

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING FEBRUARY 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 February 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. 2023CW3008 – TIMOTHY P. GARCIA AND DENICE R. GARCIA, P.O. Box 1792, Leadville, CO 80461 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorney: Ryan W. Farr, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921, (719) 471-1212)
Application for Adjudication of Exempt Well

LAKE COUNTY

Applicants are the owners of a tract of land located in the SW1/4 of the SE1/4 of Section 31, Township 8 South, Range 79 West of the 6th P.M., County of Lake, State of Colorado, containing approximately 4.00 acres, more or less, and known as 3321 Highway 91, Leadville, Colorado 80461 and specifically described on **Exhibit A** attached to the application. (“Applicants’ Property”). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) See attached **Exhibit B** topo map of Applicants’ Property. Name of Structure: Garcia Well. Legal Description of Well: The Garcia Well is located in Lake County, Colorado in the SW1/4 of the SE1/4 of Section 31, Township 8 South, Range 79 West of the 6th P.M. UTM coordinates: NAD83, Zone 13, 391331 Easting, 4351372 Northing. See attached **Exhibit A** for location reference. The Garcia Well is permitted as an exempt well pursuant to Division of Water Resources Permit No. 315698. Source: Groundwater in the alluvial aquifer. Appropriation: December 31, 1966. Completion of the construction of the well and placement into operation as of December 31, 1966. December 31, 1966. Amount Claimed: 15 gpm, absolute. Uses: Ordinary household uses inside three single family dwellings, fire protection, the watering of domestic animals and poultry, and the irrigation of not more than 0.25 acre of home gardens and lawns. Land Ownership: The land upon where the Garcia Well is drilled and which the water is and has been used is owned by the Applicants. The Garcia Well, which is the subject of this Application, is an exempt well issued pursuant to § 37-92-602(3)(b)(II), C.R.S., for the uses authorized in § 37-92-602(1)(b), C.R.S., and a decree for the Garcia Well is sought pursuant to § 37-92-602(4), C.R.S. It is Applicants’ intent to maintain the exempt status of the Garcia Well.

CASE NO. 2023CW3009 – FALCON AREA WATER & WASTEWATER AUTHORITY, c/o Spencer Fane, LLP, 1700 Lincoln St., Ste. 2000, Denver, CO 80203 (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 and Farr,

LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921, (719) 471-1212 with all pleadings and correspondence regarding this matter.)

Application for Change of Water Rights and Amendment to Plans for Augmentation

EL PASO COUNTY

The Falcon Area Water & Wastewater Authority (“Applicant”, or “FAWWA”) is a public corporation and political subdivision of the State of Colorado formed pursuant to Title 29, C.R.S. which provides water and wastewater services to its municipal and quasi-municipal members in northern El Paso County, Colorado. FAWWA’s current membership includes the Sterling Ranch Metropolitan District Nos. 1, 2, and 3 (collectively “SRMD”) and the Retreat Metropolitan District Nos. 1, and 2 (collectively “RMD”). SRMD, RMD, and related entities were the owners of certain water and water rights associated with Denver Basin groundwater, surface water storage rights and plans for augmentation, all of which have been deeded or assigned to FAWWA (the “FAWWA Water Rights”). The FAWWA Water Rights are more particularly described below. All relevant properties referenced herein, and/or serviced by FAWWA, are 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.) Included in the FAWWA Water Rights are water rights underlying the “Jaynes Property”, contiguous to SRMD and FAWWA’s current service area, and upon which it is anticipated FAWWA will provide service. These water rights were previously adjudicated in Case No. 07CW56 (the “Jaynes Water Rights”), and FAWWA is currently under contract for the purchase of the Jaynes Water Rights. FAWWA is the assignee and/or equitable owner of the FAWWA Water Rights, including contractual interests in the Jaynes Water Rights. All of the FAWWA Water Rights have been previously decreed, and the overlying lands for all such FAWWA Water Rights are contiguous. All of the FAWWA Water Rights described herein are non-designated, and therefore subject only to the jurisdiction of the Division 2 Water Court. As such FAWWA seeks to change the FAWWA Water Rights to allow for withdrawal of each of the water rights associated therewith from wells located upon any of the overlying lands, constituting the “FAWWA Well Field”, and further seeks to amend the previously decreed plans for augmentation to allow for consolidated augmentation accounting by FAWWA for water rights produced from any of the overlying properties, with augmentation to be provided as described in the decree to be entered in this matter, rather than the previously decreed augmentation plans, though consistent with the terms thereof to prevent injury. **CHANGE OF WATER RIGHTS – FAWWA WELL FIELD.** Each of the following water and water rights underlying contiguous parcels of land are by this application sought to be utilized as a well field, allowing withdrawal of water rights underlying each described land area to be withdrawn from wells constructed on the other described contiguous land parcels. Existing Decrees. The following decrees for water and water rights underlying the specifically described parcels of land are subject to the changes of water rights described more specifically in Paragraph III.B., herein: SRMD Properties. The SRMD Properties consist of approximately 1,451.44 acres located in Sections 27, 28, 32, 33, and 34 of Township 12 South, Range 65 West, and Section 4 of Township 13 South, Range 65 West, all in the 6th P.M., as more particularly described on the attached **Exhibit B**, and depicted on the attached **Exhibit A** map. The following decreed water rights are associated with the SRMD Properties: Case No. W-1309. This 1973 decree is the original adjudication for the “Pound Sterling Ranch” adjudicating

springs, wells and ponds for use on what is now the SRMD Properties. The ponds described in this case have either been abandoned or included in their current construction in the augmentation plan decreed in Case No. 20CW3059. The wells described in Case No. W-1309 are of unknown depth and therefore unknown aquifers, but were presumably shallow stockwater wells long since abandoned. This case is included in the instant application only for purposes of completeness and to ensure all water and water rights associated with the SRMD Properties are properly included in the ultimate decree. Case No. 86CW18. This represents the original adjudication of the nontributary Arapahoe aquifer, underlying 1,410 acres of the SRMD Properties. The Decree in Case No. 86CW18 quantified the following nontributary water available to FAWWA:

<u>Aquifer</u>	<u>Status</u>	<u>100-year Quantity</u>
Arapahoe	Nontributary	575 acre feet

Case No. 86CW19. This matter represents the original adjudication of nontributary Laramie-Fox Hills aquifer, underlying 1,410 acres of the SRMD Properties. The Decree in Case No. 86CW19 quantified the following nontributary water available to FAWWA:

<u>Aquifer</u>	<u>Status</u>	<u>100-year Quantity</u>
Laramie-Fox Hills	Nontributary	539 acre feet

Case No. 08CW113. This matter represents further adjudication of not-nontributary groundwater supplies in the Dawson and Denver aquifers underlying 1,451.44 acres of the SRMD Properties. Further, this matter adjudicated not-nontributary Arapahoe groundwater and nontributary Laramie-Fox Hills groundwater underlying 41.44 acres of land, the SRMD Properties groundwater which was not subject of the 86CW18 and 86CW19 actions described above. The Decree in Case No. 08CW113 quantified the following water available to FAWWA:

<u>Aquifer</u>	<u>Status</u>	<u>100-year Quantity</u>
Dawson	Not-Nontributary	392.5 acre feet
Denver	Not-Nontributary	728.9 acre feet
Arapahoe	Not-Nontributary	0.6 acre feet
Laramie-Fox Hills	Nontributary	0.4 acre feet

Case No. 20CW3059. This case adjudicated a plan for augmentation for the use of not-nontributary water supplies adjudicated in Case No. 08CW113, as well as quantifying not-nontributary and nontributary supplies underlying the Schmidt Property, as described below. Specifically, the decree in Case No. 20CW3059 (1) determined the quantities and character of Denver Basin groundwater supplies underlying the Schmidt Property; (2) provided for pumping of up to 258.16 annual acre feet of not-nontributary Denver aquifer groundwater (based on a 300-year aquifer life, equivalent to the entirety of the not-nontributary Denver aquifer quantified and decreed as underlying the SRMD Properties in Case Nos. 08CW113 and the Schmidt Property in 20CW3059, 774.48 acre feet on a 100-year allocation); (3) provided for pumping of up to 14.57 annual acre feet of not-nontributary Arapahoe aquifer (based on a 300-year aquifer life, equivalent to the entirety of the not-nontributary Arapahoe aquifer quantified and decreed as underlying the SRMD Properties in Case No. 08CW113 and the Schmidt Property in 20CW3059, 43.71 acre feet on a 100-year allocation); (4) quantified as an augmentation source the Lawn Irrigation Return Flows (LIRFs) associated with the irrigation of up to 48 acres of public

parks, lawns and gardens on the SRMD Properties as being up to 27.45 acre feet, with an immediate entitlement to claim 17.65 acre feet thereof as credits to augment the pumping of the not-nontributary Denver and Arapahoe aquifers described above, as well as replacement of evaporative depletions from SRMD Pond No. 1 and SRMD Pond No. 2, as decreed in Case No. 20CW3059; (5) decreed nontributary groundwater in the Laramie-Fox Hills aquifer underlying the SRMD Properties as an alternate source of augmentation supply during the pumping life of the not-nontributary Denver and Arapahoe wells; and, (6) described and decreed the augmentation plan associated with the above. RMD Properties. The RMD Properties are located to the northwest and contiguous to the SRMD Properties, being approximately 191.79 acres located in Sections 27 and 28 of Township 12 South, Ranch 65 West of the 6th P.M., more particularly described on the attached **Exhibit C**, and depicted on the attached **Exhibit A** map. Case No. 17CW3002. This case adjudicated Denver Basin groundwater supplies in the Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers underlying several properties, a portion of which FAWWA now owns and controls. Specifically, FAWWA has acquired the Denver Basin groundwater underlying the “Arroya Parcel” property, totaling 191.79 acres, as described in that decree, and has acquired the following water rights:

