a/k/a “Energy Area 1 Pit”). i. Date of Original Decree: Decree entered on November 2, 1979, in Case No. W-1392-77, Water Division 6. ii. Decreed Legal Description of Structure Location: This well is an open cut strip mine which intercepts

groundwater. Pumping from the pit occurs at various points in Sections 32, 28, 29, and 33, Township 5 North, Range 86 West, 6th P.M., where groundwater has seeped through the highwall and formed ponds in the bottom of the pit. A map depicting the decreed location of this structure is attached to the application as Exhibit A. iii. Source: Foidel Creek. iv. Decreed Use(s): All industrial and commercial uses associated with coal mining operation. v. Appropriation Date: December 31, 1962. vi. Decreed Amount: 0.692 c.f.s. vii. Remarks: By decree entered on May 10, 1989, in Case No. 88CW15, Water Division 6, the Energy Area Pit Well was changed to authorize all industrial and commercial uses associated with coal mining operations and to include two alternate points of diversion at Energy Well 6 (a/k/a “Old Energy Well No. 6”) and New Energy Well No. 6. viii. Amount and Use(s) Listed as Having Been Abandoned: By decree entered on July 10, 1981, in Case No. W-1502-78, Water Division 6, the Energy Area Pit Well was decreed as an alternative point of diversion for several water rights, including but not limited to the water rights described in Paragraph 2.b below (the “APOD Water Rights”). The Division Engineer’s Final Revised Abandonment List for Water Division 6 (“Final Abandonment List”) includes the right to divert the APOD Water Rights at the Energy Area Pit Well alternate point of diversion. The Final Abandonment List does not include the 0.692 c.f.s. decreed to the Energy Area Pit Well in Case No. W-1392-77. b. Description of APOD Water Rights: i. Name of Structure: Last Chance Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation, stock, and storage for year-round use for mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: October 1, 1954. 5) Decreed Amount: 9.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 1.0 c.f.s. under the subject Last Chance Ditch water right from the Energy Area Pit Well alternate point of diversion for all decreed uses. ii. Name of Structure: Trout Creek Ditch No. 3. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: May 1, 1946. 5) Decreed Amount: 5.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 5.0 c.f.s. under the subject Trout Creek Ditch No. 3 water right from the Energy Area Pit Well alternate point of diversion for all decreed uses. Twentymile owns 4.23 c.f.s. of the 5.0 c.f.s. decreed to the subject Trout Creek Ditch No. 3 water right. Accordingly, this protest is limited to the right to divert 4.23 c.f.s. owned by Twentymile under the subject Trout Creek Ditch No. 3 water right from the Energy Area Pit Well alternate point of diversion. iii. Name of Structure: Connell Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation, domestic, stock, and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: May 1, 1953. 5) Decreed Amount: 13.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 5.34 c.f.s. under the subject Connell Ditch water right from the Energy Area Pit Well alternate point of diversion for all decreed uses. iv. Name of Structure: Boettler Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Fish Creek, a tributary of Trout Creek. 3) Decreed Use(s): Irrigation and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: October 15, 1953. 5) Decreed Amount: 4.34 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 4.34 c.f.s. under the subject Boettler Ditch water right from the Energy Area Pit Well alternate point of diversion for all decreed uses. 3. Page Number on Abandonment List: The Energy Area Pit Well alternate point of diversion for the APOD Water Rights is listed on page 3 of 9 on the Final Abandonment List. 4. Factual and Legal Basis for this Protest: a. The Energy Area Pit Well alternate point of diversion for the APOD Water Rights is included in and an integral part of Twentymile’s augmentation plan decreed in Case No. W-1502-78, as amended in Case No. 90CW99, Water Division 6 (the “Augmentation Plan”). The Augmentation Plan was approved to allow operation of the Foidel Creek Mine (a/k/a Twentymile Mine), which Twentymile continues to operate under Colorado Division of Mining, Reclamation and Safety (“DRMS”) Permit No. C-1982-056. On September 12, 2018, DRMS approved Twentymile’s application to approve Permit No. C-1982-056 for an additional five-year period. The Augmentation Plan and the direct flow water rights used for augmentation under that plan, including the APOD Water Rights and their alternate point of diversion at the Energy Area Pit Well, are necessary, among other things, to maintain a reliable water supply for continued and anticipated future mining operations, and in order to assure the ability to meet any downstream call on the Yampa River system or the tributaries of Trout, Fish, Middle or Foidel Creeks. b. To date, there have been only infrequent calls on the Yampa River system or its tributaries, and Twentymile has not fully implemented the Augmentation Plan since it was first decreed in 1981. Nonetheless, during the last several years, Twentymile has expended substantial resources preparing to implement the Augmentation Plan if and when required. c. Twentymile has been reasonably diligent in pursuing the appropriative rights of exchange described in paragraph 9.e of the decree in Case No. 90CW99 (the “Exchanges”), which are also components of the Augmentation Plan. The Exchanges allow

Twentymile to store water for augmentation purposes in any one or a combination of storage rights owned by Twentymile in exchange for water introduced into the Trout Creek system from any one or a combination of ditch rights, including from the Energy Area Pit Well alternative point of diversion for the APOD Water Rights. In 2014, Twentymile obtained findings of reasonable diligence for the Exchanges in Case No. 11CW21, Water Division 6, and a further application for finding of reasonable diligence was filed and prosecuted in Case No. 20CW3042. d. Twentymile, through its attorneys, has also monitored the monthly resumes of water right applications in Water Division 6, and has submitted Statements of Opposition where deemed necessary or advisable for full protection of the water rights in the Augmentation Plan, including the APOD Water Rights with decreed alternate points of diversion at the Energy Area Pit Well. e. Finally, C.R.S. § 37-92-401(1)(a) provides that the respective Division Engineers shall prepare “a separate abandonment list comprising all *absolute water rights* that he or she has determined to have been abandoned in whole or in part and that previously have not been adjudged to have been abandoned.” (Emphasis added.) The Energy Area Pit Well as an alternative point of diversion for the APOD Water Rights is not subject to inclusion in the decennial abandonment list contemplated by C.R.S. § 37-92-401. f. Twentymile reserves the right to provide additional evidence of intent to utilize and not to abandon the subject rights. Any person who may be affected by the subject matter of this protest or by any ruling thereon and desiring to participate in any hearing pursuant to C.R.S. § 37-92-401(6) must file an entry of appearance by August 31, 2022. (8 pages incl. exhibit)

22CW3076 and bifurcated protest Case No. 21CW3048 ROUTT COUNTY. Protest to Final Abandonment List.

Protestant: Twentymile Coal, LLC, Attn: Miranda Kawcak, 29515 Routt County Road 27, Oak Creek, CO 80467. 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. 2. Water Right Description: a. Name of Structure: Energy Well 7. i. Date of Original Decree: Decree entered on November 13, 1980, in Case No. W-1397-77, Water Division 6. ii. Decreed Legal Description of Structure Location: Located in the SE1/4-SW1/4 of Section 29, Township 5 North, Range 86 West, 6th P.M., at a point 449.04 feet North of the South Section line and 2101.13 feet East of the West Section line. A map depicting the decreed location of this structure is attached to the application as Exhibit A. iii. Source: Foidel Creek. iv. Decreed Use(s): Domestic, commercial, industrial (including dust suppression) and all other beneficial uses, including exchange, substitution, replacement and augmentation. v. Appropriation Date: June 27, 1977. vi. Decreed Amount: 0.049 c.f.s. vii. Remarks: The Energy Well 7 water right was originally decreed for 0.223 c.f.s. or 100 g.p.m. of which 21.953 g.p.m. (the equivalent of 34.93 acre-feet per year) is non-tributary. In Case No. 1502-78, Water Division 6, only the tributary portions of the water right were included in the plan for augmentation. In Case No. 11CW37, Water Division 6, 0.174 c.f.s. was abandoned, which appears to correspond to the tributary portion of this water right. viii. Amount and Use(s) Listed as Having Been Abandoned: 0.049 c.f.s. decreed to the subject Energy Well 7 water right for all decreed uses. By decree entered on July 10, 1981, in Case No. W-1502-78, Water Division 6, the Energy Well 7 structure was decreed as an alternative point of diversion for several water rights, including but not limited to the water rights described in Paragraph 2.b, below (the “APOD Water Rights”). In addition to the 0.049 c.f.s. decreed to Energy Well 7, the Division Engineer’s Final Revised Abandonment List for Water Division 6 (“Final Abandonment List”) includes the right to divert the APOD Water Rights at the Energy Well 7 alternate point of diversion. b. Description of APOD Water Rights: i. Name of Structure: Last Chance Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation, stock, and storage for year-round use for mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: October 1, 1954. 5) Decreed Amount: 9.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 1.0 c.f.s. under the subject Last Chance Ditch water right from the Energy Well 7 alternate point of diversion for all decreed uses. ii. Name of Structure: Trout Creek Ditch No. 3. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: May 1, 1946. 5) Decreed Amount: 5.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 5.0 c.f.s. under the subject Trout Creek Ditch No. 3 water right from the Energy Well 7 alternate point of diversion for all decreed uses. Twentymile owns 4.23 c.f.s. of the 5.0 c.f.s. decreed to the subject Trout Creek Ditch No. 3 water right. Accordingly, this protest is limited to the right to divert 4.23 c.f.s. owned by Twentymile under the subject Trout Creek Ditch No. 3 water right from the Energy Well 7 alternate point of diversion. iii. Name of Structure: Connell Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation, domestic, stock, and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: May 1, 1953. 5) Decreed Amount: 13.0 c.f.s. 6)

Amount and Use(s) Listed as Having Been Abandoned: Right to divert 5.34 c.f.s. under the subject Connell Ditch water right from the Energy Well 7 alternate point of diversion for all decreed uses. iv. Name of Structure: Boettler Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Fish Creek, a tributary of Trout Creek. 3) Decreed Use(s): Irrigation and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: October 15, 1953. 5) Decreed Amount: 4.34 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 4.34 c.f.s. under the subject Boettler Ditch water right from the Energy Well 7 alternate point of diversion for all decreed uses. 3. Page Number on Abandonment List: The Energy Well 7 water right and alternate point of diversion for the APOD Water Rights are listed on page 4 of 9 on the Final Abandonment List. 4. Factual and Legal Basis for this Protest: a. The Energy Well 7 water right and Energy Well 7 alternate point of diversion for the APOD Water Rights are included in and an integral part of Twentymile's augmentation plan decreed in Case No. W-1502-78, as amended in Case No. 90CW99, Water Division 6 (the "Augmentation Plan"). The Augmentation Plan was approved to allow operation of the Foidel Creek Mine (a/k/a Twentymile Mine), which Twentymile continues to operate under Colorado Division of Mining, Reclamation and Safety ("DRMS") Permit No. C-1982-056. On September 12, 2018, DRMS approved Twentymile's application to approve Permit No. C-1982-056 for an additional five-year period. The Augmentation Plan and the direct flow water rights used for augmentation under that plan, including the APOD Water Rights and their alternate point of diversion at the Energy Well 7, are necessary, among other things, to maintain a reliable water supply for continued and anticipated future mining operations, and in order to assure the ability to meet any downstream call on the Yampa River system or the tributaries of Trout, Fish, Middle or Foidel Creeks. b. To date, there have been only infrequent calls on the Yampa River system or its tributaries, and Twentymile has not fully implemented the Augmentation Plan since it was first decreed in 1981. Nonetheless, during the last several years, Twentymile has expended substantial resources preparing to implement the Augmentation Plan if and when required. c. Twentymile has been reasonably diligent in pursuing the appropriate rights of exchange described in paragraph 9.e of the decree in Case No. 90CW99 (the "Exchanges"), which are also components of the Augmentation Plan. The Exchanges allow Twentymile to store water for augmentation purposes in any one or a combination of storage rights owned by Twentymile in exchange for water introduced into the Trout Creek system from any one or a combination of ditch rights, including from the Energy Well 7 alternative point of diversion for the APOD Water Rights. In 2014, Twentymile obtained findings of reasonable diligence for the Exchanges in Case No. 11CW21, Water Division 6, and a further application for finding of reasonable diligence was filed and prosecuted in Case No. 20CW3042. d. Twentymile, through its attorneys, has also monitored the monthly resumes of water right applications in Water Division 6, and has submitted Statements of Opposition where deemed necessary or advisable for full protection of the water rights in the Augmentation Plan, including the APOD Water Rights with decreed alternate points of diversion at Energy Well 7. e. Nontributary groundwater is not subject to appropriation in the same manner as tributary groundwater and is not administered within the priority system. *See, e.g.*, C.R.S. § 37-92-305(11). As such, it is not appropriate to include the nontributary portion of this water right on the Abandonment List. f. Finally, C.R.S. § 37-92-401(1)(a) provides that the respective Division Engineers shall prepare "a separate abandonment list comprising all *absolute water rights* that he or she has determined to have been abandoned in whole or in part and that previously have not been adjudged to have been abandoned." (Emphasis added.) Energy Well 7 as an alternative point of diversion for the APOD Water Rights is not subject to inclusion in the decennial abandonment list contemplated by C.R.S. § 37-92-401. g. Twentymile reserves the right to provide additional evidence of intent to utilize and not to abandon the subject rights. Any person who may be affected by the subject matter of this protest or by any ruling thereon and desiring to participate in any hearing pursuant to C.R.S. § 37-92-401(6) must file an entry of appearance by August 31, 2022. (8 pages incl. exhibit)

22CW3077 and bifurcated protest Case No. 21CW3048 ROUTT COUNTY. Protest to Final Abandonment List. Protestant: Twentymile Coal, LLC, Attn: Miranda Kawcak, 29515 Routt County Road 27, Oak Creek, CO 80467. 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. 2. Water Right Description: a. Name of Structure: New Energy Well No. 6. i. Date of Original Decree: Decree entered on June 23, 1989, in Case No. 88CW18, Water Division 6. ii. Decreed Legal Description of Structure Location: In the SW1/4-NW1/4 of Section 32, Township 5 North, Range 86 West, 6th P.M., Routt County, Colorado, at a point 3,200 feet from the South section line and 55 feet from the West section line of said Section 32. A map depicting the decreed location of this structure is attached to the application as Exhibit A. iii. Source: Foidel Creek. iv. Decreed Use(s): Commercial and industrial use, including dust suppression and equipment washing. v. Appropriation Date: November 13, 1984. vi. Decreed Amount: 0.10 c.f.s. vii. Amount and Use(s) Listed as Having Been Abandoned: By decree entered on December 20, 1991, in Case No. 90CW99, Water Division 6, the

New Energy Well No. 6 was decreed as an alternative point of diversion for several water rights, including but not limited to the water rights described in Paragraph 2.b below (the "APOD Water Rights"). The Division Engineer's Final Revised Abandonment List for Water Division 6 ("Final Abandonment List") includes the right to divert the APOD Water Rights at the New Energy Well No. 6 alternate point of diversion. The Final Abandonment List does not include the 0.10 c.f.s. decreed to the New Energy Well No. 6 in Case No. 88CW18. b. Description of APOD Water Rights: i. Name of Structure: Last Chance Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation, stock, and storage for year-round use for mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: October 1, 1954. 5) Decreed Amount: 9.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 1.0 c.f.s. under the subject Last Chance Ditch water right from the New Energy Well No. 6 alternate point of diversion for all decreed uses. iii. Name of Structure: Trout Creek Ditch No. 3. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: May 1, 1946. 5) Decreed Amount: 5.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 5.0 c.f.s. under the subject Trout Creek Ditch No. 3 water right from the Energy Well 6 alternate point of diversion for all decreed uses. Twentymile owns 4.23 c.f.s. of the 5.0 c.f.s. decreed to the subject Trout Creek Ditch No. 3 water right. Accordingly, this protest is limited to the right to divert 4.23 c.f.s. owned by Twentymile under the subject Trout Creek Ditch No. 3 water right from the Energy Area Pit Well alternate point of diversion. iii. Name of Structure: Connell Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation, domestic, stock, and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: May 1, 1953. 5) Decreed Amount: 13.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 5.34 c.f.s. under the subject Connell Ditch water right from the New Energy Well No. 6 alternate point of diversion for all decreed uses. iv. Name of Structure: Boettler Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Fish Creek, a tributary of Trout Creek. 3) Decreed Use(s): Irrigation and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: October 15, 1953. 5) Decreed Amount: 4.34 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 4.34 c.f.s. under the subject Boettler Ditch water right from the New Energy Well No. 6 alternate point of diversion for all decreed uses. v. Name of Structure: Energy Area Pit Well (a/k/a "Energy Area 1 Pit"). 1) Date of Original Decree: Decree entered on November 2, 1979, in Case No. W-1392-77, Water Division 6. 2) Source: Foidel Creek. 3) Decreed Use(s): All industrial and commercial uses associated with coal mining operation. 4) Appropriation Date: December 31, 1962. 5) Decree Amount: 0.692 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 0.692 c.f.s. under the subject Energy Area Pit Well water right from the New Energy Well No. 6 alternate point of diversion for all decreed uses. 3. Page Number on Abandonment List: The New Energy Well No. 6 alternate point of diversion for the APOD Water Rights is listed on pages 6-7 of 9 on the Final Abandonment List. 4. Factual and Legal Basis for this Protest: a. The New Energy Well No. 6 alternate point of diversion for the APOD Water Rights is included in and an integral part of Twentymile's augmentation plan decreed in Case No. W-1502-78, as amended in Case No. 90CW99, Water Division 6 (the "Augmentation Plan"). The Augmentation Plan was approved to allow operation of the Foidel Creek Mine (a/k/a Twentymile Mine), which Twentymile continues to operate under Colorado Division of Mining, Reclamation and Safety ("DRMS") Permit No. C-1982-056. On September 12, 2018, DRMS approved Twentymile's application to approve Permit No. C-1982-056 for an additional five-year period. The Augmentation Plan and the direct flow water rights used for augmentation under that plan, including the APOD Water Rights and their alternate point of diversion at the New Energy Well No. 6, are necessary, among other things, to maintain a reliable water supply for continued and anticipated future mining operations, and in order to assure the ability to meet any downstream call on the Yampa River system or the tributaries of Trout, Fish, Middle or Foidel Creeks. b. To date, there have been only infrequent calls on the Yampa River system or its tributaries, and Twentymile has not fully implemented the Augmentation Plan since it was first decreed in 1981. Nonetheless, during the last several years, Twentymile has expended substantial resources preparing to implement the Augmentation Plan if and when required. c. Twentymile has been reasonably diligent in pursuing the appropriative rights of exchange described in paragraph 9.e of the decree in Case No. 90CW99 (the "Exchanges"), which are also components of the Augmentation Plan. The Exchanges allow Twentymile to store water for augmentation purposes in any one or a combination of storage rights owned by Twentymile in exchange for water introduced into the Trout Creek system from any one or a combination of ditch rights, including from the New Energy Well No. 6 alternative point of diversion for the APOD Water Rights. In 2014, Twentymile obtained findings of reasonable diligence for the Exchanges in Case

No. 11CW21, Water Division 6, and a further application for finding of reasonable diligence was filed and prosecuted in Case No. 20CW3042. d. Twentymile, through its attorneys, has also monitored the monthly resumes of water right applications in Water Division 6, and has submitted Statements of Opposition where deemed necessary or advisable for full protection of the water rights in the Augmentation Plan, including the APOD Water Rights with decreed alternate points of diversion at the New Energy Well No. 6.e. Finally, C.R.S. § 37-92-401(1)(a) provides that the respective Division Engineers shall prepare “a separate abandonment list comprising all *absolute water rights* that he or she has determined to have been abandoned in whole or in part and that previously have not been adjudged to have been abandoned.” (Emphasis added.) The New Energy Well No. 6 as an alternative point of diversion for the APOD Water Rights is not subject to inclusion in the decennial abandonment list contemplated by C.R.S. § 37-92-401. f. Twentymile reserves the right to provide additional evidence of intent to utilize and not to abandon the subject rights. Any person who may be affected by the subject matter of this protest or by any ruling thereon and desiring to participate in any hearing pursuant to C.R.S. § 37-92-401(6) must file an entry of appearance by August 31, 2022. (8 pages incl. exhibit)

22CW3079 and bifurcated protest Case No. 21CW3048 ROUTT COUNTY. Protest to Final Abandonment List.

Protestant: Twentymile Coal, LLC, Attn: Miranda Kawcak, 29515 Routt County Road 27, Oak Creek, CO 80467. 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. 2. Water Right Description: a. Name of Structure: New Tipple Well. i. Date of Original Decree: Decree entered on February 9, 1976, in Case No. W-0844-75, Water Division 6. ii. Decreed Legal Description of Structure Location: Located in the E1/2 of Section 31, Township 5 North, Range 86 West, 6th P.M., at a point from which the S1/4 of said Section 5 bears South 6°52’12” West 1760.99 feet and South 43°10’14” West 791.35 feet. A map depicting the decreed location of this structure is attached to the application as Exhibit A. iii. Source: Foidel Creek. iv. Decreed Use(s): Domestic and industrial. v. Appropriation Date: November 11, 1974. vi. Decreed Amount: 0.0334 c.f.s. vii. Amount and Use(s) Listed as Having Been Abandoned: 0.0334 c.f.s. decreed to the subject New Tipple Well water right for all decreed uses. By decree entered on July 10, 1981, in Case No. W-1502-78, Water Division 6, the New Tipple Well structure was decreed as an alternative point of diversion for several water rights, including but not limited to the water rights described in Paragraph 2.b, below (the “APOD Water Rights”). In addition to the 0.0334 c.f.s. decreed to the New Tipple Well, the Division Engineer’s Final Revised Abandonment List for Water Division 6 (“Final Abandonment List”) includes the right to divert the APOD Water Rights at the New Tipple Well alternate point of diversion. b. Description of APOD Water Rights: i. Name of Structure: Last Chance Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation, stock, and storage for year-round use for mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: October 1, 1954. 5) Decreed Amount: 9.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 1.0 c.f.s. under the subject Last Chance Ditch water right from the New Tipple Well alternate point of diversion for all decreed uses. ii. Name of Structure: Trout Creek Ditch No. 3. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: May 1, 1946. 5) Decreed Amount: 5.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 5.0 c.f.s. under the subject Trout Creek Ditch No. 3 water right from the New Tipple Well alternate point of diversion for all decreed uses. Twentymile owns 4.23 c.f.s. of the 5.0 c.f.s. decreed to the subject Trout Creek Ditch No. 3 water right. Accordingly, this protest is limited to the right to divert 4.23 c.f.s. owned by Twentymile under the subject Trout Creek Ditch No. 3 water right from the New Tipple Well alternate point of diversion. iii. Name of Structure: Connell Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Trout Creek. 3) Decreed Use(s): Irrigation, domestic, stock, and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: May 1, 1953. 5) Decreed Amount: 13.0 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 5.34 c.f.s. under the subject Connell Ditch water right from the New Tipple Well alternate point of diversion for all decreed uses. iv. Name of Structure: Boettler Ditch. 1) Date of Original Decree: Decree entered on November 15, 1962, in Civil Action No. 3081, District Court for Routt County. 2) Source: Fish Creek, a tributary of Trout Creek. 3) Decreed Use(s): Irrigation and storage for year-round use in mining, reclamation, irrigation, electrical generation, fish propagation, and all other beneficial uses. 4) Appropriation Date: October 15, 1953. 5) Decreed Amount: 4.34 c.f.s. 6) Amount and Use(s) Listed as Having Been Abandoned: Right to divert 4.34 c.f.s. under the subject Boettler Ditch water right from the New Tipple Well alternate point of diversion for all decreed uses. 3. Page Number on Abandonment List: The New Tipple

