

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JANUARY 2021.

(This publication can be viewed in its entirety on the state court website at:

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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during January 2021, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved, and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 2021CW1; Previous Case Nos. 20CW14 and 07CW64 – LAURA MILLER, 5184 Siloam Rd, Beulah, CO 81023, (719) 252-1728

Amended Application for Finding of Reasonable Diligence

PUEBLO COUNTY

Name of Structure: Miller Reservoir, **Date of Original Decree:** June 19, 2008, **Case No. 2007CW64**, Water Div 2. **Subsequent decrees:** 2014, **Case No. 2014CW12**, Water Div 2. **Legal Description:** The center of the dam is located in the SE ¼ SE ¼ Section 30, Township 22, Range 67 West of the 6th PM, Pueblo County, CO lying 605 feet from the South line and 545 feet from the East line of said section 30, on property whose address is 5184 Siloam Rd, Beulah, CO 81023. See attachment to the application for a general location map. (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Source of water:** Run off water with an unnamed water course tributary to Rock Creek tributary to Arkansas River. **Appropriation Date:** February 28, 2006. **Amount:** Absolute 3.14-acre ft. annually fill and refill five times per year; Conditional: 7.86-acre feet annually, fill and refill five times per year. **Use:** Irrigation. **Detailed description of what has been done toward completion of conditional decree:** Water of livestock and flood irrigation methods for flood irrigation, over flow is diverted to fields north and east of Miller Reservoir, pumping may also be used if overflow is not present. Diversion methods may include; furrows, flooding, and irrigation pipes. Due to recent drought conditions, water use has been conservative and never pumped out/or used more than one fill in recent years. **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:** N/A

CASE NO. 2021CW3000; DUNCAN BREMER AND MICHELE BREMER, 15050 Woodcarver Road, Monument, CO 80132 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Steve T. Monson, #11329, Emilie B. Polley, #51296, MONSON, CUMMINS & SHOHET, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater, Approval of Plan for Augmentation, and Adjudication of Exempt Residential Well

EL PASO COUNTY

II. Summary of Application. Applicants desire to adjudicate the Denver Basin groundwater underlying their 20.094 acre parcel of property in El Paso County (“Applicants’ Property”) and to obtain a plan for augmentation for the subdivision of the Applicants’ Property into three parcels. The plan for augmentation includes three wells into the Denver aquifer of the Denver Basin. These wells will provide water service to an equivalent number of single-family lots. The Applicant’s also seek to adjudicate their existing exempt residential well.

III. Application for Underground Water Rights.

A. Legal Description of Wells.

1. **Property Description.** All wells are and will be located on the 20.094 acres of Applicants’ Property to be subdivided into three lots. Applicants’ Property is depicted on **Exhibit A** attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.), located in the E½ NW¼ of Section 35, Township 11 South, Range 67 West of the 6th P.M., and more particularly described as 15050 Woodcarver Rd., Monument, CO 80132, El Paso County, Colorado.

2. **Existing Well.** There is an existing exempt domestic well upon Applicants’ Property with Division of Water Resources Permit No. 133253 (“Bremer Well No. 1”), which permit is attached as **Exhibit B**. The Bremer Well No. 1 is drilled to a total depth of approximately 245 feet into what was called the Dawson aquifer at the time of permit issuance in 1983, and is now known as the Denver aquifer. The well permit states that the well will be located 750 feet from the north line, and 1600 feet from the west line, of Section 35 described above. The Bremer Well No. 1 location is incorrectly described in the well permit and is actually located 1,145 feet from the North line of said Section 35 and 1,916 feet from the West line of said Section 35. The well location in the well permit will be corrected to the actual location upon approval of the plan for augmentation. Upon completion of this case and the subdivision process, Bremer Well No. 1 will remain an exempt well pursuant to SB 20-155 amending C.R.S. §37-92-602(3)(b)(IV).

3. **Proposed Wells.** Applicants propose that up to two additional wells (one well per lot) will be located on the Applicants’ Property at specific locations not yet determined (“Bremer Wells Nos. 2 and 3”), to be constructed to the Denver aquifer, for a total of three wells on the Applicants’ Property.

B. Water Source.

1. **Not-Nontributary.** The ground water to be withdrawn from the Denver and Arapahoe aquifers underlying the Applicants’ Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Denver and Arapahoe aquifers will require the replacement of actual stream depletions.

2. **Nontributary.** The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicants’ Property is nontributary.

C. Estimated Rates of Withdrawal and Ground Water Available.

1. **Estimated Rates of Withdrawal.** Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicants request the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions.

2. **Estimated Average Annual Amounts of Ground Water Available.** Applicants request a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicants’ Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code or the State of Colorado’s 100-year life requirement pursuant to

C.R.S. §37-90-137(4). Applicants estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants' Property:

| AQUIFER | NET SAND (Feet) | Total Appropriation (Acre Feet) | Annual Avg. Withdrawal 100 Years (Acre Feet) | Annual Avg. Withdrawal 300 Years (Acre Feet) |
|------------------------|-----------------|---------------------------------|----------------------------------------------|----------------------------------------------|
| Denver (NNT) | 410.0 | 1400.55 | 14.01 | 4.67 |
| Arapahoe (NNT) | 343.5 | 1173.39 | 11.73 | 3.91 |
| Laramie Fox Hills (NT) | 184.0 | 554.59 | 5.55 | 1.85 |

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. D. Requested Uses. The Applicants request the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic, irrigation, stock water, garden and greenhouse, domestic animals, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicants also request that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicants' Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicants may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicants shall only be entitled to construct wells or use water from the not-nontributary Denver and Arapahoe aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c.5). E. Well Fields. Applicants request that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicants' Property through any combination of wells. Applicants request that these wells be treated as a well field. F. Averaging of Withdrawals. Applicants request that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicants' Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicants are entitled to withdraw from the aquifers underlying the Applicants' Property. G. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are and will be located as well as the underlying groundwater is owned by the Applicants. **IV. Application for Adjudication of Exempt Well.** A. Name of Structure: Bremer Well No. 1. 1. Legal Description of Well: The well is located upon the Applicants' Property in the E½ NW¼ of Section 35, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado. The well permit places the well 750 feet from the north line and 1600 feet from the west line of said Section 35. The Bremer Well No. 1 location is incorrectly described in the permit and is located on land owned by the Applicants and is located 1,145 feet from the North line of said Section 35 and 1,916 feet from the West line of said