<u>Aquifer</u>	<u>Status</u>	<u>100-year Quantity</u>
Dawson	Not-Nontributary	116 acre feet
Denver	Not-Nontributary	119 acre feet
Arapahoe	Nontributary	98 acre feet
Laramie-Fox Hills	Nontributary	58.3 acre feet

Case No. 18CW3002. This case adjudicated a plan for augmentation plan for a portion of the Denver Basin groundwater quantified in Case No. 17CW3002, specifically including the water underlying and used upon a portion of the RMD Properties. However, the individual on-lot wells augmented under this case concern a portion of the RMD Properties for which FAWWA will not be providing municipal water or wastewater services. This case is referenced herein only due to its dedication of a 2,796 acre foot portion (27.96 annual acre feet, 100-year) of the Laramie-Fox Hills aquifer underlying the RMD Properties for replacement of post-pumping depletions therein, reducing available nontributary supplies otherwise available to FAWWA. Schmidt Property. The Schmidt Property is located to the southwest of the SRMD Properties, and contiguous thereto, being approximately 97.54 acres located in the S½ of Section 32, Township 12 South, Range 65 West, of the 6th P.M., more particularly described on the attached **Exhibit D** and depicted on the attached **Exhibit A** map. Case No. 20CW3059. As described above, this Case both adjudicated the Denver Basin groundwater supplies underlying the Schmidt Property, but also adjudicated a plan for augmentation for the use of not-nontributary supplies underlying both the SRMD Properties and the Schmidt Properties. The following specific water rights were decreed as being underlying the Schmidt Properties and available for FAWWA’s use, including through the augmentation plan decreed in 20CW3059:

<u>Aquifer</u>	<u>Status</u>	<u>100-year Quantity</u>
Dawson	Not-Nontributary	9.75 acre feet
Denver	Not-Nontributary	45.56 acre feet

Arapahoe	Not-Nontributary	43.11 acre feet
Laramie-Fox Hills	Nontributary	27.8 acre feet

Jaynes Property. The Jaynes Property is located to the west of the SRMD Properties, and contiguous thereto, being approximately 135 acres located in portions of the S½ and the NE¼ NW¼ of Section 28, and the NW¼ of Section 33, all in Township 12 South, Range 65 West of the 6th P.M., more particularly described on the attached **Exhibit E**, and depicted on the attached **Exhibit A** map. Classic SRJ Land, LLC, a Colorado limited liability company, is under contract for the purchase of the Jaynes Property, including all underlying groundwater as specifically described below. FAWWA is under contract with Classic SRJ Land, LLC for the purchase of such groundwater, contingent only upon Classic SRJ Land, LLC’s closing on the underlying purchase. The current owners of the Jaynes Property have consented to the inclusion of the Jaynes water rights herein. Case No. 07CW56. This case adjudicated the Denver Basin groundwater supplies underlying the Jaynes Property. As described below, Applicant seeks a decree in this matter to utilize the Jaynes Property Denver Basin groundwater supplies in the amended plan for augmentation requested herein, in concert with the other water supplies described as a well field herein. The decree in Case No. 07CW56 provides that the following water rights underly the Jaynes Property, to be available for use by FAWWA:

<u>Aquifer</u>	<u>Status</u>	<u>100-year Quantity</u>
Dawson	Not-Nontributary	46.9 acre feet ¹
Denver	Not-Nontributary	69.2 acre feet
Arapahoe	Nontributary	58 acre feet
Laramie-Fox Hills	Nontributary	38.5 acre feet

Raygor Property. The Raygor Property is located to the east of the SRMD Properties, and contiguous thereto, being approximately 40 acres located in the SE¼ NE¼ Section 35, Township 12 South, Range 65 West of the 6th P.M., more particularly described on the attached **Exhibit F**, and depicted on the attached **Exhibit A** map. Case No. 91CW35. This case adjudicated the Denver Basin groundwater supplies underlying the Raygor Property, and FAWWA is the owner of such groundwater rights. As described below, Applicant seeks a decree in this matter to utilize the Raygor Property Denver Basin groundwater supplies in the amended plan for augmentation requested herein, in concert with the other water supplies described as a well field herein. The 91CW35 Decree provides that the following water rights underly the Raygor Property, and are therefore available for FAWWA’s use:

<u>Aquifer</u>	<u>Status</u>	<u>100-year Quantity</u>
Dawson	Not-Nontributary	34 acre feet
Denver	Not-Nontributary	76 acre feet
Arapahoe	Nontributary	49 acre feet
Laramie-Fox Hills	Nontributary	36 acre feet

¹ 12 annual acre feet of Dawson aquifer groundwater was reserved underlying the Jaynes Property in Case No. 07CW56. As there will be no on-site individual well use on the Jaynes Property once FAWWA service is provided, Applicant seeks to make available such previously reserved Dawson aquifer groundwater, to be determined herein, for use under a future plan for augmentation.

Summary. Collectively, the SRMD Properties, the RMD Properties, the Schmidt Property, the Jaynes Property and the Raygor Property are hereafter referenced as the “FAWWA Well Field Area”. FAWWA expressly seeks a decree authorizing the withdrawal of all groundwater within the FAWWA Well Field Area from each of the underlying Denver Basin aquifers, from wells located at any location within the FAWWA Well Field Area. FAWWA does not assert to the right to withdraw not-nontributary supplies from nontributary locations, nor vice versa, nor does FAWWA assert the right to withdraw water from not-nontributary aquifers of an actual replacement character, if any, from not-nontributary aquifers of a “4%” character. In total, FAWWA claims the right to produce the following quantities of water from the following aquifers, subject to approval of plans from augmentation as necessary for not-nontributary supplies, including as sought herein:

<u>Aquifer</u>	<u>Status</u>	<u>100-year Quantity</u>
Dawson	Not-Nontributary	587.15 acre feet
Denver	Not-Nontributary	1,038.66 acre feet
Arapahoe	Not-Nontributary	43.76 acre feet
Arapahoe	Nontributary	780.00 acre feet
Laramie-Fox Hills	Nontributary	700.00 acre feet

AMENDMENT TO PLANS FOR AUGMENTATION. FAWWA seeks to amend the plan for augmentation decreed in Case No. 20CW3059, to allow for the use of all Denver Basin supplies within the FAWWA Well Field Area in the same Denver Basin formations and of the same character, to be augmented pursuant to the terms and conditions of the 20CW3059 augmentation plan, such supplies being pumped from contiguous properties within the FAWWA Well Field Area. Such amendment likewise is to add the Jaynes Property water rights adjudicated in Case No. 07CW56, and the Raygor Property water rights adjudicated in Case No. 91CW35, as alternate sources of supply, and alternate sources of augmentation supply. FAWWA likewise seeks to utilize re-usable return flows generated from a first municipal use of such Denver Basin supplies within the FAWWA Well Field as a source of augmentation supply for replacement of depletions described in the above referenced plans for augmentation, to the extent such sewered return flows are or may be available in proper time, location and amount. FAWWA seeks only to add these Denver Basin supplies as augmented sources and augmentation supplies to the above referenced plans for augmentation, and does not seek additional volumetric pumping entitlements creating additional depletions. Existing Augmentation Plan – 20CW3059. As described above, the 20CW3059 decree adjudicated a plan for augmentation for the use of not-nontributary supplies underlying both the SRMD Properties and the Schmidt Properties, specifically providing for replacement of depletions from the pumping up to 258.16 annual acre feet of not-nontributary Denver aquifer groundwater (based on a 300-year aquifer life), and up to 14.57 annual acre feet of not-nontributary Arapahoe aquifer (based on a 300-year aquifer life). Augmentation during the 300-year pumping life of these aquifers is to be provided through the LIRFs quantified in the 20CW3059 decree, with post-pumping depletions to be replaced through dedication of off-site nontributary groundwater supplies. Applicant does not seek to modify these annual pumping limitations, nor the type or quantity of augmentation supplies. Amended Plan for Augmentation – Additional Physical and Replacement

Supplies. Applicant seeks to include as sources of physical supply for augmentation under the 20CW3059 Augmentation Plan, as amended hereby, all not-nontributary Denver and Arapahoe groundwater sources within the FAWWA Well Field, described above. Applicant further seeks to add any and all of the Denver Basin groundwater supplies described above for withdrawal through the FAWWA Well Field which may be utilized for irrigation of public parks and open space and for which LIRF credits have been previously calculated under the 20CW3059 decree, as augmentation sources via LIRFs, to be calculated in the same manner and quantities as described in the 20CW3059 decree. Only upon application for, and the Court's approval of, a subsequent application for an additional or further amended plan for augmentation may Applicant pump additional quantities of such not-nontributary supplies. Remarks: Additional remarks are as follows: 1. The term of the augmentation plan is for 300 years, however the length of the plan for a particular well or wells may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post-pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. 2. Before any wells are constructed, applications for well permits will be filed with the State Engineer's office, and well permits shall be granted in accordance with the decree pursuant to this application. 3. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. 4. The wells shall be installed and metered as reasonably required by the State and Division Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under the plan of augmentation, and all such accountings shall be integrated into other accountings required from Applicant pursuant to subsequently entered decrees so as to accurately account for all water uses by the District from various sources, and to ensure that all out-of-priority depletions associated therewith are adequately replaced in time, place and amount. 5. The Applicant intends to waive the 600 feet well spacing requirement for the wells to be located within the FAWWA Well Field, including as it now exists, or as it may exist in the future.