Well water right and alternate point of diversion for the APOD Water Rights are listed on page 7 of 9 on the Final Abandonment List. 4. Factual and Legal Basis for this Protest: a. The New Tipple Well water right and New Tipple Well alternate point of diversion for the APOD Water Rights are included in and an integral part of Twentymile's augmentation plan decreed in Case No. W-1502-78, as amended in Case No. 90CW99, Water Division 6 (the "Augmentation Plan"). The Augmentation Plan was approved to allow operation of the Foidel Creek Mine (a/k/a Twentymile Mine), which Twentymile continues to operate under Colorado Division of Mining, Reclamation and Safety ("DRMS") Permit No. C-1982-056. On September 12, 2018, DRMS approved Twentymile's application to approve Permit No. C-1982-056 for an additional five-year period. The Augmentation Plan and the direct flow water rights used for augmentation under that plan, including the APOD Water Rights and their alternate point of diversion at the New Tipple Well, are necessary, among other things, to maintain a reliable water supply for continued and anticipated future mining operations, and in order to assure the ability to meet any downstream call on the Yampa River system or the tributaries of Trout, Fish, Middle or Foidel Creeks. b. To date, there have been only infrequent calls on the Yampa River system or its tributaries, and Twentymile has not fully implemented the Augmentation Plan since it was first decreed in 1981. Nonetheless, during the last several years, Twentymile has expended substantial resources preparing to implement the Augmentation Plan if and when required. c. Twentymile has been reasonably diligent in pursuing the appropriative rights of exchange described in paragraph 9.e of the decree in Case No. 90CW99 (the "Exchanges"), which are also components of the Augmentation Plan. The Exchanges allow Twentymile to store water for augmentation purposes in any one or a combination of storage rights owned by Twentymile in exchange for water introduced into the Trout Creek system from any one or a combination of ditch rights, including from the New Tipple Well alternative point of diversion for the APOD Water Rights. In 2014, Twentymile obtained findings of reasonable diligence for the Exchanges in Case No. 11CW21, Water Division 6, and a further application for finding of reasonable diligence was filed and prosecuted in Case No. 20CW3042. d. Twentymile, through its attorneys, has also monitored the monthly resumes of water right applications in Water Division 6, and has submitted Statements of Opposition where deemed necessary or advisable for full protection of the water rights in the Augmentation Plan, including the APOD Water Rights with decreed alternate points of diversion at the New Tipple Well. e. Finally, C.R.S. § 37-92-401(1)(a) provides that the respective Division Engineers shall prepare "a separate abandonment list comprising all *absolute water rights* that he or she has determined to have been abandoned in whole or in part and that previously have not been adjudged to have been abandoned." (Emphasis added.) The New Tipple Well as an alternative point of diversion for the APOD Water Rights is not subject to inclusion in the decennial abandonment list contemplated by C.R.S. § 37-92-401. f. Twentymile reserves the right to provide additional evidence of intent to utilize and not to abandon the subject rights. Any person who may be affected by the subject matter of this protest or by any ruling thereon and desiring to participate in any hearing pursuant to C.R.S. § 37-92-401(6) must file an entry of appearance by August 31, 2022. (8 pages incl. exhibit)

22CW3080 (Former Cases Nos. 15CW3028, 08CW40, 02CW16, 94CW148) ROUTT COUNTY. APPLICATION FOR FINDING OF REASONABLE DILIGENCE. Deerwood Service Company, LLC ("Applicant" or "Deerwood"), Attn: Teresa Audesirk, P.O. Box 775416, Steamboat Springs, CO 80477, (970) 879-7310. Attorneys for Applicant: Karl D. Ohlsen, Katrina B. Fiscella, Sarah B. Wiedemann, Carlson, Hammond & Paddock, L.L.C., 1900 N. Grant Street, Suite 1200, Denver, CO 80203-4539; Phone Number: (303) 861-9000. **2. Name of Structures:** A. Deerwood Pond. A map setting forth the approximate location of this structure is attached as Exhibit A. The stage area capacity table and capacity survey for Deerwood Pond are attached as Exhibit B. **3. Description of Conditional Water Rights:** A. Decrees: 1. Date of Original Decree: January 31, 1996, Case No. 94CW148, District Court, Water Division No. 6. 2. Subsequent Decrees: (a) June 10, 2002, Case No. 02CW16, District Court, Water Division No. 6; (b) July 22, 2009, Case No. 08CW40, District Court, Water Division No. 6; (c) June 23, 2016, Case. No 15CW3028, District Court, Water Division No. 6. B. Location: SE1/4NW1/4 Section 20, T5N, R85W, 6th P.M. at a point bearing North 37 degrees, 16 minutes, 51 seconds East, 4389.78 feet from the Southwest Corner of said Section 20, Routt County, Colorado. The dam is located 1,770 feet South of the North line of Section 20, Township 5 North, Range 85 West of the 6th P.M., and 2,670 feet East of the West line of Section 20, Township 5 North, Range 85 West of the 6th P.M. C. Source: Unnamed tributary to Trout Creek, tributary to the Yampa River, and ground water produced by DP Well Nos. 3 and 4, as decreed in Case No. 94CW93. D. Appropriation Date: October 3, 1994. E. Amount: 13.6 acre-feet. F. Separate Appropriations: The appropriation of a conditional water right for the Deerwood Pond is separate from, and in addition to, the water right decreed for the second filling of the Deerwood Pond adjudicated in Case No. 99CW13, Water Division No. 6, and for the third filling of the Deerwood Pond adjudicated in Case No. 01CW81, Water Division No. 6. G. Use: domestic, livestock, recreation, fishery, and aesthetics. The water decreed to Deerwood Pond in Case No. 94CW148 was made absolute in the amount of 13.69 acre-feet for the uses of livestock, recreation, fishery, and aesthetic purposes in Case No. 02CW16. The use for domestic purposes remains conditional in the amount

of 13.6 acre-feet. H. Deerwood Pond Dam: 1. Height of dam: Less than 10 feet. 2. Length of dam: Approximately 425 feet. **4. Detailed outline of what has been done toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** A. As decreed in Case No. 02CW16, Deerwood Pond is part of the Deerwood Water System, an integrated system of water delivery to the developments served by the Applicant under § 37-92-301(4)(b), C.R.S. The Deerwood Water System includes the DP Wells No. 3, No. 4, and No. 4B, adjudicated in Case Nos. 94CW93 (01CW22); 99CW13 (05CW48); 01CW81 (08CW11); and 21CW3001; and the Deerwood Pond, adjudicated in Case Nos. 94CW148 (02CW16, 08CW40); 99CW13 (05CW48); and 01CW81 (08CW11), as well as the augmentation plan that is the subject of Case No. 05CW23 and the water rights incorporated therein, including those water rights decreed to Whetstone Reservoir and the Whetstone Reservoir, First Enlargement, all in Water Division No. 6. B. During the diligence period, the Applicant continued to work to develop the integrated Deerwood Water System of which Deerwood Pond is a part. C. The Applicant expended approximately \$559,781 for repairs, maintenance, and upgrades of the various structures comprising the Deerwood Water System. D. During the diligence period, water withdrawn from DP Well No. 4 continued to be supplied for beneficial use within the Creek Ranch subdivision. As of the date of this Application, 23 out of 39 residential lots in the Creek Ranch subdivision are connected to and served by the Deerwood Water System. Seven of these connections were added during the diligence period. E. During the diligence period, water withdrawn from DP Well No. 4 continued to be supplied for beneficial use within the Deerwood Ranches subdivision. As of the date of this Application, 18 out of 26 residential lots in the Deerwood Ranches subdivision are connected to and served by the Deerwood Water System. One of these connections was added during the diligence period. F. During the diligence period, water withdrawn from DP Well No. 4 continued to be supplied for beneficial use within the Wilkerson Property subdivision. As of the date of this Application, 3 out of 4 residential lots in the Wilkerson Property subdivision are connected to and served by the Deerwood Water System. G. Water from the Deerwood Pond continues to be applied to beneficial use for livestock, recreation, fishery, and aesthetic purposes within the Deerwood Ranches subdivision. H. During the diligence period, a decree finding reasonable diligence was entered by the Court in Case No. 15CW3042 as to the conditional water rights originally decreed to DP Well No. 3 and DP Well No. 4 in Case No. 94CW93 (Deerwood Ranches subdivision) on September 9, 2016. I. During the diligence period, Applicant filed an application in Case No. 18CW3021 for a finding of reasonable diligence as to the conditional water rights originally decreed to DP Well No. 3, DP Well No. 4, and Deerwood Pond (Third Filling) in Case No. 01CW81 (Wilkerson Property subdivision). A decree finding reasonable diligence in that case was entered by the Court on June 5, 2019. J. During the diligence period, Applicant filed an application in Case No. 21CW3005 for a finding of reasonable diligence as to the conditional water rights originally decreed to DP Well No. 3, DP Well No. 4, and Deerwood Pond (Second Filling) in Case No. 99CW13 (Creek Ranch Subdivision), and to make that DP Well No. 4 conditional right absolute in part. A decree was entered on March 31, 2022 in Case No. 21CW3005 making the water right decreed to DP Well No. 4 (05CW48) absolute in the amount of 41 g.p.m. for 6 additional lots, and continuing as conditional the remaining water rights decreed in Case No. 99CW13 to DP Well No. 3, DP Well No. 4, and Deerwood Pond (Second Filling). K. DP Well No. 4 is the primary source of water for the three subdivisions served by the Deerwood Water System. During the diligence period, in 2019, the Applicant discovered that the casing for DP Well No. 4 was failing, causing silt and debris to clog and potentially damage the well pump. Thereafter, Applicant incurred and paid in excess of \$65,000 on engineering and consulting fees related to repair and/or replacement of DP Well No. 4 and more than \$152,000 on expenses related to drilling and installation of a replacement well for DP Well No. 4. In addition, on January 11, 2021, the Applicant filed an Application for Change of Water Rights to Add Alternate Point of Diversion Well for DP Well No. 4 in Case No. 21CW3001, District Court, Water Division No. 6, to allow Applicant to use an existing well drilled pursuant to a monitoring well permit as an alternate point of diversion for the water rights decreed to DP Well No. 4 in Cases No. 94CW93, 99CW13, and 01CW81. As a part of this effort, Applicant obtained permit no. 85673-F for DP Well 4B, which was issued on June 23, 2021. A decree was entered on March 31, 2022 in Case No. 21CW3001, adding an alternate point of diversion at DP Well No. 4B. **5. Names(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** A. The Deerwood Pond is located on property owned by Patricia A. and David C. Mihaich, P.O. Box 771294, Steamboat Springs, CO 80477. WHEREFORE, Applicant requests that the Court enter a finding of reasonable diligence with respect to the conditional water rights decreed to Deerwood Pond.

2022CW13 (21CW3048) MOFFAT COUNTY Protest to Final Abandonment List. Protestant/Owner: Neil H. Chew, PO Box 87, Maybell, CO 81640, chewlivestock@gmail.com, 970.272.3283. **Water Right. Structure:** Mock Ditch No. 3 (4400828). **Date of Original Decree:** Sept. 9, 1900. **Case No.:** 95CW52. **Court:** 2259. **Legal:** NW1/4 NE1/4 S24, T7N, R96W. **Source:** Unnamed Trib to Mock Ditch No. 3 Trib to Yampa River (00169566 @ stream

mile 77.35. **Decreed Use:** Irrigation. **Appropriation Date:** June 1, 1961. **Decreed Amount:** 6.659 cfs. **Amount listed as having been Abandoned:** 3.319 cfs irrigation. **Former District Number Where Listed on Abandonment List:** District 44, pg. 11. **Factual Basis for Protest:** I have included copies of US Geological Survey Sunbeam and Maybell, Colorado-Moffat County 7.5 minute series (topographic) maps (EXHIBIT A). The two maps are displayed side by side because the land irrigated lies in both maps. I have enlarged a portion to more clearly show the area (EXHIBIT B). I have also enclosed a screen shot of a structure overview showing Mock Ditch No. 3 point of diversion from DWR.state.co.us website (EXHIBIT C&D). As I have explained and drawn out on the screen shot (EXHIBIT D) (the upper portion of Mock Ditch No. 3 is mislabeled as County Road 19 – that is the ditch not the county road. County Road 19 is over 2 miles east of the diversion running north out of Maybell town. I have drawn in the Mock Ditch No. 3 using green lines. I have the new pivot covering a large portion of the fields irrigated by Mock Ditch No. 3 and the crop is growing well (EXHIBIT D), but the only means I have to irrigate the portion of the field not covered by the new pivot is Mock Ditch No. 3. The new pivot has eliminated the three middle ditch feeders, but the top and bottom ditches are how I irrigate beyond the pivot. Since the ground is so porous and sandy the only way to get a large enough stream to the fields at the end of the ditch to irrigate the crops in that portion of the field is to divert the full 6.659 cfs as decreed. Therefore, the proposal to restrict my right by deeming 3.319 cfs abandoned will make it impossible to grow the crops I need to feed my livestock in this time of drought. **Remarks:** Now I understand the importance of keeping accurate records and reporting yearly of which I haven't done a very good job of in the past. I feel that as I have been searching for a more efficient way of utilizing my water right that it is ironic that I am being penalized for being conservative with my precious water by deeming it as abandoned especially in this serious time of drought. In reality, I have been conservative.

2022CW3041 MOFFAT COUNTY APPLICATION FOR UNDERGROUND WATER RIGHTS 1. Name and address of Applicant: Snake River Land & Cattle Company c/o Mr. Jim Hutcheson 4447 N. Central Expwy Dallas, TX 75205 c/o Thomas W. Korver, Hayes Poznanovic Korver LLC, 700 17th Street, Suite 1800, Denver, CO 80202. 2. Name of Structure: Ranch House Well. Type: Well. 3. Well Permit No.: 19906. 4. Location: NE1/4 NW1/4 of Section 1, T7N, R99W of the 6th P.M., Moffat County, Colorado, at UTM coordinates, NAD83, Easting, 206578.4, Northing 4499311.5 (from CDSS mapping). The Ranch House Well is located within the boundaries of Applicants' ranch. The Ranch House Well is depicted on Figure 1 hereto. 5. Source: Ground water tributary to Little Snake River, tributary to Yampa River. 6. Depth of Well: 200 feet. 7. Request for Absolute Water Right. a. Use: Domestic. b. Rate of Diversion: 2.5 gallons per minute. c. Appropriation Date: June 1, 1964, by pump installation and use. d. Adjudication Date: June 1, 1964. Ranch House Well is an existing exempt well issued pursuant to C.R.S. §§ 37-92-602(1) and (3)(b)(II)(A), and an absolute water right is sought pursuant to C.R.S. § 37-92-602(4). 8. Request for Conditional Water Right. a. Alternate Use: Ordinary household purposes, fire protection, the watering of poultry, domestic animals, and livestock on farms and ranches and for the irrigation of not over one acre of home gardens and lawns but not used for more than three single-family dwellings. b. Rate of Diversion: 12.5 gallons per minute. c. Annual Amount of Diversion: 1.0 acre-feet. d. Appropriation Date: Domestic: June 13, 2022, by filing this Application. 9. Ownership: The land upon which the Ranch House Well is located is owned by Applicant. WHEREFORE, Applicant respectfully requests that the Court enter a decree adjudicating the underground water rights described in paragraphs 2 through 8, and grants other such relief as the Court deems just and proper.

2022CW3045 (22CW3048), MOFFAT COUNTY. PROTEST TO FINAL ABANDONMENT LIST OF EFFICIENCY LODGE, INC. 1. Name, mailing address, and telephone number of Protestant: A. Efficiency Lodge, Inc., c/o W. Ray Barnes, 5342 Old Floyd Road, Mableton, GA 30126, Telephone: (720) 819-0039. B. Please send all pleadings and correspondence to: David L. Kueter, #26136, Holsinger Law, LLC, 1800 Glenarm Place, Suite 500, Denver, Colorado 80202, Telephone: (303) 722-2828, dkueter@holsingerlaw.com. **2. Describe the Water Right:** A. Name of Structure: Bailey Ditch, First Enlargement, a/k/a Bailey Ditch. B. Date of Original Decree: May 30, 1972, Case No.: CA2259. C. Decreed Legal Description of Structure Location: A point on the West or left bank of the Yampa River, from which point the Number 8 Corner of C.E. No. 154 in Section 17, Township 6 North, Range 94 West of the 6th P.M. bears North 41 degrees 8 minutes West 1,324 feet. See **Exhibit A**. D. Source of water: Yampa River. E. Decreed uses: Irrigation. F. Appropriation Date: May 15, 1941. G. Decreed Amount: 13.5 c.f.s. H. Amount and uses listed as having been abandoned: 13.5 c.f.s., for all decreed uses. I. Former District Number and Page Number where listed on Abandonment List: District 44, page 2 of the Revised Abandonment List of Water Rights in Water Division 6, dated December 20, 2021. J. State factual and legal basis for this Protest: i. The Bailey Ditch water right has been placed to beneficial use over the ten year period leading up to the issuance of the abandonment list in July 2020. DWR records show consistent diversions over the past ten years, and in 2019, the Water Commissioner reported that the "pump did not run during my visits, but field was wet during visits and hay was cut." Prior lessees of the land

and water rights from before 2010 until 2019 have confirmed that the water right was diverted and placed to beneficial use over the past 10 years. ii. The ranch and the Bailey Ditch water rights were leased for irrigation to Leon Earle prior to 2011, and to Tom Kourlis from 2011 to 2019. Both lessees have confirmed their diversion and use of the water rights during the lease terms. iii. As demonstrated in **Exhibit B**, during the term of his lease, Tom Kourlis spent over \$34,000 on maintenance and repair of the pump and associated irrigation infrastructure. Efficiency Lodge, Inc. has recently spent in excess of \$5,000 for a new motor for the existing 3-inch/20 HP pump supplying the irrigation pivots. See **Exhibit C**. Efficiency Lodge has also sent out the original 24-inch/60 HP pump for reconditioning to allow full diversion of the Bailey Ditch water right. (Number of pages of Protest: 9, including 4 pages of exhibits.)

22CW3061 (21CW3048) MOFFAT COUNTY Protest to Final Abandonment List. Protestant: Nottingham Land & Livestock LLLP, c/o Michael Nottingham, c/o Keller Law LLC, PO Box 771222, Steamboat Springs, CO 80477; 877-529-2125. Structure: Gordon C. Winn Pump 2 (WDID 5500515). Date of Decree: May 27, 1972, CA2269, District Court in and for the County of Moffat, State of Colorado. Decreed Legal Description of Structure Location: The headgate or point of diversion will be at a pump location which will discharge water from the Little Snake River into a ditch, which pump will be located at a point South 89° 59' West a distance of 1,230 feet from the Southeast Corner of Section 14, Township 10 North, Range 96 West of the 6th P.M. Source of water: Little Snake River. Decreed use or uses: Irrigation and stock water. Appropriation date: 05/01/1963. Decreed Amount: 10.0 cubic feet per second (cfs) absolute; amount listed for abandonment 3.3200 cfs. The structure is located in Water Dist. 55 and the water right is listed on Page 4 of the Final Revised Abandonment List of Water Rights in Division 6 published on December 20, 2021 by the Division of Water Resources. Protest: Protestant's use of, and intent to use, the water right to the full extent of its physical and legal availability warrants its removal from the Final Abandonment List in its entirety and continued ownership by Protestant in the amount of 10.00 cfs. Remarks: see Court file for more detailed information like complete legal and factual basis for protest. The deadline for an entry of appearance is August 31, 2022 for any person desiring to participate in the protest in support or opposition.

22CW3088 (21CW3048) THE YAMPA PARTICIPANTS AND TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. PROTEST OF REVISED ABANDONMENT IN MOFFAT COUNTY. This is a formal protest to Case No. 2021CW3048 Notice of Filing of Final Decennial Abandonment List, filed by the State Engineer and the Division Engineer for Water Division 6. 1. Name, mailing address, email address, and home telephone number of Protestant/Owner: Tri-State is the operator of the Craig Station Power Plant ("Craig Station"), the exclusive owner of Craig Station Unit 3 ("Unit 3"), and a co-owner of Craig Station Units 1 and 2 ("Units 1 and 2") as a member of the Yampa Project Participants ("Yampa Participants" or "YPP"). Tri-State is acting here on its own behalf and on behalf of the Yampa Participants. The Yampa Participants include: PacifiCorp, an Oregon Corporation; Platte River Power Authority, a Colorado Political Subdivision and Power Authority; Public Service Company of Colorado, a Colorado Corporation; Salt River Project Agricultural Improvement and Power District, an Arizona Agricultural Improvement District; and Tri-State, a Colorado Cooperative Corporation. a. Tri-State Generation and Transmission Association, Inc. ("Tri-State" or "TS") for itself and the Yampa Participants, Attn: Kelly M. Beal, Generation Land and Water Resources Manager, 1100 West 116th Ave., Westminster, Colorado 80234; E-mail: kbeal@tristategt.org; Telephone: (303) 452-6111. b. Please direct all correspondence concerning this Application to: Aaron S. Ladd, Esq. and Kunal A. Parikh, Esq., Vranesh and Raisch, LLP, 5303 Spine Road, Suite 202, Boulder, Colorado 80301; E-mail: asl@vrlaw.com; kap@vrlaw.com; Telephone: (303) 443-6151; and Roger T. Williams, Esq., Tri-State Generation and Transmission Association, Inc., 1100 West 116th Avenue, Westminster, Colorado 80234; E-mail: rwilliams@tristategt.org; Telephone: (303) 254-3218. 2. Describe the Water Rights: The water rights owned by TS or YPP included on the Division Engineer's ("DE") Revised Abandonment List dated December 20, 2021 ("Revised Abandonment List") and described below in this section 2, are referred to together as the "Subject Water Rights." a. **Name of Structure**: Craig Station Ditch and Pipeline, Diversion Point No. 1, Admin Number 45290.44865, WDID 4400522. Based on the Division Engineer's representation, we understand the water right at issue pursuant to this entry in the Revised Abandonment List is the Craig Station Ditch and Pipeline water right decreed for 44.93 cfs absolute of which the entire absolute amount is at issue in this Protest. i. **Date of Original Decree**: September 30, 1975; **Case No.**: W-723-74; **Court**: District Court, Water Division No. 60. ii. **Decreed Legal Description of Structure Location**: A point located on the South bank of the Yampa River from which the SW Corner of Section 16, Township 6 North, Range 91 West, 6th P.M., bears South 22°49'01" West a distance of 4,325.85 feet. iii. **Source of Water**: Yampa River iv. **Decreed Use or Uses**: Domestic, irrigation, municipal, commercial, industrial, mining, recreation, and all other beneficial uses, including storage in an on-site reservoir for use at the Craig Station Power Plant and uses associated with power generation. v. **Appropriation Date**: November 1, 1972; Decreed Amount: 60 cfs total, of which TS owns 45 cfs, which 45 cfs is decreed as follows: 0.89 cfs, absolute (Case No. W-