Section 35. The well location will be corrected to the actual location upon approval of this application for adjudication. The Bremer Exempt Well is permitted as an exempt well pursuant to Division of Water Resources Permit No. 133253. 2. Source: The Bremer Well No. 1 was permitted to withdraw from the Dawson aquifer at the time of permit issuance. The depth of the well is approximately 245 feet, which is now known to be within the not-nontributary Denver aquifer. 3. Date of Initiation of Appropriation: On or before May 24, 1984. 4. How Appropriation was Initiated: Completion of the construction of the well and placement into operation during the year of 1984. 5. Date Water Applied to Beneficial Use: May 24, 1984. 6. Amount Claimed: 15 g.p.m., absolute. 7. Uses: Ordinary household uses in a single residence and the irrigation of not more than one acre of home gardens and lawns, fire protections, and watering of livestock and domestic animals. 8. Land Ownership: The land upon where Bremer Well No. 1 is drilled and which the water is and has been used is owned by the Applicants. 9. Remarks: The Bremer Well No. 1 is an exempt well issued pursuant to and for the uses authorized in § 37-92-602(1)(b), C.R.S. and a decree for the Bremer Exempt Well is sought pursuant to § 37-92-602(4), C.R.S. The Applicants' seek to maintain the exempt status of the well. **V. Application for Plan for Augmentation.** A. Structures to be Augmented. The structures to be augmented are the Bremer Wells Nos. 2 and 3, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Denver aquifer of the Denver Basin underlying the Applicant's Property as requested and described herein. B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Denver aquifer from the Bremer Wells Nos. 2 and 3, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. C. Statement of Plan for Augmentation. Applicants wish to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Denver aquifer by two wells proposed herein for two residential lots. The Bremer Well No. 1 will remain an exempt well upon approval of this plan for augmentation and subdivision of Applicants' Property pursuant to SB 20-155 amending C.R.S. §37-92-602(3)(b)(IV). Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: 1. Uses. i. Household Use Only: The household use is estimated at 0.25 acre feet annually within single family dwellings on up to 2 lots, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for each lot will therefore be 0.025 acre feet per well, with return flows of 0.225 acre feet per lot or 0.45 acre-feet per year for the two wells. ii. Landscape Irrigation: The landscape irrigation is estimated at 0.05 acre feet annually per 1,000 square feet (2.18 acre feet per acre) per year, with an 85 percent assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre feet. iii. Horses (or equivalent livestock): Livestock use is estimated at 0.011 acre feet annually (10 gallons per day) per head with one hundred percent consumptive use component. 2. Each of the two augmented wells will pump a maximum of 0.6 acre feet of water per year per residence for a maximum total of 1.2 acre feet being withdrawn from the Denver aquifer per year. Such use shall be a combination of household use, irrigation of lawn, landscaping, and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.25 acre feet of water per

year per residence with the additional 0.35 acre feet per year per residence available for irrigation of lawn, landscaping, and garden and the watering of horses or equivalent livestock and domestic animals on each residential lot. 3. Depletions. Applicant's consultant has determined that maximum stream depletions over the 300 year pumping period for the Denver aquifer amounts to approximately 37.25 percent of pumping. Maximum annual depletions for total residential pumping from the Bremer Wells Nos. 2 and 3 are therefore 0.44 acre feet in year 300, being 37.25 percent of total annual pumping of 1.2 acre feet. Should Applicant's pumping be less than the 1.2 total, 0.6 acre feet per lot per year described herein, resulting depletions and required replacements will be correspondingly reduced. 4. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of the two residential wells. Applicants' consultant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10 percent per year per residence. At a household use rate of 0.25 acre feet per residence per year, total of 0.50 acre feet of in-house diversions, there will be 0.45 acre feet of septic return flows that accrue to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be adequately augmented. 5. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Bremer Wells Nos. 2 and 3, Applicants will reserve up to 360 acre-feet of the nontributary Laramie Fox Hills aquifer as necessary to replace any injurious post pumping depletions, reduced by actual stream depletions replaced during the plan pumping period. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction Applicants reserve the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicants will be entitled to apply for and receive well permits for the Bremer Wells Nos. 2 and 3 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137, and the re-permitting of Bremer Well No. 1 to its actual location upon the Applicants' Property retaining its exempt well status. 6. If the Bremer Well No. 1 should ever be re-permitted as a non-exempt well pursuant to the augmentation plan decreed herein, then total residential pumping from all three wells will amount to 1.8 acre-feet annually, being 1 acre-foot for one lot, and 0.4 acre-feet for the two additional lots. Household use for the three lots is estimated to be 0.75 acre-feet, with return flows of 0.225 acre-feet per lot, or 0.675 acre-feet per year for all three wells. Maximum annual depletions for the 300 year pumping period for the Denver aquifer for total residential pumping of 1.8 acre-feet are 0.670 in year 300, being 37.25 percent of total annual pumping. Therefore, at a total household use rate of 0.75 acre-feet per year, 0.675 acre-feet of septic system return flows will adequately augment stream depletions during pumping. Should Applicant's pumping be less than the 1.8 total per year, resulting depletions and required replacements will be correspondingly reduced. For the replacement of any injurious post-pumping depletions which may be associated with the use of the three wells, Applicants will reserve up to 540 acre-feet of the nontributary

Laramie Fox Hills aquifer to replace any injurious post pumping depletions. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions and prove that post pumping depletions will be noninjurious upon further approval of the Court under its retained jurisdiction. **VI. Remarks.** A. Applicants request a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). B. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. C. The Applicants will not need to implement the plan for augmentation until the completion of the subdivision process and the sale of the lot using one of the two augmented wells. D. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. E. The Applicants request a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. F. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicants shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. G. The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' Property. H. USBank has a lienholder interest in the Applicant's Property. Pursuant to § 37-92-302(2)(b), C.R.S., Applicants will notify USBank of the filing of this application by certified or registered mail, return receipt requested, no later than 14 days after the filing of this application. Thereafter, the Applicant will complete and file with the Court a Certificate of Notice as evidence that the required notice was given.

