

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING MARCH 2021.  
(This publication can be viewed in its entirety on the state court website at:  
[www.courts.state.co.us](http://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 March 2021, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved, and description of ruling sought as reflected by said applications, or amendments, are as follows:

**CASE NO. 2019CW3089; UPPER ARKANSAS WATER CONSERVANCY DISTRICT, ACTING THROUGH THE UPPER ARKANSAS WATER ACTIVITY ENTERPRISE (“UAWCD”), P.O. Box 1090, Salida, Colorado 81201** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorney: LAW OF THE ROCKIES, Kendall K. Burgemeister, Atty. Reg. #41593, 525 North Main Street Gunnison, CO 81230, Phone: 970-641-1903)

Amendment to Application for a Change of Water Rights

**CHAFFEE, CUSTER, FREMONT, LAKE, AND PUEBLO COUNTIES**

Summary of Amendment. The original Application for a Change of Water Rights filed in this case sought a change of 0.145 cfs of Priority 15 and 0.535 cfs of Priority 43, decreed to the Cottonwood Irrigating Ditch (WDID 1100648). Subsequently, UAWCD entered into a contract to purchase an additional 0.035 cfs of Priority 15 and an additional 0.145 cfs of Priority 43. The primary purpose of the Amendment is to add these additional quantities as water rights to be changed in this case. Additionally, while UAWCD does not believe it is legally necessary, to the extent the Water Court may require it, UAWCD appropriates the return flows from the Changed Rights to the extent necessary to be entitled to forego replacing historical return flows when there is no downstream call or the downstream call is junior to March 31, 2021, and to fully consume the portion of the Changed Rights that otherwise would have been used to make such replacement. Description of Changed Rights. In this case, UAWCD seeks to change a portion of the water rights decreed to the Cottonwood Irrigating Ditch that was previously quantified in Case No. 79CW172 (Div. 2), more particularly described as follows: Name of structure: Cottonwood Irrigating Ditch (WDID 1100648). Legal description of structure as described in most recent decree that adjudicated the location: On the south bank of Cottonwood Creek, in the SW1/4NE1/4, Section 13, Township 14 South, Range 79 West, 6<sup>th</sup> P.M., in Chaffee County. Decreed source: Cottonwood Creek, tributary to the Arkansas River. Appropriation dates, amounts decreed, and amounts Applicant intends to change:

Priority	Appropriation Date	Amount Decreed	Amount Applicant Intends to Change
15	July 31, 1866	6 cfs	0.18 cfs
43	December 31, 1872	13 cfs	0.68 cfs

The portion of the above-described rights that Applicant intends to change are referred to herein as the “Changed Rights.” Original and all relevant subsequent decrees for all of the above water rights: CA-1127 (6/19/1890, District Court, Chaffee County). 79CW172

