

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JANUARY 2023. (This publication can be viewed in its entirety on the state court website at: www.courts.state.co.us).

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 2023, 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. 2023CW1; Previous Case Nos. 16CW3040 and 02CW73 – V. PAUL MOLTZ, PO Box 1914, Buena Vista, CO 81211, (719) 221-0020

Application for Finding of Reasonable Diligence and to Make Absolute in Whole or in Part
CHAFFEE COUNTY

2. Name of Structure: Trout Creek Reservoir. **3. Describe conditional water right: A. Date of Original Decree:** July 21, 2010. **Case No:** 2002CW073. **Court:** District Court, Water Division 2. **B. Legal description:** Trout Creek Reservoir is located in the NW ¼ and the N ½ NW ¼ NE ¼ of Section 26, and the S ½ S ½ of Section 23, Township 14 South, Range 78 West, 6th P.M., Chaffee County. The right abutment of the dam is located at a point whence the NW corner of said Section 26 bears North 21 ° 55' 35" West, a distance of 1,633.95 feet. A map illustrating the location of the Reservoir is 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.) **C. Source of water:** Trout Creek, a tributary of the Arkansas River. **D. Appropriation Date:** April 20, 2000, for the original construction, and May 31, 2002, for the first enlargement. **Amount:** Under original construction, 671.69-acre feet, conditional. Under the first enlargement, 485.09-acre feet, conditional. **E. Use:** Irrigation, recreation, wildlife propagation, piscatorial, augmentation and exchange purposes. **4. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed:** (a) The operation and enlargement of Trout Creek Reservoir has required the relocation of a portion of County Road 302. (b) Applicant and the Chaffee County Commissioners began the process of relocating County Road 302 in 2010. (c) The Bureau of Land Management ("BLM"), completed an Environmental Assessment on October 6, 2010 (i.e. DOI-BLM-CO 200-2010-084-EA). (d) During the initial stages of construction of the relocated road it was determined that the proposed route needed to be modified due to concerns about resource damage. Therefore, on November 9, 2012, Chaffee County reapplied for a route for County Road 302 in another location. A Right-of-way fence was subsequently constructed along the eastern edge of the road corridor. (e) On July 22, 2014, the BLM concluded that NEPA requirements had been met. (f) The relocation of County Road 302 was completed and approved by the Chaffee County Commissioners in April of 2016. (g) In 2013, a dam inundation study was completed by the Applegate Group in conjunction with the Dam Safety Branch of the State Engineer's Office. (h) Applicant expended in excess of \$100,000.00 in engineering,

permitting, attorney fees and construction associated with the above referenced activities.

5. Date Water Applied to Beneficial Uses: N/A **6. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** The original construction and the enlargement of Trout Creek Reservoir will be located on lands currently owned by the applicant. Wherefore, Applicant requests that the Court enter an Order finding that diligent efforts have been made to put the water decreed conditionally to the Trout Creek Reservoir to beneficial use and continue the conditional status only for the 485.09-acre feet enlargement.

CASE NO. 2023CW2; Previous Case No. 15CW023 – DRAGON LAIR L.L.C., PO Box 26, Magdalena, NM 87825, (401) 241-8000

Application for Finding of Reasonable Diligence

LAKE COUNTY

2. Name of Structure: Dragon Lair Upper Micro-Hydropower Diversion, Dragon Lair Lower Micro-Hydropower Diversion, Dragon Lair Ditch, and Dragon Lair Ditch Twin Lakes Exchange Type: Ditch, Other: Hydropower penstock and exchange. **3. Describe conditional water right:** **A. Date of Original Decree:** January 5, 2017. **Case No:** 15CW023. **Court:** District Court, Water Division 2. **B. List all subsequent decrees awarding findings of diligence:** No subsequent decrees. This is the first diligence/absolute application. **C. Legal description:** From the Case No 15CW023 decree. 1 – Dragon Lair Upper Micro-Hydropower Diversion: SW ¼ of the NE ¼ of Section 24, Township 11 South, Range 81 West, 6th P.M. 1,410 feet from the north section line and 1,360 feet from the east section line. The corresponding UTM coordinates are 4326735 Northing, 379690 Easting, in Zone 13S. 2 – Dragon Lair Lower Micro-Hydropower Diversion: SE¼ of the NE ¼ of Section 24, Township 11 South, Range 81 West, 6th P.M. 1,700 feet from the north section line and 1,200 feet from the east section line. The corresponding UTM coordinates are 4326646 Northing, 379740 Easting, in Zone 13S. 3 – Dragon Lair Ditch: SE ¼ of the NE ¼ of Section 24, Township 11 South, Range 81 West, 6th P.M. 1,700 feet from the north section line and 1,200 feet from the east section line. The corresponding UTM coordinates are 4326646 Northing, 379740 Easting, in Zone 13S. 4 – Dragon Lair Ditch Twin Lakes Exchange: “Exchange From” Point (Twin Lakes Reservoir): The Twin Lakes Reservoir is located in all or portions of Sec. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 30, all in Township 11 South, Range 80 West of the 6th P.M. Lake County, Colorado on Lake Creek, tributary of the Arkansas River “Exchange TO” Point (Dragon Lair Ditch): SE ¼ of the NE ¼ of Section 24, Township 11 South, Range 81 West, 6th P.M. 1,700 feet from the north section line and 1,200 feet from the east section line. The corresponding UTM coordinates are 4326646 Northing, 379740 Easting, in Zone 13S. See general location map 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.) **D. Sources of water:** Gordon Gulch for all rights. The source of the Dragon Lair Ditch Twin Lakes Exchange water is Twin Lakes Reservoir. **E. Appropriation Dates and Amounts:** Dragon Lair Upper Micro-Hydropower Diversion: December 31, 2004, 0.5 cfs conditional, Dragon Lair Lower Micro-Hydropower Diversion: December 31, 2004, 0.5 cfs conditional, Dragon Lair Ditch: May 1, 2014, 0.325 cfs conditional, and Dragon Lair Ditch Twin Lakes

Exchange: May 1, 2014, 0.0004 cfs conditional. **F. Uses**: Dragon Lair Upper Micro-Hydropower Diversion: Hydropower, Dragon Lair Lower Micro-Hydropower Diversion: Hydropower, Dragon Lair Ditch: Domestic & Commercial, and Dragon Lair Ditch Twin Lakes Exchange: In-house domestic, greenhouse, livestock, garden and commercial uses. **4. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed**: During the first diligence period the applicant has placed a water line in the Dragon Lair Ditch such that this conveyance can be used to supply domestic water to the applicant's proposed residence site. The applicant has additionally installed storage for 240 gallons of water to help serve this proposed residence, engaged a professional architect (2021) for the production of plans for a single family residence and commercial bed & breakfast structures at a cost of \$6,000, disassembled an existing log cabin structure and removed 50 trees to clear the proposed residence/commercial building site, researched equipment and laid out penstock locations for the Dragon Lair Upper Micro-Hydropower Diversion and the Dragon Lair Lower Micro-Hydropower Diversion, engaged a professional engineer for assistance in continuing the development of these conditional water rights. The applicant seeks a finding of reasonable diligence for all of the conditional water rights decreed to the Dragon Lair Upper Micro-Hydropower Diversion, the Dragon Lair Lower Micro-Hydropower Diversion, the Dragon Lair Ditch, and the Dragon Lair Ditch Twin Lakes Exchange. The recent pandemic and inflationary conditions have slowed the applicant's efforts at beginning construction on the proposed structures. The applicant has also had multiple surgeries during this diligence period resulting in more limited physical abilities (attached letter). **5. Date Water Applied to Beneficial Uses**: No claim to make any of the conditional water rights absolute is being made in this application. **6. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool**: Applicant

CASE NO. 2023CW3000; Previous Case Nos. 16CW3044, 13CW3068, 06CW79, 02CW82, and 92CW30 – PURGATOIRE RIVER WATER CONSERVANCY DISTRICT, 3590 East Main Street, Suite 3, Trinidad, CO 81082 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Julianne Woldridge, MacDougall & Woldridge, P.C., 70 Morning Sun Drive, Suite A, P.O. Box 7273, Woodland Park, CO 80863 (719) 520-9288)

Application for Findings of Reasonable Diligence

LAS ANIMAS COUNTY

Name of structure: Joint Use Capacity, Trinidad Reservoir, WDID 1903935. **Conditional water right**: Original Decree: Case No. 92CW30 dated September 6, 2000. Supplemental decrees: Case No. 02CW82 dated May 5, 2003; Case No. 06CW79 dated July 20, 2010; Case No. 13CW3068 dated November 20, 2015; and Case No. 16CW3044 dated December 21, 2016. Location: Trinidad Dam is located on the upper Purgatoire River, a tributary of the Arkansas River, at rivermile 160.5 (Latitude 37°08'27", Longitude 104°33'03") about 3.2 miles southwest of the City of Trinidad, Las Animas County, CO. The principal axis of the dam is located as follows: commencing at a point whence the

NW corner of Sec. 27, T.33S., R.64W., 6th P.M. bears North 39°45' West for a distance of 2,257 feet; thence South 04°45'49" West 60.21 feet to the northerly end of the principal axis; thence South 45°12'52" East a distance of 1,887.99 feet along the principal axis of the dam to the southerly end of the principal axis. The Joint Use Capacity of Trinidad Reservoir inundates parts of Sec. 21, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, T.33S., R.64W., 6th P.M., Las Animas County, CO. Source: Purgatoire River and Leitensdorfer, Chicosa, and Black Hills Arroyos, available by impoundment or exchange for storage: under operating principles of the contract between applicant and the United States of America dated February 10, 1967, as amended from time to time; under Article IV D of the Arkansas River Compact; and under contracts with owners of decreed rights for domestic, irrigation, and municipal supply within the Purgatoire River Water Conservancy District. Appropriation date: May 6, 1989. Amount: 39,000 acre-feet, with the right to fill and refill each year as necessary, of which 36,189.03 acre-feet has been made absolute and 2,810.97 acre-feet remains conditional. The decrees in Case Nos. 06CW79 and 16CW3044 contained an error identifying the amount of the conditional portion as 2,810.92 acre-feet; but entered findings of diligence for “the remaining conditional” storage right. Applicant requests findings of diligence in the present case for the remaining conditional portion of the storage right (2,810.97 acre-feet). Uses: Domestic, irrigation, and municipal uses within the Purgatoire River Water Conservancy District in the manner authorized by the operating principles of the Trinidad Reservoir Project contained in the contract dated February 10, 1967 between Applicant and the United State of America, as amended. **During the previous diligence period Applicant has done the following to complete or for the completion of the appropriation and application of the water to beneficial use:** Applicant, through an agreement with the Bureau of Reclamation dated February 10, 1967, maintains and manages the Irrigation Capacity of the Trinidad Dam and Reservoir Project (“Project”). This storage space is within the Irrigation Capacity of Trinidad Reservoir. Applicant has maintained and ensured the accounting of the account for this storage right in Trinidad Reservoir for the entire diligence period, standing ready to divert water into storage when legally and physically available. Applicant intends to continue to make efforts to store water according to the conditional water right when water or storage is physically or legally available. In addition, Applicant has performed the following as part of its diligent pursuit and protection of its integrated water system which includes the subject storage right: from 2017 to date, Applicant and the Project participants paid the Bureau of Reclamation \$470,093.00 towards repayment of the construction costs of the Irrigation Capacity and \$1,108,939.00 in operation and maintenance payments; Applicant participated in annual meetings with federal agencies and ongoing “10-Year Reviews” under the Operating Principles of the Project; Applicant reported on Project operations annually to the Arkansas River Compact Administration; Applicant protected the Project water rights by participating in Water Court actions related to or that could impact Project water rights, including Case Nos. 17CW3073, 21CW3083, 20CW3029, and 21CW3083; Applicant obtained approval for and operated Irrigation Improvement Rules Compact Compliance Plans benefiting Project participants, that promote efficient use of Project water supplies; Applicant operated a program to pursue funding for and installation of new river headgates for Project ditches that promotes efficient use of Project water supplies; Applicant provided funding for gauging stations for recording and transmitting water use information, and

Applicant contributed funding and in-kind services for the Picketwire/Baca Ditch diversion project. **Name of owner of land where reservoir is located:** U.S. Army, Corps of Engineers, Albuquerque District, P.O. Box 1580, Albuquerque, NM 87103. Applicant requests a finding that it has exercised reasonable diligence towards or for the completion of the conditional portion of the storage right.