CASE NO. 2021CW3001; TRIVIEW METROPOLITAN DISTRICT ("Triview" or the "District"), c/o James McGrady, District Manager, 16055 Old Forest Point, Ste. 300, Monument, CO 80132 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: MONSON, CUMMINS & SHOHET, LLC, Chris D. Cummins, #35154, Emilie B. Polley, #51296, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80903, (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation of Triview Metropolitan District

EI PASO COUNTY

II. Summary of Application. Applicant seeks to quantify the Denver Basin groundwater underlying the certain property included within the Applicant's municipal boundaries, and for approval of a plan for augmentation to integrate such underlying not-nontributary water supplies in the Denver and Arapahoe aquifers into Applicant's existing plans for augmentation as decreed in Case Nos. 88CW23(A) and (B), 95CW153, 98CW134,

14CW3053, 15CW3076, 16CW3010 and 18CW3016 (the “Existing Augmentation Plans”). Triview is a quasi-municipal special district providing water and sewer services, amongst others, to lands included within the District Triview’s municipal boundaries are almost entirely within the Town of Monument, with land use and development approvals subject to the Town’s authority and jurisdiction. Triview operates, in conjunction with the DONALA Water and Sanitation District and the Forest Lakes Metropolitan District, a Waste Water Treatment Facility (the “WWTF”), treated affluent from which accrues to Monument Creek, tributary to Fountain Creek, tributary to the Arkansas River. Applicant asserts that such sewer return flows, when augmented by the plan for augmentation requested herein and the Existing Augmentation Plans, will be fully consumable, excepting any portions thereof dedicated to augmentation purposes, and available to augment depletions under the requested plan for augmentation during pumping. Triview also owns and controls previously adjudicated nontributary Denver Basin groundwater underlying land adjacent to the District and decreed for municipal purposes in Case No. 82CW295 (the “Northgate Water”), a portion of which will be dedicated to replacement of any injurious post-pumping depletions as part of the plan for augmentation requested herein.

III. Application for Underground Water Rights.

A. Property Description. Applicant owns and controls all water and water rights, including all Denver Basin groundwater, underlying approximately 440 acres property described as: the SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ in Section 19 and the N $\frac{1}{2}$ NW $\frac{1}{4}$ in Section 30, in Township 11 South, Range 66 West of the 6th P.M.; and the E $\frac{1}{2}$ SE $\frac{1}{4}$, in Section 24 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ in Section 25, in Township 11 South, Range 67 West of the 6th P.M.; all located in El Paso County, Colorado, and hereinafter referred to as the “Home Place Ranch Parcel”. The Home Place Parcel is more particularly described on the map attached to the application as **Exhibit A**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Home Place Ranch Parcel has been included within the District, and through such inclusion all underlying groundwater was dedicated to the District’s use as a condition of water and sewer service to such property, and all such Denver Basin groundwater has likewise been expressly deeded to the District by Quitclaim Deed, copy attached as **Exhibit B**.

B. Existing Wells. There are several small-capacity exempt wells permitted and/or constructed to the Dawson aquifer upon the Home Place Ranch Parcel, being permitted pursuant to C.R.S. §37-92-602 *et seq.* These wells may include Permit Nos. 22323-F, 16031-F, 27592, and 134024. Because the District does not seek to quantify the Dawson aquifer underlying the Home Place Ranch Parcel at this time, continued use of these exempt Dawson aquifer wells is not impacted by this application. It is Applicant’s intent to allow the existing exempt Dawson aquifer wells to continue to operate for the exempt permitted purposes until such time as District is prepared to provide municipal water service to the eastern portion of the Home Place Ranch Parcel, pursuant to existing or future agreements with the land owner. The District has not identified any existing wells to the not-nontributary Denver or Arapahoe aquifers, nor to the nontributary Laramie-Fox Hills aquifer on the Home Place Ranch Parcel.

C. Proposed Wells. Applicant may construct an undetermined quantity of wells to one or more of the Denver Basin aquifers underlying the Homeplace Ranch Parcel, as necessary to withdraw Applicant’s full entitlement from each respective aquifer, subject to Triview’s existing augmentation plans more particularly described in Section IV. In the alternative, in that the Home Place Ranch Parcel is contiguous to and adjoining other properties for

which other Denver Basin groundwater has been previously quantified for the District's use, Applicant may utilize existing, additional, or replacement wells located on such contiguous properties within the District for withdrawal of said Denver Basin groundwater supplies underlying the Homeplace Ranch Parcel. Applicant requests that all such wells to each respective aquifer be considered a Well Field, and requests waiver of the 600-foot spacing rule with regards to wells to be located solely on Applicant's Property, being all property located within the District's boundaries, as now comprised, or as may be in the future included. **D. Water Source.** 1. Not-Nontributary. The ground water in the Dawson, Denver, and Arapahoe aquifers underlying the Home Place Ranch Parcel is not-nontributary Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in these aquifers will require the replacement of actual stream depletions. Applicant does not seek to adjudicate, quantify or vest the not-nontributary groundwater in the Dawson aquifer at this time. 2. Nontributary. The groundwater in the Laramie-Fox Hills aquifers underlying the Home Place Ranch Parcel is nontributary. **E. Estimated Rates of Withdrawal and Ground Water Available.** 1. Estimated Rates of Withdrawal. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available. Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Home Place Ranch Parcel. Said amounts may be withdrawn over the 100-year aquifer life requirement pursuant to C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying the Home Place Ranch Parcel:

| AQUIFER | NET SAND (Feet) | Total Appropriation (Acre Feet) | Annual Avg. Withdrawal 100 Years (Acre Feet) |
|---------------------------|----------------------------|------------------------------------------------|-----------------------------------------------------------------|
| Denver (NNT) | 478.7 | 34,828 | 348.28 |
| Arapahoe (NNT) | 283.7 | 20,644 | 206.44 |
| Laramie Fox Hills (NT) | 188.7 | 12,118 | 121.18 |