(January 9, 1981, Water Division 2). Other portions of the Cottonwood Irrigating Ditch that are not being changed in this case were the subject of Case Nos. CA-4396, CA-4738, and W-4411. Decreed uses: Irrigation. Detailed description of proposed change: UAWCD operates existing plans for augmentation that augment out-of-priority depletions from structures located within portions of UAWCD's territory (See, e.g., 92CW84, 94CW5, 06CW32). UAWCD also operates a Rule 14 replacement plan to replace depletions from wells located within UAWCD's boundaries. UAWCD may also obtain approval of additional plans for augmentation and/or substitute water supply plans (or similar administratively approved plans that may be authorized by statute in the future) to replace out-of-priority depletions from structures located within UAWCD's boundaries. In this case, UAWCD seeks to change the Changed Rights to allow their use as a source of augmentation or replacement water in all such plans (the "Changed Uses"). UAWCD's use of the Changed Rights for the Changed Uses may occur by applying stream depletion credits from the Changed Rights as they accrue to the stream, or through storage in and subsequent release from the storage structures listed below: Pueblo Reservoir (WDID: 1403526); O'Haver Reservoir (WDID: 1103921); North Fork Reservoir (WDID: 1103300); Boss Lake Reservoir (WDID: 1103920); Cottonwood Lake (WDID: 1104005); Rainbow Lake (WDID: 1103535); DeWeese Reservoir (WDID: 1303613); Twin Lakes Reservoir (WDID: 1103503); Conquistador Reservoir (WDID: 1303535); Franklin Reservoir (a/k/a Ice Lake) (WDID 1103511). Water Court Rule 4(a) only requires an amendment to an application to state the legal description of the structures to which the amendment applies. The legal descriptions of these storage structures are provided in the original application on file with the Court. (All attachments/Exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court). The above-described uses may be accomplished directly or by exchange, including by exchange pursuant to UAWCD's exchange decreed in Case No. 04CW96. The historical consumptive use of the Changed Rights was determined in Case No. 79CW172. In that case, 1 cfs owned by the applicants was found to irrigate 26 acres, resulting in an average annual consumptive use of 34 acre-feet per year. Those findings are not subject to re-litigation in this case. *Williams v. Midway Ranches Prop. Owners Ass'n*, 938 P.2d 515, 524-26 (Colo. 1997). UAWCD is the successor in interest to the applicants in Case No. 79CW172, and the Changed Rights are a portion of the rights quantified in 79CW172. The Changed Rights are 86% of the water rights changed in 79CW172, therefore, the historical consumptive use of the Changed Rights is 29.24 acre-feet per year. In Civil Action No. 4396 (Chaffee County), the point of diversion of another portion of the Cottonwood Irrigating Ditch water rights was changed to a point on the southeast bank of Cottonwood Creek, in the W1/2E1/2 Section 13, Township 14 South, Range 79 West, 6<sup>th</sup> P.M., from whence the northwest corner of said Section 13 bears North 52°33' West a distance of 4425 feet. This new point of diversion is sometimes referred to as Cottonwood Irrigating 2 and is assigned WDID 1100936. Per the Decree entered in Case No. W-4411, Cottonwood Irrigating 2 is used as the point of diversion and measurement for the 3.8 cfs changed in Case No. W-4411. Cottonwood Irrigating 2 is located approximately 200 feet or less upstream of the Cottonwood Irrigating Ditch. Because the Cottonwood Irrigating 2 is already set-up divert and return water to Cottonwood Creek, UAWCD requests the flexibility to divert, measure, and administer the Changed Rights at the Cottonwood Irrigating 2 point of diversion. Return flows from the historical use of the Changed Rights

accrued to the Arkansas River. UAWCD requests the right to use any fully consumable water rights in its portfolio, but not Fryingpan-Arkansas Project Water, to comply with any obligation to maintain historical return flows from the Changed Rights in time, location, and amount. When return flows are replaced using water other than the Changed Rights, the corresponding diversion of the Changed Rights shall be a fully consumable depletion credit available for the Changed Uses. The other rights that UAWCD may use to replace return flows include fully consumable transmountain water attributable to shares of Twin Lakes Reservoir and Canal Company owned, leased, or controlled by UAWCD (“Twin Lakes Water”); North Fork Reservoir storage rights; O’Haver Reservoir storage rights; Water Leased from Board of Water Works of Pueblo, Colorado; UAWCD’s interest in the Alfred Katzenstein Ditch No. 1 (aka A. Katzenstein Ditch No. 1) (Priority Nos. 51 and 207(B)); Conquistador Reservoir No. 1 storage rights; UAWCD’s interest in the Friend Ranch Water Rights changed in 07CW111 and 17CW3037, all as more particularly described in the original Application and Amendment on file with the Water Court in this case. **Exhibit A to C** attached to the original Application are unchanged as a result of this amendment and are incorporated herein by reference. This amendment does not contemplate any new diversion or storage structure, or modification to any existing diversion or storage structure that was described in the original Application. Owners of land where such structures are located will be unaffected by the amendment.

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**CASE NO. 2021CW3; Previous Case Nos. 08CW51 and 14CW20 – ELENA COPPOLA, PO Box 587, La Veta, CO 81055, (719) 742-3717**