CASE NO. 2023CW3001; Previous Case Nos. 16CW3043; 09CW28; 02CW35; 95CW137; and 87CW069 – TOWN OF PALMER LAKE, P.O. Box 208 Palmer Lake, CO 80133 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Steven P. Jeffers and Casey J. Weaver, Lyons Gaddis, P.C., 950 Spruce Street, Suite 1B, Louisville, CO 80027, (720) 726-3671, sjeffers@lyonsgaddis.com; cweaver@lyonsgaddis.com)

Application for Finding of Reasonable Diligence

EL PASO COUNTY

2. Name of water right: Palmer Lake Monument Creek Exchange. **3. Describe the conditional water right from the Judgment and Decree:** A. **Original decree:** The District Court, Water Division No. 2, originally decreed the water right in Case No. 87CW069 on June 21, 1989. B. **Subsequent decrees awarding findings of diligence:** The Court entered diligence decrees in Case Nos. 95CW137 on March 8, 1996; 02CW35 on February 7, 2003; 09CW28 on July 7, 2010; and 16CW3043 on January 17, 2017. C. **Legal description of the points of the exchange:** The exchange reach is decreed from the outfall of the Tri-Lakes Wastewater Treatment Facility upstream to the Palmer Lake Well QAL-4 as described below. A map showing the location of the exchange points is 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.) i. **Exchange-from point:** A point on Monument Creek at the outfall of the Tri-Lakes Wastewater Treatment Facility in the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado. ii. **Exchange-to point:** Palmer Lake Well QAL-4, to be located in the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 8, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1,500 feet from the east section line and 10 feet from the north section line of Section 8. D. **Source:** Monument Creek for water to be diverted by exchange; nontributary Denver aquifer for water to be exchanged. E. **Appropriation:** i. **Date:** October 23, 1987. ii. **Amount:** 0.223 cfs (100 gpm) **CONDITIONAL** F. **Use:** All municipal purposes, including domestic, agricultural, industrial, commercial, irrigation, stock watering, fire protection, recreation, fish and wildlife preservation and propagation, and all other beneficial purposes, including exchange purposes, replacement of depletions resulting from the use of water from other sources, relinquishment pursuant to section 37-90-137(9)(b), C.R.S., and all other augmentation purposes. G. **Depth:** Palmer Lake QAL-4 will be approximately 50 feet deep. **4. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** The Palmer Lake Monument Creek Exchange is a component part of Applicant's integrated water supply system, pursuant to section 37-92-301(4)(b), C.R.S. In support of its claim for diligence, Applicant completed the following activities during the period from January 17, 2017, through the date of the filing of this application: A. During the subject diligence period,

Applicant constructed and/or replaced approximately 5,500 feet of water lines within its municipal system at a cost of \$ 158,348. B. In 2019, Applicant relocated a portion of its water line to allow construction of a new pedestrian bridge at a cost of \$28,118. C. In 2021, Applicant redrilled Well No. D-2, one of the decreed sources of water for the exchange, at a cost of \$657,601. D. Applicant constructed an underground water storage tank in 2019 at a cost of \$1,600,000. E. From 2018 through 2022, Applicant participated in discussions with Colorado Springs Utilities and other local water providers regarding proposed extension of the North Monument Creek Interceptor to deliver the Town's wastewater from the Tri-Lakes Wastewater Treatment Facility to the J.D. Phillips WWTP, to protect the Town's water rights, including this exchange. The Town paid in excess of \$3,800 in those negotiations. F. Applicant's Board of Trustees passed Resolution No. 10-2023 on January 12, 2023, approving the filing of this application seeking a finding of reasonable diligence in the development of the Palmer Lake Monument Creek Exchange and requesting continuance of the exchange for an additional six-years. **5. Claim to make the conditional exchange ABSOLUTE:** NA. **6. Name and address of the owners of any land upon which any new diversion structure will be constructed or modified is located:** Applicant. WHEREFORE, Applicant requests that the Court enter a decree finding and determining that Applicant has exercised reasonable diligence in the development of the conditional water right and continuing the conditional water right for an additional six-years.

CASE NO. 2023CW3002 – IRVING FRANK AVERY REVOCABLE TRUST AND EARLENA MAE AVERY REVOCABLE TRUST, 14065 Roller Coaster Road, Colorado Springs, CO 80921 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Chris D. Cummins, Emilie B. Polley, W. James Tilton of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921; (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and Plan for Augmentation
EL PASO COUNTY

Irving Frank Avery Revocable Trust and Earlena May Avery Revocable Trust (collectively "Applicants") seek to quantify the Denver Basin groundwater underlying their approximately 10.02-acre property in El Paso County, Colorado. Applicants intend to split the property into four lots, with one single-family home and one well for each lot. **Application for Underground Water Rights.** The Applicant's approximately 10.02-acre property ("Applicants' Property") is located in Section 4, Township 12 South, Range 66 West of the 6th P.M. in El Paso County, Colorado, more specifically described as located at 14065 Roller Coaster Rd, Colorado Springs, Colorado, 80921, and depicted on the **Exhibit A** map 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.) **Existing Well.** There is an existing exempt domestic well upon Applicants' Property with Division of Water Resources Permit No. 34256 ("Avery Well No. 1"), which permit is attached as **Exhibit B**. The Avery Well No. 1 is drilled to a total depth of approximately 390 feet into the Dawson aquifer, The Avery Well No. 1 is approximately located at UTM Easting 518831.6 and Northing 4320825.0, 1,996 feet from the East section line, and 2,048 feet from the North section line. Upon completion of this case and the subdivision process, the Avery Well No. 1 will remain an exempt well pursuant to SB 20-155 amending C.R.S.

§37-92-602(3)(b)(IV). Proposed Wells. Applicants propose that up to three (3) additional wells (one well per lot) will be located on Applicants' Property ("Avery Well Nos. 2 through 4"). Applicants propose that each of the three (3) new wells will be drilled to the Denver Aquifer, at locations on the property not yet determined, for a total of four wells on the Applicants' Property. Not-Nontributary. The ground water to be withdrawn from the Dawson, Denver, and Arapahoe aquifers underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. Wells in the Denver and Arapahoe aquifers will require 4% replacement of depletions. Id. Nontributary. The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicant's Property is nontributary. Estimated Rates of Withdrawal. Pumping from the well will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of any well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 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 Applicant's Property. Said amounts may be withdrawn over the 100-year aquifer life pursuant to C.R.S. §37-90-137(4) or 300-years pursuant to the El Paso County Land Use Development Code Applicants estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

Groundwater Quantification				
SW¼ NE¼ Sec 4 T12S R66W 6th P.M.				
Denver Basin Aquifer	Net Sand (ft)	Total (AF)	100 Year (AF)	300 Year (AF)
Upper Dawson (NNT)	182.0	360 ¹	3.6	1.2
Denver (NNT-4%)	503.8	860	8.6	2.86
Upper Arapahoe (NNT-4%)	228.8	390	3.9	1.3
Laramie Fox Hills (NT)	189.9	280	2.8	0.93

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicants further request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. Requested Uses. The Applicants request the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic, irrigation for lawn, garden, and greenhouse; domestic animal and livestock watering, 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

¹ Applicant will reserve 0.7 acre-feet annually for 300 years, or a total of 210 acre-feet to account for pumping of the exempt Avery Well No. 1.

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 use water from the not-nontributary Dawson, Denver, and Arapahoe aquifers pursuant to a decreed augmentation plan entered by this Court, including the plan for augmentation applied for herein, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifer in accordance with C.R.S. §37-90-137(9)(c.5). 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. 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 Applicant' are entitled to withdraw from the aquifers underlying the Applicants' Property. Owner of Land Upon Which Wells are to Be Located. The land and underlying groundwater upon which the wells are located is owned by the Applicants. **IV. Application for Approval of Plan for Augmented: Structures to be Augmented.** The structures to be augmented are the Avery Well Nos. 2- 4 which will be constructed to the not-nontributary Denver aquifer, and any replacement or additional wells associated therewith. 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 Avery Well Nos. 2-, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. Applicants wish to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Denver aquifer by Avery Well Nos. 2-4. The Avery 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: The household use is estimated at 0.26 acre-feet annually within single family dwellings on up to three lots, with a maximum of ten percent consumptive use based on nonevaporative septic leach field disposal systems. The annual consumptive use for each lot will therefore be 0.026 acre feet per well, with return flows of 0.234 acre feet per lot or 0.702 acre-feet per year for the three wells. 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. Livestock use is estimated at 0.011 acre feet annually (10 gallons per day) per head with one hundred percent consumptive use component. Each of the three augmented wells will pump a maximum of 0.3 acre-feet of water per year per residence for a total of 0.9 acre-feet being withdrawn from the Denver aquifer per year. Each well's 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 0.26 acre-feet of water per year per residence with the additional 0.04 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. Pumping from the Denver well will require 4% replacement of the pumped amount, or 0.012 acre-feet in year 300. Should Applicants' pumping be less than the 0.9 total from the Denver aquifers, per year described herein, resulting depletions and required replacements will be correspondingly reduced. Pursuant to C.R.S. §37-90-137(9)(c.5), Applicants are required to replace 4% of the water withdrawn from the Denver aquifer. Depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems, and depletions from irrigation will be adequately replaced by irrigation return flows. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.26 acre feet per residence per year, 0.234 acre-feet is replaced to the stream system per year, assuming the use of a non-evaporative septic systems. Thus, during pumping, stream depletions will be adequately augmented. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Avery Well Nos. 2-4, Applicants will reserve the entirety of the nontributary Laramie-Fox Hills aquifer, less the amount of 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 a new well permit for the Avery Well Nos. 2 through 4, for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137.

CASE NO. 2023CW3003; Previous Case No. 13CW3041 – DONALD E. AND CATHIE G. DILL, 3285 CR 47, Howard, CO 81233 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Sarah A. Klahn, Somach Simmons & Dunn, P.C., 1155 Canyon Blvd., Suite 110, Boulder, CO 80302, 303-449-2834, sklahn@somachlaw.com)

Application to Make Water Rights Partially Absolute and for a Finding of Reasonable Diligence.

FREMONT COUNTY

2. Background. This water right was originally decreed September 5, 2017 as partially conditional and partially absolute in the name of the Dills and Jerry and Frances Pearce for, *inter alia*, irrigation of both properties. On September 1, 2022, the Pearces conveyed their interests in the water right and irrigated ground to Dills and transfer of ownership was filed with the Division 2 Water Court. The Dills continue to rely on this water right for irrigation of the entire place of use, and domestic well incidental recharge. Diligence is due on the conditional portion of this water right in September of 2023, but as the applicants perfected the right and made the remainder absolute during the summer of 2022, they seek an early determination of their claims. 3. Description of subject water

rights and associated structures. The original decree authorizes diversion of water rights in certain described springs tributary to Stout Creek tributary to the Arkansas River for irrigation of 16.45 acres. 3.1. Prior Decree: The Subject Water Rights were originally decreed on September 5, 2017 in Case No. 13CW3041, Water Division 2 (“Original Decree”). 3.2 Horton Creek Extension, WDID 1201093: 3.2.1. Legal Description: NW1/4 of Section 27, Township 48 North, Range 10 East of the N.M.P.M. South 6 degrees 35 minutes East 1230 feet from the NW corner, and along the line of the Horton Creek Extension as shown on the 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.) UTM: X/Easting 425258, Y/Northing 4249058, Zone 13S, NAD83. 3.2.2. Source: The five upper springs feeding the Horton Creek Extension (Upper Spring Nos. 1-5), the Moore Spring, Horton Spring 1, Horton Spring 2, and Horton Spring 3 (“springs”) are all tributary to Stout Creek, which is tributary to the Arkansas River. Source spring locations are shown on the attached Exhibit 1 and described with more detail below: 3.2.2.1 Upper Spring 1, WDID 1202823: UTM X/Easting 425000, UTM Y/Northing 4248910, Zone 13S; 3.2.2.2. Upper Spring 2, WDID 1202824: UTM X/Easting 424914, UTM Y/Northing 4248865, Zone 13S; 3.2.2.3. Upper Spring 3, WDID 1202825: UTM X/Easting 424729, UTM Y/Northing 4248756, Zone 13S; 3.2.2.4. Upper Spring 4, WDID 1202826: UTM X/Easting 424755, UTM Y/Northing 4248734, Zone 13S; 3.2.2.5. Upper Spring 5, WDID 1202827: UTM X/Easting 424815, UTM Y/Northing 4248776, Zone 13S; 3.2.2.6. Moore Spring, WDID 1202822: UTM X/Easting 425225, UTM Y/Northing 4249291, Zone 13S; 3.2.2.7. Horton Spring 1, WDID 1201093: UTM X/Easting 425258, UTM Y/Northing 4249058, Zone 13S; 3.2.2.8. Horton Spring 2, WDID 1202820: UTM X/Easting 425402, UTM Y/Northing 4249433, Zone 13S; and 3.2.2.9. Horton Spring 3, WDID 1202821: UTM X/Easting 425433, UTM Y/Northing 4249570, Zone 13S. 3.2.3. Amount: 0.46 cfs, absolute; 0.54 cfs, conditional. 3.2.4. Dates of appropriation: September 25, 1903 for irrigation; May 18, 1971 for domestic use via incidental recharge of wells. 3.2.5. Uses: Domestic well use (incidental recharge), irrigation of 16.45 acres, piscatorial, recreational and aesthetic. 3.3. Irrigation place of use: 16.45 acres located in the SE1/4 of the SW1/4 and the W1/2 of the SW1/4 of the SE1/4 of Section 15, and the NE1/4 of the NE1/4 of the NW1/4 of Section 22, all in Township 48 North, Range 10 East, New Mexico P.M. 3.4 Exhibit 1. The water right is also decreed for domestic well (incidental recharge) of Dills well. 4. Request to make Conditional Water Right Absolute. 4.1. Date water was applied to beneficial use: September 22, 2022. 4.2. Amount: 1.00 cfs. 4.3. Use: Irrigation of the 16.45 acre place of use described above and domestic well (incidental recharge). 4.4. Supporting evidence of water diverted in-priority and applied to beneficial uses claimed: Parshall flume records are attached as Exhibit 2. 5. Request for Finding of Diligence (in the alternative): To the extent the Court declines to find that Applicants have satisfied their claim that the 1.0 cfs has been made absolute, Applicants have diligently maintained the Subject Water Rights, and can and will perfect them for beneficial uses pursuant to the standards set forth in C.R.S. §§37-92-301(4) and 37-92-305(9)(b) and associated caselaw. As detailed below, Applicants have spent approximately \$55,000 on planning, design, legal and construction efforts related to water rights protection, maintenance and improvements. Activities and expenditures that demonstrate diligent development of the Subject Water Rights include, but are not limited to: 5.1. The pond was lined at a cost of \$20,000. 5.2. Expenditure of legal fees in the