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **F. Requested Uses.** The Applicant requests the right to use the ground water for beneficial uses throughout the District's municipal service area, including properties outside of the District's boundaries, consisting of all municipal purposes including domestic, stock watering, commercial, industrial, exchange, augmentation, replacement, irrigation, manufacturing, fire protection, aquifer recharge, piscatorial and wildlife. For Applicant's purposes, being a quasi-municipal special district and political subdivision of the State of Colorado and a provider of municipal water supply, such uses are presumed to include, but are not limited to, use for fire protection, and within a central municipal water supply, including aquifer recharge, replacement, and

augmentation purposes, and Applicant requests confirmation of the same from the Court. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Applicant shall only be entitled to construct wells or use water from the non-nontributary Denver, and Arapahoe aquifers pursuant to a court-approved plan for augmentation, including as requested herein, covering the stream depletions from such not-nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c). G. Well Fields. Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying the Home Place Ranch Parcel, as well as Applicant's contiguous properties, through any combination of wells. Applicant requests that these wells to each respective aquifer be treated as a well field, including wells located on contiguous property within the District, as now comprised, or as may be in the future included. Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's included properties, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant's included properties. H. Averaging of Withdrawals. Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Home Place Ranch Parcel, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Home Place Ranch Parcel. **IV. APPLICATION FOR PLAN FOR AUGMENTATION.** A. Statement of Augmentation Plan. Triview has decreed plans for augmentation concerning the District's use of Denver Basin groundwater in Case Nos. 88CW23(A), 88CW23(B), 95CW153, 98CW134, 14CW3053, 15CW3076, 16CW3010 and 18CW3016, Water Division 2 ("Existing Augmentation Plans"), which replace depletions to Monument Creek, Fountain Creek and the Arkansas River resulting from Triview's municipal well pumping from not-nontributary Denver Basin aquifers in northern El Paso County, as well as alluvial well sources to be constructed on Monument Creek and certain augmented structures on Fountain Creek. By this Application, Triview seeks to add not-nontributary Denver Basin supplies in the Denver and Arapahoe aquifers underlying the Home Place Ranch Parcel, as passed on judicially herein, as sources of municipal supply, to be augmented as described herein to provide replacement water for any injurious out-of-priority depletions. Consistent with Existing Augmentation Plans, Applicant seeks to utilize the not-nontributary Denver and Arapahoe aquifer ground water underlying the Home Place Ranch Parcel for municipal uses throughout the District's municipal service area, as currently exists or as may exist in the future. Applicant proposes to replace any injurious out-of-priority depletions resulting from Applicant's use of not-nontributary Denver and Arapahoe ground water during the pumping life of such wells through a portion of sewer return flows accruing to Monument Creek from Applicant's Wastewater Treatment Facility. The total available not-nontributary ground water underlying the Home Place Ranch Parcel is estimated Section III., above, being 348.28 annual acre feet

from the Denver aquifer, and 206.44 annual acre feet from the Arapahoe aquifer. Any injurious post-pumping depletions will be replaced utilizing (1) up to 118.75 annual acre feet of nontributary Laramie-Fox Hills aquifer groundwater underlying the Homeplace Ranch Parcel (representing 98% of the amount quantified in herein), in combination with (2) up to 29 annual acre feet of nontributary Arapahoe aquifer groundwater, being a portion of the “Northgate Water” as owned and controlled by Triview and quantified by the Division 1 Water Court in Case No. 82CW295, along with (3) up to 406.97 annual acre feet of the nontributary groundwater in the Denver aquifer, likewise a portion of the Northgate Water. In combination, such reserved nontributary groundwater supplies total 55,065 acre feet of supply, sufficient to replace all potential out-of-priority depletions resulting from Applicant’s pumping of the not-nontributary Denver and Arapahoe aquifers quantified herein and described in this augmentation plan. Applicant seeks to integrate its accounting for all Denver aquifer and Arapahoe augmentation plans, including the Existing Augmentation Plans, and all other terms, conditions, and provisions decreed in the Existing Augmentation Plans will remain unchanged except as expressly provided herein.

B. Description of Land Overlying Denver Basin Ground Water to be Augmented: The land overlying the Denver Basin ground water which is to be augmented through the plan requested in this Application is the Home Place Ranch Parcel, more particularly described above and in the attached **Exhibit A**.

C. Structures to be Augmented: Applicant seeks approval to supplement Existing Augmentation Plans to replace any injurious out-of-priority depletions which may result from Applicant’s withdrawal of not-nontributary ground water from the Denver and Arapahoe aquifers underlying the Home Place Ranch Parcel, utilizing existing Denver and Arapahoe aquifer wells, or new well infrastructure which may be constructed to withdraw water from the Denver and Arapahoe aquifers underlying the Home Place Ranch Parcel.

D. Depletions from Triview’s municipal well fields in the not-nontributary Denver and Arapahoe aquifers are already calculated under Triview’s Existing Augmentation Plan decrees on a monthly basis including any lagged depletions from Triview’s wells within the not-nontributary Denver and Arapahoe aquifers, and sewer and non-sewer return flows. Additional pumping from the not-nontributary Denver and Arapahoe aquifers under this augmentation plan will be integrated into such calculations.

E. Owner of Land Upon Which Wells are to Be Located. The Applicant, as set forth in Section I above, is a quasi-municipal special district, and all underlying Denver Basin groundwater sought to be adjudicated herein was dedicated to the District as part of the inclusion process for the Home Place Ranch Parcel, in exchange for water and sewer services thereto, as evidenced in the Quitclaim Deed attached hereto as **Exhibit B**. The current owners of the Home Place Ranch Parcel, Home Place, LLC, a Colorado limited liability company, have expressly consented to this adjudication through terms and conditions of a Water & Sewer Infrastructure Agreement with Triview dated September 16, 2019.

V. Remarks. A. The Applicant requests a finding that vested water rights of others will not be materially injured by the additional use requested herein. B. Applicant requests a finding that it has complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). C. Upon entry of a decree in this case, the Applicant shall be entitled to apply for and receive well permits in accordance with the provisions of any decree entered in this case, or to make withdrawals of the groundwater described herein

through the District's existing contiguous well field. D. The Water Court has jurisdiction over the subject matter of this application, and the Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. E. The Applicant does not seek to change any other terms, conditions, or provisions included in Existing Augmentation Plans except as expressly provided herein. F. Applicant is the owner of the groundwater quantified and described herein, but not the surface of the Home Place Ranch Parcel. While the Home Place Ranch Parcel may, or may not, be subject to certain liens, because the ownership of the surface estate has been severed from the water at issue herein, and any such liens therefore do not encumber the Triview-owned groundwater, Triview asserts that the lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I) are therefore inapplicable.