723-77), 29.04 cfs, absolute (Case No. 79CW142), and 15.07 cfs, conditional (application pending in Case No. 21CW3046). vi. **Amount and Use or Uses Listed as having been abandoned:** 44.93 CFS for all decreed uses. vii. **Former District Number and Page Number Where Listed on Abandonment List:** The Craig Station Ditch and Pipeline, Diversion Point No. 1 is located in Water District 60, and the water right is listed on Page 2 of the Revised Abandonment List. b. **Name of Structure:** Craig Station Ditch and Pipeline, Diversion Point No. 2, Admin Number 39599.00000, WDID 4401990. Based on the Division Engineer's representation, we understand the water right at issue pursuant to this entry in the Revised Abandonment List is the alternate point of the Four Counties Ditch No. 3, Headgate No. 8 water right decreed for 45.89 cfs absolute of which the entire absolute amount is at issue in this Protest at this alternate point of diversion. i. **Date of Original Decree:** September 30, 1975; **Case No.:** W-723-74; **Court:** District Court, Water Division No. 60. ii. **Decreed Legal Description of Structure Location:** A point located on the South bank of the Yampa River from which the Southwest Corner of Section 16, Township 6 North, Range 91 West, 6th P.M., bears South 23°26'51" West a distance of 4,402.45 feet. iii. **Source of Water:** Yampa River. iv. **Decreed Use or Uses:** Domestic, irrigation, municipal, commercial, industrial, mining, recreation, and all other beneficial uses, including storage in an on-site reservoir for use at the Craig Station Power Plant and uses associated with power generation. v. **Appropriation Date:** November 1, 1972; Decreed Amount: 60 cfs total, of which TS owns 45 cfs, which 45 cfs is decreed as follows: 0.89 cfs, absolute (Case No. W-723-77), 29.04 cfs, absolute (Case No. 79CW142), and 15.07 cfs, conditional (application pending in Case No. 21CW3046). vi. **Amount and Use or Uses Listed as having been abandoned:** 45.89 cfs for all decreed uses. vii. **Former District Number and Page Number Where Listed on Abandonment List:** The Craig Station Ditch and Pipeline, Diversion Point No. 2 is located in Water District 60, and the water right is listed on Page 2 of the Revised Abandonment List. c. **Name of Structure:** Synthetic Products Ditch, Admin Number 39599.00000, WDID 4400779 f/k/a Craig Station Ditch and Pipeline, Diversion Point No. 3, Admin Number 39599.00000, WDID 4401991. Based on the Division Engineer's representation, we understand the water right at issue pursuant to this entry in the Revised Abandonment List is the alternate point of the Four Counties Ditch No. 3, Headgate No. 8 water right decreed for 45.89 cfs absolute of which the entire absolute amount is at issue in this Protest at this alternate point of diversion. i. **Date of Original Decree:** September 1, 1960; **Case No.:** CA1278; **Court:** District Court, Water Division No. 44. ii. **Decreed Legal Description of Structure Location:** Located on the left bank of the Yampa River, whence the Southwest Corner, Section 16, Township 6 North, Range 91 West, 6th P.M., Moffat County, Colorado, bears South 24°35' West, 4,825 feet. iii. **Source of Water:** Yampa River. iv. **Decreed Use or Uses:** Diversion and transmission of water for general industrial purposes, including, but not limited to, the manufacture of electrical energy, the treatment of coal and by-products thereof, various processes in the operation of plants utilizing coal or the by-products thereof, and for domestic uses necessary or desirable in connection with the said industrial activities and for other miscellaneous purposes necessary or desirable in connection with the development and utilization of coal reserves located in Moffat County, Colorado and elsewhere. v. **Appropriation Date:** June 2, 1958; Decreed Amount: 60 cfs total, of which TS owns 45 cfs, which 45 cfs is decreed as follows: 0.89 cfs, absolute (Case No. W-723-77), 29.04 cfs, absolute (Case No. 79CW142), and 15.07 cfs, conditional (application pending in Case No. 21CW3046). vi. **Amount and Use or Uses Listed as having been abandoned:** 45.89 cfs for all decreed uses. vii. **Former District Number and Page Number Where Listed on Abandonment List:** The Synthetic Products Ditch, Admin Number 39599.00000, is located in Water District 44, and the water right is listed on Page 8 of the Revised Abandonment List. d. **Name of Structure:** Synthetic Products Ditch, Admin Number 40815.00000, WDID 4400779 f/k/a Craig Station Ditch and Pipeline, Diversion Point No. 3, Admin Number 40815.00000, WDID 4401991. Based on the Division Engineer's representation, we understand the water right at issue pursuant to this entry in the Revised Abandonment List is the alternate point of the Wessels Canal water right decreed for 45.70 cfs absolute of which the entire absolute amount is at issue in this Protest at this alternate point of diversion. i. **Date of Original Decree:** September 1, 1960; **Case No.:** CA1278; **Court:** District Court, Water Division No. 44. ii. **Decreed Legal Description of Structure Location:** Located on the left bank of the Yampa River, whence the Southwest Corner, Section 16, Township 6 North, Range 91 West, 6th P.M., Moffat County, Colorado, bears South 24°35' West, 4,825 feet. iii. **Source of Water:** Yampa River. iv. **Decreed Use or Uses:** Diversion and transmission of water for general industrial purposes, including, but not limited to, the manufacture of electrical energy, the treatment of coal and by-products thereof, various processes in the operation of plants utilizing coal or the by-products thereof, and for domestic uses necessary or desirable in connection with the said industrial activities and for other miscellaneous purposes necessary or desirable in connection with the development and utilization of coal reserves located in Moffat County, Colorado and elsewhere. v. **Appropriation Date:** June 2, 1958; Decreed Amount: 60 cfs total, of which TS owns 45 cfs, which 45 cfs is decreed as follows: 0.89 cfs, absolute (Case No. W-723-77), 29.04 cfs, absolute (Case No. 79CW142), and 15.07 cfs, conditional (application pending in Case No. 21CW3046). vi. **Amount and Use or Uses Listed as having been abandoned:** 45.7- cfs for all decreed uses. vii. **Former District Number and Page Number Where Listed on Abandonment List:** The Synthetic Products Ditch, Admin Number 40815.00000, is

located in Water District 44, and the water right is listed on Page 8 of the Revised Abandonment List. e. **Name of Structure:** Four Counties Ditch No. 3, Headgate No. 8, Admin Number 39599.00000, WDID 5802813. Based on the Division Engineer's representation, we understand the water right at issue pursuant to this entry in the Revised Abandonment List is the Four Counties Ditch No. 3, Headgate No. 8 water right decreed for 45.89 cfs absolute of which 32.34 cfs is at issue in this Protest. i. **Date of Original Decree:** September 8, 1970; Case No.: CA 3538; Court: District Court, Water Division No. 58. ii. **Decreed Legal Description of Structure Location:** Located on a Long Park Creek at a point South 42°48' East, 9,195 feet to the Northwest Corner of Section 7, Township 5 North, Range 82 West, 6th P.M. Alternate points of diversion include: The headgate of the Craig Station Ditch and Pipeline, which is conditionally decreed for alternate points of diversion at the following locations: Diversion Point No. 1: A point located on the South bank of the Yampa River from which the SW Corner of Sec 16, T6N R91W, 6th P.M., bears South 22°, 49'01" West a distance of 4,325.85 feet. Diversion Point No. 2: A point located on the South bank of the Yampa River from which the SW Corner of Sec 16, T6N, R91W, 6th P.M., bears South 23°, 26'51" West a distance of 4,402.45 feet. Diversion Point No. 3: A point located on the South bank of the Yampa River from which the SW Corner of Sec 16, T6N R91W, 6th P.M., bears South 24°, 35' West a distance of 4,825 feet and which point is also the decreed point of diversion for the Synthetic Products Ditch. iii. **Source of Water:** Long Park Creek iv. **Decreed Use or Uses:** Diversion and transmission of water for general industrial purposes, including, but not limited to, the manufacture of electrical energy, the treatment of coal and by-products thereof, various processes in the operation of plants utilizing coal or the by-products thereof, and for domestic uses necessary or desirable in connection with the said industrial activities and for other miscellaneous purposes necessary or desirable in connection with the development and utilization of coal reserves located in Moffat County, Colorado and elsewhere. v. **Appropriation Date:** June 2, 1958; Decreed Amount: 45.89 cfs vi. **Amount and Use or Uses Listed as having been abandoned:** 32.34 cfs for all decreed uses. vii. **Former District Number and Page Number Where Listed on Abandonment List:** The Four Counties Ditch No. 3, Headgate No. 8, is located in Water District 58, and the water right is listed on Page 4 of the Revised Abandonment List. f. **Name of Structure:** Wessels Canal, Admin Number 40815.00000, WDID 5802120. Based on the Division Engineer's representation, we understand the water right at issue pursuant to this entry in the Revised Abandonment List is the Wessels Canal water right decreed for 45.70 cfs¹ absolute of which 31.01 cfs is at issue in this Protest. i. **Date of Original Decree:** September 8, 1970; Case No.: CA 3538; Court: District Court, Water Division No. 58. ii. **Decreed Legal Description of Structure Location:** On the left bank of the Yampa River approximately 1/2 mile downstream from the outlet of the Bear Reservoir at a point whence NW Corner Section 9, Township 4 North, Range 84 West, 6th P.M., bears North 2°41' West at a distance of 19,285 feet. Alternate points of diversion include: The headgate of the Craig Station Ditch and Pipeline, which is conditionally decreed for alternate points of diversion at the following locations: Diversion Point No. 1: A point located on the South bank of the Yampa River from which the SW Corner of Sec 16, T6N R91W, 6th P.M., bears South 22°, 49'01" West a distance of 4,325.85 feet. Diversion Point No. 2: A point located on the South bank of the Yampa River from which the SW Corner of Sec 16, T6N, R91W, 6th P.M., bears South 23°, 26'51" West a distance of 4,402.45 feet. Diversion Point No. 3: A point located on the South bank of the Yampa River from which the SW Corner of Sec 16, T6N R91W, 6th P.M., bears South 24°, 35' West a distance of 4,825 feet and which point is also the decreed point of diversion for the Synthetic Products Ditch. iii. **Source of Water:** Yampa River iv. **Decreed Use or Uses:** Domestic and industrial uses, including power generation. v. **Appropriation Date:** September 30, 1961; Decreed Amount: 45.70 cfs. vi. **Amount and Use or Uses Listed as having been abandoned:** 31.01 cfs for all decreed uses. vii. **Former District Number and Page Number Where Listed on Abandonment List:** The Four Counties Ditch No. 3, Headgate No. 8, is located in Water District 58, and the water right is listed on Page 8 of the Revised Abandonment List. 3. **State Factual and Legal Basis for this Protest:** TS and YPP (together "Protestors") protest the inclusion of the Subject Water Rights on DE's Revised Abandonment List for the following reasons. First, Protestors demonstrate that DE began revising Protestors' annual diversion records in 2009 and through the Abandonment Period in 2020 without informing Tri-State of that practice until December 2021. Second, Protestors show that DE's records are not a reliable reflection of the maximum rates diverted by TS and YPP at Craig Station during the abandonment period. For both these reasons, DE's records cannot serve as the basis for the presumption of abandonment of the Subject Water Rights. Third, Protestors can each demonstrate their lack of intent to abandon their respective water rights during the decennial abandonment cycle. The Protestors' detailed analyses supporting these positions are presented in **Attachment A**, filed with this Protest and incorporated as if fully set forth herein. 4. TS and YPP have no intent to abandon the subject water rights or their alternate points of diversion, as they form an integral part of TS's and YPP's water rights portfolios serving their respective generating units at Craig Station and future generation projects. This Protest sets out the initial factual basis for Protestors' request that the Subject Water Rights be removed from the Revised Abandonment List;

¹ Protestants do not agree this is the correct total, but is used here to reflect the DE's records and statements.

however, TS reserves the right to supplement this initial protest with additional facts, details, support, and legal analyses as necessary. WHEREFORE, TS and YPP request that the Court find and rule that (1) Craig Station Ditch and Pipeline water right; (2) Four Counties Ditch No. 3, Headgate No. 8 water right; (3) Wessels Canal water right; and (4) any of their related alternate points of diversion have not been abandoned. TS does not have any intent to abandon all or part of the Craig Station Ditch and Pipeline, Diversion Point No. 2 associated with Four Counties Ditch No. 3, Headgate No. 8 water right; Craig Station Ditch and Pipeline, Diversion Point No. 3 associated with Four Counties Ditch No. 3, Headgate No. 8 water right; or Craig Station Ditch and Pipeline, Diversion Point No. 3 associated with the Wessels Canal water right. Therefore, TS and YPP request to remove these water rights and alternate points of diversion that are the subject of this Protest from the 2020 Abandonment List. (11 pgs., 1 Exhibit)

2022CW11 Rio Blanco County Application to Make Absolute. **Applicant:** Mark Thomas, PO Box 1164, Breckenridge, CO 80424, 970.390.6010, mark@ptbreck.com. **Structure:** Cody Ditch. **Date of Original Decree:** June 15, 2009. **Case No.:** 2007CW13, Water Division 6. **Date of Decree:** June 27, 2016. **Case No.:** 2015CW13, Water Division 6. **Legal Descriptions:** Cody Ditch: NW ¼ of the SE ¼, S6, T2N, R87W, of the 6th PM, Rio Blanco County, Colorado at a point 1550 feet from the South line and 1550 feet from the East line of said Section. Cody Ditch Alternate Point of Diversion: NW ¼ of the SE ¼, S6, T2N, R87W, of the 6th PM, Rio Blanco County, Colorado at a point 2000 feet from the South line and 1700 feet from the East line of said Section. **Source:** Unnamed trib to East Fork of Williams Fork Trib to Williams Fort Trib to Yampa River. **Appropriation Date:** June 8, 2005. **Amount:** 3CFS. **Use:** Irrigation of approximately 25 acres as well as Stock Water and domestic. **What has been Done for Completion of Appropriation:** I completed more surveying for the best diversion point in relation to the delivery ditch elevations. We had an excavator delivered up in September of 2021. I decided an earthen dam would work best constructed the dam with the through culvert and headgate of 15” plastic pipe. An overflow spillway was also put in to direct excess water back into the creek. I have enclosed some photos of the structure, flume, and ditch along with some receipts and break-down of expenses to complete the structure. **Date Water Applied to Beneficial Use:** May 14, 2022. **Amount:** 2.5CFS. **Use:** Irrigation, Stock Water. **Description of Place of Use:** See attached maps. **UTM Cody Ditch:** E312801, N4448672, Z13. **UTM Cody Ditch Alternate Point:** E312750, N4448872, Z13. **Source of UTM:** Water Commissioner. **Owner:** Applicant

22CW3054 (21CW3048) RIO BLANCO COUNTY. PROTEST TO FINAL ABANDONMENT LIST. 1. Protestant/ Owner: Blue Mountain Energy, Inc. (“BME”) Attn: Joel Riggins and Kurt Blunt 3607 County Road 65, Rangely, CO 81648, (970) 675-4322, Please address all correspondence to: Peter D. Nichols, Megan Gutwein, Berg Hill Greenleaf Ruscitti LLP, 1712 Pearl St., Boulder, CO 80302, (303) 402-1600, pdn@bhgrlaw.com; mg@bhgrlaw.com. **2. Description of Water Right:** A. Names of structures: i. AW Well Field (AW-1, AW-3, AW-5). ii. White River Bridge Moon Lake Pipeline Pump. B. Dates of decrees: i. July 28, 1971, Case No. W-297, Water Div. 5 (decreed the 6.0 cfs Moon Lake Pipeline water right). ii. January 12, 1982, Case No. 81CW236, Water Div. 5 (0.3 cfs of the 6.0 cfs Moon Lake Pipeline water right was transferred to the AW Well Field as an alternate point of diversion). iii. November 26, 1990, Case No. 90CW154, Water Div. 5 (corrected locations of AW-1, AW-3, and AW-5 and added White River Bridge Moon Lake Pipeline Pump as another alternate point of diversion). iv. May 10, 2004, Case No. 02CW378, Water Div. 5 (remaining 5.7 cfs of the Moon Lake Pipeline water right changed to White River Bridge Moon Lake Pipeline Pump, which may divert entire 6.0 cfs, and abandoned AW-2, AW-4, and AW-6). C. Legal description of structures: i. AW Well Field originally described in Case No. 81CW236: The wells are located in a small alluvial well gallery in the NE1/4 SW1/4 of Section 11, T. 2N., R. 101W. of the 6th P.M. at a point 2,500 feet North of the South line and 2,000 feet East of the West line of said Section 11. ii. AW Well Field corrected in Case No. 90CW154: Well AW-1: Located in the NE1/4 SW1/4 of Section 11, Township 2 North, Range 101 West of the 6th P.M., at a point 1,689 feet north of the south section line and 1,777 feet east of the west section line of said Section 11. Well AW-3: Located in the NE1/4 SW1/4 of Section 11, Township 2 North, Range 101 West of the 6th P.M., at a point 1,731 feet north of the south section line and 2,198 feet east of the west section line of said Section 11. Well AW-5: Located in the NE1/4 SW1/4 of Section 11, Township 2 North, Range 101 West of the 6th P.M., at a point 2,098 feet north of the south section line and 2,600 feet east of the west section line of said Section 11. iii. White River Bridge Moon Lake Pipeline Pump: located in the NE1/4 SW1/4 of Section 11, T2N, R101W of the 6th P.M., at a point 2,098 feet North of the South section line and 2,600 feet East of the West section line of said Section 11. D. Decreed uses: Industrial. E. Decreed source of water: White River. F. Appropriation Date: February 17, 1947. G. Amount: 6.0 cfs absolute, total, for Moon Lake Pipeline water right. H. Amount and use listed as abandoned: 0.3 cfs from the AW Well Field and 5.05 cfs from the White River Bridge Moon Lake Pipeline Pump, all uses. I. District number and page number where listed on Abandonment List: Water District 43; pages 2 and 9 of Division 6 2021 Final Revised Abandonment List (“Final List”). **3. Factual and Legal Basis for Protest:**

“Abandonment of a water right” means “the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or part of the water available thereunder.” C.R.S. § 37-92-103(2). Abandonment therefore requires both the intent to abandon a water right along with nonuse of available water under the subject right. *CF&I Steel Corp. v. Purgatoire River Water Conservancy Dist.*, 515 P.2d 456, 458 (Colo. 1973). “Water right” means “a right to use in accordance with its priority a certain portion of the waters of the state by reason of the appropriation of the same.” C.R.S. § 37-92-103(12). In this instance, BME’s water right should be removed from the Final List because BME has used water under the subject water right during the applicable abandonment period and it has no intent to abandon the entire decreed amount (or any part) of the water right. Moreover, as explained below, the Court arguably lacks jurisdiction to abandon the subject water right because it was not properly included in the Final List. A. The subject water right is not actually listed in the Final List. The Division Engineer is directed to prepare “a separate abandonment list comprising all absolute *water rights* that he or she has determined to have been abandoned in whole or in part and that previously have not been adjudged to have been abandoned.” C.R.S. § 37-92-401(1)(a) (emphasis added). The Division Engineer is further directed to “mail a copy of the respective decennial abandonment list by certified mail, return receipt requested, to the owner or last-known owner or claimant, if known, of every absolute *water right* that the division engineer has found to have been abandoned in whole or in part.” C.R.S. § 37-92-401(2)(b) (emphasis added). The Abandonment List that was published by the Division Engineer for Water Division 6 does not describe the “Moon Lake Pipeline” water right, which appears to be the water right that is allegedly abandoned. As explained above, the AW Well Field and White River Bridge Moon Lake Pipeline Pump are decreed as alternate points of diversion for the Moon Lake Pipeline water right. Colorado law contemplates the abandonment of water rights, or the right to use a certain portion of waters of the state, but does not contemplate abandonment of structures in the decennial abandonment list. *See* C.R.S. § 37-92-103(2), (12). Water rights in Colorado may be diverted through multiple structures, and a water user’s choice to divert a water right through one decreed alternate point rather than another cannot result in the abandonment of such water right or the unused alternate structure under section 37-92-401. In fact, section 37-92-401 does not contemplate abandonment of structures at all, only water rights. A water user could cease using one decreed alternate point of diversion, divert a water right through another alternate point of diversion for 100 years, and then resume use of the first structure without any risk of abandonment under the applicable statutes. Based on the foregoing, the Court lacks jurisdiction to abandon any portion of BME’s Moon Lake Pipeline water right because the Division Engineer did not provide sufficient notice of this potential abandonment since this water right is not listed in the Final List, only certain structures. Moreover, the Court lacks jurisdiction to enter a decree abandoning a structure, since only water rights can be abandoned, not structures, pursuant to C.R.S. § 37-92-401. For the sake of argument, if the Court determines that listing of structures that are alternate points of diversions for a water right provided adequate notice, and if the Court is contemplating abandoning any portion of the Moon Lake Pipeline water right as a result of the listing of such structures, it is clear that BME has not abandoned its water right under Colorado law as explained below. B. BME has used the Moon Lake Pipeline water right. Pursuant to the Decree entered in Case No. 02CW378, the entire 6.0 cfs Moon Lake Pipeline water right may be diverted through the White River Bridge Moon Lake Pipeline Pump, so long as the total diversion of this water right at this point and at the AW Well Field does not exceed 6.0 cfs. 02CW378 Decree ¶ 14. The Final List incorrectly states that the decreed amount for the White River Bridge Moon Lake Pipeline Pump is 5.7 cfs, and purports to abandon 5.05 cfs, leaving 0.65 cfs remaining. Because the White River Bridge Moon Lake Pipeline Pump is actually able to divert the entire Moon Lake Pipeline water right, and the AW Well Field is an *alternate* point of diversion for 0.3 cfs of that same water right, then there is no legal basis for the Division Engineer to list the AW Well Field at all. The Abandonment List itself admits that at least 0.65 cfs of the Moon Lake Pipeline water right has been diverted during the last 10 years and is not being abandoned. Thus, BME would still have the right to divert up to 0.3 cfs of that water right at the AW Well Field as a decreed alternate point of diversion if and when it so chooses. The “AW Well Field” should be entirely removed from the Final List. C. BME has no intent to abandon the Moon Lake Pipeline water right. BME has no intent to abandon any portion of its Moon Lake Pipeline water right or the structures that divert such water right (if abandonment of those structures were even possible). BME submitted an objection to the Initial Abandonment List to which it attached the final decree in Case No. 15CW3027, Water Div. 6 (November 28, 2016), in which this Court entered findings of reasonable diligence for two of BME’s water rights. Importantly, the 15CW3027 water rights are part of BME’s unified water supply system for the Deserado Mine and adjacent properties, which expressly includes the Moon Lake Pipeline water right. *See* 15CW3027 Decree ¶ 9; *see also* Decree, Case No. 06CW259, Water Div. No. 5 ¶ 7.A (June 28, 2008). As noted by the Division Engineer’s Office in its responses to BME’s abandonment objections, there is no mention of either the AW Well Field or the White River Bridge Moon Lake Pipeline Pump in Case No. 15CW3027. This is because these structures simply divert the Moon Lake Pipeline water right, and the actual water right is listed in the 15CW3027 Decree at paragraph 9 as part of BME’s integrated system. BME has not diverted the Moon Lake Pipeline water right at its full decreed

amount over the last ten years due to variable demand for electricity. However, in addition to diverting the water right at the White River Bridge Moon Lake Pipeline Pump, BME has expended significant resources in maintaining all of its water rights (including the Moon Lake Pipeline) to ensure that it will be able to continue operating the Deserado Mine and producing electricity as demand increases in the future. Specifically, and not by way of limitation, BME has upgraded and replaced pumps and other structures to ensure efficient operation of its water infrastructure during cold weather. BME has also added security and perimeter fencing to reduce access to the pumps and other structures to mitigate against tampering and criminal activity. With regards to the AW Well Field, BME maintains and uses these structures as locations for monitoring water quality and has no intent to abandon them as alternate points of diversion for the Moon Lake Pipeline water right. These activities provide compelling evidence of BME's lack of intent to abandon. (8 pages)