amount of approximately \$32,000 to defend the appeal brought by opposer Yamasaki Ring, LLC in *Dill v. Yamasaki Ring, LLC*, 435 P.3d 1067 (Colo. 2019). 5.3. Water has been diverted to fill the pond at a maximum rate of 1.00 cfs. The pond has filled to the full capacity of 3.4 acre-feet. Water was used from the pond for decreed uses as reflected in the diversion records attached. 5.4. The 12-inch flume was reset to level and a 9-inch flume was installed. The 9-inch flume was installed at a cost of \$2,500.00. 6. Name and Address of Owner of the Land Upon Which Structures Are or Will be Located, Upon Which Water Is or Will Be Stored, and Upon Which Water Is or Will be Placed to Beneficial Use. Applicant.

CASE NO. 2023CW3004; Previous Case No. 98CW173 – THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, PO Box 964, Leadville, CO 80461 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Sara M. Dunn, Christopher L. Geiger, & Ryan J. Mitchell, Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602; 970-945-6546)

Application for Finding of Reasonable Diligence.

LAKE COUNTY

Summary of Application: Applicant respectively requests a finding of reasonable diligence in the development of the conditional appropriative rights of exchange for Areas A-1 and A-2 (the “Subject Water Rights”), as decreed in 98CW173. A map showing the location and extent of the Subject Water Rights is 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 Ct.) **Introduction:** In 98CW173, the Ct. adjudicated an umbrella Aug. plan (the “Umbrella Plan”) for Applicant’s Areas A-1 and A-2. Pursuant the Umbrella Plan, Applicant enters into contracts with individual water users within the boundaries of Areas A-1 and A-2 to provide dependable legal water supplies for year-round needs. The Umbrella Plan allows contractees to utilize Applicant’s water rights for replacement of out-of-priority depletions. The Subject Water Rights operate as part of the Umbrella Plan to the extent that an Aug. replacement is introduced to the river system at a point downstream of the depletions to be augmented. **Claim for Finding of Reasonable Diligence of Conditional Appropriative Rights of Exchange Conditional Appropriative Rights of Exchange:** The Subject Water Rights are operated as part of the Umbrella Plan for service to Applicant’s contractees within the boundaries of Areas A-1 and A-2, as described below and depicted in Exhibit A. The Subject Water Rights include both Storage Exchanges and River Exchanges as described below. **Previous Decree:** 98CW173, entered on 01/17/2017, in Dist. Ct., Water Div. 5. **Priority Date for All Exchanges:** The priority date for all exchanges shall be administered pursuant to C.R.S. § 37-92-306 as water rights applied for in calendar year 2012. The approp. date for all exchanges is 01/31/2012, except for the Birdseye Exchanges described below. The approp. date for the Birdseye Exchanges is 12/29/2012, as described in paragraphs below. **Descriptions of Exchanges:** The exchanges decreed herein are described below and they are summarized in the exchange matrixes incorporated as Exhibit C. **Area A Storage Exchanges:** Storage exchanges are those exchanges of water whereby the Cty. stores available water by exchange in upstream storage facilities for subsequent release to augment out-of-priority depletions while providing sufficient replacement water at or above the calling water right, in accordance with the Umbrella Plan. Storage exchange

rates are sized to accommodate sufficient inflow and filling the subject reservoirs in approximately one week. Div. 5 COA Sources to Box Creek Reservoir Exchange: The purpose of this exchange is to move the Cty.'s Div. 5 COA Sources to an upstream storage site at the proposed Box Creek Reservoir. Legal Description of Exchange Reach: Downstream Terminus: The confluence of Lake Creek with the Arkansas River located in the NE1/4 of the SE1/4 of Sec. 24, T. 11 S., R. 80 W. of the 6th P.M. The downstream terminus is located approximately 1,905 ft. from the E. line and 2,516 ft. from the S. line of Sec. 24. UTM X: 389194.4, UTM Y: 4326186.2 (information for Structure ID No. 1120035 provided by the Colorado Decision Support System ("CDSS")). Upstream Terminus: The dam centerline of Box Creek Reservoir is located in the NW1/4 of the NE1/4 of Sec. 4, T. 11 S., R. 80 W. of the 6th P.M. The upstream terminus is located approximately 2,130 ft. from the E. line and 210 ft. from the N. line of Sec. 4. UTM X: 384353.3, UTM Y: 4331826.7 (information for Structure ID No. 1103545 provided by CDSS). Maximum Rate of Exchange: 5 c.f.s. Source of Substitute Supply: Div. 5 COA Sources, as more fully described in Exhibit B. Div. 5 COA Sources to Hayden Meadows Recreation Pond Exchange: The purpose of this exchange is to move the Cty.'s Div. 5 COA Sources to an upstream storage site at the existing Hayden Meadows Recreation Pond. Legal Description of Exchange Reach: Downstream Terminus: The confluence of Lake Creek with the Arkansas River located in the NE1/4 of the SE1/4 of Sec. 24, T. 11 S., R. 80 W. of the 6th P.M. The downstream terminus is located approximately 1,905 ft. from the E. line and 2,516 ft. from the S. line of Sec. 24. UTM X: 389194.4, UTM Y: 4326186.2 (information for Structure ID No. 1120035 provided by CDSS). Upstream Terminus: The Upper River Ditch headgate located in the NE1/4 of the SE1/4 of Sec. 16, T. 10 S., R. 80 W. of the 6th P.M. The upstream terminus is located approximately 790 ft. from the E. line and 1,850 ft. from the S. line of Sec. 16. UTM X: 384983.69, UTM Y: 4337246.82 (information for Structure ID No. 1100519 provided by CDSS). Maximum Rate of Exchange: 3 c.f.s. Source of Substitute Supply: Div. 5 COA Sources, as more fully described in Exhibit B. Div. 5 COA Sources to Birdseye Gulch Exchange: The purpose of this exchange is to move the Cty.'s Div. 5 COA Sources to an upstream storage site at the proposed Birdseye Gulch Reservoir. Legal Description of Exchange Reach: Downstream Terminus: The confluence of Lake Creek with the Arkansas River located in the NE1/4 of the SE1/4 of Sec. 24, T. 11 S., R. 80 W. of the 6th P.M. The downstream terminus is located approximately 1,905 ft. from the E. line and 2,516 ft. from the S. line of Sec. 24. UTM X: 389194.4, UTM Y: 4326186.2 (information for Structure ID No. 1120035 provided by the CDSS). Upstream Terminus: A reservoir fill ditch located on Birdseye Gulch in the NE1/4 of the SE1/4 of Sec. 33, T. 8 S., R. 79 W. of the 6th P.M. The upstream terminus is located approximately 2,920 ft. from the W. line and 1,700 ft. from the S. line of Sec. 33. UTM X: 394485, UTM Y: 4351753 (information for Structure ID No. 1101236 obtained from Case No. 11CW86 Decree). Maximum Rate of Exchange: 2.2 c.f.s. Source of Substitute Supply: Div. 5 COA Sources. Box Creek Reservoir and the Derry Ditch No. 3 to Hayden Meadows Recreation Pond Exchange: The purpose of this exchange is to move the Cty.'s Box Creek Reservoir storage supply and/or the Cty.'s Derry Ditch No. 3 consumptive use credits upstream to the existing Hayden Meadows Recreation Pond. Legal Description of Exchange Reach – Box Creek Reservoir to Hayden Meadows Recreation Pond: Downstream Terminus: The confluence of Box Creek with the Arkansas River located in the NW1/4 of the SE1/4 of Sec. 11, T. 11 S., R.

80 W. of the 6th P.M. The downstream terminus is located approximately 1,671 ft. from the E. line and 2,357 ft. from the S. line of Sec. 11. UTM X: 387709, UTM Y: 4329392 (information for Structure ID No. 1120112 provided by the CDSS). Upstream Terminus: The Upper River Ditch headgate located in the NE1/4 of the SE1/4 of Sec. 16, T. 10 S., R. 80 W. of the 6th P.M. The upstream terminus is located approximately 790 ft. from the E. line and 1,850 ft. from the S. line of Sec. 16. UTM X: 384983.69, UTM Y: 4337240.82 (information for Structure ID No. 1100519 provided by the CDSS). Legal Description of Exchange Reach – Derry Ditch No. 3 to Hayden Meadows Recreation Pond: Downstream Terminus: The confluence of Lake Creek with the Arkansas River located in the NE1/4 of the SE1/4 of Sec. 24, T. 11 S., R. 80 W. of the 6th P.M. The downstream terminus is located approximately 1,905 ft. from the E. line and 2,516 from the S. line of Sec. 24. UTM X: 389194.4, UTM Y: 4326186.2 (information for Structure ID No. 1120035 provided by the CDSS). Upstream Terminus: The Upper River Ditch headgate located in the NE1/4 of the SE1/4 of Sec. 16, T. 10 S., R. 80 W. of the 6th P.M. The upstream terminus is located approximately 790 ft. from the E. line and 1,850 ft. from the S. line of Sec. 16. UTM X: 384983.69, UTM Y: 4337240.82 (information for Structure ID No. 1100519 provided by the CDSS). Maximum Rate of Exchange: 3 c.f.s. Source of Substitute Supply: Box Creek Reservoir and Derry Ditch No. 3. Box Creek Reservoir and the Derry Ditch No. 3 to Birdseye Gulch Exchange: The purpose of this exchange is to move the Cty.'s Box Creek Reservoir storage supply and/or the Cty.'s consumptive use credits associated with the Derry Ditch No. 3 upstream to the proposed Birdseye Gulch Reservoir. Legal Description of Exchange Reach – Box Creek Reservoir to Birdseye Gulch: Downstream Terminus: The confluence of Box Creek with the Arkansas River located in the NW1/4 of the SE1/4 of Sec. 11, T. 11 S., R. 80 W. of the 6th P.M. The downstream terminus is located approximately 1,671 ft. from the E. line and 2,357 ft. from the S. line of Sec. 11. UTM X: 387709, UTM Y: 4329392 (information for Structure ID No. 1120112 provided by the CDSS). Upstream Terminus: A reservoir fill ditch located on Birdseye Gulch in the NE1/4 of the SE1/4 of Sec. 33, T. 8 S., R. 79 W. of the 6th P.M. The upstream terminus is located approximately 2,920 ft. from the W. line and 1,700 ft. from the S. line of Sec. 33. UTM X: 394485.0, UTM Y: 4351753.0 (information for Structure ID No. 1101236 obtained from Case No. 11CW86 Decree). Legal Description of Exchange Reach – Derry Ditch No. 3 to Birdseye Gulch: Downstream Terminus: The confluence of Lake Creek with the Arkansas River located in the NE1/4 of the SE1/4 of Sec. 24, T. 11 S., R. 80 W. of the 6th P.M. The downstream terminus is located approximately 1,905 ft. from the E. line and 2,516 from the S. line of Sec. 24. UTM X: 389194.4, UTM Y: 4326186.2 (information for Structure ID No. 1120035 provided by the CDSS). Upstream Terminus: A reservoir fill ditch located on Birdseye Gulch in the NE1/4 of the SE1/4 of Sec. 33, T. 8 S., R. 79 W. of the 6th P.M. The upstream terminus is located approximately 2,920 ft. from the W. line and 1,700 ft. from the S. line of Sec. 33. UTM X: 394485.0, UTM Y: 4351753.0 (information for Structure ID No. 1101236 obtained from Case No. 11CW86 Decree). Maximum Rate of Exchange: 2.2 c.f.s. Sources of Substitute Supply: Box Creek Reservoir and Derry Ditch No. 3, as more fully described in Exhibit B. Hayden Meadows Recreation Pond to Birdseye Gulch Reservoir Exchange: The purpose of this exchange is to move the Cty.'s Hayden Meadows Recreation Pond storage supply upstream to the proposed Birdseye Gulch Reservoir. Legal Description of Exchange Reach: Downstream Terminus: The confluence of the Hayden Meadows Recreation Pond outlet channel and the