CASE NO. 2023CW3010; Previous Case Nos. 2016CW3033, 2001CW1 – CONCERNING THE APPLICATION FOR WATER RIGHTS OF: SALIDA RED LLC, A COLORADO LIMITED LIABILITY COMPANY, Brent and Shannon Juilleret, P.O. Box 600, Cuero, TX 77954 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Melinda H. Sherman, Esq., Bryce K. Hinchman, Esq., Sharp, Sherman & Engle LLC, P.O. Box 774608 / 401 Lincoln Ave., Steamboat Springs, CO 80477, sherman@steamboatlawfirm.com, bhinchman@steamboatlawfirm.com, (970) 879-7600)

Application For Finding Of Reasonable Diligence
CHAFFEE COUNTY, COLORADO.

2. Name of Structures: (1) Droz Creek Reservoir, (2) Smith Pond No. 1, (3) Smith Pond No. 2, (4) Smith Pond No. 3, (5) Smith Pond No. 4, Type: Reservoir (all structures), **Background:** This is an application for finding of reasonable diligence for Droz Creek

Reservoir and Smith Pond Nos. 1-4. **3. Description of Conditional Water Rights:** *DROZ CREEK RESERVOIR*, A. Date of Original Decree: June 9, 2010, in Case No. 01CW1, District Court, Water Division No. 2. B. Subsequent Decree Awarding Findings of Diligence: February 28, 2017, in Case No. 16CW3033, District Court, Water Division No. 2. C. Legal Description: The Reservoir is located in the SE1/4NE1/4 Section 6, Township 48 North, Range 8 East, N.M.P.M. The outlet works of the dam are located at a point in the SW1/4NE1/4 Section 6, Township 48 North, Range 8 East, N.M.P.M. approximately 1700 feet West of the East line and 1800 feet South of the North line of said Section 6. The decreed UTM coordinates for the Reservoir are: NAD 27 402149 E 4255469 N. The tabulated UTM coordinates for the Reservoir are: NAD83 (Zone 13S) X = 0402196E Y = 4255715N. D. Source of Water: Droz Creek, a tributary of Poncha Creek, a tributary of the South Arkansas River. E. Appropriation Date: May 12, 2000. F. Amount: 124.3 acre-feet. G. Use: Recreation, piscatorial, and stockwatering. *SMITH POND NO. 1*, A. Date of Original Decree: June 9, 2010, in Case No. 01CW1, District Court, Water Division No. 2. B. Subsequent Decree Awarding Findings of Diligence: February 28, 2017, in Case No. 16CW3033, District Court, Water Division No. 2. C. Legal Description: Smith Pond No. 1 dam is located in the S1/2NE1/4 Section 6, Township 48 North, Range 8 East, N.M.P.M at a point approximately 1600 feet from the North line and 1000 feet from the East line of said Section 6. UTM coordinates (NAD83; Zone 13S): X = 0402342E Y = 4255682N. D. Source of Water: Droz Creek, a tributary of Poncha Creek, a tributary of the South Arkansas River. E. Appropriation Date: December 31, 1999. F. Amount: 2.06 acre-feet. G. Use: Recreation, piscatorial, and wildlife watering. *SMITH POND NO. 2*, A. Date of Original Decree: June 9, 2010, in Case No. 01CW1, District Court, Water Division No. 2. B. Subsequent Decree Awarding Findings of Diligence: February 28, 2017, in Case No. 16CW3033, District Court, Water Division No. 2. C. Legal Description: Smith Pond No. 2 dam is located in the S1/2NE1/4 Section 6, Township 48 North, Range 8 East, N.M.P.M at a point approximately 1500 feet from the North line and 750 feet from the East line of said Section 6. UTM coordinates (NAD83; Zone 13S): X = 0402419E Y = 4255682N. D. Source of Water: Droz Creek, a tributary of Poncha Creek, a tributary of the South Arkansas River. E. Appropriation Date: May 12, 2000. F. Amount: 1.14 acre-feet. G. Use: Recreation, piscatorial, and wildlife watering. *SMITH POND NO. 3*, A. Date of Original Decree: June 9, 2010, in Case No. 01CW1, District Court, Water Division No. 2. B. Subsequent Decree Awarding Findings of Diligence: February 28, 2017, in Case No. 16CW3033, District Court, Water Division No. 2. C. Legal Description: Smith Pond No. 3 dam is located in the S1/2NE1/4 Section 6, Township 48 North, Range 8 East, N.M.P.M at a point approximately 1450 feet from the North line and 500 feet from the East line of said Section 6. UTM coordinates (NAD83; Zone 13S): X = 0402518E Y = 4255654N. D. Source of Water: Droz Creek, a tributary of Poncha Creek, a tributary of the South Arkansas River. E. Appropriation Date: May 12, 2000. F. Amount: 1.09 acre-feet. G. Use: Recreation, piscatorial, and wildlife watering. *SMITH POND NO. 4*, A. Date of Original Decree: June 9, 2010, in Case No. 01CW1, District Court, Water Division No. 2. B. Subsequent Decree Awarding Findings of Diligence: February 28, 2017, in Case No. 16CW3033, District Court, Water Division No. 2. C. Legal Description: Smith Pond No. 4 dam is located in the S1/2NE1/4 Section 6, Township 48 North, Range 8 East, N.M.P.M at a point approximately 1700 feet from the North line and 300 feet from the East line of said Section 6. UTM coordinates (NAD83; Zone 13S): X = 0402590E Y = 4255611N. D.

Source of Water: Droz Creek, a tributary of Poncha Creek, a tributary of the South Arkansas River. E. Appropriation Date: May 12, 2000. F. Amount: 0.7 acre-feet. G. Use: Recreation, piscatorial, and wildlife watering. **4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the previous diligence period:** Salida Red LLC, a Colorado limited liability company (the “Applicant”) acquired the conditional water rights that are the subject of this application from Thomas H. Smith by quit claim deed recorded on April 30, 2021, at Reception No. 470031 in the Chaffee County real property records, 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.) The reliability and availability of water on the subject property was an important factor in the Applicant’s due diligence review process and ultimately in its decision to purchase the property. The Applicant had discussions with the property caretaker to better understand the operation of Droz Creek Reservoir and any fluctuations in the water level resulting from drought, precipitation, and snowmelt. The Applicant learned that the water level is generally static in the Droz Creek Reservoir due to constant recharge from Droz Creek, underground springs, and other water sources that feed into the impoundment. Since purchasing the subject property, the Applicant has worked diligently to develop and use the conditional water rights in the manner contemplated by the conditional decree initially awarded in Water Division No. 2, Case No. 01CW1, and continued by subsequent decree in Case No. 16CW3033. Droz Creek supplies all of the reservoirs described herein; starting with Droz Creek Reservoir, which is located on-stream and upon the Applicant’s property. Smith Pond Nos. 1-4 are small impoundments immediately downstream of the Reservoir and upon the Applicant’s property. The Droz Creek Reservoir and Smith Pond Nos. 1-4 are components of an integrated water supply project for Applicant’s property along with the other water rights in this application. For that reason, Applicant requests that all conditional water rights herein be regarded as an integrated system. When a project or integrated system is comprised of several features, work on one feature shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the project or system. C.R.S. § 37-92-301(4)(b). The Applicant has performed the activities described below in furtherance of the development of these water rights, which activities may be supplemented with additional evidence. *A. Droz Creek Reservoir,* Since purchasing the subject property, the Applicant has applied to beneficial use water stored by exchange in Droz Creek Reservoir (“Reservoir”) for purposes of recreation, piscatorial, and stockwatering. In connection with recreational use, the Applicant has hosted several watersports-related events at the Reservoir for friends and family involving the use and aesthetic enjoyment of the waterbody. The Applicant’s dogs utilize the Reservoir daily for exercise, swimming and retrieving objects. For piscatorial use, the Applicant’s predecessor previously stocked the Reservoir with trout, which has over time spawned a healthy and sustained population. The Applicant periodically fishes in the Reservoir. Livestock also water from the Reservoir from time to time. The Applicant grazes cattle on the subject property and has observed livestock watering from the Reservoir on prior occasions. In addition to actual use of the Reservoir, the Applicant and its predecessor have expended time, energy, and financial resources in maintaining and improving the Reservoir. The Applicant’s predecessor engaged a water resources engineer and made

significant improvements to the Reservoir in 2017-2018. Construction commenced on May 18, 2017 and involved cutting down the primary spillway, lowering the approach to the emergency spillway, leveling the dam crest, and re-installing the dam survey monuments. Construction was completed on January 10, 2018. A copy of the final construction report by Small Hydro Consulting, LLC dated February 16, 2018, as submitted to the Colorado Division of Water Resources, is attached hereto as Exhibit 2. Since acquiring the subject property and its water rights in 2021, the Applicant has continued its predecessor's work and investments in the Reservoir. Dam crest monuments, used to measure the horizontal and vertical movement of the reservoir, were damaged by snow removal equipment in the winter of 2020-2021. A contractor engaged by the Applicant's predecessor repaired the monuments shortly thereafter in 2021. After taking possession of the property, the Applicant engaged Landmark Surveying & Mapping to update the survey for the Reservoir at a cost of \$506.25. Surveys of the dam crest were completed in 2021 and 2022, and the Applicant intends to complete periodic surveys of the dam crest going forward. In addition to these expenditures, the Applicant has engaged legal counsel to consult with and prepare this application at a cost estimated to exceed \$1,000.00. In the summer of 2021, the Applicant dedicated substantial time to clearing willows and other vegetation from the emergency spillway of the Reservoir and portions of the primary spillway's downstream outlet to Smith Pond No. 1. The Applicant also worked to mitigate invasive weed propagation around the Reservoir, removing large amounts of bull thistle in the process. Following these efforts, the Applicant requested an inspection by the Colorado Division of Water Resources, and the Reservoir's status was upgraded from "Conditional Satisfactory" to "Satisfactory" as a result. The Applicant met with representatives from Water Division 2 in 2022 to discuss the augmentation plan for the Reservoir and the use of shares in Twin Lakes reservoir to offset depletions to the South Arkansas River. The Applicant also met with representatives from the Upper Arkansas Water Conservancy District to discuss the potential for joint projects in the future involving the Reservoir. All of the foregoing acts and expenditures reflect the Applicant's diligence and intent to apply the Reservoir water to beneficial use in the manner contemplated by the conditional decrees. Despite the Applicant's efforts and intent to utilize water rights in the Reservoir, the water rights are rarely in priority, which requires the Applicant to rely primarily on water stored by exchange. According to a structure call analysis on the Colorado Division of Water Resources website, the Reservoir was out of priority 99.88 percent of the time period from the date of the prior diligence decree, February 28, 2017, to February 1, 2023. It appears there were just five days in total during this time in which the water right was one hundred percent in priority, according to said analysis, including May 19, 2018, May 20, 2018, May 21, 2018, April 1, 2020, and April 2, 2020. During the same time period, there were 1,833 days in which the water right was one hundred percent out of priority. Despite this limiting factor, the Applicant remains ready, willing, and able to utilize water rights decreed to the Reservoir when in priority. *B. Smith Pond Nos. 1-4*, The Smith Pond Nos. 1-4 (collectively, "Ponds") are water impoundments along Droz Creek immediately downstream of the Reservoir, all of which are located in close proximity to one another and are used for recreational, piscatorial, and wildlife purposes. The Applicant utilizes the Ponds primarily for recreational activities centered around the use and aesthetic enjoyment of the water. The Ponds are also periodically used for fishing, and the Applicant has observed a multitude