CASE NO. 2021CW3002; Previous Case No. 02CW185 – CROWLEY COUNTY WATER ASSOCIATION, INC., P.O. Box 487, Ordway, CO 81063 (Please address all correspondence and inquiries regarding this matter to Applicant's attorney: Robert F. T. Krassa, Krassa & Miller, LLC 2300 Canyon Blvd., Suite 2, Boulder, CO 80302 (303) 442-2156)

Application for Finding of Reasonable Diligence and to Make Partially Absolute
CROWLEY COUNTY

Name of Structure: CCWA Well No. 1. **3. Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree:** **a. Date of Original Decree:** September 8, 2008; Case 02CW185, Water Division No. 2. Said decree was recorded September 12, 2008 at reception number 165618, records of Crowley County. **b. List all subsequent decrees awarding findings of diligence** (all in this Court): Case 14CW3043 entered January 5, 2015. **c. Location of structure:** In the SE/4NE/4 Section 14, T.22S., R.59 W. of the 6th P.M. in Crowley County, Colorado, at a point 1650 feet south of the north line and 200 feet west of the east line of said Section 14. Location is shown on general location map attached to application as Exhibit A (same as Exhibit A of said decree in 02CW185). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **d. Source:** Groundwater tributary to the Arkansas River. **e. Date of Appropriation:** July 3, 2001; Amount: 1000 gpm (2.22 cfs) conditional, not to exceed 1607 acre feet per year. **f. Use:** irrigation, agricultural, commercial, industrial, domestic, mechanical, manufacturing, industrial, power generation, fire protection, sewage treatment, street sprinkling, irrigation of parks, lawns and grounds, recreation, piscatorial, and maintenance and preservation of wildlife and aesthetic values. Any irrigation use will be by customers of Applicant's water system in Crowley County. **g. Depth: 100 feet.** **4. Provide a detailed outline** of what has been done toward completion or for completion of appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the diligence period which ran from January 5, 2015: **a. The said decree in Case 02CW185 provides at paragraph 1009 that,** "Applicant's water rights and each of the water rights and structures which now and in the future will provide augmentation, substitution replacement and exchange supplies under this decree collectively comprise an integrated system of water rights and structures under Sec. 37-92-301(4)(b), C.R.S. Work performed

and effort or costs expended by Applicant on any water rights or structures which are part of its integrated water system shall, for the purposes of demonstrating reasonable diligence in future proceedings involving all water rights described herein, be considered to be diligence on all features of Applicant's entire integrated water supply system.” **b. During the diligence period**, CCWA Improved said, well, improved its water delivery system, constructed a new shop and office building, improved its SCATA system, purchased additional water shares to support its plan for augmentation, and made other capital improvements, at a total cost of more than \$ 1,800,000. In addition, the well was pumped at its full capacity as a necessary part of a test of a new section of 12 inch water line to a new water tank, for beneficial uses, which is further described in paragraph 5 below. **c. Applicant CCWA has in all respects diligently worked toward placing these conditional water rights to beneficial use. 5. Claim to make absolute [in part]:** **a. In September 2013** the well pump was run as part of a flow test of the meter, into applicant’s distribution system at the rate of 928 g.p.m. (2.06 c.f.s.). for the above described decreed uses in CCWA’s service area, shown on map attached as Exhibit B hereof (same as Exhibit B of said decree in 02CW185). **b. The amount of 928 g.p.m. was determined** by CCWA’s Manager, Mr. Talkington, a Certified Well Tester, by timing three separate 1000 gallon intervals. **c. The water was produced** in the course of a test of a new 12 inch section of water line, pumped into a new water storage tank and then delivered for beneficial use to the customers of CCWA’s water system, all under the 02CW185 plan for augmentation. **d. The State Engineer in the exercise** of his administrative authority has issued Written Instruction 2020-01 that water produced by a conditional water right pursuant to a plan for augmentation makes the water right absolute. The reasoning, as well as the supporting opinion of the Attorney General’s Office, is fully explained in said Written Instruction which is attached as Exhibit C and is incorporated by this reference. **6. Names and addresses of owners or reputed owners of the land** upon which any new diversion or storage structure or modification to any existing diversion or storage structure necessary for the subject water right is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: CCWA

CASE NO. 2021CW3003; THE CITY OF VICTOR AND CRIPPLE CREEK & VICTOR GOLD MINING COMPANY, c/o The City of Victor, a Colorado municipal corporation (“Victor”), c/o Richard Mann, City Administrator, 500 Victor Avenue, Victor, CO 80860; and Cripple Creek & Victor Gold Mining Company (“CC&V”), c/o Katie Blake, Sustainability Manager, 100 North 3rd Street, Victor, CO 80860 (Please address all pleadings and inquiries regarding this matter to Applicants’ attorneys: **Victor’s attorneys:** Julianne Woldridge, Esq., MacDougall & Woldridge, P.C., 70 Morning Sun Dr., Suite A, P.O. Box 7273, Woodland Park, Colorado 80863; Telephone Number: (719) 520-9288 and **CC&V’s attorneys:** Gabe Racz, Esq. and Andrea A. Kehrl, Esq., Vranesh and Raisch, LLP, 5303 Spine Road, Suite 202, Boulder, CO 80301; Telephone: (303) 443-6151)

Application for Findings of Reasonable Diligence
PUEBLO, FREMONT, AND TELLER COUNTIES

2. Name of Water Right: Altman Exchange. **3. Description of Conditional Water Right:** a. **Prior Decrees:** The Altman Exchange was originally decreed in Case No.