Arkansas River located in the SE1/4 of the NW1/4 of Sec. 22, T. 10 S., R. 80 W. of the 6th P.M. The downstream terminus is located approximately 1,920 ft. from the W. line and 1,990 ft. from the N. line of Sec. 22. UTM X: 385798.6, UTM Y: 4336058.13 (information for Structure ID No. NO ID provided by the CDSS). Upstream Terminus: A reservoir fill ditch located on Birdseye Gulch in the NE1/4 of the SE1/4 of Sec. 33, T. 8 S., R. 79 W. of the 6th P.M. The upstream terminus is located approximately 2,920 ft. from the W. line and 1,700 ft. from the S. line of Sec. 33. UTM X: 394485.0, UTM Y: 4351753.00 (information for Structure ID No. 1101236 obtained from Case No. 11CW86 Decree). Maximum Rate of Exchange: 2.2 c.f.s. Source of Substitute Supply: Hayden Meadows Recreation Pond, as more fully described in **Exhibit B. River Exchanges**: River exchanges provide Aug. supply by exchange within Area A in amts. necessary to replace depletions attributed to the Cty.'s contractees located at various upstream locations. Area A-1 River Exchange: Under this exchange, the Cty. will replace the depletions associated with Area A-1 out-of-priority diversions with releases of storage supplies, Derry Ditch No. 3 consumptive use credits, and Contract Exchange water. Any Contract Exchange water must be sourced from a transbasin diversion into Water Div. 2 or otherwise decreed for fully consumable use in Water Div. 2. Legal Description of Exchange Reach: Downstream Termini: The confluence of Spring Creek (S. of Sawmill Gulch) and the Arkansas River. The downstream terminus is located in the NW1/4 of the NW1/4 of Sec. 25, T. 11 S., R. 80 W. of the 6th P.M. approximately 814 ft. from the E. line and 771 ft. from the N. line of Sec. 25. Upstream Terminus: Upstream boundaries of Area A-1 as more fully described below. Maximum Rate of Exchange: 2 c.f.s. Area A-2 River Exchange: Under this exchange, the Cty. will replace depletions associated with Area A-2 out-of-priority diversions with releases of storage supplies, Derry Ditch No. 3 consumptive use credits, and Contract Exchange water. Legal Description of Exchange Reach: Downstream Terminus: The confluence of Lake Creek with the Arkansas River located in the NE1/4 of the SE1/4 of Sec. 24, T. 11 S., R. 80 W. of the 6th P.M. The downstream terminus is located approximately 3,310 ft. from the W. line and 2,820 from the N. line of Sec. 24. Upstream Termini: Upstream boundaries of Area A-2 as more fully described below. Maximum Rate of Exchange: 0.5 c.f.s. Sources of Substitute Supply for All River Exchanges: The Aug. sources include Div. 5 COA Sources; Derry Ditch No. 3 consumptive use credits; Box Creek Reservoir; Hayden Meadows Recreation Pond; Birdseye Gulch Reservoir; and Contract Exchange Sources, as more fully described in Exhibit B. Cumulative Amt.: The cumulative rate of depletions through all augmented structures within Area A-1 and A-2 is 20.1 c.f.s. and is apportioned further among Areas A-1 and A-2 as more fully described below. Applicant will ensure that the total out-of-priority depletions will not exceed the replacement water available to Applicant. Total replacement water offered may not exceed 80.0 AF. If Applicant adds additional replacement sources through procedures identified in the decree entered in Case No. 98CW173, total replacement water offered may increase to no more than 272.0 AF. The County's Service Area within Area A, Sub-Areas A-1 and A-2: Area A encompasses those regions that are located near the Arkansas River or on tributary creeks where use of the Cty.'s water rights or supplies for Aug. can offset the out-of-priority depletions of its and its contractees' water use under the Umbrella Plan decreed in Case No. 98CW173. Thus, within the Cty.'s "Area A" there are no calling water rights located between the proposed diversions and the Arkansas River or relevant tributaries that cannot be augmented with

supplies available to the Cty. The 98CW173 decree identifies two sub areas of Area A, Areas A-1 and A-2, in which the Cty. will provide service in a different manner under this Umbrella Plan. Area A-1 – Arkansas River Below the Confluence of the East Fork of the Arkansas and Tennessee Creek: Area A-1 includes structures that will divert water from within that portion of Area A encompassing all areas tributary to the Arkansas River and its tributaries in a stream reach extending from a downstream terminus at the point where the Arkansas River crosses from Lake Cty. into Chaffee Cty. to an upstream terminus, the confluence of the East Fork of the Arkansas River and Tennessee Creek, a distance of approximately 15 miles. The downstream terminus, the Southern boundary of Lake County is located in the NW1/4 of the NW1/4 of Sec. 31, T. 11 S., R. 79 W. of the 6th P.M. The upstream terminus, the confluence of the East Fork of the Arkansas River and Tennessee Creek is located within Lake County in the SE1/4 of the SW1/4 of Sec. 16, T. 9 S., R. 80 W. of the 6th P.M. Depletions originating within Area A-1 can be augmented by exchange with the Cty.'s existing replacement supplies (Div. 5 COA Sources and Derry Ditch No. 3). The boundary of Area A-1 is depicted on Exhibit A. Major tributaries to the Arkansas River that are included within Area A-1 are defined below: Spring Creek (S. of Sawmill Gulch): Lower Terminus: The confluence of Spring Creek with the Arkansas River in Government Lot 1 NE1/4, Sec. 25, T. 11 S., R. 80 W. of the 6th P.M. Upper Termini: All areas tributary to Spring Creek. Holmes Gulch: Lower Terminus: The confluence of Holmes Gulch with the Arkansas River in the NW1/4 of Sec. 13, T. 11 S., R. 80 W. of the 6th P.M. Upper Termini: All areas tributary to Holmes Gulch. Sawmill Gulch: Lower Terminus: The confluence of Sawmill Gulch with the Arkansas River in the NE1/4 of Sec. 11, T. 11 S., R. 80 W. of the 6th P.M. Upper Termini: All areas tributary to Sawmill Gulch. Spring Creek (N. of Sawmill Gulch): Lower Terminus: The confluence of Spring Creek with the Arkansas River in the SE1/4 of Sec. 34, T. 10 S., R. 80 W. of the 6th P.M. Upper Termini: All areas tributary to Spring Creek, including Brush Creek. Dry Union Gulch: Lower Terminus: The confluence of Dry Union Gulch with the Arkansas River in the NE1/4 of Sec. 27, T. 10 S., R. 80 W. of the 6th P.M. Upper Termini: All areas tributary to Dry Union Gulch. Empire Gulch: Lower Terminus: The confluence of Empire Gulch with the Arkansas River in the NW1/4 of Sec. 22, T. 10 S., R. 80 W. of the 6th P.M. Upper Terminus: All areas tributary to Empire Gulch below the Empire Creek Ditch (Moyer Headgate – See 97CW83) in the NE1/4 of SW1/4 of Sec. 14, T. 10 S., R. 80 W. of the 6th P.M. Thompson Gulch: Lower Terminus: The confluence of Thompson Gulch with the Arkansas River in the NE1/4 of Sec. 16, T. 10 S., R. 80 W. of the 6th P.M. Upper Termini: All areas tributary to Thompson Gulch. Iowa Gulch: Lower Terminus: The confluence of Iowa Gulch with the Arkansas River in the NE1/4 of Sec. 16, T. 10 S., R. 80 W. of the 6th P.M. Upper Terminus: All areas tributary to Iowa Gulch below the AASARCO Iowa Gulch Pumping Station in the E1/2 of the unsurveyed Sec. 33, T. 9 S., R. 79 W. of the 6th P.M. California Gulch: Lower Terminus: The confluence of California Gulch with the Arkansas River in the NE1/4 of Sec. 32, T. 9 S., R. 80 W. of the 6th P.M. Upper Terminus: All areas tributary to California Gulch excluding the Parkville Water Dist. service area. Box Creek: Lower Terminus: The confluence of Box Creek Gulch with the Arkansas River in the SE1/4 of Sec. 11, T. 11 S., R. 80 W. of the 6th P.M. Upper Termini: All areas tributary to Box Creek below the Derry No. 2 Headgate in the NE1/4 of the SW1/4 of Sec. 5, T. 11 S., R. 80 W. of the 6th P.M. Corske Creek: Lower Terminus: Corske Creek joins Box Creek at an unknown location within either: Secs. 3, 4 or 5, T. 11 S., R. 80 W.; or Sec.

32, 33 or 34, T. 10 S., R. 80 W. of the 6th P.M. Upper Termini: All areas tributary to Corske Creek downstream of the intersection of Corske Creek with the Western boundary of R. 80 W. located in Government Lot 2 NW1/4 of Sec. 7, T. 11 S., R. 80 W. of the 6th P.M. Lake Creek: Lower Terminus: The confluence of Lake Creek with the Arkansas River in the SE1/4 of Sec. 24, T. 11 S., R. 80 W. of the 6th P.M. Upper Terminus: All areas tributary to Lake Creek downstream of the intersection of Lake Creek with the Western boundary of R. 80 W located in Government Lot 4 SW1/4 of Sec. 19, T. 11 S., R. 80 W. of the 6th P.M. Bartlett Gulch: Lower Terminus: The confluence of Bartlett Gulch with Twin Lakes in Government Lot 5 (the NE1/4) of Sec. 19, T. 11 S., R. 80 W. of the 6th P.M. Upper Termini: All areas tributary to Bartlett Gulch below the Lily Pond Ditch Headgate located in the SE1/4 of Sec. 12, T. 11 S., R. 81 W. of the 6th P.M. Dayton Gulch: Lower Terminus: The confluence of Dayton Gulch with Twin Lakes in Government Lot 2 (the NW1/4) of Sec. 19, T. 11 S., R. 80 W. of the 6th P.M. Upper Termini: All areas tributary to Dayton Gulch. Area A-2: – Turquoise Reservoir and Lake Fork: Area A-2 includes structures that will divert water from within that portion of Area A encompassing areas tributary to the Lake Fork and its tributaries in a stream reach extending from a downstream terminus at the confluence of Lake Fork with the Arkansas River to an upstream terminus, a point just upstream of the confluence of Lake Fork and Busk Creek at the upper end of Turquoise Reservoir, a distance of approximately 9 miles. The downstream terminus is located in the SE1/4 of Sec. 5, T. 10 S., R. 80 W. of the 6th P.M. The upstream terminus is located in the SW1/4 of Sec. 10, T. 9 S., R. 81 W. of the 6th P.M. Depletions originating within Area A-2 will be augmented by exchange only when exchange potential exists. However, exchange potential is limited within Area A-2 and the development of upstream storage supplies and/or contract exchange in cooperation with third parties, such as the Pueblo Board of Water Works (“PBWW”), City of Aurora (“Aurora”), or the City of CO Springs is required to develop year-round Aug. Specifically, the Cty. is working with the municipalities and/or their water providers to execute a contract exchange of Twin Lakes water for transbasin water supplies stored in Turquoise Reservoir. Except when exchange potential exists, Aug. within Area A-2 shall be by release from Turquoise Reservoir. Aug. within Area A-2 may begin when, and may continue for so long as, the Cty. has the ability to store water in and release water from Turquoise Reservoir. The boundary of Area A-2 is depicted on Exhibit A. Major tributaries to Lake Fork that are included within Area A-2 are defined below: Willow Creek: Lower Terminus: The confluence of Willow Creek with Lake Fork in Government Lot 2 NE1/4, Sec. 6, T. 10 S., R. 80 W. of the 6th P.M. Upper Terminus: All areas tributary to Willow Creek, excluding any wilderness areas, downstream of the Willow Creek Ditch headgate located in the NW1/4 of Sec. 12, T. 10 S., R. 81 W. of the 6th P.M. North Willow Creek: Lower Terminus: The confluence of North Willow Creek with Willow Creek in the SE1/4, Sec. 1, T. 10 S., R. 81 W. of the 6th P.M. Upper Termini: All areas tributary to N. Willow Creek, excluding any wilderness areas, downstream of the W. line of the SW1/4 of Sec. 1, T. 10 S., R. 81 W. of the 6th P.M. Hunt Gulch: Lower Terminus: The confluence of Hunt Gulch with Lake Fork in the SW1/4, Sec. 31, T. 9 S., R. 80 W. of the 6th P.M. Upper Terminus: All areas tributary to Hunt Gulch, excluding any wilderness areas or National Fish Hatchery lands, downstream of the W. line of the SW1/4 of Sec. 25, T. 9 S., R. 81 W. of the 6th P.M. Colorado Gulch: Lower Terminus: The confluence of Colorado Gulch with Lake Fork in Government Lot 3 SW1/4, Sec. 30, T. 9 S., R. 80 W. of the 6th P.M. Upper Termini: All areas tributary to