Application for Finding of Reasonable Diligence

**HUERFANO COUNTY**

**Name of Structure:** Petrie Pond, Type: Reservoir. **Date of original decree:** 2008, Case No: 2008CW51, Water Div 2. **Subsequent decrees:** 2015, Case No: 2014CW20, Water Div 2. **Legal Description:** The decreed location for the Petrie Pond dam is in the SW ¼ of the SW ¼ Section 34, Township 29 South, Range 68 West, 6th P.M., 1363 feet from the South line and 673 feet from the West line of Section 34, with the UTM coordinates erroneously switched: GPS Location: Northing 0500382; Easting 4147884. The actual location of Petrie Pond is in the NW ¼ SW ¼ Section 34, Township 29 South, Range 68 West, 6th P.M., Huerfano County, Colorado. The UTM Coordinates for the Petrie Pond dam above the outlet are: Northing 4147966 and Easting 500452 NAD 83 Zone 13N. See general location map attached to the application. (Attachments or Exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court). **Source of water:** Deer Creek **Appropriation Date:** December 31, 1946. **Amount:** 35phf, **Use:** Irrigation of 25 acres in the W ½ of W ½ Section 34T 29S, R68W 6<sup>th</sup> p.m. Huerfano County CO as an absolute right stock water. **Detailed description of what has been done toward completion of conditional decree:** Invoice attached to application of all work done to date, agi-drain replaced, and pond cleaned out, not enlarged due to dry conditions water rarely reaches the pond. **Claim to make absolute in whole or in part:** N/A **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. **Remarks:** I have spent in excess of \$8,000 to repair the pond and due to dry

conditions water rarely reaches the pond. The amount of snow melt has greatly decreased.

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**CASE NO. 2021CW4, Previous Case No. 2016CW9 - BILLY THOMPSON, 60705 E State HWY 96, Boone, CO 81025, (719) 947-3098**

Application to Make Absolute in Whole or In Part

**PUEBLO COUNTY**

**Name of Structure:** Thompson Spring, **Type:** Spring. **Date of original decree:** 07/27/2016, **Case No:** 2016CW9, **Court:** Pueblo. **Legal Description:** NW ¼ SW ¼ Section 14 Township 21S Range 61W 6<sup>th</sup> p.m., Pueblo County. **UTM:** Easting: 0570070, Northing: 4231037. 2700 feet from N S and 300 feet from E, Land Survey Plat for Billy and Peggy Thompson. A portion of Sections 10, 14 and 15 Township 21 South, Range 61 West, 6<sup>th</sup> p.m., county of Pueblo. See general location map attached to the application. (Attachments or Exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court). **Source of water:** Spring **Appropriation Date:** November 3, 2016. **Amount:** 1 GPM. **Use:** Stock Water. **Detailed description of what has been done toward completion of conditional decree:** Used JD 4010 tractor and cleaned pond. **Claim to make absolute in whole or in part: Date applied to beneficial use:** 03/15/98. **Amount:** Spring. **Use:** Stock water. **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.

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**CASE NO. 2021CW5; GIBSON ROKICH LIVING TRUST, 250 Reagan Road, Rye, CO 81069, (801) 647-5534**

Application for Conditional Water Rights (Surface)

**HUERFANO COUNTY**

**Name of Structure:** Rokich Salamander Spring, Rokich Chickadee Spring, Rokich Water Barrel Spring, Rokich Willow Spring. **Location:** See general location map attached to the application. (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

Legal Description Huerfano County	Q40	Q160	Section	Township	Range	Principal Meridian
Rokich Salamander Spring	SE/4 of the	SW/4	35	25 South	66 West	6th
Rokich Chickadee Spring	NE/4 of the	NW/4	2	26 South	66 West	6th
Rokich Water Barrel Spring	NE/4 of the	NW/4	2	26 South	66 West	6th
Rokich Willow Spring	SE/4 of the	SW/4	35	25 South	66 West	6th

**Source of PLSS Information:** GIS system from field GPS data.

**Point of diversion UTM format:**

Legal Description Huerfano County	Easting	Northing	Zone	Projection
Rokich Salamander Spring	522123	4185989	13S	NAD83
Rokich Chickadee Spring	522017	4158530	13S	NAD83
Rokich Water Barrel Spring	522010	4185797	13S	NAD83

Rokich Willow Spring	522069	4186056	13S	NAD83
<b>Source of UTM coordinates: Hand-held GPS Unit</b>				
<b>Street Address: 250 Reagan road, Rye, CO 81069</b>				
<b>Subdivision: Ghost River, Lot 1</b>				

**Date of appropriation:** 06/01/2020. **How appropriation was initiated:** Utilized some of the spring waters for year irrigation, contacted NRCS regarding further developing the springs, contacted previous area resident about history of use of the springs. **Date applied to beneficial use:** Not applicable, conditional claims. **Amount claimed in gpm:**

Structure	Amount Claimed
Rokich Salamander Spring	1 gpm, conditional
Rokich Chickadee Spring	1 gpm, conditional
Rokich Water Barrel Spring	1.33 gpm, conditional
Rokich Willow Spring	1 gpm, conditionial