2010CW98, Water Division 2, by an amended Decree entered January 5, 2015 ("2010CW98 Decree"). b. **Subsequent Decrees Awarding Findings of Diligence:** None. This is the first application for findings of reasonable diligence for the Altman Exchange. In addition to the Altman Exchange, the 2010CW98 Decree also adjudicated an appropriative right of exchange known as the Reservoir Exchange; it is entirely absolute and, therefore, is not a subject water right in this Application. c. **Legal Description of Exchange Reach and Structures:** i. **Exchange Reach:** The lower terminus of the exchange reach is Pueblo Reservoir, as described below in Paragraph 3(c)(ii). The exchange reach extends up the Arkansas River to its confluence with Beaver Creek located in Township 19 South, Range 68 West, 6th P.M., Fremont County, then up Beaver Creek to the confluence of Beaver Creek and West Beaver Creek, then up West Beaver Creek. The upper terminus of the exchange reach is the Altman Pump Station, as described below in Paragraph 3(c)(iii). The exchange may be operated from and to any point on the streams within this reach, including but not limited to the Altman Pump Station. ii. **Pueblo Reservoir:** In all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 in Township 20 South, Range 66 West, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, in Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, 24 and 25, in Township 20 South, Range 67 West, all of the 6th P.M. in Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section bears North 61° 21' 20" East, a distance of 2,511.05', all more particularly described in the decree in Case No. B-42135, District Court, Pueblo County, Colorado, in Pueblo County. iii. **Altman Pump Station:** NE1/4 NW1/4 Section 15, Township 15 South, Range 69 West, 6th P.M. iv. The exchange reach and structures described above are depicted on the general location map attached to the application as **Figure 1**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) d. **Sources of Water to be Exchanged:** Any fully consumable and legally available water obtained by either Applicant that can be exchanged and used by either Applicant, and that has been stored in Pueblo Reservoir that is of sufficient quantity and quality to satisfy the Division Engineer that it will not injure the owners of or persons entitled to use vested water rights or decreed conditional water rights, including but not limited to the following: (1) Fully consumable water owned or controlled by the Board of Water Works of Pueblo, Colorado ("BWWP"). The source of such water is unspecified, but is generally described as water stored in Twin Lakes Reservoir (located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in Township 11 South, Range 81 West, 6th P.M., in Lake County), Turquoise Reservoir (located on Lake Fork Creek in Sections 7, 8, 17, 18, 19, and 20, Township 9 South, Range 80 West, 6th P.M. and Sections 10, 11, 12, 13, 14, and 15, Township 9 South, Range 81 West, 6th P.M., in Lake County), Clear Creek Reservoir (located in Sections 7 and 8, Township 12 South, Range 79 West, and Section 12, Township 12 South, Range 80 West, 6th P.M. in Chaffee County), and Pueblo Reservoir (located in Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36, Township 20 South, Range 66 West, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, in Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, 24 and 25, in Township

20 South, Range 67 West, all of the 6th P.M., in Pueblo County), and reusable return flows. Such water may include water available from Twin Lakes Reservoir & Canal Co. ("Twin Lakes"), including without limitation storage and direct flow rights for water diverted from another basin available for 100 percent consumptive use and reuse and for augmentation. The water rights producing Twin Lakes water are: 1) Colorado River Water Rights: Case No. 3082, District Court, Garfield County, August 25, 1936 and Case No. W-1901, District Court, Water Div. No. 5, May 12, 1976; priority: August 23, 1930, No. 431; source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Div. No. 5; use: direct flow and storage purposes for irrigation, domestic, commercial, industrial, municipal, and all beneficial uses; amount: direct flow amount for diversions through transmountain tunnels of 625 c.f.s., with an annual limit of 68,000 acre-feet, a running ten year limit of 570,000 acre-feet; and 2) Arkansas River Water Rights: Case No. 2346, District Court, Chaffee County, July 14, 1913 as modified in Case No. W-3965, District Court, Water Div. No. 2, April 19, 1974; priorities: December 15, 1896, No. 3 and March 25, 1897, No. 4; source: Lake Creek and its tributaries, tributary to the Arkansas River; use: storage for irrigation, domestic, commercial, industrial, and municipal purposes on any site in the Arkansas River Basin of Colorado below the Twin Lakes Reservoir which are capable of being served by water by diversion from said Arkansas River; amount: 54,452 acre-feet (20,645.3 acre-feet for Priority No. 3 and 33,806.7 acre-feet for Priority No. 4). BWWP water may also include water rights as decreed in Case Nos. 84CW177, 84CW177(B), 86CW111(B), 86CW111(A), 90CW53, 90CW55, W-28(76), and W-145, Water Div. No. 2, and Case No. CA2535, Pueblo County District Court, and Decree of water rights in Water District 12 dated February 3, 1894. The enumeration herein of Twin Lakes Arkansas River water rights does not imply that the non-reusable return flow component of Twin Lakes Arkansas River water rights can be exchanged under the 2010CW98 Decree; only the consumable portion of the Twin Lakes Arkansas River water rights may be exchanged. (2) Fully consumable water owned or controlled by Pueblo West Metropolitan District ("Pueblo West") and obtained by either Applicant. The source of such water is unspecified, but could include, without limitation, water from Twin Lakes shares, as described above, return flows from Pueblo West's service area, and water rights as decreed in Case No. 85CW134, Water Division 2, and Case No. 01CW152, Water Division 2 (Pioneer Ditch, Gas Creek Ditch, Princeton Ditch, Willowdale Ditch, Pike Ditch, and Bowen Ditch). (3) Fully consumable water purchased from Colorado Springs Utilities ("CS-U"). e. **Appropriation Date and Amount:** April 17, 2008; 3.8 cubic feet per second ("cfs") total, as further specified below. i. 1.91 cfs of the Altman Exchange from the confluence of Middle Beaver Creek and West Beaver Creek to the Altman Pump Station is conditional and subject to this Application; the remaining 1.89 cfs for this particular reach was decreed as absolute in the 2010CW98 Decree and is not subject to this Application. ii. 2.40 cfs of the Altman Exchange from Pueblo Reservoir to the Altman Pump Station is conditional and subject to this Application; the remaining 1.40 cfs for this particular reach was decreed as absolute in the 2010CW98 Decree and is not subject to this Application. f. **Uses:** All uses for which the exchange water is legally useable, by direct diversion and/or storage, including but not limited to municipal, industrial, replacement, augmentation of all beneficial uses, exchange,

and recreation. Applicants will develop and operate this exchange as part of Victor's integrated water system, of which CC&V is a customer. The place of use of the exchanged water is generally described as within and around the City of Victor and the Cripple Creek Mining District, including but not limited to areas capable of being served by Victor's water system, generally described as Sections 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, Township 15 South, Range 69 West, 6th P.M., Teller County, Colorado, and CC&V's Cresson Project. A map of the general area is attached hereto as **Figure 2.**

4. Diligence claim: Applicants seek a determination from the Court, pursuant to C.R.S. § 37-92-301(4), that they have been reasonably diligent in the development of the Altman Exchange.