2022CW3057 (21CW3048), Rio Blanco County, Colorado. Protest to Final Abandonment List. White River. Name, address, email address, and telephone number of Protestant: Rio Blanco Water Conservancy District, c/o Alden Vanden Brink, District Manager, 2252 East Main Street, Rangely, CO 81648, (970) 675-5055, al@rioblancowcd.org. c/o Edward B. Olszewski, Esq., Olszewski, Massih & Maurer, P.C., P.O. Box 916, Glenwood Springs, CO 81602, (970) 928-9100, ed@ommpc.com. Please direct all pleadings and correspondence to Protestant's counsel at the addresses above. Names of Structures: LK Ditch 1, Spring Creek D Pump 1 (AP) and Spring Creek D Pump. **LK Ditch 1:** Date of Original Decree: September 8, 1947 Case No.: CA 0715 Court: Rio Blanco County District Court Location: The headgate is located on the White River in the NE¼ SE¼ of Section 22, T. 2 N., R. 101 W., 6th P.M.; UTM x 183932.1, UTM y 4448418.4, Latitude 40.126706, Longitude -108.70921. Source: White River. Appropriation Date: May 10, 1944 Amount 1.49 c.f.s., *absolute* Uses: Irrigation. Administration number: 34463.00000; WDID: 4300751. Amount and use(s) listed as having been abandoned: 1.49 cfs for all decreed uses. Former District Number and Page Number where listed on Abandonment List: District No. 43; listed on Page 9 of 19 on Abandonment List. **Spring Creek D Pump 1 (AP):** Date of Original Decree: November 26, 1958 Case No. and Court: C.A. 999, Rio Blanco County District Court & 90CW051, Water Division No. 5 Court: Rio Blanco County District Court Location: A point of diversion located on the White River in the NW¼ NE¼ of Section 7, T. 2 N., R. 100 W., 6th P.M. 1,204 ft south of the north section line and 2,237 feet west of the east section line of Section 7; and/or at a point of diversion located on the South Bank of the White River, whence the East ¼ Corner of Section 7, T. 2 N., R. 100 W. of the 6th P.M. bears South 110 degrees 51' East a distance of 2,343.8 feet. Source: White River Appropriation Date: May 10, 1941 Amount: 5.20 c.f.s., *absolute* Uses: Irrigation. Administration number: 35679.33367; WDID: 4300939 Amount and use(s) listed as having been abandoned: 2.2 cfs for all decreed uses. Former District Number and Page Number where listed on Abandonment List: District No. 43; listed on Page 16 of 19 on Abandonment List. **Spring Creek D Pump 1:** Date of Original Decree: November 26, 1958. Case No. and Court: C.A. 999, Rio Blanco County District Court & 90CW051, Water Division No. 5 Court: Rio Blanco County District Court Location: A point of diversion located on the White River in the NW¼ NE¼ of Section 7, T. 2 N., R. 100 W., 6th P.M. 1,204 ft south of the north section line and 2,237 feet west of the east section line of Section 7; and/or at a point of diversion located on the South Bank of the White River, whence the East ¼ Corner of Section 7, T. 2 N., R. 100 W. of the 6th P.M. bears South 110 degrees 51' East a distance of 2,343.8 feet. Source: White River Appropriation Date: May 10, 1941 Amount: 5.20 c.f.s., *absolute* Uses: Irrigation. Administration number: 35679.33367; WDID: 4300939. Amount and use(s) listed as having been abandoned: 1.8 cfs for all decreed uses. Former District Number and Page Number where listed on Abandonment List: District No. 43; listed on Page 16 of 19 on Abandonment List. The Protest contains a recitation of the legal standards for abandonment. Factual Basis for Protest. LK Ditch 1. Protestant filed for a change in surface point of diversion due to the original point of diversion for the LK Ditch 1 being inundated by Kenney Reservoir. Protestant already diverts water at the new location for the LK Ditch 1 via a pump and pipeline and irrigates approximately 45 acres of lands. A formal change of water rights case has been filed in Case No. 21CW3017, Water Division 6. Protestant is using the water at an alternate location pending approval of a pending change case. Applicant has expended significant funds to use water from the LK Ditch 1 and has no intent to abandon the LK Ditch 1 water right. The land has been irrigated and maintained by three individuals all with ten-year contracts. The present contract is in the third year of its new term. Spring Creek D Pump 1(AP) and Spring Creek D Pump 1. Spring Creek D Pump 1 is an alternate point of diversion between two sites that periodically have a trailer mounted pump shared between the two sites. Starting in the fall of 2019 Protestant staff began rebuilding this pump and purchased another larger trailer mounted pump with the ability to be used between

both sites as well. The rebuild included new axels, new bearing, new pump drive shaft, and the installation of a flow meter for each irrigation pump assembly. The rebuilding started in 2019 and continued into 2020 with the irrigation pump assembly put back into service the spring of 2020. The rebuild and replacement planning process was also included within the 2020 Rio Blanco Water Conservancy District (“RBWCD”) General Fund and Enterprise Fund budgeting process and is noted in the 2020 Hydroelectric Fund Budget and General Fund as “Irrigation Improvements”. These discussions began with the RBWCD Board of Directors in August 2019. Part of the planning also included collecting new pump and parts proposals that included price and availability. The new pump is significantly larger and able to divert the full 5.2CFS decreed right. See attachments. In 2019 a land operator lease expired. With this the RBWCD advertised for a new land operator ultimately completing the selection. This agreement includes the RBWCD having a functioning irrigation pump available for the operators use to adequately irrigation RBWCD agricultural lands. In 2020 the most recent 10 - year lease was signed with the new operator for the agricultural lands owned by the RBWCD. The previous land operator from 2010 to end of 2019 provided their own pump for a period of time as well as is identifiable in the arial photos attached. Protestant is using the water from the Spring Creek D Pump 1(AP) and Spring Creek D Pump 1 to their full decreed capacities. Protestant has expending significant funds to use water from the Spring Creek D Pump 1(AP) and Spring Creek D Pump 1 and has no intent to abandon the water rights. WHEREFORE, Protestant respectfully requests that the Court remove the above-described water rights owned by Protestant from the Division Engineer’s Final 2020 Abandonment List. (7 pages, 1 map)

22CW3046 (21CW3048) – JACKSON COUNTY – PROTEST TO FINAL ABANDONMENT LIST. 1. Name, Mailing Address, E-mail Address, and Phone Number of Protestant. Fairbanks Ranch Holdings, Inc., c/o Dean Singleton, 2001 Lincoln Street, Unit 3122, Denver, Colorado 80202, E-mail: probinson@deansingleton.com, Phone: (303) 954-1959. Copies of all pleadings and other correspondence to: Richard A. Johnson, Esq., David F. Bower, Esq., Michael S. Davidson, Esq., Johnson & Repucci LLP, 850 W. South Boulder Road, Suite 100, Louisville, Colorado 80027. **2. Description of Subject Water Right.** (a) Name of Structure. Poverty Flats Ditch No. 1 Enlargement [WDID 4700845]. (b) Original and all Relevant Subsequent Decrees. The Poverty Flats Ditch No. 1 Enlargement was decreed on January 10, 1958, in Civil Action No. 511, Jackson County District Court. (c) Decreed Point of Diversion. At a point on the left bank of the South Fork of the Michigan River, whence the South Quarter corner of Section 33, Township 7 North, Range 77 West of the 6th P.M., bears South 5° West a distance of 2244 feet. (d) CDSS Location. NW1/4 SE1/4 of Section 33, Township 7 North, Range 77 West of the 6th P.M. (Zone 13, NAD83, Easting 412173m, Northing 4487159m.) (e) Source. Michigan River (or the South Fork of the Michigan River). (f) Decreed Use. Irrigation. (g) Appropriation Date. September 12, 1955. (h) Decreed Amount. The Poverty Flats Ditch No. 1 is decreed for a total of 42 cfs (40 cfs for irrigation and 2 cfs for stockwatering). The Poverty Flats Ditch No. 1 Enlargement is decreed for 20 cfs. (i) Amount and Uses Listed as Abandoned. 8.05 cfs, for all decreed uses. (j) Page Number on Abandonment List. The subject right is listed on page 7 of 9 on the Division Engineer’s Final Revised Abandonment List for Water Division 6. **3. Factual and Legal Basis for Protest.** The factual and legal basis for the protest is generally set forth in the Statement of Objection to Decennial Abandonment List attached hereto as Exhibit A and the affidavit of Mr. Jim Baller attached as Exhibit B. As described in more detail in the Statement of Objection and affidavit, Fairbanks did not abandon any portion of its Poverty Flats Ditch No. 1 Enlargement water right. During the subject abandonment period from 2010 to 2019, Fairbanks diverted and beneficially used water under the Poverty Flats Ditch No. 1 Enlargement right for irrigation purposes. The CDSS diversion records show that a maximum of 31.95 cfs was diverted by the ditch in 2015, Fairbanks owns 13.33 cfs of the 40 cfs decreed to the Poverty Flats Ditch No. 1 for irrigation, Fairbanks is the first irrigator on the Poverty Flats Ditch No. 1, and there are no records or other evidence to indicate that Fairbanks did not take its full 13.33 cfs entitlement as part of the 31.95 cfs diverted by the ditch over the last decade. Therefore, the diversion records do not support a finding of abandonment against Fairbanks. Moreover, Fairbanks, through its Ranch Manager, Mr. Baller, has continued to repair and maintain the Poverty Flats Ditch No. 1, including installing a new 48” Parshall Flume at the headgate in 2015 capable of measuring flows of up to 47.8 cfs – 5.8 cfs more than the 42 cfs decreed to the ditch in total. Furthermore, Mr. Baller, on behalf of Fairbanks and all other properties he owns and manages in Water District 47, has and continues to operate and protect the water rights under his supervision, including through his participation with the Michigan River Water Conservancy District and the North Platte Basin Roundtable. Accordingly, to the extent that there was any nonuse under the Poverty Flats Ditch No. 1 Enlargement right, which Fairbanks disputes, there was still no intent to abandon. **4. Remarks.** Under Colorado water law, abandonment of a water right requires a concurrence of nonuse and intent to abandon. The Division Engineer has the initial burden of proving nonuse; if it meets its initial burden, there is a rebuttable presumption of intent to abandon, and the burden then shifts to the water right owner to rebut the presumption. *Wolfe v. Jim Hutton Educational Foundation*, 344 P.3d 855, 857 (Colo. 2015). Here, the Division Engineer asserts that

because the entire 40 cfs Poverty Flats Ditch No. 1 Enlargement right was not diverted all at once, the full extent of the water right was not used. The Division Engineer fails to acknowledge the significance of the fact that the water right is split between two different parties. If each owner took its full entitlement at different times, the water right would have been diverted and used to the full extent of their ownership, even if the full 40 cfs was not diverted all at once. By finding that “we would expect to at least see some records showing diversions up to 40 cfs,” the Division Engineer prematurely shifted the burden on Fairbanks to rebut the presumption of nonuse. Because the Division Engineer has no evidence that Fairbanks did not use its full entitlement of the water right, the Division Engineer cannot meet its initial burden of proving nonuse of the portion of the water right owned by Fairbanks. Even if the Division Engineer meets its burden of proving nonuse, that alone will not establish abandonment where the owner of the water right introduces sufficient evidence to show that during the period of nonuse, there never was any intention to permanently discontinue the use of the water. See *Beaver Park Water, Inc. v. Victor*, 649 P.2d 300 (Colo. 1982); *City and County of Denver v. Snake River Water District*, 788 P.2d 772, 776 (Colo. 1990). The evidence presented by Fairbanks in its Statement of Objection proves that there was no intent to abandon the Poverty Flats Ditch No. 1 Enlargement right over the last ten years, as the Poverty Flats Ditch No. 1 was diverted and used at a greater amount than is owned by Fairbanks and a new flume was installed by Fairbanks that could measure an amount greater than what is decreed to the ditch. In addition, the Division Engineer’s basis for determining the rights to be listed on the 2020 abandonment list was arbitrary and capricious, and the original abandonment listing was in error in the first place. Per C.R.S. 37-92-401(1)(c), “[i]n making his or her determinations with respect to abandonment, the division engineer shall investigate the circumstances relating to each water right for which the available water has not been fully applied to a beneficial use . . .” However, the Division Engineer failed to take into consideration circumstances surrounding each right, including maintenance and repair work on a ditch and other efforts from Fairbanks and its agents to use, protect, and preserve its water rights, instead taking the position that “this office is not tasked to determine whether or not there is an intent to abandon.” This failure to review and consider the circumstances of each right as required by statute means that the original abandonment listing was not supported by law. Finally, the Division Engineer’s decision to declare a portion of a water right abandoned that is owned by more than one party without evidence of the amount that was diverted and beneficially used by each owner deprives the rightful owner of a real property right without due process of law. This issue will be further compounded in the future as owners of shared ditches with water rights that have been declared abandoned are forced into quiet title actions against each other to determine the remaining amount each owner continues to own, when in fact, there was no intent to abandon any of the right in the first place. (5 pages, plus exhibits)

22CW3047 (21CW3048) – JACKSON COUNTY – PROTEST TO FINAL ABANDONMENT LIST. 1. Name, Mailing Address, E-mail Address, and Phone Number of Protestant. Fairbanks Ranch Holdings, Inc., c/o Dean Singleton, 2001 Lincoln Street, Unit 3122, Denver, Colorado 80202, E-mail: probinson@deansingleton.com, Phone: (303) 954-1959. Copies of all pleadings and other correspondence to: Richard A. Johnson, Esq., David F. Bower, Esq., Michael S. Davidson, Esq., Johnson & Repucci LLP, 850 W. South Boulder Road, Suite 100, Louisville, Colorado 80027. **2. Description of Subject Water Right.** (a) Name of Structure. Poverty Flats Ditch No. 2 Enlargement [WDID 4700844]. (b) Original and all Relevant Subsequent Decrees. The Poverty Flats Ditch No. 2 Enlargement was decreed on January 10, 1958, in Civil Action No. 511, Jackson County District Court. (c) Decreed Point of Diversion. At a point on the West or left bank of the South Fork of the Michigan River, whence the North Quarter corner of Section 4, Township 6 North, Range 77 West of the 6th P.M., bears North 45° West a distance of 660 feet. (d) CDSS Location. NW1/4 NE1/4 of Section 4, Township 6 North, Range 77 West of the 6th P.M. (Zone 13, NAD83, Easting 412200.3m, Northing 4486380.7m.) (e) Source. South Fork of the Michigan River. (f) Decreed Use. Irrigation. (g) Appropriation Date. September 12, 1955. (h) Decreed Amount. The Poverty Flats Ditch No. 2 is decreed for 40 cfs. (There is also an additional 11 cfs associated with the Riley Ditch that is attributed to the structure.) The Poverty Flats Ditch No. 2 Enlargement is decreed for 16 cfs. (i) Amount and Uses Listed as Abandoned. 12 cfs, for all decreed uses. (j) Page Number on Abandonment List. The subject right is listed on page 7 of 9 on the Division Engineer’s Final Revised Abandonment List for Water Division 6. **3. Factual and Legal Basis for Protest.** The factual and legal basis for the protest is generally set forth in the Statement of Objection to Decennial Abandonment List attached hereto as Exhibit A and the affidavit of Mr. Jim Baller attached as Exhibit B. As described in more detail in the Statement of Objection and affidavit, Fairbanks did not abandon any portion of its Poverty Flats Ditch No. 2 Enlargement water right. During the subject abandonment period from 2010 to 2019, Fairbanks diverted and beneficially used water under the Poverty Flats Ditch No. 2 Enlargement right for irrigation purposes. The CDSS diversion records show that a maximum of 38.34 cfs was diverted by the ditch in 2013 for use at the place of use decreed to the Poverty Flats Ditch No. 2, Fairbanks owns a total of 30 cfs in the Poverty Flats Ditch No. 2 for irrigation, Fairbanks is the first irrigator on the Poverty Flats Ditch No. 2, and there are no records or other evidence to indicate

that Fairbanks did not take its full 30 cfs entitlement as part of the water that was diverted for use on the lands decreed to be irrigated by the subject water right. Therefore, the diversion records do not support a finding of abandonment against Fairbanks. Moreover, Fairbanks, through its Ranch Manager, Mr. Baller, has continued to repair and maintain the Poverty Flats Ditch No. 2, including extensive maintenance work that was done during 2019, as evidenced by receipts provided to the Division Engineer. Furthermore, Mr. Baller, on behalf of Fairbanks and all other properties he owns and manages in Water District 47, has and continues to operate and protect the water rights under his supervision, including through his participation with the Michigan River Water Conservancy District and the North Platte Basin Roundtable. Accordingly, to the extent that there was any nonuse under the Poverty Flats Ditch No. 2 Enlargement right, which Fairbanks disputes, there was still no intent to abandon. **4. Remarks.** Under Colorado water law, abandonment of a water right requires a concurrence of nonuse and intent to abandon. The Division Engineer has the initial burden of proving nonuse; if it meets its initial burden there is a rebuttable presumption of intent to abandon, and the burden then shifts to the water right owner to rebut the presumption. *Wolfe v. Jim Hutton Educational Foundation*, 344 P.3d 855, 857 (Colo. 2015). Here, the Riley Ditch appears to have been decreed as an extension lateral off the Poverty Flats Ditch No. 2. While the Division Engineer acknowledges this fact, it still attempts to attribute diversions into the Poverty Flats Ditch No. 2 to the Riley Ditch to the detriment of the Poverty Flats Ditch No. 2 Enlargement right. The Division Engineer's only support for its position is that attributing the diversions to the Riley Ditch would leave "the Riley Ditch rights unused and subject to abandonment." Because the Riley Ditch rights were not listed on the abandonment list, and because Fairbanks may also be the owner of the Riley Ditch rights, the Division Engineer argues that portions of the Poverty Flats Ditch No. 2 Enlargement right should be abandoned instead. This is not a valid reason for abandonment and does not amount to proof that the Poverty Flats Ditch No. 2 Enlargement right was not used during the statutory period. As a result, the Division Engineer cannot meet its initial burden of proving nonuse. Likewise, the Division Engineer fails to acknowledge the significance of the fact that the Poverty Flats Ditch No. 2 Enlargement right is split between two different parties. If each owner took its full entitlement at different times, the water right would have been diverted and used to the full extent of each of their ownership, even if the full 40 cfs decreed to the Poverty Flats Ditch No. 2 (excluding the Riley Ditch) was not diverted all at once. In making its assumptions regarding the use and ownership of the Poverty Flats Ditch No. 2 Enlargement right, the Division Engineer prematurely shifted the burden on Fairbanks to rebut the presumption of nonuse. Because the Division Engineer has no evidence that Fairbanks did not use its full entitlement of the water right, the Division Engineer cannot meet its initial burden of proving nonuse of the portion of the water right owned by Fairbanks. Even if the Division Engineer meets its burden of proving nonuse, that alone will not establish abandonment where the owner of the water right introduces sufficient evidence to show that during the period of nonuse, there never was any intention to permanently discontinue the use of the water. *See Beaver Park Water, Inc. v. Victor*, 649 P.2d 300 (Colo. 1982); *City and County of Denver v. Snake River Water District*, 788 P.2d 772, 776 (Colo. 1990). The evidence presented by Fairbanks in its Statement of Objection proves that there was no intent to abandon the Poverty Flats Ditch No. 2 Enlargement right over the last ten years, as the Poverty Flats Ditch No. 2 was diverted and used at a greater amount than is owned by Fairbanks, was diverted by both owners in the ditch at a rate that represents 96% of the total amount decreed to the structure for its place of use, and was extensively cleaned during the abandonment period to maintain its full decreed amount. In addition, the Division Engineer's basis for determining the rights to be listed on the 2020 abandonment list was arbitrary and capricious, and the original abandonment listing was in error in the first place. Per C.R.S. 37-92-401(1)(c), "[i]n making his or her determinations with respect to abandonment, the division engineer shall investigate the circumstances relating to each water right for which the available water has not been fully applied to a beneficial use ..." However, the Division Engineer failed to take into consideration circumstances surrounding each right, including maintenance and repair work on a ditch and other efforts from Fairbanks and its agents to use, protect, and preserve its water rights, instead publicly taking the position that "this office is not tasked to determine whether or not there is an intent to abandon." This failure to review and consider the circumstances of each right as required by statute means that the original abandonment listing was not supported by law. Finally, the Division Engineer's decision to declare a portion of a water right abandoned that is owned by more than one party without evidence of the amount that was diverted and beneficially used by each owner deprives the rightful owner of a real property right without due process of law. This issue is especially problematic here, as the Division Engineer has arbitrarily determined that the full 12 cfs listed for abandonment should be attributed to Fairbanks because the other ditch owner sold their ranch in the last decade, completely ignoring that Fairbanks is the first user in the ditch and maintains and operates the structure. (5 pages plus exhibits)

22CW3048 (21CW3048) – JACKSON COUNTY – PROTEST TO FINAL ABANDONMENT LIST. 1. Name, Mailing Address, E-mail Address, and Phone Number of Protestant. Fairbanks Ranch Holdings, Inc., c/o Dean Singleton, 2001 Lincoln Street, Unit 3122, Denver, Colorado 80202, E-mail: probinson@deansingleton.com, Phone:

(303) 954-1959. Copies of all pleadings and other correspondence to: Richard A. Johnson, Esq., David F. Bower, Esq., Michael S. Davidson, Esq., Johnson & Repucci LLP, 850 W. South Boulder Road, Suite 100, Louisville, Colorado 80027. **2. Description of Subject Water Right.** (a) Name of Structure. Mill Creek Ditch Enlargement [WDID 4700776]. (b) Original and all Relevant Subsequent Decrees. The Mill Creek Ditch Enlargement was decreed on January 10, 1958, in Civil Action No. 511, Jackson County District Court. (c) Decreed Point of Diversion. At a point on the left bank of Mill Creek, whence the Northwest corner of Section 4, Township 6 North, Range 77 West, 6th P.M., bears North 23°45' West a distance of 5907 feet. (d) CDSS Location. NE1/4 SW1/4 of Section 4, Township 6 North, Range 77 West of the 6th P.M. (Zone 13, NAD83, Easting 412033.9m, Northing 4485487.6m.) (e) Source. Mill Creek. (f) Decreed Use. Irrigation. (g) Appropriation Date. September 29, 1955. (h) Decreed Amount. The Mill Creek Ditch is decreed for a total of 16.5 cfs (16 cfs for irrigation and 0.5 cfs for stockwatering). The Mill Creek Ditch Enlargement is decreed for 12 cfs for irrigation. (i) Amount and Uses Listed as Abandoned. 7.64 cfs, for all decreed uses. (j) Page Number on Abandonment List. The subject right is listed on page 6 of 9 on the Division Engineer's Final Revised Abandonment List for Water Division 6. **3. Factual and Legal Basis for Protest.** The factual and legal basis for the protest is generally set forth in the Statement of Objection to Decennial Abandonment List attached hereto as Exhibit A and the affidavit of Mr. Baller attached as Exhibit B. As described in more detail in the Statement of Objection and affidavit, Fairbanks did not abandon any portion of its Mill Creek Ditch Enlargement water right. During the subject abandonment period from 2010 to 2019, Fairbanks diverted and beneficially used water under the Mill Creek Ditch Enlargement right for irrigation purposes, which is evidence that Fairbanks continued to need and use the water right. Moreover, Fairbanks, through its Ranch Manager, Mr. Baller, has continued to maintain and repair the Mill Creek Ditch, including installing a new 36" Parshall Flume at the headgate in 2019 capable of measuring flows double that decreed to the ditch. The Water Commissioner inspected this flume in 2019 and stated that "[t]he flume looked good and the ditch was cleaned out below so that water wouldn't get backed up and submerge the flume." Furthermore, Mr. Baller, on behalf of Fairbanks and all other properties he owns and manages in Water District 47, has and continues to operate and protect the water rights under his supervision, including through his participation with the Michigan River Water Conservancy District and the North Platte Basin Roundtable. Accordingly, to the extent that there was any nonuse under the Mill Creek Ditch Enlargement right, which Fairbanks disputes, there was still no intent to abandon. **4. Remarks.** Under Colorado water law, abandonment of a water right requires a concurrence of nonuse and intent to abandon. However, intent is the very essence of abandonment. Nonuse for a period of time may serve as evidence of abandonment; however, nonuse alone will not establish abandonment where the owner of the water right introduces sufficient evidence to show that during the period of nonuse, there never was any intention to permanently discontinue the use of the water. *See Beaver Park Water, Inc. v. Victor*, 649 P.2d 300 (Colo. 1982); *City and County of Denver v. Snake River Water District*, 788 P.2d 772, 776 (Colo. 1990). The evidence presented by Fairbanks in its Statement of Objection proves that there was no intent to abandon the Mill Creek Ditch Enlargement right over the last ten years, as Fairbanks continued to use the ditch and installed a new flume that could measure an amount greater than what is decreed to the ditch. The expenditure of funds and efforts to protect and preserve the Mill Creek Ditch Enlargement right is sufficient evidence that there was no intent to abandon the right. The Division Engineer's Office has also taken the position that because the headgate was required to be installed by an order issued by the Division Engineer, "the argument that the installation of this flume shows an intent to not abandon the water right is flawed." The Division Engineer's position is flawed, as there was no reason for Fairbanks to install a new headgate sized larger than the total amount decreed to the Mill Creek Ditch if it intended to abandon any portion of any of the water rights decreed to the structure. *See Twin Lakes Ditches v. Bd. of Cnty. Comm'rs of Lake County*, 76 P.3d 918, 922-23 (Colo. 2003)(repair and maintenance of diversion structures evidences intent to not abandon water right). Instead, the Division Engineer's position shows that it did not satisfy its duty required by C.R.S. 37-92-401(1)(c) to "investigate the circumstances relating to each water right for which the available water has not been fully applied to a beneficial use..." This failure to review and consider the circumstances of each right as required by statute means that the original abandonment listing was not supported by law. (5 pages, plus exhibits)