of wildlife species watering from the Ponds, including elk, mule deer, and moose, and has witnessed bald eagles catching fish from the Ponds. The Ponds are used seasonally by waterfowl, including ducks and Canadian geese. During the summer of 2022, the Applicant observed a pair of nesting geese raising two hatchlings proximate to the Ponds, and a pair of mallards raising several hatchlings proximate to the Ponds. While the Applicant uses the Ponds for their decreed uses through water stored by exchange, as noted in previous diligence applications and decrees, the Ponds are rarely in priority. According to a structure call analysis on the Colorado Division of Water Resources website, the Ponds were out of priority 99.88 percent of the time period beginning from the date of the prior diligence decree, February 28, 2017, to the date of this Application as of February 2023. It appears there were only five days in total during this time in which the Ponds were in priority, according to the structure call analysis for each of the Smith Pond Nos. 1-4. These dates included May 19, 2018, May 20, 2018, May 21, 2018, April 1, 2020, and April 2, 2020. During the same time period, there were 1,833 days in which the water rights in Smith Pond Nos. 1-4 were one hundred percent out of priority. Despite this limiting factor, the Applicant remains ready, willing, and able to utilize water rights decreed to the Ponds when in priority. **5. If claim to make absolute in whole or in part:** A. Date water applied to beneficial use: N/A. Amount: N/A. Use: N/A. B. The application shall include supporting evidence that applicant diverted water in-priority and applied such water to the beneficial uses claimed in the amounts claimed. N/A. C. Description of place of use where water is applied to beneficial use. Mark the location of area irrigated on a USGS topographic map and attach to this application a legible 8 ½ x 11 inch copy of the applicable portion of the map. N/A. **6. If the actual location of the structure is different from the location above, provide the actual description:** N/A. **7. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which the structures are located and upon which water is used and/or stored:** All structures that are the subject of this application are located upon the Applicant's property. **8. Remarks or other pertinent information:** WHEREFORE, the Applicant respectfully requests the Court enter a decree in which it: 1. Grants the Applicant's prayer that the Court find the Applicant has exercised reasonable diligence in developing the appropriation of conditional water rights for the Droz Creek Reservoir, Smith Pond No. 1, Smith Pond No. 2, Smith Pond No. 3, and Smith Pond No. 4, as set forth herein, and the conditional status of said water rights shall be continued and extended. 2. Grants the Applicant's prayer that the Court find that the Droz Creek Reservoir, Smith Pond No. 1, Smith Pond No. 2, Smith Pond No. 3, and Smith Pond No. 4 constitute a project or integrated system comprised of several features, as contemplated under C.R.S. § 37-92-301(4)(b). 3. For such further relief as the Court may deem proper.

CASE NO. 2023CW3011; Previous Case No. 16CW3064 – ELIZABETH W. DEAN, P.O. Box 64140, Colorado Springs, CO 80962 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Steven T. Monson and Ryan W. Farr of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921 (719) 471-1212).
Application for Reasonable Diligence and to Make Absolute in Part
EL PASO COUNTY

The Applicant seeks the initial finding of reasonable diligence under the original February 19, 2017 Decree in Case No. 16CW3064 that granted condition decrees for portions of the use and amounts of Applicant's three exempt residential wells. Dean Well No. 1. Legal Description: **Dean Well No. 1** is located on Applicants' property in the SW ¼ of the SW ¼, Section 15, Township 16 South, Range 67 West, 6th P.M. (El Paso County Assessor Parcel No 7615004021). approximately 1,225 feet from the South section line and 750 feet from the West section line. UTM coordinates: NAD83, Zone 13 S, Easting: 510213, Northing: 4278305. Dean Well No. 1 is permitted as an exempt well. Applicant's property is shown on **Exhibit A** attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Source: The source of the well is groundwater tributary to Little Turkey Creek, tributary to Turkey Creek, tributary to the Arkansas River. Date and Case No. of Original Decree: The original Decree was entered by this Court on February 19, 2017, in Case No. 16CW3064. Appropriation Date and Amount: The appropriation date is January 9, 1995 for 15 gallons per minute. The amount of 6 g.p.m. was decreed as absolute and 9 g.p.m. was decreed as conditional. Depth: Approximately 560 feet. Permit No: 186506. Use: Dean Well No. 1 is permitted and decreed for ordinary household uses inside three single family dwellings, the irrigation of not more than 1 acre of home gardens and lawns, the watering of domestic animals, and fire protection. Applicant was an absolute decree for such uses within her existing single family residence. Applicant was awarded a conditional right for such uses in two additional single family dwellings. **Dean Well No. 2.** Legal Description: Dean Well No. 2 is located on Applicant's property in the SW ¼ of the SW ¼, Section 15, Township 16 South, Range 67 West, 6th P.M. (El Paso County Assessor Parcel No 7615000002) approximately 1,200 feet from the south section line and 1,300 feet from the west section line. UTM coordinates: NAD83, Zone 13 S, Easting: 510379, Northing: 4278272. Dean Well No. 2 is permitted as an exempt domestic well. Applicant's property is shown on the attached Exhibit B. Source: The source of the well is groundwater tributary to Little Turkey Creek, tributary to Turkey Creek, tributary to the Arkansas River. Date and Case No. of Original Decree: The original Decree was entered by this Court on February 19, 2017, in Case No. 16CW3064. Appropriation Date and Amount: The appropriation date is December 4, 1970 for 15 gallons per minute. The amount of 9 g.p.m. was decreed as absolute and 6 g.p.m. was decreed as conditional. Depth: Approximately 500 feet. Permit No: 43918-A. Use: Dean Well No. 2 was decreed for ordinary household uses inside one single family dwelling, the irrigation of not more than 1 acre of home gardens and lawns, the watering of domestic animals, and fire protection. Applicant was granted an absolute right for all uses. Only the rate of flow remains conditional. Name of Structure. **Shared Well.** Legal Description: Shared Well is located on property owned by Anthony Acri and Kristina Acri described as a part of Lot 1 of the Eagle Canyon Subdivision located in the NE1 /4 of the SW1 /4 of Section 15, Township 16 South, Range 67 West of the 6th P.M., El Paso County, Colorado, comprising approximately 6.11 acres. (El Paso County Assessor Parcel No. 7615004020). Shared Well is approximately 2,200 feet from the South section line and 1,900 feet from the West section line. UTM coordinates: NAD83, Zone 13 S, Easting: 510549, Northing: 4278549. Shared Well is permitted as an exempt domestic well pursuant to Permit No. 179279. The Acri property is shown on the attached Exhibit C. Source: The source of the well is groundwater tributary to Little Turkey Creek, tributary to

Turkey Creek, tributary to the Arkansas River. Date and Case No. of Original Decree: The original Decree was entered by this Court on February 19, 2017, in Case No. 16CW3064. Appropriation Date and Amount: The appropriation date is April 4, 1994, for 15 gallons per minute, conditional. Applicant was decreed a conditional right to 15 g.p.m. based on an undivided one-third interest in Shared Well. However, the maximum pumping rate for Shared Well shall not exceed 15 g.p.m. pursuant to Division of Water Resources Well Permit No. 179279. Depth: Approximately 500 feet. Permit No: 179279. Use: Shared Well is permitted for use in three single family dwellings, for the irrigation of not more than one acre of home gardens and lawns, for the watering of domestic animals, and fire protection. In Case No. 16CW3064 Applicant was granted a conditional decree for her one-third interest in Shared Well resulting in a conditional right for use in one single family dwelling, irrigation of one-third of an acre of home gardens and lawns, the watering of domestic animals, and fire protection. Ownership of Shared Well. The Shared Well is jointly owned by Elizabeth Dean, Anthony Acri and Kristina Acri, and Gary McCowen and Anita McCowen. Applicant has a one-third interest in the Shared Well. The well is shared for each of the residential uses under a well sharing agreement between the three parties. During the diligence period from the entry of the decree, the Applicant has engaged in considerable efforts to protect all three of the conditional water rights by successfully engaging with other neighboring property owners in opposition of two gravel mining permit applications located upstream from the wells on the Little Turkey Creek basis. The mining water that was to be used from Little Turkey Creek and the disturbance of the geology were asserted to impair the groundwater source and recharge for the Applicant's three wells. The Applicant spent over \$75,000 in opposing and defeating these two mining applications. Dean Well No. 1 had the pump replaced in November of 2017 to improve the production of the well for its absolute and conditional uses at a cost of approximately \$2,800. The well production was increased from the 6 g.p.m. absolute decreed amount to 10 g.p.m., and thereby putting to beneficial use an additional 4 g.p.m. The property where Dean Well No. 1 is located has continued to be considered for a division of the 94 acre property into two additional parcels of 35 acres or more for family members, where the three residential uses of the well would be implemented under a well sharing agreement. The 2,500 gallon water storage tank for the well, that will also be used under the well sharing agreement, was repaired and improved at a cost in excess of \$1,100. For Dean Well No. 2, the pump has been rehabilitated by a licensed well contractor to continue and improve the yield of the well at a cost of approximately \$1,100. Whether the yield of the well have been able to be increased above the 6 g.p.m absolute water right has not yet been determined. The Shared Well is owned one third by Applicant and is currently being operated and maintained by the other two owners for their residential purposes. The Applicant continues to evaluate the construction of a residence upon the Applicant's property that will use and be benefited by the shared use of this well. A well sharing agreement prior to the decree remains in place. Well repair expenses have been incurred by the other two owners of the Shared Well that are currently using the well. Applicant has not yet had to share in these costs as her water use has not yet commenced. This list of diligence work for the three wells is not exhaustive. Based on the activities and expenditures described herein, the Applicant has established that it can and will complete the full development of the adjudicated conditional water rights and place them to beneficial use within a reasonable period of time. **Claim To Make Absolute**