Colorado Gulch, excluding any wilderness areas. Strawberry Gulch: Lower Terminus: The confluence of Strawberry Gulch with Lake Fork in Government Lot 5 NW1/4, Sec. 30, T. 9 S., R. 80 W. of the 6th P.M. Upper Termini: All areas tributary to Strawberry Gulch, excluding any wilderness areas. Sugarloaf Gulch: Lower Terminus: The confluence of Sugarloaf Gulch with Lake Fork in Government Lot 42 SW1/4, Sec. 19, T. 9 S., R. 80 W. of the 6th P.M. Remark: In the preceding paragraph in the decree entered in 98CW173, Strawberry Gulch was erroneously entered in place of Sugarloaf Gulch. Upper Termini: All areas tributary to Sugarloaf Gulch, excluding any wilderness areas. Bartlett Gulch: Lower Terminus: The confluence of Bartlett Gulch with Lake Fork in the SW1/4, Sec. 19, T. 9 S., R. 80 W. of the 6th P.M. Upper Termini: All areas tributary to Bartlett Gulch, excluding any wilderness areas. Busk Creek: Lower Terminus: The confluence of Busk Creek with Lake Fork in the SW1/4, Sec. 10, T. 9 S., R. 81 W. of the 6th P.M. Upper Termini: All areas tributary to Busk Creek, excluding any wilderness areas. Bear Creek: Lower Terminus: The confluence of Bear Creek with Turquoise Reservoir in the SE1/4, Sec. 10, T. 9 S., R. 81 W. of the 6th P.M. Upper Termini: All areas tributary to Bear Creek, excluding any wilderness areas. **Integrated Water Supply System:** As decreed in 21CW3018 and 11CW86, the water rights described herein are part of the City's integrated water supply system. "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 the water rights for all features of the entire project or system." C.R.S. § 37-92-301(4)(b). **Owners of the land upon which all existing structures are located:** 6.1 Birdseye Gulch Reservoir and Ditch: Bureau of Land Management, 3028 East Main Street, Canyon City, CO 82121. 6.2. Hayden Meadows Recreation Pond: Applicant. 6.3. Twin Lakes Reservoir: Twin Lakes Reservoir and Canal Company, P.O. Box 8, Ordway, CO 81063 and/or the U.S. Department of Interior, Bureau of Reclamation, East Colorado Projects Office, 11056 West County Road 18E, Loveland, CO 80537-9711. 6.4. Derry Ditch No. 3: Located on land owned by the United States Department of Agriculture, Forest Service, 2840 Kachina Drive, Pueblo, CO 81008. 6.5. Turquoise Reservoir: Water and Land Operations Division, U.S. Department of Interior, Bureau of Reclamation, East Colorado Projects Office, 11056 West County Road 18E, Loveland, CO 80537-9711. 6.6. Box Creek Reservoir: Proposed reservoir to be constructed on lands owned by City of Aurora, 15151 East Alameda Parkway, Suite 3600, Aurora, CO 80012 and/or State of Colorado, State Land Boards, 1127 Sherman Street, Suite 300 Denver, CO 80203. 6.7. Upper River Ditch: City of Aurora, 15151 East Alameda Parkway, Suite 3600, Aurora, CO 80012. **Diligence Activities:** In the six years preceding the filing of the Application, Applicant has diligently pursued development of the subject water rights. The application on file with the Ct. contains a detailed outline of the work performed during the diligence period.

CASE NO. 2023CW3005; Previous Case No. 10CW2 – EVERGREEN NATURAL RESOURCES LLC, RATON BASIN PARTNERS, LLC, and WAPITI RATON L.L.C.

(Please address all pleadings and inquiries regarding this matter to Applicants' attorneys: William H. Caile, Esq., Hayley K. Siltanen, Esq., Holland & Hart LLP, 555 17th Street, Suite 3200, Denver, Colorado 80202-3921, (303) 295-8000, whcaile@hollandhart.com)
Application for Findings of Reasonable Diligence

LAS ANIMAS COUNTY

2. Name of Structures and Original Decree: Appropriative rights of exchange decreed in Case No. 10CW2, Water Division 2, by decree entered January 30, 2017. **3. Description of the Conditional Water Rights:** **A. Background:** This Application concerns conditional appropriative rights of exchange in the Purgatoire River and its tributaries for the use of Applicants' plan for augmentation decreed in Case No. 10CW2 (the "Augmentation Plan"). Applicants will operate the exchanges for two purposes under the Augmentation Plan: (1) to replace depletions accruing upstream of the location of available replacement water sources, to various locations within or upstream of individual stream segments ("Administrative Reaches") where augmentation may be required to prevent injury resulting from out-of-priority depletions; and (2) to divert legally available water into storage when water is available by exchange. **B. Exchange Reaches:** Discrete appropriative rights of exchange from each of the "Exchange-From Points" to each of the "Exchange-To Points," as more particularly described below. These Exchange-From and Exchange-To Points are shown on the map attached to the application as **Exhibit A** and more particularly described in the **Appendix 1** (Exchange Matrix) attached to the application, which also specifies the proposed rates of exchange. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **C. Exchange-From Points, Including Source of Exchanged Water:** i. Mid Fork 1 Pond (WDID 1903017): 1) Original Decree: Case No. 09CW113, Water Division 2, decree dated November 15, 2011. 2) Subsequent Decree(s) Awarding Findings of Diligence: Case No. 17CW3064, Water Division 2, decree dated July 24, 2018. 3) Legal Description: An off-channel pond located in the SW 1/4 of the SW 1/4 of Section 20, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 570 feet from the South Section Line and 1,290 feet from the West Section Line. 4) Source: Purgatoire River. 5) Point of Diversion: The planned point of diversion for Mid Fork 1 Pipeline is located in the NW 1/4 of the NW 1/4 of Section 29, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 300 feet from the North Section Line and 1,030 feet from the West Section Line. 6) Appropriation Date: September 30, 2009. 7) Amount: 11.3 acre-feet (conditional), to be filled via the Mid Fork 1 Pipeline at a rate of fill of 3 c.f.s. (conditional), with the right to fill and refill the pond when in priority, up to three complete fills annually. 8) Use: Commercial, mining, manufacturing, construction, augmentation, livestock watering, wildlife, fire protection, road construction and maintenance, dust suppression, and industrial uses, directly or by exchange. ii. Lopez Canyon Pond (WDID 1903018): 1) Original Decree: Case No. 09CW113, Water Division 2, decree dated November 15, 2011. 2) Subsequent Decree(s) Awarding Findings of Diligence: Case No. 17CW3064, Water Division 2, decree dated July 24, 2018. 3) Legal Description: An off-channel pond located in the SW 1/4 of the SE 1/4 of Section 21, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 1,190 feet from the South Section Line and 1,530 feet from the East Section Line. 4) Source: Lopez Canyon stream, tributary to the Purgatoire River. 5) Point of Diversion: The planned point of diversion for Lopez Canyon Pipeline is located in the SW 1/4 of the SE 1/4 of Section 21, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 1,270 feet from the South Section Line and 1,320 feet from the East Section Line. 6) Appropriation Date: September 30, 2009. 7) Amount: 7.5 acre-feet

(conditional), to be filled via Lopez Canyon Pipeline with a capacity of 1 c.f.s (conditional), with the right to fill and refill the pond when in priority, up to three complete fills annually.

8) Use: Commercial, mining, manufacturing, construction, augmentation, livestock watering, wildlife, fire protection, road construction and maintenance, dust suppression, and industrial uses, directly or by exchange.

iii. South Fork 1 Pond (WDID 1903019): 1) Original Decree: Case No. 09CW113, Water Division 2, decree dated November 15, 2011. 2) Subsequent Decree(s) Awarding Findings of Diligence: Case No. 17CW3064, Water Division 2, decree dated July 24, 2018. 3) Legal Description: UTM (meters) NAD83: 504177(x), 4102172(y). 4) Source: South Fork 1 Pond is an on-channel pond located in an unnamed tributary that flows into the South Fork of the Purgatoire River. The pond may be filled either from water flowing in the streambed of the unnamed tributary or water diverted from the South Fork of the Purgatoire River. 5) Point of Diversion: The point of diversion, in UTM (meters) NAD83, will be approximately 504156(x), 4102315(y). 6) Appropriation Date: September 30, 2009. 7) Amount: 11.3 acre-feet (conditional), to be filled via South Fork 1 Pipeline with a rate of fill of 3 c.f.s. (conditional), with the right to fill and refill the pond when in priority, up to three complete fills annually. 8) Use: Commercial, mining, manufacturing, construction, augmentation, livestock watering, wildlife, fire protection, road construction and maintenance, dust suppression, and industrial uses, directly or by exchange.

iv. Lorencito 14-16 Pond (WDID 1903518): 1) Original Decree: Case No. 09CW114, Water Division 2, decree dated November 25, 2012. 2) Subsequent Decree(s) Awarding Findings of Diligence: Case No. 18CW3070, Water Division 2, decree dated June 10, 2019. 3) Legal Description: An off-channel pond located in the NW 1/4 of the SW 1/4 of Section 16, Township 34 South, Range 66 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 2,075 feet from the South Section Line and 500 feet from the West Section Line (This location is outside of the sections surveyed by the USGS, so interpreted sections were used). 4) Source: Lorencito Canyon, tributary to the Purgatoire River. 5) Point of Diversion: The planned point of diversion is located in the NW 1/4 of the SW 1/4 of Section 16, Township 34 South, Range 66 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 1,965 feet from the South Section Line and 380 feet from the West Section Line (This location is outside of the sections surveyed by the USGS, so interpreted sections were used). 6) Appropriation Date: August 1, 2011. 7) Amount: 20.7 acre-feet (conditional), to be filled via the Lorencito Diversion with a rate of fill of 1 c.f.s. (conditional), with the right to fill and refill the pond when in priority, up to three complete fills annually. 8) Use: Commercial, mining, manufacturing, construction, augmentation, livestock watering, wildlife, fire protection, road construction and maintenance, dust suppression, and industrial uses, directly or by exchange.

v. Warren McDonald Pond (WDID 1903519): 1) Original Decree: Case No. 09CW114, Water Division 2, decree dated November 25, 2012. 2) Subsequent Decree(s) Awarding Findings of Diligence: Case No. 18CW3070, Water Division 2, decree dated June 10, 2019. 3) Legal Description: An off-channel pond located in the NW 1/4 of the SE 1/4 of Section 36, Township 32 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 2,120 feet from the South Section Line and 2,178 feet from the East Section Line. 4) Source: Sarcillo Canyon, tributary to Purgatoire River. 5) Point of Diversion: The planned point of diversion is located in the SW 1/4 of the NE 1/4 of Section 36, Township 32 South, Range 67 West of the 6th P.M. in Las Animas