**Proposed Uses:**

Structure	Used Claimed
Rokich Salamander Spring	Livestock
Rokich Chickadee Spring	Lawn, garden, livestock
Rokich Water Barrel Spring	Lawn, garden, livestock
Rokich Willow Spring	Livestock

**Irrigation:** Number of acres historically irrigated: 0; proposed to be irrigated 1 acre. Does Applicant intend to use water right to supplement irrigation on an area of land already irrigated under another water right: No. Legal description of irrigated acreage: 1 acre within the NE/4 of the NW/4 of Section 2, Township 26 South, Range 66 West, 6<sup>th</sup> P.M. **Non-Irrigation:** Livestock use in areas at or near the spring locations. **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:** Gibson Rokich

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**CASE NO. 2021CW6; RICHARD BRICE LEWIS and KATHERINE N. LEWIS, 7980 County Road 250, Salida, CO 81201, (719) 221-2071, (719) 850-3440**

Application for Simple Change in Surface Point of Diversion

**CHAFFEE COUNTY**

**Decreed water right for which change is sought:** **A.** Name of Structure: John Post, **B.** Date of original and all relevant subsequent decrees: 12/31/1882, 12/31/1889, Case No. 2936, Court: District Chaffee County **C.** Legal Description: East bank of said Spaulding Gulch at a point from whence the said North-west corner of said Section 31 NAD 83, 13S 402211 Easting, 4265810 Northing. See general location map attached to the application. (Attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court). **D.** Decreed source of water: Spaulding Gulch. **E.** Appropriation Date: 12/31/82, 12/31/1889. **F.** Total amount decreed to structure in gallons per minute (gpm) or cubic feet per second (cfs): Absolute 1 cfs. **G.** Decreed use or uses: Irrigation. **H.** Amount of water that applicant intends to change: Absolute: 1 cfs. **3. Detailed description of proposed change in a surface point of diversion:** **A.** Complete statement of change: The point of diversion will be moved from its current location as described above. NAD 83. 13S 402211 Easting, 4265810 Northing, to a new

location downstream located on the water right holder's property. There are no intervening surface diversion points or inflow between the old and the new location of the point of diversion. It does not include a change in point of diversion from below or within a stream reach for which there is an intervening surface diversion point or inflow or decreed in-stream flow right to an upstream location within or above that reach. **B. Legal Description of the new surface point of diversion:** NW ¼ NW ¼ Section 3 Township 49N Range 7E New Mexico P.M. in Chaffee County. **UTM Coordinates:** Easting: 402511; Northing 4265574, Zone 13, **Street Address:** 7980 County Road 250, Salida, Colorado 81201. **4. 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

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**CASE NO. 2021CW3012; SAMUEL N KNIGHT, JR., 5603 Pennock Point, Jupiter, FL 33458** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Beattie Houpt & Jarvis, Jefferson Houpt, Ryan Jarvis, Eric Theile, PO Box 1669, Basalt, CO 81621, 970-945-8659)

Application to Make Conditional Water Right Partially Absolute and for Findings of Reasonable Diligence

**HUERFANO COUNTY, Cucharas River**

**Names of structures:** Dalton Pump & Pipeline and Little Lake Dalton. **First Claim for Relief:** Name of Structure: Dalton Pump and Pipeline. Original decree entered on 03/15/04 in 98CW172; Subsequent decrees: entered in 11CW38 and 18CW3009. Appropriation date: 09/03/93. Uses: Piscatorial, aesthetic, recreational, and wildlife propagation. Location: in the SE¼NE¼ Sec 7, T 30 S, R 68 W 6<sup>th</sup> PM, at a point 2,510 ft S of N Sec Line and 885 ft W of E Sec Line of said Sec 7; also described by UTM coordinates as: 496654 E. 4145073. See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Source: Cucharas River. Amount: 2.0 cfs, conditional. Place of use: Little Lake Dalton. Date and amount of water applied to beneficial use: 05/31/12; 0.7 cfs for piscatorial, aesthetic, recreational, and wildlife propagation in Little Lake Dalton. Remarks: Dalton Pump & Pipeline operates pursuant to the change of water right and plan for augmentation approved in 98CW172. **Second Claim for Relief:** Name of Structure: Little Lake Dalton: Location: in the SE¼NE¼ Sec 7, T 30 S, R 68 W 6<sup>th</sup> PM, 890 ft W of E Sec Line and 1,853 ft S of N Sec Line of said Sec 7; also described by UTM coordinates as: 496679 E. 4145330 N. Little Lake Dalton is an off-channel reservoir filled with water diverted from the Cucharas River through the Dalton Pump & Pipeline. Source: Cucharas River and local surface in-flow tributary to the Cucharas River. Decreed amount: 27.3 af, conditional, with right to fill and refill in priority, and when out of priority while operating in accordance with the change of water right and plan for augmentation approved in 98CW172. Max rate: 2.0 cfs. Surface area: 3.43 acres. Max height: 14 ft. Total capacity: 27.3 af. Active capacity: 26.9 af. Dead storage: 0.4 af. Owner of land: Applicant.