In Part. Due to the replacement of the pump for Dean Well No.1 as discussed above, the production of that well has increased from 6 g.p.m. to 10 g.p.m. and has been applied to the decreed beneficial uses. As a result, the Applicant seeks to have an additional 4 g.p.m. of this conditional water right made absolute. Attached as Exhibit D is a copy of the November 1, 2017 Pump Installation Report and Production Test Report that documents the 10 g.p.m. production. If this request is granted, Dean Well No. 1 will have a total of 10 g.p.m. absolute with 5 g.p.m. remaining as the conditional water right. **Name of the Owners of the Land on Which Structure is Located Upon Which Water Is or Will Be Stored or Upon Which Water is or Will Be Placed to Beneficial Use:** Applicant is the owner of the land where the Dean Well No. 1 and Dean Well No. 2 is located and will be used (Exhibits A and B). Anthony Acri and Kristina Acri, whose address is 3095 Little Turkey Creek Road, Colorado Springs, Colorado 80926, are the owners of the land where the Shared Well is located (Exhibit C). Applicant is the owner of the land where the water from her one third share in the Shared Well will be used. Applicant requests the Court find that (1) Applicant has maintained diligence for the conditional water rights described herein; (2) that the Applicant can and will complete the decreed conditional appropriations; (3) that the Applicant has completed a portion of the decreed conditional appropriation for the Dean Well No. 1, and that an additional 4 g.p.m. be made absolute(4) that the remaining conditional groundwater rights described herein and as set forth in Case No. 16CW3064 continue in full force and effect for an additional diligence period; and (6) for such other relief as the Court deems appropriate.

CASE NO. 2023CW3012; Previous Case No. 06CW08 – SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT (SOUTHEASTERN); c/o Lee E. Miller, General Counsel; 31717 United Avenue, Pueblo, CO 81001 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Stephen H. Leonhardt, April D. Hendricks and Peter D. Jaacks; Burns, Figa & Will, P.C.; 6400 S. Fiddlers Green Circle, Suite 1000, Greenwood Village, CO 80111; (303) 796-2626; and Peter D. Levish, Southeastern, 31717 United Avenue, Pueblo, CO 81001; (303) 956-0656.)

Application for Finding of Reasonable Diligence
PUEBLO, CROWLEY, AND OTERO COUNTIES.

2. Purpose of Application: This Application requests a finding of reasonable diligence for Southeastern’s conditional appropriative rights of exchange decreed in Case No. 06CW08 (the “Non-Project Water Exchange”). These conditional exchanges allow Southeastern to divert water by exchange upstream on the Arkansas River at Pueblo Reservoir (including the proposed Pueblo Reservoir Enlargement), and to deliver to the downstream calling water right an equivalent amount of water from storage in Holbrook Reservoir No. 1 or Dye Lake, or from diversions at the Catlin Canal Headgate, High Line Canal Headgate, Holbrook Canal Headgate, Oxford Farmers Ditch Headgate or Rocky Ford Ditch Headgate. The water diverted by exchange will be stored in Pueblo Reservoir pursuant to a contract with the United States Bureau of Reclamation and then released for beneficial use within Southeastern’s district boundaries. The substitute supply of water for these exchanges is water that is owned, controlled, or leased by Southeastern or by a constituent entity of Southeastern, other than Fryingpan-Arkansas Project water or return flows therefrom. For the purposes of this Application, a “constituent entity” refers

to any entity served by Southeastern and located within Southeastern's district boundaries, whether a political subdivision, irrigation entity, or other entity. **3. Original Decree**: The conditional exchanges that are the subject of this Application were originally decreed in Case No. 06CW08 (February 14, 2017), by the District Court, Water Division 2, Colorado. **4. Exchange Reach**. The exchange reach is shown on the location map attached to the Application as **Exhibit A**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 4.1. The upstream terminus of the exchange reach is Pueblo Reservoir (described in paragraph 6.1, below). 4.2. The downstream terminus of the exchange reach is the point where the outlet for Holbrook Reservoir No. 1 returns water to the Arkansas River (described in paragraph 5.1, below). **5. Locations of delivery of substitute supply, initial exchange-from locations and process to add additional locations**. Southeastern's exchange contemplates that water diverted at the Holbrook Canal Headgate will be returned to the Arkansas River from the Holbrook Reservoir No. 1 Outlet or from the Dye Lake Outlet at the points where such water returns to the Arkansas River. Water diverted at any other ditch headgate described herein may be returned to the Arkansas River through the augmentation stations and other water delivery locations specifically described in this paragraph, or at other points under the ditches within the exchange reach described herein, using the process described in paragraph 5.6, below. 5.1. Holbrook Reservoir No. 1 Outlet is located in the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 7, Township 23 South, Range 55 West of the 6th P.M. in Otero County, Colorado and returns such water to the Arkansas River at an exchange-from point in the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 24, Township 23 South, Range 56 West of the 6th P.M. in Otero County, Colorado. The UTM coordinates for this structure are: UTMx=622616.2; UTMy=4213416.8.1 The WDID number for this structure is 1703511.2. 5.2. Dye Reservoir Outlet is in the Southeast $\frac{1}{4}$ of Section 5, Township 23 South, Range 56 West of the 6th P.M. in Otero County, Colorado. The diversion into the reservoir from the canal, which can also act as a release back to the storage canal, is in the Northeast $\frac{1}{4}$ of Section 5 Township 23 South, Range 56 West of the 6th P.M. The UTM coordinates for this structure are: UTMx=614523.9; UTMy=4215331.6. The WDID number Dye Reservoir is 1703510. The Dye Reservoir Outlet delivers water to the Arkansas River at an exchange-from point in the Southwest $\frac{1}{4}$ of Section 19, Township 23 South, Range 55 West of the 6th P.M. 5.3. Dye Wasteway & Augmentation Facility Outlet's confluence with the Arkansas River, as decreed in Case No. 11CW13 (Water Division 2). The structure is located in the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 5, Township 23 South, Range 56 West of the 6th P.M. UTMx=614354; UTMy=4201524. The WDID number for this structure is 1700751. The Dye Wasteway and Augmentation Facility Outlet delivers water to the Arkansas River at an exchange-from point in the Southwest $\frac{1}{4}$ of Section 19, Township 23 South, Range 55 West of the 6th P.M. 5.4. Catlin Canal Timpas Creek Augmentation Station, which returns water to Timpas Creek in the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 18, Township 24 South, Range 56 West of the 6th P.M. in Otero County, Colorado. The UTM coordinates for this structure are: UTMx=611957.5; UTMy=4201578.4. The WDID for this structure is 1700800. Substitute supplies delivered at this location are delivered to the Arkansas River at the confluence of Timpas Creek with the Arkansas River, which is an exchange-from point located in the North $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 25, and the South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 24, of