County. The point of diversion will be approximately 2,480 feet from the North Section Line and 1,850 feet from the East Section Line. 6) Appropriation Date: September 30, 2009. 7) Amount: 25.0 acre-feet (conditional), to be filled via the Warren McDonald Diversion with a rate of fill of 1 c.f.s. (conditional), with the right to fill and refill the pond when in priority, up to three complete fills annually. 8) Use: Commercial, mining, manufacturing, construction, augmentation, livestock watering, wildlife, fire protection, road construction and maintenance, dust suppression, and industrial uses, directly or by exchange. vi. Margery Pond (WDID 1903520): 1) Original Decree: Case No. 09CW114, Water Division 2, decree dated November 25, 2012. 2) Subsequent Decree(s) Awarding Findings of Diligence: Case No. 18CW3070, Water Division 2, decree dated June 10, 2019. 3) Legal Description: An off-channel pond located in the SW 1/4 of the SE 1/4 of Section 14, Township 32 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 190 feet from the South Section Line and 1,840 feet from the East Section Line. 4) Source: Sarcillo Canyon, tributary to the Purgatoire River, diverted through the Margery Pipeline. 5) Point of Diversion: The planned point of diversion for Margery Pipeline is located in the SW 1/4 of the SE 1/4 of Section 14, Township 32 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 850 feet from the South Section Line and 1,851 feet from the East Section Line. 6) Appropriation Date: September 30, 2009. 7) Amount: 14.5 acre-feet (conditional), to be filled via the Margery Pipeline with a rate of fill of 1 c.f.s. (conditional), with the right to fill and refill the pond when in priority, up to three complete fills annually. 8) Use: Commercial, mining, manufacturing, construction, augmentation, livestock watering, wildlife, fire protection, road construction and maintenance, dust suppression, and industrial uses, directly or by exchange. vii. Stage Coach Pond (WDID 1903521): 1) Original Decree: Case No. 09CW114, Water Division 2, decree dated November 25, 2012. 2) Subsequent Decree(s) Awarding Findings of Diligence: Case No. 18CW3070, Water Division 2, decree dated June 10, 2019. 3) Legal Description: An off-channel pond located in the SE 1/4 of the NE 1/4 of Section 26, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 2,350 feet from the North Section Line and 530 feet from the East Section Line. 4) Source: Purgatoire River or Wet Canyon, tributary to the Purgatoire River. 5) Point of Diversion: The point of diversion is located in the SE 1/4 of the NW 1/4 of Section 26, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 2,040 feet from the North Section Line and 1,930 feet from the West Section Line. An alternate point of diversion is located in the NE 1/4 of the NW 1/4 of Section 36, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 1000 feet from the North Section Line and 2,550 feet from the West Section Line. 6) Appropriation Date: September 30, 2009. 7) Amount: 47.5 acre-feet (conditional), to be filled via the Stage Coach Pipeline or the alternate point of diversion described above, both with a rate of fill of 1 c.f.s. (conditional), with the right to fill and refill the pond when in priority, up to three complete fills annually. 8) Use: Commercial, mining, manufacturing, construction, augmentation, livestock watering, wildlife, fire protection, road construction and maintenance, dust suppression, and industrial uses, directly or by exchange. The Exchange-From Points and sources of exchange water described in paragraphs 3.C.i through 3.C.vii may include the following additional Exchange-From Points located

downstream of those identified in paragraphs 3.C.i through 3.C.vii, see also Appendix 1 (Exchange Matrix), identified and legally described in **Table 1**, below.

Table 1

Additional Exchange-From Points	Downstream Points	Qtr./ Qtr.	Section, Township, Range	Approx. Distance from N/S Sec. Line	Approx. Distance from E/W Sec. Line
Confl. of Burro Canyon with Purgatoire		SWSW	S 35, T33S, R65W	440 ft from S	220 ft from W
Confl. of Long Creek with Purgatoire		SENE	S 31, T33S, R64W	2330 ft from N	370 ft from E
Confl. of Raton Creek with Purgatoire		SESE	S 22, T33S, R64W	100 ft from S	560 ft from E
Confl. of Reilly Canyon with Purgatoire		NWNW	S 31, T33S, R64W	120 ft from N	515 ft from W
Confl. of Sarcillo Canyon with Purgatoire		SWSE	S 34, T33S, R66W	1000 ft from S	1340 ft from E
Confl. of South Fork with Purgatoire		SENE	S 36, T33S, R67W	1370 ft from N	875 ft from W
Confl. of Lopez Canyon with Purgatoire		NWSW	S 27, T33S, R67W	1700 ft from S	1180 ft from W
Confl. of unnamed tributary with Purgatoire		NENW	S 36, T33S, R67W	890 ft from N	2650 ft from E
Confl. of Wet Canyon with Purgatoire		NWNW	S 36, T 33S, R 67W	1180 ft from N	20 ft from W
Confl. of Lorencito Canyon with Purgatoire		NWNW	S 3, T 34S, R 66W	175 ft from N	1280 ft from W

viii. Trinidad Reservoir (WDID 1903935): Trinidad Reservoir’s dam is located in the SE1/4 NW1/4 of Section 27, Township 33 South, Range 64 West of the 6th P.M., 2400 feet from north and 1800 feet from east Section Lines. ix. Legend Lake (WDID 1903942): 1) Original Decree: Case No. 08CW38, Water Division 2, decree entered October 9, 2015. 2) Subsequent Decree(s) Awarding Findings of Diligence: Case No. 21CW3065, Water Division 2, decree entered May 31, 2022. 3) Location of Dam: NE 1/4 of NE 1/4 of Section 4, Township 34 South, Range 66 West of the 6th P.M., Las Animas County, Colorado. The mid-point of the reservoir is approximately 364 feet south of the north section line, and approximately 452 feet west of the east section line of said Section 4. 4) Source: Purgatoire River. 5) Appropriation Date: February 8, 2007. 6) Amount: 121.25 acre-feet, conditional. 7) Use: All municipal purposes including domestic, industrial, commercial, manufacturing, agricultural, irrigation, stock watering, recreational, piscatorial, fish and wildlife, fire protection, street washing, hydroelectric power production, for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of depletions resulting from use of water from other sources, for replacement of reservoir evaporation, for all augmentation purposes and for all other beneficial purposes. x. Hill Ranches Augmentation Pond (WDID 1903556): This pond has not yet been constructed, and no water right was claimed in Case No. 10CW2. The approximate size and location of the pond is as follows: 1) Location: Located in the W 1/2 of Section 24, Township 34 South, Range 69 West of the 6th P.M., Las Animas

County. 2) Capacity: Up to 20 acre feet. 3) Source: South Fork of the Purgatoire River.

xi. Golden Eagle Mine Discharge Point: 1) Original Decree: Case No. 80CW110, Water Division 2, decree entered on December 19, 1986. 2) Name of Structure: Golden Eagle Mine. 3) Legal Description of Point of Diversion: Section 29, Township 33 South, Range 67 West of the 6th P.M., being 3620 feet south of the North line and 2720 feet west of the East line of Section 29. 4) Source: Mine water exiting the portal of the Golden Eagle Mine, being nontributary developed mine water. 5) Appropriation Date: None set forth in decree – developed water. 6) Amount: 180 gpm, nontributary. Up to 214 gpm may be diverted at such time that the Mine is discharging at least 41 gpm, of which the first 34 gpm discharged from the mine are considered tributary to the Purgatoire River and are not decreed for diversion for beneficial use. 7) Use: For use, reuse, and successive use to extinction, and for lease, sale, exchange, or other disposition to other water users for the following beneficial uses: domestic, industrial, manufacturing, mining, and agricultural purposes.

D. Exchange-To Points: i. Mid Fork 1 Pond: Described in paragraph 3.C.i, above. ii. Lopez Canyon Pond: Described in paragraph 3.C.ii, above. iii. South Fork 1 Pond: Described in paragraph 3.C.iii, above. iv. Lorencito 14-16 Pond: Described in paragraph 3.C.iv, above. v. Warren McDonald Pond: Described in paragraph 3.C.v, above. vi. Margery Pond: Described in paragraph 3.C.vi, above. vii. Stage Coach Pond: Described in paragraph 3.C.vii, above. viii. The Top of Administrative Reaches A through M: The highest extent of Administrative Reaches A through M, or such other point within each Administrative Reach at which depletions covered by the Augmentation Plan must be replaced to prevent injury to vested senior water rights. The legal descriptions of the upstream and downstream extent of each Administrative Reach are set forth in **Table 2**, below. A map showing the location of the Administrative Reaches is attached to the application as **Exhibit B**.

Table 2 – Legal Descriptions of Upstream and Downstream Points of Each Administrative Reach					
Reach	Defined Point	Qtr./ Qtr.	Section, Township, Range	Approx. Distance from N/S Sec. Line	Approx. Distance from E/W Sec. Line
A	Upstream	SESE	S32, T32S, R68W	640 ft from S	1270 ft from E
	Downstream	SENE	S24, T33S, R68W	2465 ft from N	780 ft from E
B	Upstream	SWSE	S20, T33S, R68W	585 ft from S	1370 ft from E
	Downstream	SENE	S24, T33S, R68W	2465 ft from N	780 ft from E
C	Upstream 1	NWSE	S28, T34S, R68W	2590 ft from S	2395 ft from E
	Downstream 1	SWNW	S36, T33S, R67W	1350 ft from N	875 ft from W
	Upstream 2	NENW	S28, T34S, R68W	1250 ft from N	1410 ft from W
	Downstream 2	NENW	S28, T34S, R68W	1305 ft from N	1540 ft from W

D	Upstream	SENE	S24, T33S, R68W	2465 ft from N	780 ft from E
	Downstream	NENW	S29, T33S, R67W	125 ft from N	2290 ft from W
E	Upstream	NENW	S29, T33S, R67W	125 ft from N	2290 ft from W
	Downstream	SWNW	S36, T33S, R67W	1350 ft from N	875 ft from W
F	Upstream	SWNW	S36, T33S, R67W	1350 ft from N	875 ft from W
	Downstream	SWSW	S35, T33S, R65W	440 ft from S	220 ft from W
G	Upstream	SWSW	S35, T33S, R65W	440 ft from S	220 ft from W
	Downstream	SWNW	S36, T33S, R65W	2360 ft from N	520 ft from W
H	Upstream	NWSW	S6, T33S, R65W	2250 ft from S	430 ft from W
	Downstream	SWSW	S35, T33S, R65W	440 ft from S	220 ft from W
I	Upstream 1	SWNE	S4, T33S, R65W	2490 ft from N	2095 ft from E
	Downstream 1	SESE	S25, T33S, R65W	725 ft from S	445 ft from E
	Upstream 2	NWNW	S31, T33S, R64W	15 ft from N	530 ft from W
	Downstream 2	NWNW	S31, T33S, R64W	295 ft from N	465 ft from W
J	Upstream	SESE	S22, T34S, R65W	290 ft from S	825 ft from E
	Downstream	NENE	S31, T33S, R64W	1250 ft from N	370 ft from E
K	Upstream	SWNW	S36, T33S, R65W	2360 ft from N	520 ft from W
	Downstream	SWNE	S27, T33S, R64W	1625 ft from N	1710 ft from E
L	Upstream 1A	SWSE	S10, T35S, R63W	608 ft from S	1945 ft from E
	Upstream 1B	NENE	S18, T35S, R63W	955 ft from N	940 ft from E
	Downstream 1	SENE	S11, T34S, R64W	1400 ft from N	270 ft from E
	Upstream 2	SENE	S33, T34S, R63W	1850 ft from N	1150 ft from E
	Downstream 2	SWSW	S32, T34S, R63W	545 ft from S	1105 ft from W

	Upstream 3	SESE	S21, T34S, R63W	1000 ft from S	235 ft from E
	Downstream 3	NESE	S20, T34S, R63W	2165 ft from S	1180 ft from E
M	Upstream 1	SENE	S11, T34S, R64W	1400 ft from N	270 ft from E
	Downstream 1	NWSW	S26, T33S, R64W	2240 ft from S	1130 ft from W
	Upstream 2	SWNW	S26, T33S, R64W	2256 ft from N	1130 ft from W
	Downstream 2	NWNW	S26, T33S, R64W	1130 ft from N	1144 ft from W
N	Upstream	NWSE	S24, T31S, R66W	2430 ft from S	1670 ft from E
	Downstream	SWNE	S34, T30S, R65W	1435 ft from N	1640 ft from E
O	Upstream	SESE	S19, T31S, R67W	1353 ft from S	645 ft from E
	Downstream	NWSE	S24, T31S, R66W	2430 ft from S	1670 ft from E
P	Upstream 1	SWNE	S26, T31S, R68W	1945 ft from N	1810 ft from E
	Downstream 1	SWSW	S35, T31S, R67W	275 ft from S	1230 ft from W
	Upstream 2	SWNE	S28, T31S, R68W	2030 ft from N	1440 ft from E
	Downstream 2	NENE	S6, T32S, R67W	1015 ft from N	0 ft from E
Q	Upstream	NESE	S16, T31S, R67W	2010 ft from S	470 ft from E
	Downstream	NWSE	S15, T31S, R67W	2050 ft from S	2240 ft from E

Note: In regions where official Township, Range, and Section lines do not exist, interpreted Township, Range and Section boundaries were used to determine legal descriptions.