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**CASE NO. 2021CW3013; REEVES BROWN and BETSY BROWN, 7100 3R Road, Beulah, CO 81023** (Please address all pleadings and inquiries regarding this matter to

Applicant's attorneys: Peter D. Nichols, Esq., Megan Gutwein, Esq., Berg Hill Greenleaf Ruscitti LLP, 1712 Pearl Street, Boulder, Colorado, 80302, (303) 402-1600  
Application for Simple Change in Surface Point of Diversion Pursuant to C.R.S. § 37-92-305(3.5)

## **ON THE ST. CHARLES RIVER, TRIBUTARY TO ARKANSAS RIVER, IN PUEBLO COUNTY**

**2. Decreed water right for which a simple change in surface point of diversion is sought:** Dotson No. 2 Ditch. A. Name of structure: Dotson No. 2 Ditch. B. Date of original decree and subsequent decrees: The Dotson No. 2 Ditch water right was decreed on June 26, 1893 in Case No. CA2756, District Court, Pueblo County. There are no subsequent decrees. C. Legal description of structure: The headgate is located on the right bank of the St. Charles River in the S.1/2 of the S.W.1/4 of Sec. 24, T. 23 S., R. 68 W., in Pueblo County, Colorado. See map attached Exhibit A. D. Source: St. Charles River. E. Appropriation Date: March 1, 1874. F. Amount: 0.2 cfs, absolute. G. Uses: Irrigation. H. Amount Applicant Seeks to Change: 0.2 cfs, absolute. **3. Detailed description of proposed simple change in surface point of diversion:** A. Complete statement of change: A "simple change in a surface point of diversion" is "a change in the point of diversion from a decreed surface diversion point to a new surface diversion point that is not combined with and does not include any other type of change of water right and for which there is no intervening surface diversion point or inflow between the new point of diversion and the diversion point from which a change is being made." C.R.S. § 37-92-305(3.5)(a)(II). An applicant seeking a simple change in a surface point of diversion must demonstrate that the requested simple change will not (1) result in diversion of a greater flow rate or amount of water than has been decreed to the water right and, without requantifying the water right, is physically and legally available at the diversion point from which a change is being made; or (2) injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right. C.R.S. § 37-92-305(3.5)(c). While the Dotson No. 2 Ditch was originally decreed with a separate point of diversion from the Dotson No. 1 Ditch, the subject water right has historically been diverted at the headgate of the Dotson No. 1 Ditch. Applicant seeks a simple change in the location of the decreed point of diversion of the Dotson No. 2 Ditch to the headgate of the Dotson No. 1 Ditch, See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) ("Changed POD"). GPS coordinates for the Changed POD are included in paragraph 3.B below. Applicant's proposed simple change in surface point of diversion is not combined with and does not include any other type of change of water right, and there are no intervening surface diversion points or inflows between the decreed point of diversion and the Changed POD. See C.R.S. § 37-92-305(3.5)(a)(II). The proposed simple change in surface point of diversion will not result in total combined diversions of a greater flow rate than the 0.2 cfs decreed to the Dotson No. 2 Ditch. Water is physically and legally available at the decreed rate at the original diversion point from which the proposed change is being made. The proposed simple change in surface point of diversion will also not injuriously affect the owner of or persons entitled to use water under a vested water right or decreed conditional water right; there are no such rights located between or in the vicinity of the originally-decreed point of diversion and the Changed POD. B. Location of proposed simple change in surface point

of diversion: Legal description of Dotson No. 1 Ditch: The headgate is located on the right bank of the St. Charles River in the S.1/2 of the S.W.1/4 in Sec. 24, T. 23 S., R. 68 W., in Pueblo County, Colorado. GPS Coordinates: 38°1'37" N; 104°57'5"W UTM coordinates NAD 1983 Zone 13 South, Easting 504266, Northing 4208805, as shown on **Exhibit A**.