Township 23 South, Range 56 West of the 6th P.M. in Otero County, Colorado. 5.5. Rocky Ford Ditch Wasteway, in the North ½ of the Northeast ¼ of Section 30, Township 22 South, Range 57 West, 6th P.M., just below the Rocky Ford Ditch Rating Flume. The UTM coordinates for this structure are: UTMx=604601.9; UTMy=4217903.9 (NAD 83). The WDID number for this structure is 1700668. The Rocky Ford Ditch Wasteway returns water to the Arkansas River at an exchange-from point in the Northeast ¼ of Southwest ¼ of Section 28, Township 22 South, Range 57 West of the 6th P.M. 5.6. Additional structures delivering sources of substitute supply. Southeastern may exchange from other structures under the Holbrook Canal, Catlin Canal, High Line Canal, Oxford Farmers Ditch and Rocky Ford Ditch, provided that any such station returns water to a location above the existing Fort Lyon Canal Headgate. Prior to using any additional the structure to deliver substitute supply water, Southeastern must receive approval from the Division Engineer pursuant to the process set forth in Paragraph 9.6 of the 06CW08 Decree. **6. Structure at which water will be stored by exchange.** 6.1. Pueblo Reservoir. Pueblo Reservoir is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 in Township 20 South, Range 66 West, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, in Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, 24 and 25, in Township 20 South, Range 67 West, all of the 6th P.M. in Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section bears North 61° 21' 20" East, a distance of 2,511.05', all more particularly described in the decree in Case No. B-42135, District Court, Pueblo County, Colorado, as corrected in Case No. 02CW37. The current decreed and existing capacity is 357,678 acre-feet (WDID 1403526). 6.1.1. Decrees. Pueblo Reservoir was decreed in Case No. B-42135, Pueblo County District Court, on June 25, 1962, with an appropriation date of February 10, 1939 (Priority No. A-22C). The Decree was modified in Case No. 80CW6 (Water Division 2) on October 23, 1980 (amended to correct clerical error on April 29, 1981), to conform to the reservoir as built. The conditional portion of the water right has been maintained through a series of diligence proceedings, most recently Case No. 16CW3079 (Water Division 2). 6.1.2. Storage volume. The current decreed and existing capacity is 357,678 acre-feet. Of the decreed amount, 62,972 acre-feet, together with the right to refill, remain conditional. **7. Source of substitute supply water.** 7.1. The source of substitute supply water for the conditional exchanges that are the subject of this Application is "Non-Project Water," defined as those water rights, other than Fryingpan-Arkansas Project water or return flows from Fryingpan-Arkansas Project water (for which Southeastern already holds decrees), that: 7.1.1. Are owned, controlled or leased by Southeastern or by a constituent entity; 7.1.2. Are now or hereafter decreed for use in Water Division 2; and 7.1.3. May be stored in Pueblo Reservoir directly or by exchange, and used for exchange pursuant to decree or statutorily authorized administrative approval (including but not limited to such approval as authorized by C.R.S. §§ 37-92-308, 37-92-309, 37-80-120, 37-80.5-101, et seq. or 37-83-101, et seq.). 7.2. The decreed sources of substitute supply are limited to Non-Project Water sources described in the Record of Decision for the Arkansas Valley Conduit and Long-Term Excess Capacity Master Contract Final Environmental Impact Statement, United States Department of the Interior, Bureau of Reclamation (Feb. 27, 2014) and the Arkansas Valley Conduit and Long-Term Excess Capacity Master Contract Final

Environmental Impact Statement, prepared by the United States Department of Interior, Bureau of Reclamation, dated August 2013. These sources include: 7.2.1. 9.2 shares of the Oxford Farmers Ditch owned or leased by the Town of Fowler and changed in Case No. 13CW7 (Water Division 2). 7.2.1.1. Point of Diversion. On the south bank of the Arkansas River in the Northwest corner of Section 31, Township 21 South, Range 60 West of the 6th P.M. in Pueblo County, Colorado. The UTM coordinates for this structure are: UTMx=573604.7; UTMy=4226507.5. The WDID number for this structure is 1400541. 7.2.1.2. The Oxford Farmer's Ditch has two direct flow water rights; an appropriation of 13.4 c.f.s. for irrigation with a September 21, 1867 priority date, and an appropriation of 116.0 c.f.s. for irrigation with a February 26, 1887 priority date. Both were decreed on March 23, 1896 in Civil Action 2535, Pueblo County District Court. 7.2.2. 883.7 shares of the Holbrook Canal Company owned by the City of La Junta and changed in Case No. 11CW13 (Water Division 2). 7.2.2.1. Point of Diversion. The point of diversion is on the north bank of the Arkansas River in the Northeast ¼ of Section 24, Township 22 South, Range 58 West of the 6th P.M. in Crowley County, Colorado. The UTM coordinates for this structure are: UTMx=601202.8; UTMy=4220086.1. The WDID number for this structure is 1700554. 7.2.2.2. The Holbrook Canal (a/k/a Lake Canal) was decreed in the 1905 Decree by the District Court, Bent County, Colorado, with an appropriation date of September 25, 1889, for 155 c.f.s., from the Arkansas River. A second priority was awarded by the 1905 Decree with an appropriation date of August 30, 1893, for 445 c.f.s. 7.2.2.3. Holbrook Canal/Holbrook Reservoir storage right (a/k/a Reservoir No. 1) was decreed April 8, 1905, by the District Court, Bent County, Colorado, with an appropriation date of March 2, 1892, for 600 c.f.s. and 185,001,980 cubic feet (4,247.06 a.f.). Holbrook Canal/ Holbrook Reservoir storage right (a/k/a Reservoir No. 1)'s second right was decreed February 3, 1927, by the District Court, Bent County, Colorado, with an appropriation date of September 15, 1909, for 600 c.f.s. and 3,196 a.f., 2,000 a.f. of which was transferred to the Dye Reservoir in Case No. W-3905 by Decree dated September 13, 1974. 7.2.2.4. Holbrook Canal/Dye Reservoir storage right was decreed on February 3, 1927, by the District Court, Bent County, Colorado, with an appropriation date of October 10, 1903, for 600 c.f.s. and 4,500 a.f., 2,000 a.f. of which was transferred to the Holbrook Reservoir in Case No. W-3905 by Decree dated September 13, 1974. Holbrook Canal/Dye Reservoir's second storage right was decreed on February 3, 1927, by the District Court, Bent County, Colorado, with an appropriation date of September 3, 1909 for 400 c.f.s. and 3,486.00 a.f. 7.2.3. 218.32 shares of the Catlin Canal Company owned by the City of Rocky Ford and changed in Case Nos. 06CW49 and 10CW7 (Water Division 2). 7.2.3.1. Point of Diversion. A point on the South bank of the Arkansas River, in the North one-half of the Northwest quarter of Section 19, Township 22 South, Range 58 West of the 6th P.M. in Water District No. 17 in Otero County, Colorado. The UTM coordinates for this structure are: UTMx=592535.7; UTMy=4220318.8. The WDID number for this structure is 1700552. 7.2.3.2. The following water rights are decreed to the Catlin Canal pursuant to *In re Adjudication of Priorities of Right to the Use of Water for Irrigation in Water District No. 17*, Decree entered April 8, 1905 by the Bent County District Court ("1905 Decree"): 11.4.3.2.1. 22 c.f.s. in the water right assigned Priority No. 2 by the 1905 Decree, with an appropriation date of April 10, 1875. Pursuant to *Reorganized Catlin Consolidated Canal Co. v. Hinderlider*, 80 Colo. 522, 253 P. 389 (1927), this 22 c.f.s. interest is required to be

administered as junior to the Priority No. 4 Water Right, as described in the 1905 Decree. 7.2.3.3. 226 c.f.s. in the water right assigned Priority No. 5 by the 1905 Decree, with an appropriation date of December 3, 1884. 7.2.3.4. 97 c.f.s., which is the entire water right assigned Priority No. 7 by the 1905 Decree, with an appropriation date of November 14, 1887. 7.2.4. An additional 194.173 shares of the Catlin Canal Company (water rights are described in paragraph 7.2.3, above) owned by the City of Rocky Ford. 7.2.5. 26 shares of the Catlin Canal Company (water rights are described in paragraph 7.2.3, above) owned by the Town of Manzanola. 7.2.6. 4.197 shares of the High Line Canal Company owned by the Town of Manzanola. 7.2.6.1. Point of Diversion. In the south bank of Arkansas River in Pueblo County, Colorado, in Northeast ¼ of the Northeast ¼ of Section 17, Township 21 South, Range 61 West of the 6th P.M. bearing South 48° 28' West, 459.36 feet from the corners of Sections 8, 9, 16 and 17 in Township 21 South, Range 61 West of the 6th P.M. The UTM coordinates for this structure are: UTMx=566565.0; UTMy=4231011.0. The WDID for this structure is 1400542. 7.2.6.2. High Line Canal's water rights have been decreed as follows:

District	Priority No.	Priority Date	Adjudication Date	Amount in CFS
14	4	12/31/1861	03/23/1896	40.0
14	25	07/01/1869	03/23/1896	16.0
17	3	03/07/1884	04/08/1905	32.5
14	48	06/30/1885	03/23/1896	30.0
14	50	03/11/1886	03/23/1896	2.0
14	60	01/06/1890	03/23/1896	378.0
14	61	12/31/1890	03/23/1896	2.5
14	20	09/21/1867	03/23/1896	0.6

7.2.7. 8.7 shares of the Rocky Ford Ditch Company owned by the City of Rocky Ford and changed in Case Nos. 06CW49 and 10CW7. 7.2.7.1. Point of Diversion. On the south bank of the Arkansas River in the Northwest ¼ of the Northeast ¼, Section 30, Township 22 South, Range 57 West of the 6th P.M. in Otero County, Colorado. The UTM coordinates for this structure are: UTMx=602903.3; UTMy=4218898.5. The WDID number for this structure is 1700558. 7.2.7.2. Rocky Ford Ditch, Priorities No. 1 and 14: 7.2.7.2.1. Date Decree entered: April 8, 1905. 7.2.7.2.2. In re Adjudication of Priorities of Right to the Use of Water for Irrigation in Water District No. 17, Bent County District Court. 7.2.7.2.3. Source. Arkansas River. 7.2.7.2.4. Appropriation dates and amounts: a. Priority No. 1. May 15, 1874; Amount: 111.76 c.f.s.; b. Priority No. 14. May 6, 1890; Amount: Originally decreed for 96.54 c.f.s. Of the 96.54 c.f.s., 92.11 c.f.s. have been abandoned and only 4.43 c.f.s. remain. 7.3 Additional sources of substitute supply. Southeastern may include additional fully consumable Non-Project Water attributable to additional shares of the Oxford Farmers Ditch, Holbrook Canal Company, Catlin Canal Company, High Line Canal Company, or Rocky Ford Ditch Company owned or leased by Southeastern or its constituent entities as sources of substitute supply for this exchange ("Additional Shares"), provided that the Additional Shares are either decreed for the intended use by exchange, use by exchange is approved by substitute water supply plan authorized by C.R.S. § 37-92-308(4) or (7), or use by exchange is approved in a fallowing and leasing pilot project approved pursuant to C.R.S. § 37-60-115(8). Use of such Additional Shares will be pursuant to paragraph 11.5 and 11.6 of the decree in Case No.