5. Detailed outline of what has been done towards completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the previous diligence period:

a. Pursuant to the 2010CW98 Decree, the Altman Exchange is part of Victor's integrated system, of which CC&V is a customer. C.R.S. § 37-92-301(4)(b) provides that when a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.

b. As background on the Applicants and the integrated system, Victor owns the Altman Pump Station, and, pursuant to an Operating and Maintenance Agreement, CC&V operates and maintains the Altman Pump Station. In addition, pursuant to written agreements, CC&V leases and purchases raw water every year from Victor, including without limitation water that Victor leases from the City of Cripple Creek. Victor utilizes its water facilities and infrastructure to deliver that leased water to CC&V.

c. Throughout the diligence period, CC&V has operated and maintained the Altman Pump Station at a cost of approximately \$108,000.

d. Throughout the diligence period, Applicants have undertaken numerous efforts and activities and made several investments and expenditures in furtherance of the completion of the Altman Exchange and the integrated water system of which the Altman Exchange is a component, as detailed below.

e. During the diligence period, CC&V retained water rights attorneys to assist with various water rights matters pertaining to the integrated system, expending approximately \$250,000 in legal fees and \$170,000 in related costs.

f. For purchases and leases of raw water from Victor and other entities, reservoir storage fees to store some of its water leased from other entities and stored in Pisgah Reservoir as part of its augmentation plan, and operation and maintenance costs for components of the integrated system, CC&V expended approximately \$2,500,000 each year during the diligence period, at a total approximate cost of \$12,780,000. Within that total amount, CC&V paid approximately \$1.2 million to BWWP and approximately \$800,000 to CS-U to lease and purchase water sources that are decreed as substitute supplies for the Altman Exchange.

g. In addition, on June 1, 2015, CC&V entered into an Addendum to its Amended and Restated Agreement for the Purchase of Water with CS-U, extending its water lease with CS-U through the year 2025. As noted above, fully consumable water leased from CS-U is a decreed source of substitute supply for the Altman Exchange.

h. CC&V has installed, maintained, and upgraded various facilities associated with the integrated water system, including, for instance, relocating two water pipelines in its East Cresson Overburden Storage Area, which are integral components of CC&V's on-site water infrastructure. First, in 2016, CC&V relocated its Grassy Valley Pipeline, which

conveys water from the Altman Pump Station to various places of use at the mine site. CC&V expended a total cost of approximately \$670,000 for the engineering and construction work to relocate the Grassy Valley Pipeline. Then, in 2020, CC&V expended in excess of \$700,000 to relocate its Grassy Valley Pipeline again, in order to accommodate a mine expansion. i. During the diligence period, CC&V expended approximately \$25 million to install new liners in its Valley Leach Facilities, where CC&V uses water from the Altman Pump Station to conduct gold recovery activities. j. In the near future, CC&V anticipates increased on-site water demand and intends to upgrade the pump at the Altman Pump Station to accommodate its increased needs and to operate the Altman Exchange at its full decreed rate. CC&V has begun to evaluate the cost of the pump upgrade and currently estimates a cost between \$100,000 and \$175,000. k. During the diligence period, Victor expended approximately \$274,568 for maintenance, operations, and repairs of its integrated water system, including without limitation operation, maintenance, and capital improvements to its diversion structures and reservoirs and installation and operation of satellite telemetry devices, water purchases or leases and land acquisition, contract negotiations, and accounting and operation of existing water diversions, exchanges, and storage. Included in this amount is over \$70,000 in engineering consultant fees and over \$23,000 in legal consultant fees and expenses related to the operation, maintenance, and repairs of its integrated water system. Victor operated the reservoir exchanges decreed as absolute in Case No. 10CW98 in 2015, 2016, and 2017, exchanging over 629 acre-feet. Victor also expended \$1,033.00 for water purchased from Cripple Creek, for which Victor was reimbursed by Cripple Creek & Victor Gold Mining Company. Victor also assigns and incurs expenses for staff and equipment to operate its integrated water system. Victor is negotiating to acquire additional water that it anticipates exchanging using the Altman Exchange in 2021 to ensure adequate supplies of water during reservoir maintenance. 1. Applicants have a continuing need for the full Altman Exchange, maintain the intent to develop and complete the appropriation of the Altman Exchange, and can and will put the water diverted by the Altman Exchange to beneficial use within a reasonable period of time. Applicants' claim for findings of reasonable diligence, and continuation of the Altman Exchange is not speculative. **6. Claim to make absolute:** Applicants do not seek to make any portion of the Altman Exchange absolute. **7. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** a. Pueblo Reservoir, Turquoise Reservoir, and Twin Lakes Reservoir are owned by the United States Department of the Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road 18-E, Loveland, CO 80537. b. Altman Pump Station is owned by Applicant, Victor. **8. Remarks or other pertinent information:** a. Applicants will comply with all applicable terms and conditions of the 2010CW98 Decree in its efforts to complete the appropriation of the Altman Exchange. WHEREFORE, the Applicants request the Court to enter a Decree granting the claims set forth herein, finding that the Applicants have exercised reasonable diligence in completing the appropriation and placing the Altman Exchange to beneficial use, and ordering that the Altman Exchange remains in full force and effect, in its entirety, for another six years or until made absolute the completion of the appropriation.

CASE NO. 2021CW3004; Previous Case Nos. 14CW3040; 08CW31; 00CW111 – TRAIL’S END RANCH, LLC (“Trail’s End”) c/o Paul R. Seegers, Manager, 14140 Midway Road Suite 202, Farmers Branch, Texas, 75244

(Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Alan E. Curtis, Heather A. Warren, WHITE & JANKOWSKI LLC, 1333 W. 120th Ave., Suite 302, Westminster, Colorado, 80234, (303) 595-9441)

Application to Make Conditional Water Rights Absolute and/or for Finding of Reasonable Diligence