E. Legend Lake: As described in paragraph 3.C.ix, above. **F. Hill Ranches Augmentation Pond:** As described in paragraph 3.C.x, above. **G. Exchange Rates:** A separate appropriative right of exchange was decreed for an exchange between each of the Exchange-To points and Exchange-From points that are identified in Appendix 1, with the rate of exchange. Exchange rates are subject to a determination of reasonable transit losses as determined by the Division Engineer and Water Commissioner. **H. Conditional Water Rights:** The appropriative rights of exchange are CONDITIONAL water rights. **I. Date of Appropriation for All Exchanges:** February 1, 2010. **J. Terms and Conditions Governing Exchanges:** Per the decree in Case No. 10CW2, there will be no material injury to the owners or users of vested water rights or decreed conditional water rights as a result of the subject exchanges so long as there is compliance with and proper

administration of the protective terms and conditions set forth below: i. Live Stream: Unless otherwise permitted by the Water Commissioner or Division Engineer, each exchange will operate only when there is a live stream at all locations within the exchange reach. ii. Maximum Exchange Rate: The maximum rates of exchange shall be limited as set forth in Appendix 1. iii. Administration Within Priority System: The exchanges are appropriative water rights and will be exercised within the priority system. iv. Substitute Supply: Pursuant to C.R.S. § 37-80-120(3), the substitute source of supply for the exchanges shall be of quality to meet the requirements of use to which downstream appropriators have normally been accustomed. v. Approval of Water Commissioner and/or Division Engineer: Prior to the operation of the subject exchanges, Applicants shall notify and obtain the approval of the Water Commissioner and/or Division Engineer. vi. Accounting: Applicants shall maintain accounting forms for the exchanges and provide them to the Division Engineer as provided by the decree in Case No. 10CW2.

4. Detailed outline of the work and expenditures done toward or for the completion of the appropriations and application of water to beneficial use:

A. Applicant Raton Basin Partners, LLC (“Raton Basin Partners”) purchased all of the rights and interests of Timber Creek Energy LLC (“Timber Creek”) in the Augmentation Plan and the subject appropriative rights of exchange, effective September 8, 2020, which Timber Creek previously purchased from XTO Energy Inc. (“XTO”), effective October 2, 2017. Ogris Operating, LLC is a contract operator for Raton Basin Partners. **B.** Applicant Evergreen Natural Resources LLC (“Evergreen”) purchased all of the rights and interests of Pioneer Natural Resources USA, Inc. (“Pioneer”) in the Augmentation Plan and subject appropriative rights of exchange, effective July 1, 2018. **C.** Applicant Wapiti Raton L.L.C. (“Wapiti”) purchased all of the rights and interests of ARP Production Company, LLC (“ARP”) in the Augmentation Plan and subject appropriative rights of exchange, effective March 29, 2019. **D.** Applicants operate coal bed methane (“CBM”) gas wells in the Central Raton Basin, which includes the drainages of the Purgatoire River and its tributaries, generally above the Trinidad Reservoir, and portions of the Apishapa River. As a part of the CBM extraction process, CBM wells typically produce groundwater (sometimes referred to as “produced water”) from groundwater aquifers. The Augmentation Plan, including the subject appropriative rights of exchange, operates to augment out-of-priority depletions caused by CBM wells in the Central Raton Basin that withdraw tributary produced water. **E.** During the diligence period, Applicants and/or their predecessors, Timber Creek, XTO, Pioneer, and ARP, undertook the following activities in support of the development of the subject appropriative rights of exchange and completion of the appropriation: i. Operated the Augmentation Plan, including regular measurement, reporting, and accounting. ii. Prosecuted an Application for Finding of Reasonable Diligence in Case No. 18CW3070, Water Division 2, to continue the Lorencito 14-16 Pond, Warren McDonald Pond, Margery Pond, and Stage Coach Pond conditional water storage rights for an additional diligence period. The Water Court entered a final decree in Case No. 18CW3070 on June 10, 2019. The conditional water storage rights decreed in Case No. 18CW3070 are augmentation sources under the Augmentation Plan and are Exchange-To and Exchange-From points for the subject appropriative rights of exchange. iii. Prosecuted an Application for Finding of Reasonable Diligence in Case No. 17CW3064, Water Division 2, to continue the Mid Fork 1 Pond, Lopez Canyon Pond, and South Fork Canyon Pond conditional water storage rights for an additional diligence

period. The Water Court entered a final decree in Case No. 17CW3064 on July 24, 2018. The conditional water storage rights decreed in Case No. 17CW3064 are augmentation sources under the Augmentation Plan and are Exchange-To and Exchange-From points for the subject appropriative rights of exchange. iv. Negotiated and entered into a Water Supply Agreement dated April 21, 2017, with the Town of Aguilar, for the long-term provision of augmentation water supplies. v. Met with staff of the State Engineer's Office and Division Engineer's Office on numerous occasions to develop and implement plans for accounting, measurement, reporting and administration of the produced water withdrawals and operation of the Augmentation Plan. vi. Conducted numerous technical analyses, investigations and evaluations in support of the above-described activities, including without limitation annual projection reports as required by the Augmentation Plan and the operation of a calibrated, multi-layered numerical model of groundwater flow systems in the Central Raton Basin using the MODFLOW computer code developed by the United States Geological Survey, and continuous water quality monitoring and permitting activities. vii. Filed a statement of opposition and negotiated settlement terms in Case No. 20CW3029, Water Division 2, to protect Applicants' water rights included in the Augmentation Plan, including the subject conditional appropriative rights of exchange. viii. Filed a statement of opposition and negotiated settlement terms in Case No. 18CW3033, Water Division 2, to protect Applicants' water rights included in the Augmentation Plan, including the subject conditional appropriative rights of exchange. ix. Reviewed water court resumes and applications for water rights in the Purgatoire River basin to protect Applicants' water rights included in the Augmentation Plan, including the subject conditional appropriative rights of exchange. x. Engaged the services of attorneys, engineers, and other professionals in furtherance of the activities described above. xi. Total expenditures during the diligence period in connection with the above-described activities are difficult to quantify, but are conservatively estimated to be in excess of \$500,000. **F.** The list of activities above is not intended to be exhaustive, and Applicants reserve the right to present additional evidence of reasonable diligence as appropriate.

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.** Applicants. **B.** Colorado Parks and Wildlife, 600 Reservoir Road, Pueblo, CO 81005. **C.** Charlene Spencer et al., 1216 Brilliant Street, Raton, NM 87740. **D.** Hill Ranch, a Texas General Partnership/Hill Ranch, Ltd., c/o B.F. Hill, 3794C Highway 67 West, Glen Rose, TX = 76043. **E.** Ten Bar Ranch Limited Partnership, LLLP, 15043 County Road 41.7, Weston, CO 81091. WHEREFORE, Applicants respectfully request that the Court enter a judgment and decree finding that Applicants have demonstrated reasonable diligence in the development of all conditional water rights decreed in Case No. 10CW02, continuing such conditional water rights in full force and effect, and for such other relief as the Court deems just and proper.

CASE NO. 2023CW3006; Previous Case No. 2013CW3000 – NEW ELK COAL COMPNAY, LLC (“New Elk Coal” or “Applicant”), c/o Jon Romcke, 12250 Highway 12, Weston, CO 81091 (Please address all pleadings and inquiries regarding this matter

to Applicant's attorneys: Andrea L. Benson, Cynthia F. Covell, and Gilbert Y. Marchand, Alperstein & Covell P.C., 1391 Speer Boulevard, Suite 730, Denver, CO 80204

LAS ANIMAS COUNTY, COLORADO

Application for Finding Of Reasonable Diligence And To Make Portion Of Water Right Absolute

2. Names of structures/water rights: New Elk Mine Dewatering System, New Elk Surface Diversion, New Elk Pond, New Elk Storage Tank #1; and New Elk Storage Tank #3, and New Elk Mine Exchange. **3. Original Decree:** Case No. 2013CW3000, decreed by the District Court for Water Division 2, State of Colorado, on January 5, 2017. This is the first application for finding of diligence since the Original Decree was entered.

UNDERGROUND WATER RIGHT 4. Description of Conditional Underground Water Right - New Elk Mine Dewatering System: 4.a. Well Permits: New Elk has filed or will file well permit applications, pertaining to the bore hole locations described in paragraph 4(b)(2) below. 4.b. Legal description of New Elk Mine Dewatering Well System: 4.b.(1) Mine location: The New Elk Mine Dewatering System will be located in all or portions of Sections 5, 6, 7, 8, 9, 17, 18, 19, 20, 27, 28, 29, 30, 31, 32, 33, and 34 in T33S, R67W, 6th PM; Sections 12, 13, 14, 23, 24, 25, 26, 33, 34, 35, and 36 of T33S, R68W, 6th P.M.; Sections 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29 and 30 of T34S, R67W, 6th PM; and Sections 1, 2, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 35, and 36 of T34S, R68W, 6th PM consisting of approximately 34,000 acres. A USGS map showing the location of the mine boundary is attached as Exhibit A. 4.b.(2) Locations of portals of the New Elk Mine are located as follows (GPS Location Information in UTM format): 4.b.(2)(i) Allen Mine Borehole: Northing 4112395.13; Easting 503218.70, Zone 13. A Well Permit Application, Receipt #3654338, was filed for this location. 4.b.(2)(ii) Allen Mine Borehole 2: Northing 4112589.36; Easting 503451.25, Zone 13. A Well Permit Application has not yet been filed. 4.b.(2)(iii) Allen Mine Well No. 1: Northing 4112745.95; Easting 503852.51; Zone 13. A Well Permit Application, Receipt #3659537A, was filed for this location. 4.b.(2)(iv) Allen Mine Well No. 2: Northing 4112480.77; Easting 503758.51; Zone 13. A Well Permit Application, Receipt #3659537C, was filed for this location. The locations of these boreholes are depicted on Exhibit B. 4.c. Source of water: Groundwater tributary to the South Fork Purgatoire River, North Fork Purgatoire River, Middle Fork Purgatoire River and the Purgatoire River, or Apishapa River, all tributary to the Arkansas River. 4.d. Anticipated depth: Approximately 400 feet. 4.e. Information regarding appropriation: 4.e.(2) Date of Appropriation: July 13, 2011. 4.e.(2) How appropriation was initiated: By diversion of water and placement to beneficial use pursuant to an approved substitute water supply plan. 4.f. Amount: 1,200 gpm (per borehole) (up to 1,620 acre feet per borehole annually and up to a maximum of 1,930 acre-feet annually for all bore holes combined), conditional. Further, Applicant shall not exceed a total volumetric limit under this plan of 77,477 acre-feet total for all bore holes combined. 4.g. Use or Proposed Use: Industrial use at the New Elk Mine and any other uses incidental to the coal mine operations at the New Elk Mine, including but not limited to collecting and dewatering excess seepage of groundwater, dust control, coal washing, augmentation and replacement of depletions associated with the New Elk Mine, and domestic uses. A map depicting the mine boundary is attached as Exhibit A hereto.

SURFACE WATER RIGHT 5. Description of Conditional Surface Water Right: New Elk Surface Diversion. 5.a. Source: Middle Fork Purgatoire River, tributary to the

Arkansas River. 5.b. Legal description of the point of diversion: Northing 4112424; Easting 503094, Zone 13. A map depicting the location of the New Elk Surface Diversion is attached as Exhibit B hereto. 5.c. Date of appropriation and how appropriation was initiated: November 28, 2011, by filing an application for approval of a substitute water supply plan whereby surface diversions that would otherwise be out of priority would be augmented, and service of said plan request on the Division 2 Water Substitute Water Supply Plan notification list. 5.d. Amount: 7.0 c.f.s., conditional, up to a maximum of 3,200 acre-feet annually, total in combination with the New Elk Pond and New Elk Storage Tanks #s 1 and 3 water rights decreed herein. 5.e. Use: Industrial use at the New Elk Mine and any other uses incidental to the coal mine operations at the New Elk Mine, including but not limited to coal washing, dust control, storage in New Elk Pond, New Elk Storage Tanks, augmentation and replacement of depletions associated with the New Elk Mine, and domestic uses. **STORAGE RIGHT (New Elk Pond) 6. Description of Conditional Storage Right** - New Elk Pond: 6.a. Legal description: Northing 4112299; Easting 503056, Zone 13. A map depicting the location of the New Elk Pond is attached as Exhibit B hereto. 6.b. Source: The New Elk Pond is an off-channel pond and is filled from the following sources: 6.b.(1) Groundwater tributary to the South Fork Purgatoire River, North Fork Purgatoire River, Middle Fork Purgatoire River and the Purgatoire River, or Apishapa River, all tributary to the Arkansas River, diverted into storage through the New Elk Mine Dewatering System, described above. 6.b.(2) Middle Fork Purgatoire River, tributary to the Arkansas River, diverted into storage through the New Elk Surface Diversion, described above. 6.c. Date of Appropriation and how appropriation was initiated: July 16, 2006, by completion of design for construction of pond. 6.d. Amount: 12.0 acre-feet, conditional, with right to fill and refill without limitation when in priority up to a maximum of 3,200 acre-feet annually total in combination with the New Elk Surface Diversion and New Elk Storage Tanks #s 1 and 3 water rights decreed herein. Surface area of high water line: 2.05 acres 6.e. Use: Industrial uses at the New Elk Mine and any other uses incidental to the coal mine operations at the New Elk Mine, including but not limited to detaining mine water to allow any suspended solids to settle out prior to returning to Purgatoire River, coal washing, dust suppression, and augmentation and replacement of depletions associated with the New Elk Mine. **STORAGE RIGHTS (New Elk Mine Storage Tanks) 7. Description of Storage Rights** - New Elk Storage Tank #1; and New Elk Storage Tank #3. 7.a. Legal descriptions of structures are as follows: 7.a.(1) New Elk Storage Tank #1: Northing 4112153; Easting 503322, Zone 13. 7.a.(2) New Elk Storage Tank #3: Northing 4112145; Easting 503338, Zone 13. A map depicting the location of the storage tanks is attached as Exhibit B hereto. 7.b. Source: 7.b.(1) Groundwater tributary to the South Fork Purgatoire River, North Fork Purgatoire River, Middle Fork Purgatoire River and the Purgatoire River, or Apishapa River, all tributary to the Arkansas River, diverted into storage through the New Elk Mine Dewatering System, described above. 7.b.(2) Middle Fork Purgatoire River, tributary to the Arkansas River, diverted into storage through the New Elk Surface Diversion. 7.c. Date of Appropriation and how appropriation was initiated: 7.c.(1) New Elk Storage Tank #1: June 15, 1960, by installation of tank. 7.c.(2) New Elk Storage Tank #3: April 3, 2013, the date on which the application in this case was filed. 7.d. Date water applied to beneficial use: 7.d.(1) New Elk Storage Tank #1: January 3, 1961. 7.d.(2) New Elk Storage Tank #3: N/A. 7.e. Amount: 7.e.(1) New Elk Storage Tank #1: 65,000 gallons, conditional, with right to fill