06CW08. **8. Description of Conditional Appropriative Rights of Exchange.** 8.1. Source. Arkansas River. The sources of substitute supply are described in paragraph 7 above. 8.2. Date of initiation of appropriation. June 2003. The priority for these rights relates back to December 2005, as decreed in Case No. 06CW08. 8.3. Uses. The water will be used beneficially for the municipal purposes for which the Non-Project Water supplied is decreed at the time of exchange. 8.4. Date water applied to beneficial use. Not applicable. 8.5. Amount. Southeastern’s exchanges will be operated at a rate up to the rate at which inflows at Pueblo Reservoir would have passed through the reservoir had no exchange been made. Direct flow exchanges (exchanges from points other than storage releases) will not exceed a cumulative instantaneous rate of 50 c.f.s. or an aggregate amount of 2,000 acre-feet per year. 8.5.1. Exchange Amount from Holbrook Facilities. Exchanges from the points listed in paragraphs 5.1-5.3, including any exchanges from storage, shall not exceed a maximum annual volume of 450 acre-feet per year or the following **maximum rates of exchange by month:** Mar: 14.4 c.f.s.; Apr: 11.1 c.f.s.; May: 13.3 c.f.s.; June: 13.5 c.f.s.; July: 14.2 c.f.s.; Aug: 14.4 c.f.s.; Sept: 14.4 c.f.s.; Oct: 14.4 c.f.s.; Nov: 14.4 c.f.s. 8.5.2. The exchange matrix shown below indicates the decreed instantaneous exchange rates in cubic feet per second (c.f.s.) and annual volumetric exchange limits in acre-feet per year for the exchange-from points to Pueblo Reservoir (the exchange-to point).

Exchange-To Location Pueblo Reservoir			Maximum Exchange Amounts	
			c.f.s.	acre-feet/year
Exchange-From Locations	Approved Augmentation Stations Following Diversion at the Following Headgates	High Line Canal	50 ¹	2,000 ¹
		Oxford Farmers Ditch		
		Catlin Canal		
		Holbrook Canal		
		Rocky Ford Ditch		
	Dye Reservoir	14.4 ²	450 ²	
	Holbrook Reservoir			

Notes: 1. Cumulative for all direct flow exchange structures, including all approved augmentation stations under the listed ditches; and 2. Cumulative for all points listed in 5.1 - 5.3, including both storage structures. 8.5.3. Rate of Diversion Limitation: The rate of diversion for the exchanges is further limited to the lesser of: (1) the available stream flow and reservoir inflow at the exchange-to location; or (2) the rate at which Southeastern is delivering its substitute water supply less any transit loss assessed from the point of delivery of substitute supply to the exchange-from point. **9. Detailed outline of work done toward operation of exchanges, completion of project, and application of water to beneficial use:** 9.1. Southeastern intends to use the Non-Project Water Exchange described in this Application primarily to deliver water to participants in the Arkansas Valley Conduit (“AVC”) for beneficial use. During the diligence period, lasting from February 2017 to February 2023, Southeastern has worked extensively towards the development and completion of the AVC. The AVC is an authorized feature of the Fryingpan-Arkansas Project (“Project”) that was originally contemplated in the Project’s

authorizing legislation to provide water to municipalities and water providers within Southeastern's boundaries in the Arkansas River Valley. The AVC, currently under construction, consists of a 103-mile pipeline from Pueblo to Lamar, with spurs and delivery lines that will deliver water from the main pipeline directly to the AVC participants. By agreement, the development of the AVC is being cooperatively managed by Southeastern and the United States Bureau of Reclamation ("Reclamation"). Consequently, both Southeastern's and Reclamation's actions and expenditures evidence diligence with respect to the development of the Non-Project Water Exchange at issue in this Application. Work on the AVC during the diligence period includes the following:

9.1.1. From 2017 to 2022, Southeastern worked toward the development of the AVC by completing various aspects of the planning and design phase including: preliminary engineering on an alternative design to the Preferred Alternative in Reclamation's Record of Decision; coordination with the U.S. Geological Survey for water quality studies to support the AVC; public education and outreach; coordination with Reclamation on AVC activities, including Intergovernmental Personnel Act (IPA) funding; consultant services for state and federal intergovernmental coordination; public education and outreach; development of a project charter and Project Management Plan with Reclamation for the AVC; hiring a consulting firm to develop profiles of participating water systems and to refine AVC construction estimates for spurs and delivery lines; meetings with stakeholders to discuss funding availability for the AVC; and coordination with the Colorado Water Conservation Board (CWCB) and other state agencies in support of future loans and grants. Southeastern has spent in excess of \$2.2 million on these activities during the diligence period.

9.1.2. Southeastern negotiated and entered into a three-party contract with Reclamation and Pueblo Water in which Pueblo Water agreed to provide conveyance, treatment and transmission of AVC water to a point 15 miles from Pueblo Reservoir.

9.1.3. Southeastern secured \$100 million in total funding for the AVC from the CWCB, which was approved by the Colorado General Assembly in 2020. In 2022, Southeastern negotiated an intergovernmental agreement with Otero County, by which Otero County agreed to serve as the fiscal agent for the AVC. This agreement allows Southeastern and Otero County to access grant funds awarded by the CWCB for the construction of delivery lines to AVC participants.

9.1.4. Southeastern entered into a Contract with the United States Bureau of Reclamation for the Use of Excess Capacity in the Facilities of the Project on December 23, 2016 ("Excess Capacity Master Contract"). The Excess Capacity Master Contract allows participating constituent entities of Southeastern to store non-Project Water in Pueblo Reservoir when space is available. During the diligence period, Southeastern has negotiated and entered into subcontracts with several AVC participants to facilitate the storage of non-Project Water in Pueblo Reservoir. During the diligence period, the District has paid over \$1.7 million to the Bureau of Reclamation under its Excess Capacity Contract obligations during the diligence period.

9.1.5. Reclamation and Southeastern developed a Project Management Plan for the AVC, which was approved on April 16, 2020. Under the Project Management Plan for the AVC, the Bureau of Reclamation is responsible for design and construction of the 103-mile trunk line for the AVC, while Southeastern will build the necessary spurs and delivery lines to deliver water from the trunk line to the AVC participants. Southeastern has worked with Reclamation to begin construction of the AVC during the diligence period.

9.1.6. During the diligence period, Reclamation has spent in excess of \$20.5

million on AVC planning, development, and construction activities, including National Environmental Protection Act (NEPA) investigations and reports, project design, geotechnical surveys, rights of way investigation, and contract negotiations. 9.1.7. In 2022, the AVC was allocated \$60 million from the Fiscal Year 2022 Infrastructure Investment and Jobs Act to fund Reclamation's obligations for the construction of the AVC's trunk line. In October 2022, Reclamation awarded a \$42.9 million contract for the construction of the first 6-mile section of the trunk line, with construction of this initial section scheduled to begin in 2023 and be completed in 2024. 9.2. As this Court has previously found, the construction, operation and maintenance of parts of the Fryingpan-Arkansas Project demonstrate reasonable diligence for other parts of the Project. See, e.g., Decree in Case No. 2020CW3069, Water Division 2, at 6, ¶ 7 (May 10, 2021). The collection, transportation, storage, and power systems of the Fryingpan-Arkansas Project comprise one overall, integrated water supply project. The AVC is an integral part of the Project, and the exchanges at issue in this Application are essential to the delivery of water through the AVC to Southeastern's constituents in the Arkansas River Valley. Reasonable diligence on the Fryingpan-Arkansas Project is therefore reasonable diligence on the Non-Project Water Exchange. See *id.* 9.2.1. Work in connection with the Fryingpan-Arkansas Project and all its decreed diversions has been prosecuted with reasonable diligence. The existing East Slope structures of the Fryingpan-Arkansas Project have been used to convey and store Project Water, including that diverted from the West Slope, and to deliver such water for decreed beneficial uses. Southeastern has contractual agreements for planning, construction, operation, maintenance and repayment of the Fryingpan-Arkansas Project with the United States Bureau of Reclamation. Consequently, the acts of the Bureau of Reclamation evidence diligence with respect to Southeastern's water rights. 9.2.2. Fryingpan-Arkansas Project activities include operation, maintenance and improvement of the collection system and storage facilities, including Pueblo Reservoir. Operation of the Project is subject to the terms of Southeastern's Water Division No. 5 and Division No. 2 Decrees, the Operating Principles, and the Congressional authorizing legislation. Current diversions and recordkeeping are integral to Southeastern's future exercise of the exchanges herein. During the diligence period, Southeastern spent more than \$20 million on the East Slope and West Slope Project operation and maintenance costs. 9.2.3. During the diligence period, Southeastern has expended \$1,900,000 for engineering and legal fees and costs, primarily to protect Southeastern's West and East Slope water decrees and for further Project development during the diligence period. Southeastern has appeared as a party in various water rights proceedings involving water rights along the Arkansas River and its tributaries in order to protect Southeastern's various decreed rights in the Fryingpan-Arkansas Project. Southeastern also has expended substantial executive time and legal and engineering expense toward protecting and administering the Winter Water Storage Program in Pueblo Reservoir pursuant to the Decree in Case No. 84CW179, which program contributes to repayment of the Fryingpan-Arkansas Project costs. Moreover, Southeastern has taken part in various legislative, administrative and judicial proceedings to protect Southeastern's rights in the Fryingpan-Arkansas Project, including its absolute and conditional East Slope water storage and exchange rights. 9.2.4. Southeastern has been diligent in the development of the remaining conditional water rights for the Project, and has been awarded findings of reasonable diligence for both its West Slope and East