**4. Name and address of owner of land upon which requested simple change in surface point of diversion is located:** Applicant owns the land upon which the original point of diversion and Changed POD are located. WHEREFORE, the Applicants pray this Court enter a decree: a) Granting a simple change in point of diversion for the Dotson No. 2 Ditch as applied for herein; and b) Granting such other and further relief as the Court deems proper.

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**CASE NO. 2021CW3014; Previous Case Nos. 14CW3050, 08CW410 and 00CW151 – ABC RENTAL & RV, LLC, a Colorado limited liability company, d/b/a Bighorn RV Park, c/o Aaron & Brenda Cromer, P.O. Box 261, Coaldale, CO 81222** (Please address

all pleadings and inquiries regarding this matter to Applicant's attorneys: MONSON, CUMMINS & SHOJET, LLC, David M. Shohet, #36675, Emilie B. Polley, #51296,13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921, (719) 471-1212)

Application for Filing of Reasonable Diligence and to Make Absolute in Part and Notice of Relinquishment of Conditional Water Right

**FREMONT COUNTY**

**II. Summary of Application.** Applicant owns and operates the Bighorn RV Park, a family camping resort consisting of a campground store, swimming pool, hotel units, camper cabins, mobile homes/trailers, bath house, lawns, laundry, tent spaces and RV spaces. Bighorn RV Park is located in the NW ¼ of the SE ¼ and the E ½ of the SE ¼, of Section 33, Township 48 N, Range 11 E of the N.M.P.M., Coaldale, Colorado. A map of Applicant's property is attached to 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.) Applicant's predecessor obtained conditional water rights for the Bighorn Park Diversion No. 1, the Bighorn Park Diversion No. 2, and the Bighorn Park Pond No. 1, and a plan for augmentation to augment out-of-priority depletions from the conditional water rights in Case No. 00CW151. Applicant owns one (1) share in the Twin Lakes Reservoir and Canal Company used to fully augment the total consumptive use demand from the existing indoor domestic and commercial uses in Bighorn RV Park. Applicant also has a water lease contract with the Pueblo Board of Water Works ("PBWW"), under which PBWW provides the augmentation water to replace the out-of-priority depletions associated with outdoor uses, including irrigation, swimming pool, and pond evaporation. Applicant's predecessors filed for, and were decreed, findings of diligence for the conditional water rights in Case Nos. 08CW410 and 14CW3050. The Applicant is now seeking a decree for a finding of reasonable diligence and to make absolute in part, and abandon in part, the conditional water rights decreed in Case No. 00CW151, as diverted pursuant to the terms of the plan for augmentation and in accordance with the Division of Water Resources Written Instruction 2020-01 dated July 21, 2020, DWR Position on Making Water Rights Diverted Out-of-Priority Absolute. **III. Description of Conditional Water Rights.** A. Name of Structures: Bighorn Park Diversion No. 1, Bighorn Park Diversion No. 2, and Bighorn Park Pond No. 1. B. Original Decree: Case No. 00CW151, June 12, 2002, District Court, Water Division 2. C. Subsequent Decrees finding Diligence: a. Case No.