CUSTER COUNTY

2. Name of Conditional Water Right. Trail’s End Pond No. 10 Exchange (“Exchange Water Right”). **3. Description of Exchange Water Right.** a. Original Decree. Case No. 2000CW111, May 14, 2002, Water Division 2 (“2000CW111 Decree”). b. Previous Diligence. Water Division 2 Decrees in: (1) Case No. 2008CW31, September 25, 2008 (“2008CW31 Decree”); and (2) Case No. 2014CW3040, January 6, 2015 (“2014CW3040 Decree”). c. Source. Unnamed tributary to Brush Creek, tributary to the Arkansas River, wastewater, seepage, and Trail’s End Wells No. 12 and 13. d. Place of Diversion and Storage by Exchange. Trail’s End Pond No. 10, located in Section 12, T.46N., R.12E., N.M.P.M., Custer County, Colorado, at a point approximately 1,900 feet from the west section line and 3,150 feet from the south section line. Pond No. 10 is shown on the general location map attached to the application as **EXHIBIT 1**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) e. Appropriation Date. November 1, 2000. f. Amount. 0.125 cfs, conditional. g. Use. Exchange, augmentation, substitution, replacement, piscatorial, wildlife habitat, stock watering, recreation and aesthetic purposes. h. Substitute Supply. Water available under the Thomas Balman Ditch No. 4, also known as the Koch Spring Ditch, as changed in the 2000CW111 Decree (“Balman Water Right”). i. Manner and Operation of the Exchange. Trail’s End Pond No. 10 is an existing structure on Trail’s End Ranch, which is owned by Trail’s End. The entire water right for Trail’s End Pond No. 10 was confirmed absolute in the 2000CW111 Decree and is not at issue in this diligence proceeding. Under the 2000CW111 Decree, water may be stored in Trail’s End Pond No. 10 under the Exchange Water Right in substitution for water which is made available to the stream system under Trail’s End’s changed Balman Water Right. Water stored in Trail’s End Pond No. 10 under the Exchange Water Right may be used for the uses identified in paragraph 3.g, above. Use of the Exchange Water Right is one of several alternative ways allowed by the 2000CW111 Decree to augment and replace depletions. j. Continuing Intent and Ability. Trail’s End intends to, and can and will, store water in the Trail’s End Pond No. 10 under the Exchange Water Right as needed for all purposes for which the Exchange Water Right was adjudicated by the 2000CW111 Decree. **4. Absolute Claim for Exchange.** As discussed below, the entire decreed amount of the Exchange Water Right has been put to the beneficial uses approved in the 2000CW111 Decree. a. Bases for Absolute Claim. Records maintained by Division 2, District 13 Water Commissioner Jerry Livengood demonstrate that the Exchange Water Right has been made absolute in accordance with the requirements of Colorado Division of Water Resources Written Instruction 2020-01, DWR Position on Making Water Rights Diverted Out of Priority Absolute dated July 21, 2020. b. Amount. 0.125 cfs made absolute; 0.00

cfs remains conditional. c. Uses. Exchange, augmentation, substitution, replacement, piscatorial, wildlife habitat, stock watering, recreation and aesthetic purposes. d. Place of Use. Trail's End Pond No. 10 as described in paragraph 3.d, above. **5. Diligence Claim for Exchange Water Right**. In the event the entire Exchange Water Right is not made absolute, Trail's End requests that the remaining conditional portions of the Exchange Water Right be continued in full force and effect for all purposes for the reasons discussed below. a. Diligence Period. The most recent diligence period for the Exchange Water Right was from January 6, 2015 when the 2014CW3040 Decree was entered, through January 31, 2021 ("Diligence Period"). b. Integrated System. This Court has previously confirmed that Trail's End Pond No. 10, the conditional appropriation for the Exchange Water Right, and the other structures, water rights and plan for augmentation described in the 2000CW111 Decree: (1) comprise an integrated water supply system for Trail's End Ranch; and (2) efforts, activities and expenditures on the various components of this integrated water system may be considered as evidence of diligence for all components of the system. See 2008CW31 Decree ¶ 8, at 3; 2014CW3040 Decree ¶ 8, at 3. Pursuant to C.R.S. § 37-92-301(4)(b), work on other components of Trail's End's water system is evidence of diligence on the Exchange Water Right. c. Activities and Expenditures. During the Diligence Period, Trail's End, with the assistance of White & Jankowski LLC, completed activities and expended funds exceeding thirty-eight thousand dollars (\$38,000.00). These actions and expenditures confirm Trail's End's steady and diligent effort to complete the appropriation of the Exchange Water Right by applying water diverted by the Exchange Water Right to beneficial use. These activities and expenditures include, without limitation: i. Operation of Trail's End Pond No. 10. Throughout the Diligence Period, Trail's End: (1) operated and maintained Trail's End Pond No. 10; and (2) augmented and replaced depletions from the integrated water system adjudicated by the 2000CW111 Decree, including depletions from Trail's End Pond No. 10. ii. Operation of Other Trail's End Pond No. 10 Water Rights. In addition to the Exchange Water Right, a separate absolute water right and plan for augmentation for Trail's End Pond No. 10 were confirmed by the 2000CW111 Decree. Trail's End has stored and used water in Trail's End Pond No. 10 under the priority adjudicated to Trail's End Pond No. 10 and the plan for augmentation and has used such water for all of the uses adjudicated to the Exchange Water Right. iii. Resume Review. During the Diligence Period, Trail's End reviewed Division 2 Water Court resumes monthly to identify applications potentially impacting Trail's End's water rights and operations including, without limitation, the Exchange Water Right. iv. Water Court Oppositions. Trail's End filed statements of opposition and actively participated in Case No. 2018CW02, a Division 2 Water Court application by RP on TC, LLC to obtain terms and conditions necessary to protect Trail's End's water rights and operations including, without limitation, the Exchange Water Right. **6. Requested Ruling**. Based on the foregoing, Trail's End respectfully requests that the Water Court enter a decree finding that the full 0.125 cfs of the Exchange Water Right has been made absolute and no further diligence filings for the Exchange Water Right are required. If the Exchange Water Right is not made absolute in its entirety, Trail's End requests that all remaining conditional portions of the Exchange Water Right be continued in full force and effect for all purposes in the full decreed amount. **7. Names and Addresses of Owners or Reputed Owners of the Land Upon Which Any New**

Diversion Structure, or Modification to Any Existing Diversion Structure is or Will Be Located. a. Trail's End, at the address in paragraph 1, above.

THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT AND PROTEST WITHIN THE TIME PROVIDED BY STATUTE, OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of March 2021, (forms available at Clerk's office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$192.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 11th day of February 2021.

Michele Santistevan

Michele M. Santistevan, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
501 N. Elizabeth Street, Suite 116
Pueblo, CO 81003; (719) 404-8749



(Court seal)
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