22CW3049 (21CW3048) – JACKSON COUNTY – PROTEST TO FINAL ABANDONMENT LIST. 1. Name, Mailing Address, E-mail Address, and Phone Number of Protestant. Fairbanks Ranch Holdings, Inc., c/o Dean Singleton, 2001 Lincoln Street, Unit 3122, Denver, Colorado 80202, E-mail: probinson@deansingleton.com, Phone: (303) 954-1959. Copies of all pleadings and other correspondence to: Richard A. Johnson, Esq., David F. Bower, Esq., Michael S. Davidson, Esq., Johnson & Repucci LLP, 850 W. South Boulder Road, Suite 100, Louisville, Colorado 80027. **2. Description of Subject Water Right.** (a) Name of Structure. Shafto Enlargement Ditch [WDID 4700872]. (b) Original and all Relevant Subsequent Decrees. The Shafto Enlargement Ditch was decreed in Case No. 85CW53, Water Division 6, dated February 13, 1986, and recognized as absolute in Case No. 89CW6, Water Division 6, dated February 20, 1990. (c) Decreed Point of Diversion. The headgate is located on the left bank of an unnamed

tributary of the Michigan River at a point whence the 1/4 Corner of the East side of Section 33, T. 7 N., R. 77 W., bears N 79° E 1204 feet. (d) CDSS Location. SW1/4 NE1/4 of Section 33, Township 7 North, Range 77 West of the 6th P.M. (Zone 13, NAD83, Easting 412400m, Northing 4487609m.) (e) Source. Unnamed tributary of the Michigan River. (f) Decreed Use. Irrigation and stockwatering. (g) Appropriation Date. April 9, 1985. (h) Decreed Amount. The Shafto Ditch is decreed for a total of 5 cfs (with 2 cfs for just irrigation and another 3 cfs for irrigation and stockwatering). The Shafto Enlargement Ditch is decreed for 3 cfs for irrigation and stockwatering. (i) Amount and Uses Listed as Abandoned. 2 cfs, for irrigation. (j) Page Number on Abandonment List. The subject right is listed on page 8 of 9 on the Division Engineer's Final Revised Abandonment List for Water Division 6. **3. Factual and Legal Basis for Protest**. The factual and legal basis for the protest is generally set forth in the Statement of Objection to Decennial Abandonment List attached hereto as Exhibit A and the affidavit of Mr. Baller attached as Exhibit B. As described in more detail in the Statement of Objection and affidavit, Fairbanks did not abandon any portion of its Shafto Enlargement Ditch water right. During the subject abandonment period from 2010 to 2019, Fairbanks diverted and beneficially used water under the Shafto Enlargement Ditch right for irrigation purposes, which is evidence that Fairbanks continued to need and use the water right. The State's diversion records also show that 4.31 cfs was diverted in 2020, further evidencing that Fairbanks had no intention to abandon the right. Moreover, Fairbanks, through its Ranch Manager, Mr. Baller, has continued to maintain and repair the Shafto Ditch, including installing a new 36" Parshall Flume at the headgate in 2019 capable of measuring flows far greater than the 5 cfs decreed to the ditch in total. Furthermore, Mr. Baller, on behalf of Fairbanks and all other properties he owns and manages in Water District 47, has and continues to operate and protect the water rights under his supervision, including through his participation with the Michigan River Water Conservancy District and the North Platte Basin Roundtable. Accordingly, to the extent that there was any nonuse under the Shafto Enlargement Ditch right, which Fairbanks disputes, there was still no intent to abandon. **4. Remarks**. Under Colorado water law, abandonment of a water right requires a concurrence of nonuse and intent to abandon. However, intent is the very essence of abandonment. Nonuse for a period of time may serve as evidence of abandonment; however, nonuse alone will not establish abandonment where the owner of the water right introduces sufficient evidence to show that during the period of nonuse, there never was any intention to permanently discontinue the use of the water. *See Beaver Park Water, Inc. v. Victor*, 649 P.2d 300 (Colo. 1982); *City and County of Denver v. Snake River Water District*, 788 P.2d 772, 776 (Colo. 1990). The evidence presented by Fairbanks in its Statement of Objection proves that there was no intent to abandon the Shafto Enlargement Ditch right over the last ten years, as Fairbanks continued to use the ditch and installed a new flume that could measure an amount greater than what is decreed to the ditch. The expenditure of funds and efforts to protect and preserve the Shafto Enlargement Ditch right is sufficient evidence that there was no intent to abandon the right. The Division Engineer's Office has also taken the position that because the headgate was required to be installed by an order issued by the Division Engineer, "the argument that the installation of this flume shows an intent to not abandon the water right is flawed." The Division Engineer's position is flawed, as there was no reason for Fairbanks to install a new headgate sized larger than the total amount decreed to the Shafto Ditch if it intended to abandon any portion of any of the water rights decreed to the structure. *See Twin Lakes Ditches v. Bd. of Cnty. Comm'rs of Lake County*, 76 P.3d 918, 922-23 (Colo. 2003)(repair and maintenance of diversion structures evidences intent to not abandon water right). Instead, the Division Engineer's position shows that it did not satisfy its duty required by C.R.S. 37-92-401(1)(c) to "investigate the circumstances relating to each water right for which the available water has not been fully applied to a beneficial use..." This failure to review and consider the circumstances of each right as required by statute means that the original abandonment listing was not supported by law. (5 pages, plus exhibits)

2022CW3050 (21CW3048) JACKSON COUNTY. PROTEST TO FINAL ABANDONMENT LIST. Protestants: Connor Creek Ranch, LLC and Gateway Farms, LLP, PO Box 399 Timnath, CO 80547, craig@harrisonresource.com, (970) 227-4100. All pleadings should be directed to: Attorneys for Protestants/Owners: Matthew Machado, # 31233 Jeffrey J. Kahn, #6894 Lyons Gaddis, PC PO Box 978, Longmont, CO 80502-0978, Telephone: 303-776-9900, mmachado@lyonsgaddis.com; jkahn@lyonsgaddis.com

2. Describe the Water Right: **A. Name of Structure**: 30 cfs Overland Ditch Enlargement ("1904 Right") **B. Date of Original Decree**: July 1, 1908 **Case No**: CA 1783 **Court**: Larimer District Court **C. Decreed Legal Description of Structure Location** (provide a 8 ½ x 11 inch copy of the applicable portion of a USGS topographic map with the location of the structure clearly marked): On the South Fork of the Michigan River in the SW ¼ of the NE ¼ of Section 4, T6N, R77W, 6th P.M. at a point 2060 feet from the north section line and 2350 feet from the east section Line of Section 4. See Exhibit A attached. **D. Source of water**: South Fork of Michigan River **E. Decreed use or uses**: Irrigation **F. Appropriation Date**: July 20, 1904 **Decreed Amount**: 30 cfs **G. Amount and use or uses listed as having been abandoned**: 7.6 cfs **H. Former District Number and Page Number where listed on Abandonment List**: Former Water District 47, Page 7 **3. State factual and legal basis for this Protest**: Protestants have always intended to maintain

and use all of the water rights in the Overland Ditch and have never had any intention of abandoning any portion of the 1904 Right. Protestants have been prevented from completing the necessary repairs to restore the capacity of the Overland Ditch to be able to divert all of the water rights decreed to the ditch due the complexity and high cost of those repairs, and difficulties with coordinating the repairs with the other owners of the Overland Ditch. The Protestants have been planning those repairs for several years and have had ongoing discussions of the repairs with the other Overland Ditch owners. The Protestants have every intention of proceeding with those repairs as soon as they are able. 4. Remarks: None.

22CW3053 JACKSON COUNTY (21CW3048). Protest of the Town of Walden to the Final Decennial Abandonment List of Water Rights in Water Division 6 in Jackson County. 1. Name, Mailing Address, E-mail Address and Phone Number of Protestant/Owner: Town of Walden, c/o Mayor Jim Dustin, P.O. Box 489, Walden, CO 80480, Phone: (970) 723-4344, Email: jimdustin.townofwalden@gmail.com. Please direct all pleadings, correspondence and other information concerning this matter to undersigned counsel, Beth Van Vurst, Van Vurst Law, LLC, 6400 S. Fiddlers Green Circle, Suite 250, Greenwood Village, CO, 80111. 2. Description of First Listed Water Right: a. Name of Structure: Walden Michigan River Diversion (WDID 4701083). b. Date of Relevant Decrees, Case Nos. and Court: A 6 cfs water right was decreed to the Enlargement of Old S.C. Ditch by the Division 6 Water Court on December 10, 1971 in Case No. W-32. A portion of that water right (1.25 cfs) was subsequently changed to the Walden Michigan River Diversion, which is the structure included on the Division Engineer's Abandonment List, by entry of decree by the Division 6 Water Court on November 19, 1987 in Case No. 87CW44. c. Decreed Legal Description: The 87CW44 Decree provides that the Walden Michigan River Diversion is located on the left bank of the Michigan River at a point S 45°04' E. 1596.23 feet from the NW Corner of Section 21, T9N, R79W. d. Source: Michigan River. e. Decreed Uses: Municipal. f. Appropriation Date: October 10, 1961. g. Decreed Amount: 1.25 cfs. h. Amount and Uses Listed as Abandoned: 1.111 cfs for municipal uses. i. Former District Number and Page Number where Listed on Abandonment List: The Walden Michigan River Diversion is located in Water District 47 and listed on page 8 of 9 on the Division Engineer's Abandonment List. j. Additional Remarks: There is a separate 1 cfs senior water right decreed to the Walden Michigan River Diversion by virtue of the amended change decree entered in Case No. W-41 on February 15, 1972. None of that senior water right is on the abandonment list and, therefore, it is not at issue in this proceeding. The total amount of water decreed to the Walden Michigan River Diversion structure is 2.25 cfs, of which 1.139 cfs (1 cfs of the senior water right and 0.139 cfs of the junior water right described above) is not on the Division Engineer's Abandonment List. 3. Description of Second Listed Water Right: a. Name of Structure: Hansen Park Well (WDID 4705060). b. Date of Relevant Decrees, Case Nos. and Court: The Hansen Park Well was adjudicated by Decree entered on November 29, 2007 in Case No. 03CW15, Water Division 6, as an additional, alternate point of diversion for a portion of a water right that was originally decreed to Walden Well No. 2 on December 31, 1972 in Case No. W-231, Water Division 6. c. Decreed Legal Description: SW1/4SW1/4 of Section 21, T9N, R79W of the 6th P.M., 798 feet north of the South line of said Section 21, and 1,125 feet east of the West line of said Section 21. d. Source: underground water, tributary to the Michigan River. e. Decreed Uses: Municipal. f. Appropriation Date: July 21, 1959. g. Decreed Amount: 150 gpm or 0.33 cfs. h. Amount and Uses Listed as Abandoned: 0.33 cfs for municipal uses. i. Former District Number and Page Number Where Listed on Abandonment List: The Hansen Park Well is located in Water District 47 and listed on page 4 of 9 on the Division Engineer's Abandonment List. j. Additional Remarks: As noted above, the Hansen Park Well is decreed as an additional, alternate point of diversion for a portion of the 500 gpm water right originally decreed to Walden Well No. 2 in Case No. W-231. Walden Well No. 2 is not included on the abandonment list and, therefore, none of the water rights decreed to that structure are at issue in this proceeding. 4. State Factual and Legal Basis for this Protest: a. The Town owns the Walden Michigan River Diversion and Hansen Park Well water rights described above (collectively, hereinafter the "Subject Water Rights") and protests the inclusion of these rights on the Division Engineer's Abandonment List. Upon information and belief, this is the first time the Division Engineer has placed either of the Subject Water Rights on the abandonment list. b. Abandonment is defined under Colorado law as "the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or part of the water available thereunder". C.R.S. § 37-92-103(2). Findings of abandonment are strongly disfavored under Colorado law. Wolfe v. Jim Hutton Educational Foundation, 344 P.3d 855, 861 (Colo. 2015). "Valuable property rights are lost by partial or total abandonment of a water right." Williams v. Midway Ranches Prop. Owners' Ass'n, 938 P.2d 515, 527 (Colo. 1997). c. In assessing whether a water right should be included on the abandonment list, the Division Engineer is guided by C.R.S. § 37-92-402(11), which provides that: "failure for a period of ten years or more to apply to a beneficial use the water available under a water right when needed by the person entitled to use the same shall create a rebuttable presumption of abandonment of a water right with respect to the amount of such available water which has not been so used; except that such presumption may be waived by the division engineer or state engineer if special

circumstances negate an intent to abandon.” C.R.S. § 37-92-402(1)(a). d. However, “abandonment of a water right requires a concurrence of nonuse and intent to abandon.” Beaver Park Water, Inc. v. City of Victor, 649 P.2d 300, 302 (Colo. 1982). “Nonuse alone will not establish abandonment where the owner introduces sufficient evidence to show that during the period of nonuse there never was any intention to permanently discontinue the use of the water.” Id. (finding that the evidence provided was sufficient to rebut the presumption of abandonment arising from twenty years of nonuse). e. Courts have identified various factors to determine whether a water right holder intended to abandon his or her water right including, but not limited to: “(1) repair and maintenance of diversion structures; (2) attempts to put the water to beneficial use; (3) active diversion records and non-appearance of the water right on the State Engineer’s abandonment list; (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. Wolfe at 859 (citing E. Twin Lakes Ditches & Water Works, Inc. v. Bd. of County Comm’rs of Lake County, 76 P.3d 918, 922 (Colo. 2003)). Many of those factors, as well as some others, are present here. f. The Town of Walden is located approximately 2-3 hours from Colorado’s Front Range urban corridor and is the only incorporated municipality in Jackson County. The Town does not now have, and never has had, intent to abandon any portion of either of the Subject Water Rights. These water rights are, instead, important components of the Town’s integrated water supply system that help provide the Town with more operational flexibility as well as additional, supplemental water supplies that are necessary to meet the Town’s current and future water needs. g. The portion of the Walden Michigan River Diversion water right that is included on the Division Engineer’s Abandonment List was donated to the Town by Howard Hampton in the 1980s. At the time of the donation, the water right was decreed to the Enlargement of Old S.C. Ditch for irrigation purposes. Judgment and Decree, Case No. W-32 (Dec. 10, 1971). h. The Town took steps to incorporate the water into its overall municipal water supply system shortly after receiving the donation. The Town filed an application with the Division 6 Water Court in Case No. 87CW44 to permanently change both the type of use and point of diversion of the donated water right. A Decree was ultimately entered in that case that confirms the Town’s right to divert 1.25 cfs of the 6 cfs originally decreed to the Enlargement of Old S.C. Ditch at the Town’s existing surface diversion structure, the Walden Michigan River Diversion, for municipal purposes. i. The Town has, and continues to, operate and maintain the Walden Michigan River Diversion structure. It serves as the point of diversion for another, more senior water right that was changed to this location for municipal purposes in Case No. W-41. Once water is diverted through the Walden Michigan River Diversion structure, it is currently conveyed to the Town’s treatment plant and then, following treatment, further delivered into one or more portions of the municipal water line distribution system. The Town may further expand its distribution system and service area in the future. j. The Town has and continues to undertake many efforts to maintain, repair, replace and improve the infrastructure of its entire water system. For example, but not by way of limitation: i.) From approximately 2008 through 2011, the Town undertook extensive work in connection with the “Walden Water Supply Improvement Project.” The project resulted in, among other things, replacement of the entire Walden Michigan River Diversion structure. ii.) The Town currently employs two individuals that are responsible for, among other things, operating and maintaining the Town’s municipal water supply and sewer system. These employees consistently conduct maintenance and other work on the Walden Michigan River Diversion structure to keep it in working condition, such as removing accumulated debris. iii.) The Town is planning to install new pumps at the water treatment plant, replace the 8-inch water distribution line that runs from the treatment plant to Town with a 10-inch line, and replace one of its existing wells. The Town considers these to be high-priority projects and is actively pursuing approximately \$2 million in outside funding for these projects. k. With regard to the Hansen Park Well, the Town obtained a decree in Case No. 03CW15 towards the end of 2007 that allows this well to be used as an additional, alternate point of diversion for a portion of the 500 gpm water right originally decreed to Walden Well No. 2 in Case No. W-231. The Hansen Park Well water right provides the Town with important operational flexibility and long-term security since it provides the Town with an additional means of diverting raw water for irrigation of a public park and other municipal purposes, which in turn reduces demand on the treated water supply system. The Town has actively maintained, and replaced where necessary, the infrastructure to which the Hansen Park Well would eventually be connected. For example, the Town repaired over half of the irrigation system in Hansen Park in 2021. l. The Town has undertaken efforts to develop the Hansen Park Well. Initial drilling was unsuccessful in developing a sufficient yield. However, it is possible that additional exploratory drilling may be more successful as there are reports of a nearby well that produces water in sufficient quantity for the Town’s needs. For the time being, the Town has elected to prioritize its limited resources on other pressing infrastructure projects and rely on its previously developed municipal water supplies. The lack of need under these circumstances is reasonable justification for non-use of the Hansen Park Well water right. 5. The above-described activities evidence that the Town does not now have, and never has had, intent to abandon any portion of either of the Subject Water Rights. 6. The Town reserves the right to identify additional facts and legal bases for this protest during the course of this proceeding. Wherefore, the Town of Walden respectfully requests this Court enter an

Order finding that the Subject Water Rights have not been abandoned and removing these water rights from the Division Engineer's Abandonment List. (8 pages).

2022CW3055 Jackson County. Protest to Final Abandonment List. Applicant-Protestant: Bear Creek Investments, LLP, 11325 CR 12W, Walden, CO 80480. All pleadings should be directed to: Jeremy E. Scott, Bell, Gould, Linder & Scott, P.C., 318 East Oak Street, Fort Collins, CO 80524, Phone Number: 970-493-8999, E-mail: jedscott@bell-law.com. Description of Water Right: Name of Water Right: **Legal Tender Ditch**. Date of Original Decree: 6-20-1939, Case No. 286, Water District No. 47, Water Div. 1; Decreed Legal Description of Structure Location: NW1/4, NW1/4, S22, T9N, R81W of the 6th P.M. Legal description is more fully described in the protest on file with the Water Court; Source of water: North Fork of North Platte River; Decreed use or uses: Irrigation; Appropriation Date: June 1, 1889; Decreed Amount: 47.0000 cfs; Amount and use or uses listed on 2020 Decennial Abandonment List as having been abandoned: 17.2100 cfs used for irrigation and all decreed uses per 2020 Decennial Abandonment List; Former District Number and Page Number where listed on Abandonment List--WDID: Admin No. 30280.14397; WDID 4700720; Page 9 of the July 1, 2020 Abandonment List of Water Rights in Division 6.

Since 2013, the subject water right is enrolled in and serves a necessary/integral part to a conservation easement and should be removed from the Final Abandonment List. Furthermore, Bear Creek Investments, LLP did not abandon the subject water right and did not intend to permanently relinquish or discontinue use of any portion of the subject water right as evidenced by, among other things: (i) its enrollment in the conservation easement program; (ii) historical diversion and placement to beneficial use of water available from the Legal Tender Ditch; (iii) documented repairs/improvements made to the Legal Tender Ditch in 2018, 2019 and 2021 for improved carriage, measurement, and delivery of water; and (iv) the planning/commencement with other stakeholders of a sizeable project to engineer/rework sections of the Legal Tender Ditch. The rebuttable presumption of abandonment provided by C.R.S. § 37-92-402(11) should not apply in this case. The factual and legal basis for this protest are more fully described in the protest on file with the Water Court. Remarks: Bear Creek Investments, LLP, requests confirmation that Legal Tender Ditch for 47.0000 cfs and for all decreed uses has not been abandoned and shall be removed from the Abandonment List (7 pages of original protest).

2022CW3058 (2021CW3048) Jackson County. Protest To Final Abandonment List. 1. Name, address, telephone number of protestant: United States Department of the Interior, Bureau of Land Management, Kremmling Field Office, 2103 E. Park Ave., Kremmling, CO 80459. **2. Description of the water right: A. Name of structure:** Spring Creek Reservoir **B. Date of original decree:** August 8, 1986. **C. Decreed legal description of structure location:** SW ¼ NE ¼, Section 31, T8N R78W, Sixth P.M. The left abutment of the dam is located at a point whence the South ¼ Corner of said Section 31 bears South 10° 59' West 3270.9 feet. **D. Source of water:** Spring Creek / Illinois River **E. Decreed use or uses:** wildlife propagation, firefighting, livestock, recreation **F. Appropriation date and decreed amount:** November 15, 1977 – 70 acre-feet **G. Amount and uses listed as having been abandoned:** 20 acre-feet **H. Former district number and page number on Abandonment List:** District number not listed. Page 8 on abandonment list. **3. State factual and legal basis for this protest:** BLM has completed a bathymetric survey of the reservoir and determined that the actual reservoir capacity is 55.45 acre-feet. In BLM's protest to the original Abandonment List, BLM provided substantial information about its history of use of the reservoir and BLM's continuing intent to use the full capacity of the reservoir. BLM requests that the abandoned amount be modified to 14.45 acre feet, leaving 55.45 acre feet decreed to the reservoir.

22CW3060 (2021CW3048) JACKSON COUNTY. PROTEST TO FINAL ABANDONMENT LIST. 1. Name, mailing address, email address and home telephone number of Protestant/Owner: The Arapaho Ranch Corporation ("Arapaho Ranch"), c/o Benjamin F. Stapleton III, Sullivan & Cromwell, 125 Broad St., New York, NY, 10004, stapletonb@sullcrom.com, 212-558-3740; Shawn K. Foster, Manager, The Arapaho Ranch Corporation, 13244 State Hwy. 14, Coalmont, CO 80430, horses3g@gmail.com, 970-723-4050. Attorneys for The Arapaho Ranch Corporation: William A. Paddock, Lee H. Johnson, and Sarah B. Wiedemann, Carlson, Hammond & Paddock, L.L.C., 1900 N. Grant Street, Suite 1200, Denver CO 80203, Phone: 303-861-9000, Email: bpaddock@chp-law.com, swiedemann@chp-law.com 2. Describe the Water Right: A. Name of Structure: Experiment Ditch. B. Date of Original Decree: 01-10-1958, Case No. 511, Jackson County District Court. C. Decreed Legal Description of Structure Location (see Exhibit A, Google Earth image showing approximate location of Experiment Ditch; Exhibit B, applicable portion of the USGS topographic map for Spicer Peak Quadrangle showing location of the land shown in Exhibit A): The Experiment Ditch "bears in a generally Northerly direction from . . . whence the township corner common to Townships 5 and 6 North and Range 80 and 81 West of the 6th P.M. bears North 34° West a distance of

425 feet.” D. Source of water: Seepage territory tributary to Arapaho Creek. E. Decreed use or uses: Irrigation. F. Appropriation Date: 10-14-1940. Decreed Amount: 32.5 c.f.s. G. Amount and use or uses listed as having been abandoned: 17.5 c.f.s. for all decreed uses. H. Former District Number and Page Number where listed on Abandonment List: Former Water District Number: 47, Revised Abandonment List: Page 4, Initial Abandonment List: Page 7. 3. The Arapaho Ranch is participating to oppose the proposed abandonment of 17.5 c.f.s. of the Experiment Ditch water right. 4. Factual and Legal Basis for this Protest and Other Remarks: The source of this water right is seepage. The Map of the Experiment Ditch (attached as Exhibit C), accepted for filing by the State Engineer on October 4, 1950, with filing no. 18419, describes the headgate or origin of the ditch as “at a point in seepage tributary to Arapaho Creek.” The map shows seepage entering the Ditch from the territory surrounding its upper reaches as opposed to a single point of origin. The decree entered on January 10, 1958, in Case No. 511, awarded the Experiment Ditch a water right for 32.5 c.f.s., and describes its source as seepage water being “diverted by means of [Experiment] Ditch from seepage territory tributary to Arapaho Creek.” A copy of the relevant portion of the 1958 Decree is attached as Exhibit D. The Experiment Ditch is physically located down-gradient from the Arapaho Creek and is constructed and situated so that it intercepts the available seepage in the territory shown on the Map of the Experiment Ditch and described in the 1958 Decree. During the past ten years the Arapaho Ranch has used all seepage water intercepted/diverted by the Experiment Ditch during the irrigation season and has applied the same to beneficial use when needed. There is no continuous record of the seepage flow available for the Experiment Ditch. The Division Engineer has no records from which she can determine the rate of flow of seepage water accruing to the Experiment Ditch. The Division Engineer has no records from which she can determine if more than 15 c.f.s. was physically available to the Experiment Ditch during the past ten years, and if so, whether that amount was unused by the Arapaho Ranch when needed. The Division Engineer simply has no factual basis to conclude that the Arapaho Ranch failed for a period of ten years or more to apply to beneficial use the water available to the Experiment Ditch when needed by the Arapaho Ranch. The physical location of the Experiment Ditch, the lack of evidence of any nonuse of water physically available when needed, the Arapaho Ranch’s maintenance and use of the Ditch, as well as the personal knowledge of the ranch owners and operators demonstrates that the Arapaho Ranch has not failed to use the water physically available when needed and never intended to abandon any portion of the Experiment Ditch 32.5 c.f.s. water right. 5. The Arapaho Ranch owns the 32.5 c.f.s. water right decreed to the Experiment Ditch.