and refill without limitation when in priority, up to a maximum of 3,200 acre-feet annually total in combination with the New Elk Surface Diversion, New Elk Pond and New Elk Storage Tank #3 water rights decreed herein. 7.e.(2) New Elk Storage Tank #3: 400,000 gallons, conditional, with right to fill and refill without limitation when in priority, up to a maximum of 3,200 acre-feet annually total in combination with the New Elk Surface Diversion, New Elk Pond and New Elk Storage Tank #1 water rights decreed herein. 7.f. Use: Industrial uses at the New Elk Mine and any other uses incidental to coal mine operations at the New Elk Mine, including but not limited to intercepting and detaining water, coal washing, dust suppression, augmentation and replacement purposes.

EXCHANGE RIGHT 8. Description of Exchange - New Elk Mine Exchange: 8.a. Exchange Reach: 8.a.(1) Upstream Terminus: New Elk Surface Diversion. 8.a.(2) Downstream Terminus: Trinidad Reservoir. 8.b. Source of Water to be Exchanged: Water stored in Trinidad Reservoir and more specifically described in paragraph 37 of the Original Decree. 8.c. Date of initiation of appropriation: December 7, 2011. 8.d. How initiated. The appropriation was initiated by Applicant's determination to devise a plan for augmentation to include water stored in Trinidad Reservoir by exchange and discussion at Arkansas River Compact Association Engineering Committee Meeting regarding proposed amendment to Operating Principals to allow use of water stored in Trinidad Reservoir outside of District boundaries. 8.e. Rate of exchange: 7 c.f.s. (conditional), up to a maximum of 3,200 acre-feet annually. 8.f. Use: Industrial use and any other uses incidental to coal mine operations, including but not limited to coal washing, dust control, storage in New Elk Pond, New Elk Storage Tanks, augmentation, replacement, and domestic uses.

EVIDENCE OF DILIGENCE ACTIVITIES 9. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the previous diligence period: 9.a. During this diligence period, New Elk has continued to improve, operate and maintain its integrated water supply system, of which the conditional water rights described herein are a part. To enable New Elk to more effectively provide water service for operation of its mine, it has expended in excess of \$40,000 during this diligence period for overall capital infrastructure investment to construct, repair and improve its water system infrastructure and projects that are part of the efficiency, operation and maintenance of its water supply system. 9.b. During this diligence period, Applicant has completed the following activities related to its water supply system: 9.b.(1) The New Elk Coal Well Field pumping systems from borefields and underground parts of the mine have been put into place. 9.b.(2) The diversion structure for the New Elk Surface Diversion is in place, Applicant has pumped into the New Elk Pond for storage, and such water was placed to beneficial use for supplying water to underground equipment and for essential dust suppression. In 2021, Applicant also improved the filtration system in the pump house that diverts water from the river. 9.b.(3) The New Elk Pond was constructed as designed for water storage and the water has been stored and directed for uses described in this Application. In 2021, Applicant also installed a water delivery line from the storage pond to the pumphouse where the water from the pond can be filtered before being placed to uses described in this Application. 9.b.(4) The New Elk Storage Tanks are in place and are used as part of Applicant's water management system and uses described in this Application. During this diligence period, New Elk Coal negotiated and entered into a lease with Hill Ranch, Ltd. for use of Hill

Ranch's water rights in Applicant's integrated water system, which use of such water rights was contemplated and described in the Original Decree. Applicant expended approximately \$354,000 for negotiation of this lease and for lease payments to Hill Ranch for such water during this diligence period. **CLAIM TO MAKE ABSOLUTE 10. Claim to Make Portion of New Elk Surface Diversion Water Right Absolute:** 10.a. Date water applied to beneficial use: August 9, 2021. 10.b. Amount: 0.29 c.f.s. 10.c. Uses: Industrial use at the New Elk Mine and any other uses incidental to the coal mine operations at the New Elk Mine, including but not limited to coal washing, dust control, storage in New Elk Pond, New Elk Storage Tanks, augmentation and replacement of depletions associated with the New Elk Mine, and domestic uses. 10.d. Attached hereto as Exhibit C is the Division of Water Resources diversion records in support of this claim to make a portion of the New Elk Surface Diversion Water Right. 10.e. Description of place of use where water is applied to beneficial use. New Elk Mine. **11. 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.** All structures are located on land owned by Applicant, except the New Elk Mine Storage Tanks, which are located on land owned by Colorado Parks and Wildlife, 6060 Broadway, Denver, CO 80216.

CASE NO. 2023CW3007; Previous Case Nos. 16CW3031 and 08CW73 – ANTHONY L. TIMKO and TRACY C. TIMKO, 13688 Hidden Valley Trail, Salida, CO 81201 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Mark E. Hamilton, Esq. and Susan M. Ryan, Esq., Holland & Hart LLP, 600 E. Main St., Suite 104, Aspen, CO 81611, (970)925-3476, mehamilton@hollandhart.com, smryan@hollandhart.com.)

CHAFFEE COUNTY

Application to Make Absolute and For Findings of Reasonable Diligence

Original Decree: 08CW73, Water Division 2, May 11, 2010 Subsequent decree: 16CW3031, Water Division 2, January 17, 2017 Background: In Case No. 08CW73 the Ponds were decreed absolute for fish, wildlife, stock watering, fire protection, recreational and piscatorial purposes, and conditional for irrigation and augmentation under the plan decreed in that case. Only the conditional rights decreed to the Ponds are the subject of this case. Name of Structure: **Sebesta Pond No. 1 (WDID 1103338)** Legal descriptions: Left abutment of dam is located 1630 feet from North section line of said Section 25; 1035 feet from West section line of Section 25, Township 50 North, Range 7 East, N.M.P.M., Chaffee County, Colorado. The location of Sebesta Pond No. 1 is shown on **Exhibit A** attached to the application and incorporated herein by reference. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) UTM (NAD 83): 13S 0399612E, 4268663N. Source: Squaw Creek and Blank Gulch. Appropriation Date: September 30, 2008, conditional for irrigation and augmentation uses. Amount, Fill Rate, Surface Area, Capacity and Length and Height of Dam: Amount: 4.0 acre-feet, conditional. Fill Rate: 1.8 c.f.s. Surface Area: 0.7 acres. Capacity: 4.0 acre-feet. Length of Dam: 227 feet. Height of Dam: 9 feet. Use: Irrigation of up to 5.1 acres in Section 25 Township 50 North, Range 7 East, N.M.P.M. (less any dry up of Applicants' land as required under the decree in Case No. 08CW73) and

augmentation in the plan decreed in Case No. 08CW73, conditional (as described above, the absolute uses are not at issue in this case). Name of Structure: **Sebesta Pond No. 2 (WDID 1103339)**. Legal Description: Left abutment of dam is located 1990 feet from North section line of said Section 25; 1307 feet from West section line of said Section 25, Township 50 North, Range 7 East, N.M.P.M., Chaffee County, Colorado. The location of Sebesta Pond No. 2 is shown on **Exhibit A** attached hereto and incorporated herein by reference. UTM (NAD 83): 13S 0399691E, 4268524N. Source: Squaw Creek and Blank Gulch. Appropriation Date: September 30, 2008, conditional for irrigation and augmentation uses. Amount, Fill Rate, Surface Area, Capacity and Length and Height of Dam: Amount: 1.1 acre-feet, conditional. Fill Rate: 1.8 c.f.s. Surface Area: 0.3 acres. Capacity: 1.1 acre-feet. Length of Dam: 172 feet. Height of Dam: 7 feet. Use: Irrigation of up to 5.1 acres in Section 25 Township 50 North, Range 7 East, N.M.P.M. (less any dry up of Applicants' land as required under the decree in Case No. 08CW73) and augmentation in the plan decreed in Case No. 08CW73, conditional (as described above, the absolute uses are not at issue in this case). **Evidence in Support of Claim to Make Subject Water Rights Absolute and for Findings of Reasonable Diligence with Respect to any Portion of the Subject Water Rights Not Made Absolute:** The activities described below support Applicants' claim to make the Subject Water Rights absolute and to continue the Subject Water Rights in full force and effect for another six-year diligence period with respect to any portion of such rights not made absolute. This list is not intended to be exclusive and may be supplemented by additional evidence: Stage capacity curves for the Ponds were prepared in 2011 and show that the current volume of Pond No. 1 is 2.54 acre-feet and the volume of Pond No. 2 is 0.77 acre-feet. The stage capacity curves were submitted to the Office of the Division Engineer in May 2016 and are attached to this Application as **Exhibit B**. The Ponds are partially constructed to their decreed capacities and Applicants have filled the Ponds annually since 2016. Applicants filled the Ponds from 2016 to 2022 in the amounts of 2.54 acre-feet for Pond No. 1 and 0.77 acre-feet for Pond No. 2. The Ponds operate under the plan for augmentation decreed in Case No. 08CW73. Applicants (in cooperation with Wail Hashimi, who also owns an interest in the Eureka Ditch and has his own ponds on the ditch) performed regular maintenance on the Ponds, Eureka Ditch and associated structures each year. Applicants engaged the services of attorneys and consultants to provide legal and technical advice in connection with the protection and continued development of the Subject Water Rights. Applicants expended funds in excess of \$5,000 in connection with the above activities. Applicants plan on expanding the capacity of the Ponds to fully utilize the decreed capacity of each Pond and making the remaining portions of the Subject Water Rights absolute. Applicants have no intention to abandon the Subject Water Rights. **Claim to Make Subject Water Rights Absolute in Part:** Applicants request that the Court confirm and decree that the Subject Water Rights be made absolute in the amounts of 2.54 acre-feet for Sebesta Pond No. 1 and 0.77 acre-feet for Sebesta Pond No. 2 for irrigation and augmentation purposes based upon the verified facts described above pursuant to section 37-92-301(4)(e) of the Colorado Revised Statutes (A conditional storage right "shall be made absolute for all decreed purposes to the extent of the volume of the appropriation that has been captured, possessed, and controlled at the decreed storage structure") and Written Instruction 2020-01 *DWR Position on Making Water Rights Diverted Out of Priority Absolute*. **Claim**

to Continue Subject Water Rights as Conditional: Based upon the verified facts described above, Applicants request that the Court find that they have exercised reasonable diligence towards the development of the Subject Water Rights in the amounts of 1.46 acre-feet for Sebesta Pond No. 1 and 0.33 acre-feet for Sebesta Pond No. 2 for irrigation and augmentation uses consistent with C.R.S. § 37-92-301(4)(b) and that Applicants have exercised reasonable diligence on amounts associated with the subject water rights that are not made absolute in this case. **Name and address of owner of land on which points of diversion and places of use are located:** Applicants (see above address). WHEREFORE, Applicants respectfully request that the Court make portions of the Subject Water Rights absolute and enter a finding of reasonable diligence for the Subject Water Rights as described in this Application. Applicants also request such other and further relief as the Court may deem appropriate.

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 2023, (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 14th day of February 2023.

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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