Slope conditional Project water rights, in Case Nos. 18CW3063 (Water Division No. 5) and 16CW3079 (Water Division No. 2), respectively. Moreover, in Case No. 16CW3076, Water Division 2, Southeastern adjudicated changes in points of diversion and changes of use for several of the Project's conditional Division 2 water rights decreed in Civil Action No. 5141 (Chaffee County District Court). These changes, decreed on November 11, 2018, will better maintain the feasibility of future development and use of those conditional rights as the Fryingpan-Arkansas Project is developed and operated. 9.2.5. Southeastern has also obtained findings of reasonable diligence for the development of its other conditionally decreed exchanges that facilitate the delivery of Project Water to its constituents. Southeastern's exchanges help to "secure the greatest benefit from the use and reuse of imported project waters within project boundaries in the State of Colorado," as provided in the Operating Principles and contemplated in the decrees for Southeastern's water rights. Southeastern's activities with regard to these exchanges demonstrate reasonable diligence with respect to Southeastern's water rights for the Project. 9.2.5.1. In Case No. 20CW3069, Southeastern made absolute an additional portion of its appropriative right of exchange originally decreed in Case No. 97CW160, and received a finding of reasonable diligence for the remaining conditional portion of that water right. That exchange enables Southeastern to deliver Project Water to its constituents with storage facilities and points of diversion in the South Arkansas River drainage. 9.2.5.2. In Case No. 17CW3046, Water Division No. 2, Southeastern made absolute an additional portion of its appropriative right of exchange decreed in Case No. 99CW160, and received a finding of reasonable diligence for the remaining conditional portion of this water right. That exchange enables Southeastern to deliver Project Water to facilities along Grape Creek for use by entities within Southeastern's boundaries that may be served by releases from the DeWeese-Dye Reservoir. 9.2.5.3. In Case No. 19CW3028, Water Division No. 2, Southeastern received a finding of diligence for its exchange of Project Water Return Flows originally decreed in Case No. 01CW151. This exchange allows Southeastern to store surplus return flows from municipal and irrigation use of Project Water in Pueblo Reservoir for subsequent use by entities within Southeastern's boundaries. 9.3. The work performed and actions taken during the diligence period demonstrate Southeastern's continuing need for and intent to develop the conditional exchange rights that are the subject of this Application. Moreover, these actions demonstrate that the substitute water supplies identified in this Application can and will be diverted by exchange, that the exchanged water can and will be beneficially used, and that Southeastern can and will complete the development of the exchanges at issue in this Application with diligence and within a reasonable time. **10. Names and Addresses of Owners of Land on which the Structures are Located:** 10.1. Holbrook Reservoir No. 1, Dye Lake and the Holbrook Canal Headgate are owned by the Holbrook Mutual Irrigating Company, P.O. Box 511, La Junta, Colorado 81050-0511; (719) 383-3000. 10.2. According to the real property records of Crowley County, Colorado, the land underlying the Holbrook Canal Headgate is owned by William Stewart Carle, 3 Mirada Road, Colorado Springs, Colorado 80906. 10.3. According to the real property records of Otero County, Colorado, portions of the land inundated by Dye Lake are owned by Quarter Circle LT, Inc., 2475 Lane 16, Ordway, Colorado 81063; and Raymond E. and Frances A. Carter, 17248 County Road HH.50, Rocky Ford, Colorado 81067. 10.4. According to the real property records of Otero County, Colorado, portions of the land

underlying the Dye Lake outlet are owned by Frank Minor Blackford, P.O. Box 293, La Junta, Colorado 81050. 10.5. According to the real property records of Otero County, Colorado, portions of the land inundated by Holbrook Reservoir No. 1 are owned by the State of Colorado, Phillip J. Weiser, Esq., Colorado Attorney General, 1300 Broadway, Denver, CO 80203. 10.6. According to the real property records of Otero County, Colorado, portions of the land underlying the outlet for Holbrook Reservoir No. 1 are owned by Kenneth and Christy Casper, 26826 County Road GG, Rocky Ford, CO 81067-9471. 10.7. According to the real property records of Otero County, Colorado, portions of the land underlying the Holbrook No. 1 return to the Arkansas River are owned by Larry N. and Nancy A. McElroy, P.O. Box 471, Swink, Colorado 81077. 10.8. The Catlin Canal Headgate and the Catlin Canal Augmentation Stations are owned by the Catlin Canal Company, P.O. Box 174, Manzanola, Colorado 81058; (719) 462-5293. 10.9. The High Line Canal Headgate is owned by the High Line Canal Company, 963 Elm Avenue, Rocky Ford, Colorado 81067; (719) 462-5620. 10.10. According to the real property records of Pueblo County, Colorado, portions of the land underlying the diversion point for the High Line Canal are owned by Fremont Paving and Redi-Mix Inc., P.O. Box 1091, Canon City, CO 81212. 10.11. The Oxford Farmers Ditch Headgate and Augmentation Station are owned by the Oxford Farmers Ditch Company, 7150 Hwy 50, Manzanola, Colorado 81058; (719) 263-5534. 10.12. According to the real property records of Pueblo County, Colorado, portions of the land underlying the diversion point for the Oxford Farmers Ditch are owned by Daniel J. & Barbara J. Gaudreault, P.O. Box 69, Elizabeth, Colorado 80107. 10.13. According to the real property records of Otero County, Colorado, portions of the land underlying the Oxford Farmers Ditch Augmentation Station are owned by Leonard Joe and Jean Marie Corsentino, 33138 County Road 3, Fowler, Colorado 81039. 10.14. The Rocky Ford Ditch Headgate and Augmentation Station are owned by the Rocky Ford Ditch Company, 17850 RD JJ, Rocky Ford, Colorado 81067; (719) 254-7984. 10.15. According to the real property records of Otero County, Colorado, portions of the land underlying the Rocky Ford Ditch Augmentation Station are owned by Larry Hammond, 32797 County Road 14.50, Rocky Ford, Colorado 81067. 10.16. Pueblo Reservoir and the surrounding land are owned by the U.S. Department of Interior, Bureau of Reclamation, ("Reclamation"), Eastern Colorado Area Office, 11056 West County Rd. 18-E, Loveland, Colorado 80537-9711. 10.17. According to the real property records of Otero County, Colorado, portions of the land surrounding the confluence of Timpas Creek and the Arkansas River are owned by Larry N. and Nancy A. McElroy, P.O. Box 471, Swink, Colorado 81077, and Van Boven Holding Co., LLC, P.O. Box 796, Rocky Ford, Colorado 81067. WHEREFORE, Southeastern respectfully requests that this Court enter a decree (1) finding that Southeastern has exercised reasonable diligence in the development of the conditional rights of exchange that are the subject of this Application, and (2) continuing the conditional water rights in full force and effect for another six years, until the date set for a subsequent application for a finding of reasonable diligence. Southeastern also seeks such other and further relief as this Court deems just and proper.

CASE NO. 2023CW3013; Previous Case Nos. 2003CW026, 2010CW027, and 2016CW012 – TIFFANY W. LOVETT, c/o Timothy C Sanford, MFO Management Co., 111 E. Court St. Suite 3D, Flint, MI 48502 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Beth Ann J. Parsons, FAIRFIELD AND

WOODS, P.C., 1801 California Street, Suite 2600, Denver, Colorado 80202, Phone (303) 830-2400)

Application For Finding of Reasonable Diligence

CHAFFEE COUNTY

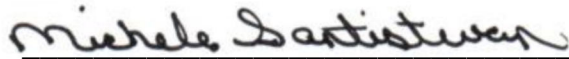
2. Name of Structure: Olson Ditch (WDID 1100589). **3. Description of conditional water right:** A. Date of Original Decree: May 7, 2004, Case No. 2003CW026, District Court, Water Division 2, State of Colorado. B. List of Subsequent Diligence Decrees: September 23, 2010, Case No. 10CW027, and February 15, 2017, Case No. 2016CW012, District Court, Water Division No. 2, State of Colorado. C. Location: A point on the north bank of Powell Creek in the NE ¼ of the NW ¼ of Section 35, Township 13 South, Range 79 West, 6th P.M., Chaffee County, Colorado, being approximately 1,050 feet from the north section line and 1,550 feet from the west section line of said Section 35. Applicant provides the following coordinates to help further identify the approximate relevant location utilizing the Universal Transverse Mercator (UTM) grid system projection: 13S 396234E, 4304200N. D. Source: Powell Creek, an intermittent tributary of the Arkansas River. E. Appropriation Date: July 5, 2002. F. Amount: 0.4 c.f.s. G. Use: Stock watering and irrigation of 20 acres land west of County Road 361 in the S ½ of the SE ¼ Section 26, Township 13 South, Range 79 West, 6th P.M., Chaffee County, Colorado. **4. Detailed outline of what has been done toward completion of the appropriation and application to a beneficial use as conditionally decreed.** Applicant purchased the Olson Ditch conditional water right and the associated relevant land interests (“Property”) on January 10, 2019. Applicant’s evaluation of the Property, including the condition of the ditch and relevant structures associated with the Olson Ditch conditional right, and prospective uses of the Property and conditional water rights, is ongoing. Further, Applicant has engaged counsel as an exercise of reasonable diligence for development of the right. **5. Water applied to beneficial use:** 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:** N/A. WHEREFORE, Applicant requests the Court to enter its decree and ruling as follows: 1. To make a finding of reasonable diligence with respect to the Olson Ditch that was conditionally decreed in Case No. 2003CW025, and continued in effect in Case Nos. 2010CW026 and 2016CW012, and providing that a subsequent showing of diligence on the right be made six years from the date of entry of a decree of diligence; 2. Any other ruling the Court deems appropriate in the above-captioned matter.

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 April 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 10th day of March, 2023.





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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