22CW3067 (21CW3048) THE WATER SUPPLY AND STORAGE COMPANY’S PROTEST TO FINAL ABANDONMENT LIST JACKSON COUNTY. Protestant/Owner: The Water Supply and Storage Company, P.O. Box 2017, Fort Collins, CO 80522. Please send all future correspondence and pleadings to Brent A. Bartlett, Esq., and Whitney Phillips Coulter, Esq., Fischer, Brown Bartlett, Larsen & Irby, P.C., 1319 E. Prospect Road, Fort Collins, CO 80525. Describe the Water Right: **(1) Name of Structure:** Cameron Pass Ditch, WDID 4704602 **(2) Date of Original Decree:** April 23, 1902, Civil Action 1519, Larimer County District Court **(3) Decreed Legal Description of Structure Location:** 3,752 feet south, 14 degrees 15 minutes east from the north quarter corner of Section 2, Township 6 North, Range 76 West. A map showing the location of the Cameron Pass Ditch is attached hereto as **Exhibit A.** **(4) Source of water:** Middle Fork of the Michigan River **(5) Decreed use or uses:** i) The use of water originally decreed to the Cameron Pass Ditch in Case No. 1519 has been or is in the process of being changed in Water Division 1 by various shareholders of the Water Supply and Storage Company (“WSSC”) for a variety of uses, including but not limited to municipal uses, all as more fully set forth in the applicable decrees entered by or applications filed in the District Court, Water Division 1, Colorado (Consolidated Case Nos. 86CW401, 86CW402, 86CW403 and 87CW332, and Case Nos. 03CW421 (North Weld County Water District), 03CW422 (East Larimer County Water District), 07CW190 (City of Greeley), 11CW265 (Fort Collins), 17CW3057 (North Weld County Water District), and 18CW3076 (East Larimer County Water District)). The Cameron Pass Ditch water rights are also the subject of several pending change of use applications in Case Nos. 20CW3208, 21CW3199, and 21CW3229. ii) Reuse of waters diverted by WSSC that originate outside of the Cache La Poudre Basin (foreign water), including water diverted through the Cameron Pass Ditch, has been decreed by the District Court, Water Division 1, Colorado, as set forth in the decree in Case No. 2003CW089. **(6) Appropriation Date and Amount:** July 30, 1882, for 10 cfs (“Priority 10”); July 7, 1898, for 12 cfs (after 2010 abandonment of 6 cfs) (“Priority 277”). **(7) Amount and use or uses listed as having been abandoned:** 1.1 cfs of Priority 10; 12 cfs of the Priority 277. **(8) District Number and Page Number where listed on Abandonment List:** District 47, page 3. **C.** 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). “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” and “(5) filing documents to protect, change, or preserve the right.” *East Twin Lakes*, 76 P.3d 918 at 922. WSSC owns and operates a large and complex water delivery system, ultimately serving water users along the Front Range in Northern Colorado. The Cameron Pass Ditch is an integral part of that system. As described more specifically below, WSSC has not and does not now intend to abandon any portion of the water rights decreed to the Cameron Pass Ditch, and it has outwardly demonstrated its intent to continue and protect those water rights. Civil Action 1519, Larimer County District Court (“Original Decree”) was a general adjudication of water right priorities in Water District 47. Priority 10 was awarded to WSSC by original construction of the Cameron Pass Ditch. Priority No. 277 was awarded by extension of the Cameron Pass Ditch. In the 2010 Decennial Abandonment case, 11CW37, WSSC and the Division Engineer ultimately stipulated that 6 cfs of Priority 277 had been abandoned, leaving 12 cfs remaining under that right. Priority 10 was not included on the 2010 Decennial Abandonment List. Priority 10 and Priority 277 are collectively referred to herein as the Cameron Pass Ditch Rights. In *Public Service Company v. Blue River Irrigation*, 829 P.2d 1276 (Colo. 1992) the Colorado Supreme Court considered whether the acts of the shareholders of a mutual ditch company are relevant to a determination of reasonable diligence. The Court stated: ...The premise of our decisions in *Blue Water I* and *Blue Water II*, based upon *Jacobucci v. District Court*, 189 Colo. 380, 541 P.2d 667 (1975), was that a mutual ditch company exists solely for the benefit of its shareholders and thus, the act of its shareholders are relevant to a determination of reasonable diligence. *Blue River I*, 753 P.2d at 741-742....The shareholders in this case are two corporations and the acts of the majority shareholder certainly are the acts of Blue River [Irrigation Company] for purposes of the reasonable diligence hearing.... *Id.* at 1277 and 1278. This same logic applies to our facts. WSSC is a mutual ditch company. From January 1, 2010, to December 31, 2019 (“Relevant Time Period”), various shareholders of WSSC changed and sought to change the use of the entirety of the water rights decreed to the Cameron Pass Ditch. **Exhibit B.** WSSC exists for the benefit of its shareholders. The shareholders’ affirmative efforts to change the use of those decreed water right demonstrates a lack of intent to abandon, which is imputed to WSSC. In particular, WSSC shareholders obtained four change decrees involving the Cameron Pass Ditch Rights during the Relevant Time Period: 03CW421, which decree was entered in 2012; 03CW422, which decree was entered in 2011; 07CW190, which decree was entered in 2014; and 11CW265, which decree was entered in 2015. Two additional change cases were pending during the relevant time period: 17CW3057 and 18CW3076, the final decrees for which change cases were entered in 2020. WSSC filed statements of opposition in all of those change cases to ensure that the proposed changes would not injure the water rights, including the Cameron Pass Ditch Rights, held by other shareholders. WSSC filed statements of opposition in several other water court cases during the relevant time period to protect its water rights, including the Cameron Pass Ditch Rights, from injury. Such cases include but are not limited to: 2011CW203, 2011CW285, 2013CW11, and 2015CW3162. Also, WSSC filed a statement of opposition in 2015CW3053 because the subject water rights therein involved diversions from the Michigan River that may have impacted the Cameron Pass Ditch water rights. During the Relevant Time Period, WSSC conducted regular maintenance on the Cameron Pass Ditch, including annual inspection of the ditch, removal of trees and vegetation in and along the ditch, improving access, legal research regarding the extent of the easement for the ditch, and measurement of flows through the ditch. WSSC has also worked with staff from the City of Fort Collins on the maintenance and operation of the Cameron Pass Ditch. Upon information and belief, WSSC diverted all water physically and practically available to the Cameron Pass Ditch each year during the relevant period. Finally, as the Colorado Supreme Court held in its opinion related to the City of Thornton’s change of WSSC water rights, “[t]he irrigated farmland which receives water attributable to WSSC and JDC shares is generally water-short or marginally water-adequate.” *City of Thornton v. Bijou Irr. Co.*, 926 P.2d 1, 87 (Colo. 1996). WSSC’s shareholders need and use all water available to them and often need more. In fact, WSSC purchases extra water from the North Poudre Irrigation Company on an annual basis to supplement its water supply to its shareholders. WSSC has a need for all water available from the Cameron Pass Ditch Rights and has not intended to abandon any portion of them. WSSC may provide additional evidence and information as the case progresses. This Protest consists of six (6) pages, plus exhibits.

2022CW3068 (2021CW3048) Jackson County. Protest to Final Abandonment List. Protestant-Owner: United States of America, Department of the Interior, U.S. Fish & Wildlife Service. Name of Structure: **State Walden Pipeline** (WDID 4700897). Date of Original Decree: June 20, 1939. Case No: Civil Action 286. Court: Jackson County District Court. Decreed Legal Description of Structure Location Northeast 1/4 of the Southwest 1/4 of Section 15, Township 8 North, Range 80 West, of the 6th Principal Meridian, Jackson County, Colorado. See USGS topographic map at Exhibit A. Source of water: Potter Creek. Decreed use or uses: Fish propagation, fish culture, and domestic use. Appropriation Date: June 15, 1925. Decreed Amount: 0.75 cfs continuous direct flow. Amount

and use or uses listed as having been abandoned: 0.75 cfs, all decreed uses. Former District Number and Page Number where listed on Abandonment List: The State Walden Pipeline is located in former Water District No. 47 and appears on page 8 of the Division 6 Revised Abandonment Listing in Case No. 21CW3048, District Court, Water Division 6. Factual and legal basis for the protest on the State Walden Pipeline water right: The Arapaho National Wildlife Refuge was established in 1967 primarily to provide suitable habitat for migratory birds. See www.fws.gov/refuge/arapaho. Refuge staff manage water levels to assure optimal aquatic and non-aquatic vegetation to provide food sources and habitat for wildlife, and in some locations, grazing and water for domestic and stock purposes. The water is diverted from different sources and at different points according to water rights held by USFWS, and then directed through a complex system of ditches to irrigate meadows and fill ponds. The State Walden Pipeline captures and controls spring water collected in the concrete spring box and conveys it northward to a ditch that feeds the West Fish Hatchery Pond. The State appropriated the water right for both fish and domestic uses before conveying it to FWS for the Refuge in 1975. The Refuge has continued the fish uses, but has abandoned the domestic uses, as the buildings near the terminus of the pipeline are no longer maintained. The Division Engineer placed the State Walden Pipeline water right on the 2020 Abandonment List after determining at an August 2019 site visit that the pipeline was broken and incapable of conveying water for either decreed use. However, the pipeline was operational until earlier that year. In February of 2019, FWS Hydrologist Brian Newman witnessed that the pipeline was functional and was conveying water. See Declaration of Brian Newman, attached as Exhibit B, at para 5 and Figures 1 and 2. Further, Tara Wertz, who was the Refuge Manager from 2017 to 2021, regularly measured the outflow from the pipeline using a bucket method, and confirms that the pipeline was operational and was used to deliver water in 2017, 2018 and 2019. See Declaration of Tara Wertz, attached as Exhibit C. DWR's diversion records during the 2010-20 period for the State Walden Pipeline are erroneous, as acknowledged in the DWR letter response to FWS's objection. Further, the USGS has mislabeled the spring (the point of diversion for the pipeline) as the State Walden Reservoir. Staff turnover at the Refuge has been high; between 2010 and 2020 there were two Refuge Managers and two Acting Refuge Managers. Often, only one person was present at the Refuge. Funding dollars for repair to FWS infrastructure is limited and the FWS prioritized the repair and replacement of other infrastructure during this time period. FWS is unable to invest in repairing the pipeline and installing a measuring device at its outlet while the abandonment case is pending. But the evidence discussed above and attached demonstrates beneficial use and lack of intent to abandon. During the past ten years, FWS has diverted the available water into the State Walden Pipeline at the decreed point of diversion and conveyed it to the decreed place of use for its decreed fishery purpose. Description of the Potter Ditch No. 2 right (second of two protested rights): Name of Structure: Potter Ditch No. 2 (WDID 4700843). Date of Original Decree: July 1, 1908. Case No: Civil Action 1783. Court: Larimer County District Court. Decreed Legal Description of Structure Location: Northeast 1/4 of the Southeast 1/4 of Section 15, Township 8 North, Range 80 West, of the 6th Principal Meridian, Jackson County, Colorado. See Exhibit A. Source of water: Potter Creek. Decreed use or uses: Irrigation. Appropriation Date: July 1, 1905. Decreed Amount: 5 cfs absolute. Amount and use or uses listed as having been abandoned: 5 cfs, all decreed uses. Former District Number and Page Number where listed on Abandonment List: The Potter Ditch No. 2 is located in former Water District No. 47 and appears on page 7 of the Division 6 Revised Abandonment List in Case No. 21CW3048, District Court, Water Division 6. Factual and legal basis for protest on the Potter Ditch No. 2 right: The Potter Ditch No. 2 water right is used for irrigating pasture within the Refuge. The current Special Use Permit for grazing in this portion of the Refuge authorizes a minimum of 1200 AUM's. It was approved on March 15, 2018 and expires on September 30, 2022. The Colorado Division Engineer placed the Potter Ditch No. 2 water right on the 2020 Abandonment List after determining at an August 2019 site visit that the ditch had been fully abandoned and that "records of use over the last 10 plus years are in error because the water commissioners had been observing flow in the Hubbard Ditch Nos. 2 and 4." Significant staff turnover and vacancies described in the attached declarations have led to incomplete diversion records. Staffing and funding problems have prevented accurate recording of diversions in recent years, but the Refuge has still used the water right. Newman Decl., ¶¶ 8-10. The previous Refuge Manager had planned to install a new flume in 2022. Wertz Decl. at ¶ 7. DWR reported erroneously in 2017 and 2020 diversion records that there was no structure for Potter Ditch No. 2. However, at a May 3, 2022, site visit, FWS Hydrologist Brian Newman photographed the 1-foot diameter circular slide-gate structure at the decreed point of diversion, and noted that it was partially open and operational. See Newman Decl., Para. 8, Figures 5-6. An FWS staff member and three crew members from the Youth Conservation Corps Program completed repairs to the Potter Ditch No. 2 in the summer of 2017, after the grazing permittee asked for repairs so that water could continue flowing down the ditch in order to irrigate pasture for his cattle. Newman Decl., Para 9. A minimum of 1200 AUM's have grazed in this area during 2010-2020 and to present. Id. During that ten-year period, and certainly since the 2017 repairs, Potter Ditch No. 2 has been used by the grazing permittee to irrigate pasture for cattle. This evidence shows that the water right has been put to beneficial use during the past ten years in accordance with its decree. Further, the maintenance of the ditch by FWS staff and the commitment to continue using this source

to irrigate pasture for the grazing permittee demonstrate lack of intent to abandon. Remarks: The United States requests that both above-named water rights be removed from the 2020 Colorado abandonment list.

2022CW3073 (21CW3048): PROTEST TO FINAL REVISED ABANDONMENT LIST OF WATER RIGHTS CONCERNING GIVEADAM JONES DITCH in JACKSON COUNTY, COLORADO 1. **Protestant-Owner:** Silver Spur Land and Cattle, LLC, a Colorado limited liability company (“Silver Spur”), P.O. Box 714, Encampment, WY 82325, c/o Nicholas Haderlie, Esq., General Counsel, nharderlie@spurranches.com, 307.327.5550. All pleadings and court-related documents are to be sent to Claire E. Sollars, Esq., Colorado Water Matters, PLLC, P.O. Box 881302, Steamboat Springs, CO 80488, Claire@ColoradoWaterMatters.com, 970.875.3370. 2. **Description of Water Rights:** A. **Name of Structure:** Giveadam Jones Ditch. B. **Date of Original Decree:** September 19, 1892, Case No. CA0922, District Court, County of Larimer, State of Colorado. C. **Decreed Legal Description of Structure Location:** As originally decreed: SE 1/4 NE 1/4, Section 28, T10N, R79W of the 6th P.M., Routt County, Colorado. In Water Div. 6 Case 91CW24, the point of diversion was changed to the New Pioneer headgate located in the NE1/4 NW1/4, Section 27, T10N, R79W, 6th P.M. at a point from whence the W/4 corner bears south 59 degrees 30 minutes west, 2800 feet for a portion of the water right. DWR database UTM Coordinates: 393744 mE 4518513 mN. D. **Source of water:** Canadian River. E. **Decreed use:** Irrigation. F. **Appropriation Date:** May 20, 1890 (Priority 224 (200)), and June 17, 1891 (Priority 242 (214)). **Decreed Amount:** 4.00 cfs and 2.0 cfs, respectfully. G. **Amount and Use or Uses Listed as Having Been Abandoned:** 1.33 cfs and 0.67 cfs, all decreed uses. H. **Former District Number and Page Number Where Listed on Abandonment List:** Water District 47 (WDID 4700637), page 4 of 9. 3. **Factual and Legal Basis for this Protest:** Abandonment of a water right is defined as “the termination of a water right in whole or in part *as a result of the intent of the owner* thereof to discontinue permanently the use of all or a part of the water available thereunder.” C.R.S. § 37-92-103(2) (emphasis added). If established, see C.R.S. § 37-92-402(11), a presumption of intent to abandon “is insufficient in and of itself to prove abandonment.” *East Twin Lakes Ditches & Water Works, Inc. v. Bd. of County Comm'rs of Lake County*, 76 P.3d 918, 921 (Colo. 2003) (citations omitted). Intent to abandon “remains the touchstone of the abandonment analysis.” *Id.* Colorado courts consider various factors when evaluating intent. See *East Twin Lakes Ditches*, 76 P.3d at 922, 923-24; *Wolfe v. Jim Hutton Educational Foundation*, 344 P.3d 855, 861 (Colo. 2015) (intent to not abandon includes diverting a water right at an undecreed point of diversion). The presumption of abandonment can be rebutted “by introducing evidence sufficient to excuse the non-use *or* demonstrate an intent not to abandon.” *East Twin Lakes*, 76 P.3d at 921 (citing *Haystack Ranch, LLC v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000) (emphasis added). Colorado courts consider a number of mitigating factors when evaluating intent, including taking legal and investigative actions consistent with the use and protection of the water rights, and efforts to use a water right for an undecreed use or diverting a water right at an undecreed point of diversion. *Id.*, at 923, 924. See, e.g., *Wolfe v. Jim Hutton Educational Foundation*, 344 P.3d 855, 861 (Colo. 2015) (addressing use of undecreed point of diversion and stating: “Regardless of the burden of proof applied, [the Colorado Supreme Court] spoke clearly in both [the *Lengel* and *Means*] cases about the relationship between undecreed diversions and abandonment—use of a water right at an undecreed point of diversion does not evidence intent to abandon.” (discussing *Lengel v. Davis*, 347 P.2d 142 (Colo. 1959) and *Means v. Pratt*, 331 P.2d 805 (Colo. 1958)). As demonstrated in the *Statements of Objection to Decennial Abandonment List* (Exhibit 1 and Exhibit 2 (incorporated herein by reference)), Silver Spur had understood the entirety of the Giveadam Jones Ditch water right was transferred to the New Pioneer Ditch and that the entire 6.0 cfs was being diverted at the point and placed to beneficial use. Silver Spur did not intend to abandon the water rights. 4. **Remarks:** Silver Spur respectfully requests the Water Court enter an order (1) confirming Silver Spur did not intend to abandon any portion of the Giveadam Jones Ditch water rights; (2) mandating the Giveadam Jones Ditch water rights be removed from the Final Revised Abandonment List of Water Rights in Water Division 6, and (3) providing for other relief as deemed appropriate.

2022CW3075 (21CW3048). Protest to Final Abandonment List of Water Rights Involving Water Rights in Jackson County, Colorado. Attorneys for Protestant: Melinda H. Sherman, Reg. #23259, Bryce K. Hinchman, Reg. #48044, Sharp, Sherman & Engle LLC, P.O. Box 774608, Steamboat Springs, CO 80477, Phone: (970) 879-7600, sherman@steamboatlawfirm.com, bhinchman@steamboatlawfirm.com. 1. **Name and Address of Protestant:** Canadian River Ranch, LLC, an individual protected series of Foxmoore Properties, LLC, an Oklahoma Series LLC, P.O. Box 840, Tulsa, OK 74110 (“Protestant”). Send a Copy of Pleadings to: Melinda H. Sherman, Esq., Bryce K. Hinchman, Esq., P.O. Box 774608, Steamboat Springs, CO 80477, Phone: 970-879-7600, sherman@steamboatlawfirm.com, bhinchman@steamboatlawfirm.com. 2. **Describe the Water Rights:** 2.A. **Fox Ditch.** (1) **Date of Original Decree:** July 1, 1908. (2) **Decreed Legal Description of Structure Location:** Per the decree, the headgate of the Fox Ditch is located at a point 5,220 feet East and 3,260 feet South of the section corner common

to Sections 3 and 4, Township 7 North, Range 77 West of the 6th P.M., and Sections 33 and 34, Township 8 North, Range 77 West of the 6th P.M. In Jackson County, Colorado. See Exhibit "A-1" for topographical map depicting structure location. (3) Source of Water: South Fork Canadian River. (4) Decreed Use or Uses: Irrigation. (5) Appropriation Date: July 14, 1900. (6) Decreed Amount: 8.65 c.f.s., Absolute. (7) Amount and Use or Uses Listed as Having Been Abandoned: 4.65 c.f.s. proposed for abandonment, all decreed uses. (8) Former District Number and Page Number Where Listed on Abandonment List: Water District No. 47; WDID 4700622; Admin No. 18457.00000. Final Abandonment List, Page 4 of 9, Line 17. **2.B. Lower Little Muddy Ditch.** (1) Date of Original Decree: Date of Original Decree: December 31, 1975. (2) Decreed Legal Description of Structure Location: Per the decree, the headgate of the Lower Little Muddy Ditch is in the Southeast Quarter (SE ¼) of the Southeast Quarter (SE ¼) of Section 5, Township 8 North, Range 77 West of the 6th P.M., in Jackson County, Colorado, at a point whence the Southeast Corner of said Section 5 bears south 42° East, a distance of 1,750 feet. See Exhibit "A-2" for topographical map depicting structure location. (3) Source of Water: Muddy Creek. (4) Decreed Use or Uses: Irrigation. (5) Appropriation Date: October 19, 1960. (6) Decreed Amount: 14.0 c.f.s., Absolute. (7) Amount and Use or Uses Listed as Having Been Abandoned: 5.51 c.f.s. proposed for abandonment, all decreed uses. (8) Former District Number and Page Number Where Listed on Abandonment List: Water District No. 47; WDID 4701041; Admin No. 45655.40469. Final Abandonment List, Page 5 of 9, Line 41 (Final Line on Page). **2.C. Upper Little Muddy Ditch.** (1) Date of Original Decree: December 31, 1975. (2) Decreed Legal Description of Structure Location: Per the decree, the headgate of Upper Little Muddy Ditch is in the Northwest Quarter (NW ¼) of the Southwest Quarter (SW ¼) of Section 4, Township 8 North, Range 77 West of the 6th P.M., in Jackson County, Colorado, at a point whence the West Quarter Corner of said Section 4 bears North 79° West, a distance of 1,100 feet. See Exhibit "A-3" for topographical map depicting structure location. (3) Source of Water: Muddy Creek. (4) Decreed Use or Uses: Irrigation. (5) Appropriation Date: September 20, 1959. (6) Decreed Amount: 12.0 c.f.s., Absolute. (7) Amount and Use or Uses Listed as Having Been Abandoned: 3.0 c.f.s. proposed for abandonment, all decreed uses. (8) Former District Number and Page Number Where Listed on Abandonment List: Water District No. 47; WDID 4701040; Admin No. 45655.40074. Final Abandonment List, Page 8 of 9, Line 32. **2.D. Vita Ditch.** (1) Date of Original Decree: January 10, 1958. (2) Decreed Legal Description of Structure Location: Per the decree, the headgate of Vita Ditch is located at a point whence the West quarter corner of Section 22, Township 8 North, Range 77 West of the 6th P.M., bears North 43°08' West a distance of 607 feet. In Jackson County, Colorado. See Exhibit "A-4" for topographical map depicting structure location. (3) Source of Water: Kelly Creek. (4) Decreed Use or Uses: Irrigation. (5) Appropriation Date: September 15, 1940. (6) Decreed Amount: 6.2 c.f.s., Absolute. (7) Amount and Use or Uses Listed as Having Been Abandoned: 6.2 c.f.s. proposed for abandonment, all decreed uses. (8) Former District Number and Page Number Where Listed on Abandonment List: Water District No. 47; WDID 4700933; Admin No. 33534.33130. Final Abandonment List, Page 8 of 9, Line 34. **2.E. Togo Ditch No. 2.** (1) Date of Original Decree: March 6, 1923. (2) Decreed Legal Description of Structure Location: Per the decree, the headgate of Togo Ditch No. 2 is located 50 rods South, 4 rods East, of the Northwest corner of the Southwest Quarter (SW ¼) of Section 30, Township 9 North, Range 77 West of the 6th P.M. in Jackson County, Colorado. See Exhibit "A-5" for topographical map depicting structure location. (3) Source of Water: Cabin Creek. (4) Decreed Use or Uses: Irrigation. (5) Appropriation Date: June 18, 1919. (6) Decreed Amount: 10.0 c.f.s., Absolute. (7) Amount and Use or Uses Listed as Having Been Abandoned: 6.0 c.f.s. proposed for abandonment, all decreed uses. (8) Former District Number and Page Number Where Listed on Abandonment List: WDID: 4700923; Admin No. 25370.00000. Final Abandonment List, Page 8, Line 30. **3. State Factual and Legal Basis for this Protest:** Protestant and Protestant's predecessor in interest did not intend to abandon any portion of the Protested Water Rights, and there is no evidence that Protestant or Protestant's predecessor in interest intended to permanently discontinue the use of any portion of the Protested Water Rights. The rebuttable presumption of abandonment provided by C.R.S. § 37-92-402(11) should not apply in this case. Additionally, records of the Protestant's predecessor during the decennial period show (a) in some years, greater diversion flows than are reflected in the Water Commissioner's records, and (b) in some years of low water flow in the respective supply sources, that such predecessor diverted water to the full extent of physical availability of flow from such sources. *The factual and legal basis for this Protest is more fully described in the Protest on file with the Water Court.* **4. Conclusion:** Protestant requests confirmation that: **a.** The 8.65 c.f.s. of direct flow water adjudicated to the Fox Ditch in Case No. CA1783 for irrigation purposes has not been abandoned in whole or in part, and that it be removed from the Final Revised Abandonment List of Water Rights in Water Division 6; **b.** The 14.0 c.f.s. of direct flow water adjudicated to the Lower Little Muddy Ditch in Case No. W-846-75 for irrigation purposes has not been abandoned in whole or in part, and that it be removed from the Final Revised Abandonment List of Water Rights in Water Division 6; **c.** The 12.0 c.f.s. of direct flow water adjudicated to the Upper Little Muddy Ditch in Case No. W-846-75 for irrigation purposes has not been abandoned in whole or in part, and that it be removed from the Final Revised Abandonment List of Water Rights in Water Division 6; **d.** The 6.2 c.f.s. of direct flow water adjudicated

to the Vita Ditch in CA511 for irrigation purposes has not been abandoned in whole or in part, and that it be removed from the Final Revised Abandonment List of Water Rights in Water Division 6; **e.** The 10.0 c.f.s. of direct flow water adjudicated to the Togo Ditch No. 2 in CA3571 for irrigation purposes has not been abandoned in whole or in part, and that it be removed from the Final Revised Abandonment List of Water Rights in Water Division 6; **f.** To the maximum extent permitted by law, Protestant seeks recovery of reasonable costs and fees incurred in connection with defending its ownership status of the Protested Water Rights against the State's listing on the Final Revised Abandonment List of Water Rights in Water Division 6; and **g.** For such other and further relief as the Court deems just and proper. [14 pages of original Protest]

2022CW3078, (21CW3048) JACKSON COUNTY. PROTEST TO FINAL ABANDONMENT LIST OF COLORADO CATTLEMEN'S AGRICULTURAL LAND TRUST. 1. Name, mailing address, and telephone number of Protestant: a. Colorado Cattlemen's Agricultural Land Trust ("CCALT"), c/o Megan Knott, Stewardship Director, P.O. Box 773014, Steamboat Springs, CO 80487, Telephone: (720) 557-8272, megan@ccalt.org. b. Please send all pleadings and correspondence to: David L. Kueter, #26136, Holsinger Law, LLC, 1800 Glenarm Place, Suite 500, Denver, Colorado 80202, Telephone: (303) 722-2828, dkueter@holsingerlaw.com. **2. Describe the Water Right:** A. Name of Structure: Lorena Ditch. B. Date of Original Decree: September 19, 1892 in case C.A. 0922. C. Decreed Legal Description of Structure Location: The headgate is located on the left bank of the North Platte River in the SE¼ SE¼ of Section 14, Township 8 South, Range 81 West of the 6th P.M. in Jackson County, Colorado. See **Exhibit A**. D. Source of water: North Platte River. E. Decreed uses: Irrigation. F. Appropriation Date: April 15, 1887 (Priority 36) and July 16, 1888 (Priority 72). G. Decreed Amount: 4 c.f.s. (Priority 36) and 3.5 c.f.s. (Priority 72). H. Amount and uses listed as having been abandoned: 4 c.f.s. (Priority 36) and 3.5 c.f.s. (Priority 72) for all decreed uses. I. Former District Number and Page Number where listed on Abandonment List: District 47, Page 5 of the Revised Abandonment List of Water Rights in Water Division 6, dated December 20, 2021. J. State factual and legal basis for this Protest: i. CCALT is the holder of a conservation easement upon the land where the Lorena Ditch is located and which is subject to this protest (**Exhibit B**). The conservation easement was granted in 2013, and demonstrates lack of intent to abandon the water rights. *East Twin Lakes v. Lake County*, 76 P.3d 918, 924 (Colo. 2003). ii. CCALT adopts and incorporates the bases set forth in the attached objection filed with the Division of Water Resources by the water right owner, Swift Resources Limited Partnership LLLP (**Exhibit C**). iii. The diversion records maintained by the Division of Water Resources show diversion of at least 7.0 c.f.s. during the period from 2010 to 2020 (**Exhibit D**). D. Number of pages of Protest: 36, including 31 pages of exhibits.

2022CW3081 (21CW3048): PROTEST TO FINAL REVISED ABANDONMENT LIST OF WATER RIGHTS CONCERNING PLEASANT VALLEY DITCH in JACKSON COUNTY, COLORADO 1. **Protestant-Owner:** Silver Spur Land and Cattle, LLC, a Colorado limited liability company ("Silver Spur"), P.O. Box 714, Encampment, WY 82325, c/o Nicholas Haderlie, Esq., General Counsel, nhaderlie@spurranches.com, 307.327.5550. All pleadings and court-related documents are to be sent to Claire E. Sollars, Esq., Colorado Water Matters, PLLC, P.O. Box 881302, Steamboat Springs, CO 80488, Claire@ColoradoWaterMatters.com, 970.875.3370. 2. **Description of Water Right:** A. Name of Structure: Pleasant Valley Ditch. B. Date of Original Decree: April 23, 1902, CA1523, District Court, County of Larimer, State of Colorado. C. Decreed Legal Description of Structure Location: "The headgate is located on the left bank of [North Fork of the Platte River] at a point whence the southwest corner of section 4, Township 10 North Range 82 West bears south 48 degrees west 38 chains." DWR database UTM Coordinates: 364934 mE 4527975 mN; 363788 mE 4526509 mN. D. Source of water: North Fork North Platte River. E. Decreed use: Irrigation. F. Appropriation Date: October 18, 1889. Decreed Amount: 36.0 cfs, Absolute. G. Amount and Use or Uses Listed as Having Been Abandoned: 23.0 cfs, all decreed uses. H. Former District Number and Page Number Where Listed on Abandonment List: Water District 47 (WDID 4700837), page 7 of 9. 3. **Factual and Legal Basis for this Protest:** Abandonment of a water right is defined as "the termination of a water right in whole or in part *as a result of the intent of the owner* thereof to discontinue permanently the use of all or a part of the water available thereunder." C.R.S. § 37-92-103(2) (emphasis added). If established, see C.R.S. § 37-92-402(11), a presumption of intent to abandon "is insufficient in and of itself to prove abandonment." *East Twin Lakes Ditches & Water Works, Inc. v. Bd. of County Comm'rs of Lake County*, 76 P.3d 918, 921 (Colo. 2003) (citations omitted). Intent to abandon "remains the touchstone of the abandonment analysis." *Id.* Colorado courts consider various factors when evaluating intent. See *East Twin Lakes Ditches*, 76 P.3d at 922, 923-24; *Wolfe v. Jim Hutton Educational Foundation*, 344 P.3d 855, 861 (Colo. 2015) (intent to not abandon includes diverting a water right at an undecreed point of diversion). The presumption of abandonment can be rebutted "by introducing evidence sufficient to excuse the non-use *or* demonstrate an intent not to abandon." *East Twin Lakes*, 76 P.3d at 921 (citing *Haystack Ranch, LLC v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000) (emphasis added). Colorado courts consider a number of mitigating factors when evaluating intent,

including repair and maintenance of diversion structures, *Haystack Ranch*, 997 P.2d at 554; *Southeastern Colo. Water Conservancy Dist. v. Twin Lakes Assoc., Inc.*, 770 P.2d 1231, 1237 (Colo.1989). As discussed in the *Statement of Objection to Decennial Abandonment List* (Exhibit 1 (incorporated herein by reference)), Silver Spur diverted and beneficially used the water to the maximum extent water was available. In 2019, Silver Spur discovered a landslide had blocked the ditch. Significant repairs and improvements have been done, and Silver Spur expects to resume full use of the water right. 4. **Remarks:** Silver Spur respectfully requests the Water Court enter an order (1) confirming Silver Spur did not intend to abandon any portion of the Pleasant Valley Ditch Water Right; (2) mandating the Pleasant Valley Ditch Water Right be removed from the Final Revised Abandonment List of Water Rights in Water Division 6, and (3) providing for other relief as deemed appropriate.

22CW3082 (21CW3048) JACKSON COUNTY Protest to Final Abandonment List. Protestant: Lori A. Schott Revocable Trust, c/o Keller Law LLC, PO Box 771222, Steamboat Springs, CO 80477; 877-529-2125. Structure: Willford Ditch (WDID 4700957). Date of Decree: 1958-01-10, CA511, District Court in and for County of Jackson, State of Colorado. Decreed Legal Description of Structure Location: A point on the right bank of Beaver Creek whence the South Quarter corner of Section 28, T 12 N, R 82 W bears South 5° West 500 feet, 18 cubic feet of water per second of time, and from Little Beaver Creek, at a point on the ditch whence the Northwest corner of Section 34, T 12 N, R 80 West bears North 85° a distance of 1000 feet, 2 cubic feet of water per second of time. Source of water: Beaver Creek, a tributary to Big Creek, a tributary to North Platte River. Decreed use or uses: All decreed uses, including without limitation irrigation. Appropriation date: 1954-09-15. Amount decreed: 20.00 cubic feet per second (cfs) absolute; amount listed for abandonment 20.00 cfs. The structure is located in Water Dist. 47 and the water right is listed on Page 9 of the Div. 6 Final Abandonment List. Protest: Protestant and its predecessor's intent to use the water right, despite legal and economic obstacles to its actual use, warrants its removal from the Final Abandonment List and continued ownership by Protestant in the amount of 20.00 cfs. Remarks: See Court file for more detailed information like complete legal and factual basis for protest. The deadline for an entry of appearance is August 31, 2022 for any person desiring to participate in the protest in support or opposition.

2022CW3083 (21CW3048): PROTEST TO FINAL REVISED ABANDONMENT LIST OF WATER RIGHTS CONCERNING NOVELTY DITCH in JACKSON COUNTY, COLORADO 1. **Protestant-Owner:** Silver Spur Land and Cattle, LLC, a Colorado limited liability company ("Silver Spur"), P.O. Box 714, Encampment, WY 82325, c/o Nicholas Haderlie, Esq., General Counsel, nharderlie@spurranches.com, 307.327.5550. All pleadings and court-related documents are to be sent to Claire E. Sollars, Esq., Colorado Water Matters, PLLC, P.O. Box 881302, Steamboat Springs, CO 80488, Claire@ColoradoWaterMatters.com, 970.875.3370. 2. **Description of Water Right:** A. **Name of Structure:** Novelty Ditch. B. **Date of Original Decree:** September 19, 1892, CA0922, District Court, County of Larimer, State of Colorado. C. **Decreed Legal Description of Structure Location:** right bank of St. Francis Creek, at a point whence the NE corner of Section 3, T. 9 N., R. 78 W. bears N 10 degrees E. 20 chains. DWR database UTM Coordinates: 404323 mE 4514843 mN. D. **Source of water:** Saint Francis Creek. E. **Decreed use:** Irrigation. F. **Appropriation Date:** June 25, 1891. **Decreed Amount:** 8.0 cfs Absolute. G. **Amount and Use or Uses Listed as Having Been Abandoned:** 5.56 cfs, all decreed uses. H. **Former District Number and Page Number Where Listed on Abandonment List:** Water District 47 (WDID 4700805), page 7 of 9. 3. **Factual and Legal Basis for this Protest:** Abandonment of a water right is defined as "the termination of a water right in whole or in part *as a result of the intent of the owner* thereof to discontinue permanently the use of all or a part of the water available thereunder." C.R.S. § 37-92-103(2) (emphasis added). If established, see C.R.S. § 37-92-402(11), a presumption of intent to abandon "is insufficient in and of itself to prove abandonment." *East Twin Lakes Ditches & Water Works, Inc. v. Bd. of County Comm'rs of Lake County*, 76 P.3d 918, 921 (Colo. 2003) (citations omitted). Intent to abandon "remains the touchstone of the abandonment analysis." *Id.* Colorado courts consider various factors when evaluating intent. See *East Twin Lakes Ditches*, 76 P.3d at 922, 923-24. See also *Wolfe v. Jim Hutton Educational Foundation*, 344 P.3d 855 (Colo. 2015). The presumption of abandonment can be rebutted "by introducing evidence sufficient to excuse the non-use or demonstrate an intent not to abandon." *East Twin Lakes*, 76 P.3d at 921 (citing *Haystack Ranch, LLC v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000) (emphasis added). Colorado courts consider a number of mitigating factors when evaluating intent, including repair and maintenance of diversion structures, *Haystack Ranch*, 997 P.2d at 554; *Southeastern Colo. Water Conservancy Dist. v. Twin Lakes Assoc., Inc.*, 770 P.2d 1231, 1237 (Colo. 1989). As discussed in the *Statement of Objection to Decennial Abandonment List* (Exhibit 1 (incorporated herein by reference)), Silver Spur diverted and beneficially used the water to the maximum extent water was available. Silver Spur determined the measuring device was not operating properly and did not reflect the full amount of water being diverted. An appropriately sized measuring device has been ordered and will be installed in 2022. 4. **Remarks:** Silver Spur respectfully requests the Water Court enter an order (1) confirming Silver Spur did not intend to abandon any

portion of the Novelty Ditch Water Right; (2) mandating the Novelty Ditch Water Right be removed from the Final Revised Abandonment List of Water Rights in Water Division 6, and (3) providing for other relief as deemed appropriate.

2022CW3084 (21CW3048): PROTEST TO FINAL REVISED ABANDONMENT LIST OF WATER RIGHTS CONCERNING SAINT FRANCES DITCH 7 in JACKSON COUNTY, COLORADO 1. **Protestant-Owner:** Silver Spur Land and Cattle, LLC, a Colorado limited liability company (“Silver Spur”), P.O. Box 714, Encampment, WY 82325, c/o Nicholas Haderlie, Esq., General Counsel, nharderlie@spurranches.com, 307.327.5550. All pleadings and court-related documents are to be sent to Claire E. Sollars, Esq., Colorado Water Matters, PLLC, P.O. Box 881302, Steamboat Springs, CO 80488, Claire@ColoradoWaterMatters.com, 970.875.3370. 2. **Description of Water Right:** A. **Name of Structure:** Saint Frances Ditch 7. B. **Date of Original Decree:** September 19, 1892, CA0922, District Court, County of Larimer, State of Colorado. C. **Decreed Legal Description of Structure Location:** right bank of stream on the NE 4 NE 4, Section 5, T. 9N., R. 78 W. DWR database UTM Coordinates: 401465 mE 4515482 mN. D. **Source of water:** Sherman Creek (Christy Creek as described in decree). E. **Decreed use:** Irrigation. F. **Appropriation Date:** September 4, 1888. **Decreed Amount:** 6.0 cfs Absolute. G. **Amount and Use or Uses Listed as Having Been Abandoned:** 3.5 cfs, all decreed uses. H. **Former District Number and Page Number Where Listed on Abandonment List:** Water District 47 (WDID 4700861), page 7 of 9. 3. **Factual and Legal Basis for this Protest:** Abandonment of a water right is defined as “the termination of a water right in whole or in part *as a result of the intent of the owner* thereof to discontinue permanently the use of all or a part of the water available thereunder.” C.R.S. § 37-92-103(2) (emphasis added). If established, *see* C.R.S. § 37-92-402(11), a presumption of intent to abandon “is insufficient in and of itself to prove abandonment.” *East Twin Lakes Ditches & Water Works, Inc. v. Bd. of County Comm'rs of Lake County*, 76 P.3d 918, 921 (Colo. 2003) (citations omitted). Intent to abandon “remains the touchstone of the abandonment analysis.” *Id.* Colorado courts consider various factors when evaluating intent. *See East Twin Lakes Ditches*, 76 P.3d at 922, 923-24; *Haystack Ranch, LLC v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000); *Southeastern Colo. Water Conservancy Dist. v. Twin Lakes Assoc., Inc.*, 770 P.2d 1231, 1237 (Colo. 1989); *see also Wolfe v. Jim Hutton Educational Foundation*, 344 P.3d 855 (Colo. 2015). Such mitigating factors include repair and maintenance of diversion structures. *Haystack Ranch*, 997 P.2d at 554. As discussed in the *Statement of Objection to Decennial Abandonment List* (Exhibit 1 (incorporated herein by reference)), Silver Spur diverted and beneficially used the water to the maximum extent water was available and provided diversion records documenting its efforts. Silver Spur continues to work in good faith with the Division Engineer to comply with the 2019 *Order to Install Headgate and/or Measuring Device* and has incurred expenditures on materials and labor in doing so. 3. **Remarks:** Silver Spur respectfully requests the Water Court enter an order (1) confirming Silver Spur did not intend to abandon any portion of the Saint Frances Ditch 7 Water Right; (2) mandating the Saint Frances Ditch 7 Water Right be removed from the Final Revised Abandonment List of Water Rights in Water Division 6; and (3) providing for other relief as deemed appropriate.

2022CW3085 (21CW3048): PROTEST TO FINAL REVISED ABANDONMENT LIST OF WATER RIGHTS CONCERNING OVERLAND DITCH in JACKSON COUNTY, COLORADO 1. **Protestant-Owner:** Silver Spur Land and Cattle, LLC, a Colorado limited liability company (“Silver Spur”), P.O. Box 714, Encampment, WY 82325, c/o Nicholas Haderlie, Esq., General Counsel, nharderlie@spurranches.com, 307.327.5550. All pleadings and court-related documents are to be sent to Claire E. Sollars, Esq., Colorado Water Matters, PLLC, P.O. Box 881302, Steamboat Springs, CO 80488, Claire@ColoradoWaterMatters.com, 970.875.3370. 2. **Description of Water Rights:** A. **Name of Structure:** Overland Ditch. B. **Date of Original Decree:** Admin. No. 19924, Priority No. 326 - July 1, 1908, CA01783, District Court, County of Larimer, State of Colorado. Admin. No. 23285, Priority No. 391 – Mar. 6, 1923, Case 03/06/1923. C. **Decreed Legal Description of Structure Location:** SW 4 NE 4 of Section 4, Township 6 North, Range 77 West of the 6th P.M. database UTM Coordinates: 412219 mE 4486063 mN. D. **Source of water:** South Fork Michigan River. E. **Decreed use:** Irrigation. F. **Appropriation Date and Decreed Amount:** Admin. No. 19924, Priority No. 326 - July 20, 1904, 30 cfs. Admin. No. 23285, Priority No. 391 – Oct. 2, 1913, 12.82 cfs. G. **Amount and Use or Uses Listed as Having Been Abandoned:** Admin. No. 19924, Priority No. 326 - 7.6 CFS, all decreed uses. Admin. No. 23285, Priority No. 391 – 7.82, all decreed uses. H. **Former District Number and Page Number Where Listed on Abandonment List:** Water District 47 (WDID 4700819), page 7 of 9. 3. **Factual and Legal Basis for this Protest:** Abandonment of a water right is defined as “the termination of a water right in whole or in part *as a result of the intent of the owner* thereof to discontinue permanently the use of all or a part of the water available thereunder.” C.R.S. § 37-92-103(2) (emphasis added). If established, *see* C.R.S. § 37-92-402(11), a presumption of intent to abandon “is insufficient in and of itself to prove abandonment.” *East Twin Lakes Ditches & Water Works, Inc. v. Bd. of County Comm'rs of Lake County*, 76 P.3d 918, 921 (Colo. 2003) (citations omitted). Intent

to abandon “remains the touchstone of the abandonment analysis.” *Id.* Colorado courts consider various factors when evaluating intent. See *East Twin Lakes Ditches*, 76 P.3d at 922, 923-24; *Haystack Ranch, LLC v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000); *Southeastern Colo. Water Conservancy Dist. v. Twin Lakes Assoc., Inc.*, 770 P.2d 1231, 1237 (Colo. 1989); see also *Wolfe v. Jim Hutton Educational Foundation*, 344 P.3d 855 (Colo. 2015). Such mitigating factors include repair and maintenance of diversion structures. *Haystack Ranch*, 997 P.2d at 554. As discussed in the *Statements of Objection to Decennial Abandonment List* (Exhibit 1 (Admin. No. 19924, Priority No. 326) and Exhibit 2 (Admin. No. 23285, Priority No. 391) (incorporated herein by reference)), the Overland Ditch has been used and maintained cooperatively with other water right owners for years. Additionally, extensive work has been done to rehabilitate the ditch to carry its full decreed rate of flow. 4. **Remarks:** Silver Spur respectfully requests the Water Court enter an order (1) confirming Silver Spur did not intend to abandon any portion of the Overland Ditch Water Rights; (2) mandating the Overland Ditch Water Rights be removed from the Final Revised Abandonment List of Water Rights in Water Division 6; and (3) providing for other relief as deemed appropriate.

2022CW3086 (21CW3048): PROTEST TO FINAL REVISED ABANDONMENT LIST OF WATER RIGHTS CONCERNING LEGAL TENDER DITCH in JACKSON COUNTY, COLORADO 1. **Protestant-Owner:** Silver Spur Land and Cattle, LLC, a Colorado limited liability company (“Silver Spur”), P.O. Box 714, Encampment, WY 82325, c/o Nicholas Haderlie, Esq., General Counsel, nharderlie@spurranches.com, 307.327.5550. All pleadings and court-related documents are to be sent to Claire E. Sollars, Esq., Colorado Water Matters, PLLC, P.O. Box 881302, Steamboat Springs, CO 80488, Claire@ColoradoWaterMatters.com, 970.875.3370. 2. **Description of Water Right:** A. **Name of Structure:** Legal Tender Ditch. B. **Date of Original Decree:** June 20, 1939, CA0286, District Court, County of Larimer, State of Colorado. C. **Decreed Legal Description of Structure Location:** As decreed, left bank of the North Fork of the North Platte River, NW4 NW4 of Section 32, T. 8 North, R. 82 West. DWR database UTM Coordinates: 374584 mE 4510976 mN. D. **Source of water:** North Fork North Platte River. E. **Decreed use:** Irrigation. F. **Appropriation Date:** June 1, 1889. **Decreed Amount:** 47.0 cfs Absolute. G. **Amount and Use or Uses Listed as Having Been Abandoned:** 17.21 cfs, all decreed uses. H. **Former District Number and Page Number Where Listed on Abandonment List:** Water District 47 (WDID 4700720), page 5 of 9. 3. **Factual and Legal Basis for this Protest:** Abandonment of a water right is defined as “the termination of a water right in whole or in part *as a result of the intent of the owner* thereof to discontinue permanently the use of all or a part of the water available thereunder.” C.R.S. § 37-92-103(2) (emphasis added). If established, see C.R.S. § 37-92-402(11), a presumption of intent to abandon “is insufficient in and of itself to prove abandonment.” *East Twin Lakes Ditches & Water Works, Inc. v. Bd. of County Comm’rs of Lake County*, 76 P.3d 918, 921 (Colo. 2003) (citations omitted). Intent to abandon “remains the touchstone of the abandonment analysis.” *Id.* Colorado courts consider various factors when evaluating intent. See *East Twin Lakes Ditches*, 76 P.3d at 922, 923-24; *Haystack Ranch, LLC v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000); *Southeastern Colo. Water Conservancy Dist. v. Twin Lakes Assoc., Inc.*, 770 P.2d 1231, 1237 (Colo. 1989); see also *Wolfe v. Jim Hutton Educational Foundation*, 344 P.3d 855 (Colo. 2015). Such mitigating factors include repair and maintenance of diversion structures. *Haystack Ranch*, 997 P.2d at 554. As discussed in the *Statement of Objection to Decennial Abandonment List* (Exhibit 1 (incorporated herein by reference)), Silver Spur and other water users, including Bear Creek Investments LLP and Colorado Parks and Wildlife, have undertaken significant efforts to repair and improve Legal Tender Ditch. See also Exhibit 2, Exhibit 3 (incorporated herein by reference) (Bear Creek Investments LLP Statements of Objection). The water users recently worked with Ducks Unlimited to design a project to ensure long term delivery of the maximum decreed rights in the ditch. The \$350,000 project is expected to be completed in 2022. Legal Tender Ditch is regularly maintained and used to the maximum extent possible. 4. **Remarks:** Silver Spur respectfully requests the Water Court enter an order (1) confirming Silver Spur did not intend to abandon any portion of the Legal Tender Ditch Water Right; (2) mandating the Legal Tender Ditch Water Right be removed from the Final Revised Abandonment List of Water Rights in Water Division 6; and (3) providing for other relief as deemed appropriate.

2022CW3087 (21CW3048): PROTEST TO FINAL REVISED ABANDONMENT LIST OF WATER RIGHTS CONCERNING WHEELER DITCH in JACKSON COUNTY, COLORADO 1. **Protestant-Owner:** Silver Spur Land and Cattle, LLC, a Colorado limited liability company (“Silver Spur”), P.O. Box 714, Encampment, WY 82325, c/o Nicholas Haderlie, Esq., General Counsel, nharderlie@spurranches.com, 307.327.5550. All pleadings and court-related documents are to be sent to Claire E. Sollars, Esq., Colorado Water Matters, PLLC, P.O. Box 881302, Steamboat Springs, CO 80488, Claire@ColoradoWaterMatters.com, 970.875.3370. 2. **Description of Water Right:** A. **Name of Structure:** Wheeler Ditch. B. **Date of Original Decree:** June 20, 1939, CA0286, District Court, County of Larimer, State of Colorado. C. **Decreed Legal Description of Structure Location:** right bank of Wheeler Creek, at a point in the Southeast Quarter of the Northeast Quarter of Section 32 Township 12 North, Range 81 West. DWR

database UTM Coordinates: 372347 mE 4537001 mN. D. Source of water: Wheeler Creek. E. Decreed use: Irrigation. F. Appropriation Date: May 1, 1887. Decreed Amount: 6.0 cfs Absolute. G. Amount and Use or Uses Listed as Having Been Abandoned: 2.8 cfs, all decreed uses. H. Former District Number and Page Number Where Listed on Abandonment List: Water District 47 (WDID 4700954), page 9 of 9. 3. **Factual and Legal Basis for this Protest**: Abandonment of a water right is defined as “the termination of a water right in whole or in part *as a result of the intent of the owner* thereof to discontinue permanently the use of all or a part of the water available thereunder.” C.R.S. § 37-92-103(2) (emphasis added). If established, see C.R.S. § 37-92-402(11), a presumption of intent to abandon “is insufficient in and of itself to prove abandonment.” *East Twin Lakes Ditches & Water Works, Inc. v. Bd. of County Comm'rs of Lake County*, 76 P.3d 918, 921 (Colo. 2003) (citations omitted). Intent to abandon “remains the touchstone of the abandonment analysis.” *Id.* Colorado courts consider various factors when evaluating intent. See *East Twin Lakes Ditches*, 76 P.3d at 922, 923-24; *Haystack Ranch, LLC v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000); *Southeastern Colo. Water Conservancy Dist. v. Twin Lakes Assoc., Inc.*, 770 P.2d 1231, 1237 (Colo. 1989); see also *Wolfe v. Jim Hutton Educational Foundation*, 344 P.3d 855 (Colo. 2015). Such mitigating factors include repair and maintenance of diversion structures. *Haystack Ranch*, 997 P.2d at 554. As discussed in the *Statement of Objection to Decennial Abandonment List* (Exhibit 1 (incorporated herein by reference)), Silver Spur diverted and beneficially used the water to the maximum extent water was available and provided diversion records documenting its efforts. Silver Spur worked in good faith with the Division Engineer to address the 2019 *Order to Install Headgate and/or Measuring Device*. Silver Spur installed a headgate and measuring device and performed other substantial repair and restoration work that will enable Silver Spur to divert and beneficially use the full amount of the Wheeler Ditch Water Right. 4. **Remarks**: Silver Spur respectfully requests the Water Court enter an order (1) confirming Silver Spur did not intend to abandon any portion of the Wheeler Ditch Water Right; (2) mandating the Wheeler Ditch Water Right be removed from the Final Revised Abandonment List of Water Rights in Water Division 6; and (3) providing for other relief as deemed appropriate.

2022CW3089 (21CW3048): PROTEST TO FINAL REVISED ABANDONMENT LIST OF WATER RIGHTS CONCERNING SANBORN DITCH in JACKSON COUNTY, COLORADO 1. **Protestant-Owner**: Silver Spur Land and Cattle, LLC, a Colorado limited liability company (“Silver Spur”), P.O. Box 714, Encampment, WY 82325, c/o Nicholas Haderlie, Esq., General Counsel, nharderlie@spurranches.com, 307.327.5550. All pleadings and court-related documents are to be sent to Claire E. Sollars, Esq., Colorado Water Matters, PLLC, P.O. Box 881302, Steamboat Springs, CO 80488, Claire@ColoradoWaterMatters.com, 970.875.3370. 2. **Description of Water Right**: A. Name of Structure: Sanborn Ditch. B. Date of Original Decree: June 20, 1939, CA0286, District Court, County of Larimer, State of Colorado. C. Decreed Legal Description of Structure Location: left bank of the Canadian River in the Northeast Quarter of the Northwest Quarter of Section 36, Township 10 North Range 79 West. DWR database UTM Coordinates: 397532 mE 4517238 mN. D. Source of water: Canadian River. E. Decreed use: Irrigation. F. Appropriation Date: September 1, 1888. Decreed Amount: 35 cfs. G. Amount and Use or Uses Listed as Having Been Abandoned: 13 cfs, all decreed uses. H. Former District Number and Page Number Where Listed on Abandonment List: Water District 47 (WDID 4700865), page 8 of 9. 3. **Factual and Legal Basis for this Protest**: Abandonment of a water right is defined as “the termination of a water right in whole or in part *as a result of the intent of the owner* thereof to discontinue permanently the use of all or a part of the water available thereunder.” C.R.S. § 37-92-103(2) (emphasis added). If established, see C.R.S. § 37-92-402(11), a presumption of intent to abandon “is insufficient in and of itself to prove abandonment.” *East Twin Lakes Ditches & Water Works, Inc. v. Bd. of County Comm'rs of Lake County*, 76 P.3d 918, 921 (Colo. 2003) (citations omitted). Intent to abandon “remains the touchstone of the abandonment analysis.” *Id.* Colorado courts consider various factors when evaluating intent. See *East Twin Lakes Ditches*, 76 P.3d at 922, 923-24; *Haystack Ranch, LLC v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000); *Southeastern Colo. Water Conservancy Dist. v. Twin Lakes Assoc., Inc.*, 770 P.2d 1231, 1237 (Colo. 1989); see also *Wolfe v. Jim Hutton Educational Foundation*, 344 P.3d 855 (Colo. 2015). Such mitigating factors include repair and maintenance of diversion structures. *Haystack Ranch*, 997 P.2d at 554. As discussed in the *Statements of Objection to Decennial Abandonment List* (Exhibit 1 (incorporated herein by reference)), Silver Spur diverted and beneficially used the water to the maximum extent when water was available. To ensure the Sanborn Ditch can divert and carry the full amount of the decreed water right when water is available, Silver Spur recently built up the diversion dam, and reinstalled the head gate and flume. 4. **Remarks**: Silver Spur respectfully requests the Water Court enter an order (1) confirming Silver Spur did not intend to abandon any portion of the Sanborn Ditch Water Right; (2) mandating the Sanborn Ditch Water Right be removed from the Final Revised Abandonment List of Water Rights in Water Division 6; and (3) providing for other relief as deemed appropriate.

2022CW3090 (21CW30480): PROTEST TO FINAL REVISED ABANDONMENT LIST OF WATER RIGHTS CONCERNING NORTH PARK DITCH NO. 5 in JACKSON COUNTY, COLORADO 1. **Protestant-Owner:** Silver Spur Land and Cattle, LLC, a Colorado limited liability company (“Silver Spur”), P.O. Box 714, Encampment, WY 82325, c/o Nicholas Haderlie, Esq., General Counsel, nharderlie@spurranches.com, 307.327.5550. All pleadings and court-related documents are to be sent to Claire E. Sollars, Esq., Colorado Water Matters, PLLC, P.O. Box 881302, Steamboat Springs, CO 80488, Claire@ColoradoWaterMatters.com, 970.875.3370. 2. **Description of Water Rights:** A. **Name of Structure:** North Park Ditch No. 5. B. **Date of Original Decree:** Admin. No. 30280.15462 - June 02, 1939, CA0286, District Court, County of Larimer, State of Colorado. Admin. No. 50403.32659 – Dec. 31, 1988. C. **Decreed Legal Description of Structure:** right bank of the Michigan River situated near the center of the east side of the NW4 NE4, Section 20, T. 9 N., R. 79 W., 6th P.M. DWR database UTM Coordinates: 391412 mE 4510877 mN. D. **Source of water:** Michigan River. E. **Decreed use:** Irrigation. F. **Appropriation Date and Decreed Amount:** Admin. No. 30280.15462 - May 1, 1892, 23.5 cfs. Admin. No. 50403.32659 – June 2, 1939, 2.5 cfs. G. **Amount and Use or Uses Listed as Having Been Abandoned:** Admin. No. 30280.15462 - 8.86 cfs, all decreed uses. Admin. No. 50403.32659 – 2.5 cfs, all decreed uses. H. **Former District Number and Page Number Where Listed on Abandonment List:** Water District 47 (WDID 4700803), page 7 of 9. 3. **Factual and Legal Basis for this Protest:** Abandonment of a water right is defined as “the termination of a water right in whole or in part *as a result of the intent of the owner* thereof to discontinue permanently the use of all or a part of the water available thereunder.” C.R.S. § 37-92-103(2) (emphasis added). If established, see C.R.S. § 37-92-402(11), a presumption of intent to abandon “is insufficient in and of itself to prove abandonment.” *East Twin Lakes Ditches & Water Works, Inc. v. Bd. of County Comm’rs of Lake County*, 76 P.3d 918, 921 (Colo. 2003) (citations omitted). Intent to abandon “remains the touchstone of the abandonment analysis.” *Id.* Colorado courts consider various factors when evaluating intent. See *East Twin Lakes Ditches*, 76 P.3d at 922, 923-24; *Haystack Ranch, LLC v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000); *Southeastern Colo. Water Conservancy Dist. v. Twin Lakes Assoc., Inc.*, 770 P.2d 1231, 1237 (Colo. 1989); see also *Wolfe v. Jim Hutton Educational Foundation*, 344 P.3d 855 (Colo. 2015). As discussed in the *Statements of Objection to Decennial Abandonment List* (Exhibit 1 (Admin. No. 30280.15462) and Exhibit 2 (Admin. No. 50403.32659) (incorporated herein by reference)), Silver Spur diverted and beneficially used the water to the maximum extent water was available. North Park Ditch No. 5 is regularly maintained and can carry the full amount of the decreed water right when such flow is available. 4. **Remarks:** Silver Spur respectfully requests the Water Court enter an order (1) confirming Silver Spur did not intend to abandon any portion of the North Park Ditch No. 5 Water Rights; (2) mandating the North Park Ditch No. 5 Water Rights be removed from the Final Revised Abandonment List of Water Rights in Water Division 6; and (3) providing for other relief as deemed appropriate.

2022CW3091 (21CW3048): PROTEST TO FINAL REVISED ABANDONMENT LIST OF WATER RIGHTS CONCERNING STILLWATER DITCH in JACKSON COUNTY, COLORADO 1. **Protestant-Owner:** Silver Spur Land and Cattle, LLC, a Colorado limited liability company (“Silver Spur”), P.O. Box 714, Encampment, WY 82325, c/o Nicholas Haderlie, Esq., General Counsel, nharderlie@spurranches.com, 307.327.5550. All pleadings and court-related documents are to be sent to Claire E. Sollars, Esq., Colorado Water Matters, PLLC, P.O. Box 881302, Steamboat Springs, CO 80488, Claire@ColoradoWaterMatters.com, 970.875.3370. 2. **Description of Water Right:** a. **Name of Structure:** Stillwater Ditch. B. **Date of Original Decree:** June 20, 1939, CA0286, District Court, County of Larimer, State of Colorado. C. **Decreed Legal Description of Structure Location:** left bank of the Canadian River at a point near the Northwest corner of the Southeast Quarter of Section 31, Township 10 North, Range 78 West. DWR database UTM Coordinates: 399856 mE 4516760 mN. D. **Source of water:** Canadian River. E. **Decreed use:** Irrigation. F. **Appropriation Date:** May 10, 1894. **Decreed Amount:** 16 cfs. G. **Amount and Use or Uses Listed as Having Been Abandoned:** 9.3 cfs, all decreed uses. H. **Former District Number and Page Number Where Listed on Abandonment List:** Water District 47 (WDID 4700905), page 8 of 9. 3. **Factual and Legal Basis for this Protest:** Abandonment of a water right is defined as “the termination of a water right in whole or in part *as a result of the intent of the owner* thereof to discontinue permanently the use of all or a part of the water available thereunder.” C.R.S. § 37-92-103(2) (emphasis added). If established, see C.R.S. § 37-92-402(11), a presumption of intent to abandon “is insufficient in and of itself to prove abandonment.” *East Twin Lakes Ditches & Water Works, Inc. v. Bd. of County Comm’rs of Lake County*, 76 P.3d 918, 921 (Colo. 2003) (citations omitted). Intent to abandon “remains the touchstone of the abandonment analysis.” *Id.* Colorado courts consider various factors when evaluating intent. See *East Twin Lakes Ditches*, 76 P.3d at 922, 923-24; *Haystack Ranch, LLC v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000); *Southeastern Colo. Water Conservancy Dist. v. Twin Lakes Assoc., Inc.*, 770 P.2d 1231, 1237 (Colo. 1989); see also *Wolfe v. Jim Hutton Educational Foundation*, 344 P.3d 855 (Colo. 2015). Such mitigating factors include repair and maintenance of diversion structures. *Haystack Ranch*, 997 P.2d at 554. As discussed in the *Statements of Objection to Decennial Abandonment List* (Exhibit 1 (incorporated herein by reference)), Silver Spur diverted and

beneficially used the water to the maximum extent when water was available. To ensure Stillwater Ditch can divert and carry the full amount of the decreed water right, Silver Spur recently built up the diversion dam. 4. **Remarks:** Silver Spur respectfully requests the Water Court enter an order (1) confirming Silver Spur did not intend to abandon any portion of the Stillwater Ditch Water Right; (2) mandating the Stillwater Ditch Water Right be removed from the Final Revised Abandonment List of Water Rights in Water Division 6; and (3) providing for other relief as deemed appropriate.

2022CW3092 (21CW3048): PROTEST TO FINAL REVISED ABANDONMENT LIST OF WATER RIGHTS CONCERNING PARK DITCH in JACKSON COUNTY, COLORADO 1. **Protestant-Owner:** Silver Spur Land and Cattle, LLC, a Colorado limited liability company (“Silver Spur”), P.O. Box 714, Encampment, WY 82325, c/o Nicholas Haderlie, Esq., General Counsel, nhaderlie@spurranches.com, 307.327.5550. All pleadings and court-related documents are to be sent to Claire E. Sollars, Esq., Colorado Water Matters, PLLC, P.O. Box 881302, Steamboat Springs, CO 80488, Claire@ColoradoWaterMatters.com, 970.875.3370. 2. **Description of Water Right:** A. **Name of Structure:** Park Ditch. B. **Date of Original Decree:** June 20, 1939, CA0286, District Court, County of Larimer, State of Colorado. C. **Decreed Legal Description of Structure Location:** left bank of Lake Creek (formerly known as Scribner Creek), whence the Southwest corner of Section 21 Township 10 North, Range 81 West bears South 05 degrees 10 minutes East 2035.3 feet. DWR database UTM Coordinates: 373895 mE 4519549 mN. D. **Source of water:** Lake Creek. E. **Decreed use:** Irrigation. F. **Appropriation Date:** June 6, 1888. **Decreed Amount:** 11 cfs. G. **Amount and Use or Uses Listed as Having Been Abandoned:** 4 cfs, all decreed uses. H. **Former District Number and Page Number Where Listed on Abandonment List:** Water District 47 (WDID 4701033), page 7 of 9. 3. **Factual and Legal Basis for this Protest:** Abandonment of a water right is defined as “the termination of a water right in whole or in part *as a result of the intent of the owner* thereof to discontinue permanently the use of all or a part of the water available thereunder.” C.R.S. § 37-92-103(2) (emphasis added). If established, *see* C.R.S. § 37-92-402(11), a presumption of intent to abandon “is insufficient in and of itself to prove abandonment.” *East Twin Lakes Ditches & Water Works, Inc. v. Bd. of County Comm’rs of Lake County*, 76 P.3d 918, 921 (Colo. 2003) (citations omitted). Intent to abandon “remains the touchstone of the abandonment analysis.” *Id.* Colorado courts consider various factors when evaluating intent. *See East Twin Lakes Ditches*, 76 P.3d at 922, 923-24; *Haystack Ranch, LLC v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000); *Southeastern Colo. Water Conservancy Dist. v. Twin Lakes Assoc., Inc.*, 770 P.2d 1231, 1237 (Colo. 1989); *see also Wolfe v. Jim Hutton Educational Foundation*, 344 P.3d 855 (Colo. 2015). Such mitigating factors include repair and maintenance of diversion structures. *Haystack Ranch*, 997 P.2d at 554. As discussed in the *Statement of Objection to Decennial Abandonment List* (Exhibit 1 (incorporated herein by reference)), Silver Spur diverted and beneficially used the water to the maximum extent water was available. Silver Spur continues to work in good faith with the Division Engineer to comply with the 2019 *Order to Install Headgate and/or Measuring Device* and has incurred expenditures to comply with the 2019 Order. Silver Spur further states other factors warrant the removal of the entire Water Right from the abandonment list. The Park Ditch is related to the ongoing rehabilitation of Boettcher Lake, and also supplies irrigation water for the downstream improvements made in cooperation with Ducks Unlimited. 4. **Remarks:** Silver Spur respectfully requests the Water Court enter an order (1) confirming Silver Spur did not intend to abandon any portion of the Park Ditch Water Right; (2) mandating the Park Ditch Water Right be removed from the Final Revised Abandonment List of Water Rights in Water Division 6; and (3) providing for other relief as deemed appropriate.

22CW3044 (21CW3048) – GARFIELD COUNTY – PROTEST TO FINAL ABANDONMENT LIST. 1. Name, Mailing Address, E-mail Address, and Phone Number of Protestant. Lone Creek Land Company LLC, c/o Brian DeBrie, 4841 N. 84th Street Lincoln, Nebraska 68507, E-mail: brian-debrie@piedmontese.com, Phone: (402) 890-1541. Copies of all pleadings and other correspondence to: David F. Bower, Esq., Johnson & Repucci LLP, 850 W. South Boulder Road, Suite 100, Louisville, Colorado 80027, Phone: (303) 442-1900, Fax: (303) 442-0191, E-mail: dfbower@j-rlaw.com. 2. **Description of Subject Water Right.** (a) **Name of Structure.** Ram’s Horn Feeder Ditch (WDID 5802102). (b) **Original and all Relevant Subsequent Decrees.** The Ram’s Horn Feeder Ditch was decreed on March 30, 1964, in Civil Action No. 3538, Routt County District Court. (c) **Decreed Point of Diversion.** E. bank of Dome Creek at a point whence E1/4 cor. Sec. 16 Tp. 1 N. R. 86 W. 6th P.M. bears N. 41°10’ E. a distance of 5135 feet. (d) **CDSS Location.** SW1/4 NW1/4 of Section 21, Township 1 North, Range 86 West of the 6th P.M. (Zone 13, NAD83, Easting 324929m, Northing 4434518m.) (e) **Source.** Dome Creek. (f) **Decreed Use.** Irrigation (Note: Feeder for Ram’s Horn Reservoir). (g) **Appropriation Date.** July 1, 1939. (h) **Decreed Amount.** 15 cfs. (i) **Amount and Uses Listed as Abandoned.** 15 cfs, for all decreed uses. (j) **Page Number on Abandonment List.** The subject right is listed on page 7 of 9 on the Division Engineer’s Final Revised Abandonment List for Water Division 6. 3. **Factual and Legal Basis for Protest.** The factual and legal basis for this protest is generally set forth in the Statement of Objection

to Decennial Abandonment List attached hereto as Exhibit 1. As described in more detail in the Statement of Objection, the Ram's Horn Reservoir Feeder Ditch water right was not and has never been abandoned. The Ram's Horn Feeder Ditch is the feeder ditch for Ram's Horn Reservoir, and the Ram's Horn Reservoir water right was not included on the abandonment list. The reservoir feeder ditch cannot be abandoned without also abandoning the reservoir right, and because the Division Engineer did not find the reservoir right to be abandoned, the feeder ditch right cannot be abandoned. On these grounds alone, the Ram's Horn Feeder Ditch must be removed from the abandonment list. In addition, Lone Creek has provided evidence that during the subject abandonment period, (i) the feeder ditch diversion records show that the ditch was used (2013–2016), (ii) Lone Creek's predecessor was working with the Division of Water Resources on a rehabilitation plan for the feeder ditch structure (August 2018), (iii) Lone Creek purchased the water right (November 2018), and (iv) there is justification for years of non-use of the filler structure because of a lease with Colorado Parks and Wildlife to maintain a conservation pool in Ram's Horn Reservoir (May 2012) and to keep water in the reservoir pursuant to an agreement with the Upper Colorado River Commission (May 2018). This evidence clearly shows that the Ram's Horn Feeder Ditch water right was not abandoned during the subject abandonment period. **4. Remarks.** Under Colorado water law, abandonment of a water right requires a concurrence of nonuse and intent to abandon. However, intent is the very essence of abandonment. Nonuse for a period of time may serve as evidence of abandonment; however, nonuse alone will not establish abandonment where the owner of the water right introduces sufficient evidence to show that during the period of nonuse, there never was any intention to permanently discontinue the use of the water. See *Beaver Park Water, Inc. v. Victor*, 649 P.2d 300 (Colo. 1982); *City and County of Denver v. Snake River Water District*, 788 P.2d 772, 776 (Colo. 1990). The evidence presented by Lone Creek in its Statement of Objection proves that there was no intent to abandon the Ram's Horn Feeder Ditch over the last ten years. In 2018, the then owner of Ram's Horn Reservoir met with the Division of Water Resources on a rehabilitation plan for the feeder ditch, which was transferred to Lone Creek later that year. There was simply no reason to meet with the State Engineer's Office to rehabilitate the feeder ditch or for Lone Creek to buy the subject water right if the feeder ditch had been abandoned. Additionally, in choosing to list the Ram's Horn Feeder Ditch on the abandonment list, the Division Engineer's Office failed to comply with the C.R.S. § 37-92-401(1)(c), which requires that office to "investigate the circumstances relating to each water right for which the available water has not been fully applied to a beneficial use." The Division Engineer's Office did not consider the circumstances regarding the feeder ditch, instead basing its decision solely on whether water had been diverted because "this office is not tasked to determine whether or not there is an intent to abandon." This failure to review and consider the circumstances of each right as required by statute means that the original abandonment listing was not supported by law. To compound matters, in at least one other situation, the sale of a water right during the abandonment period was sufficient to have the portion of a right removed from the list, showing that the Division Engineer was also arbitrary and capricious in its application of the abandonment statute. The Division Engineer's decision not to review the circumstances relating to the Ram's Horn Feeder Ditch, and applying different review standards to different water rights, means the original abandonment listing was in error.

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

You are hereby notified that you will have until the last day of **August, 2022** to file with the Water Court 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 be served on the Applicant or the Applicant's Attorney, with an affidavit or certificate of such service being filed with the Water Court, as prescribed by Rule 5, C.R.C.P. The filing fee for the Statement of Opposition is \$192.00, and should be sent to the Clerk of the Water Court, Division 6, 1955 Shield Dr. Unit 200, Steamboat Springs, CO 80487.

Carmma L. Parkison
Clerk of Court
Routt County Combined Court
Water Division 6

/s/ Carmma L. Parkison