08CW41, November 7, 2008, District Court, Water Division 2; b. Case No. 14CW3050, March 17, 2015, District Court, Water Division 2. D. Legal Descriptions: 1. Bighorn Park Diversion No. 1: The point of diversion is located in the Northeast 1/4 of the Southeast 1/4, Section 33, Township 48 North, Range 11 East of the N.M.P.M., Fremont County, Colorado. 2. Bighorn Park Diversion No. 2: The point of diversion is the outflow of a culvert which runs underneath U.S. Highway 50 in the Southeast 1/4 of the Southeast 1/4, Section 33, Township 48 North, Range 11 East, N.M.P.M., Fremont County, Colorado. 3. Bighorn Park Pond No. 1: The pond's decreed location is to be constructed in the Northeast 1/4 of the Southeast 1/4, Section 33, Township 48 North, Range 11 East, N.M.P.M., Fremont County, Colorado. The approximate locations of the above conditional water rights are shown on Exhibit A map attached to the application. E. Sources: 1. Bighorn Park Diversion No. 1: An unnamed watercourse tributary to the Arkansas River. 2. Bighorn Park Diversion No. 2: An unnamed watercourse tributary to the Arkansas River representing the outflow from a series of ponds located in that portion of the Southeast 1/4 of the Southeast 1/4, Section 33, Township 48 North, Range 11 East N.M.P.M. which lies south of the U.S. Highway 50 right of way. 3. Bighorn Park Pond No. 1: Diversions from the Bighorn Park Underground Water Right, Bighorn Park Diversions No. 1 and No. 2, all waters tributary to unnamed watercourses tributary to the Arkansas River, Fremont County, Colorado. F. Appropriation Date: October 6, 2000. G. Amounts: 1. Bighorn Park Diversion No. 1: 0.26 c.f.s., conditional. 2. Bighorn Park Diversion No. 2: 0.25 c.f.s., conditional. 3. Bighorn Park Pond No. 1: 2.0 acre-feet, conditional, with the right to fill and refill. H. Uses: 1. Bighorn Park Diversion No. 1: Domestic, recreation, commercial, swimming pool, fish propagation, storage and irrigation of up to 3 acres of lawn, garden and landscaping. 2. Bighorn Park Diversion No. 2: Domestic, recreation, commercial, swimming pool, fish propagation, storage and irrigation of up to 3 acres of lawn, garden and landscaping. 3. Bighorn Park Pond No. 1: Storage, recreation, fish propagation and irrigation of up to 3 acres of lawn, garden and landscaping. **IV. Outline of Work Done for Completion of Appropriation and Application of Water to Beneficial Use.** On June 29, 2018, Applicant purchased the Bighorn RV Park, including all water rights appurtenant to the park. In Case No. 00CW151, the Court decreed to Applicant's predecessor the use of three conditional water rights for domestic, recreation, commercial, swimming pool, fish propagation, storage and irrigation of up to 3 acres of lawn, garden and landscaping. During this diligence period the Applicant operated the Bighorn Park Diversion No. 1 in accordance with the requirements of the Augmentation Plan for replacement of out-of-priority depletions from the Applicant's uses on the Subject Property. During this diligence period, Applicant and the Applicant's predecessor, in connection with the development of Bighorn RV Park, as part of the integrated system, has also spent considerable time and money repairing and upgrading the park. Applicant has remodeled cabins and rooms, and installed new landscaping. Applicant has expended considerable amounts of money on advertising Bighorn RV Park. Applicant's predecessor also drilled a new well for a water supply for the RV park and obtained a new plan for augmentation for this new well. Therefore, during this diligence period Applicant has devoted substantial time towards the development of Bighorn RV Park, which includes the development of the conditional water rights as part of the integrated system. **V. Claim to Make Absolute.** In light of the operation of the Bighorn Park Diversion No. 1 pursuant to the decreed Augmentation Plan and the Division of Water Resources Written Instruction 2020-01, the Applicant seeks to

make absolute the conditional groundwater right decreed in Case No 00CW151 for the Bighorn Park Diversion No. 1. The Applicant obtained the Water Court's approval of the Augmentation Plan as prescribed by law for the replacement of out-of-priority depletions and prevention of injury to other decreed water rights. C.R.S. 37-92-103(9). The Applicant, under the Augmentation Plan, has diverted water, replaced out-of-priority depletions to the river, and applied water to beneficial use under the Bighorn Park Diversion No. 1. Applicant diverted 0.66 acre feet in 2018, 9.48 acre feet in 2019, and 1.24 acre feet in 2020 from the Bighorn Park Diversion No. 1, at a maximum diversion rate of 15 g.p.m., primarily for the irrigation of lawns, gardens and trees within the Park. A map is attached as Exhibit B showing the area of irrigation within the Park. Operation of the Bighorn Park Diversion No. 1 under the terms of the Augmentation Plan prevented injury to other decreed water rights. **VI. Relinquishment of Conditional Water Rights.** The Applicant is relinquishing its conditional water rights to the Bighorn Park Diversion No. 2 and the Bighorn Park Pond No. 1 as decreed in Case No. 00CW151, for which diligence has been previously granted in Case Nos. 08CW41 and 14CW3050. This relinquishment does not in any way apply to the other absolute and conditional water rights originally decreed in Case No. 00CW151, or as subsequently decreed by this Application. **VII. Name and Address of Owners of Land on Which Structures Will Be and Are Located.** The owner of the property upon which the point of diversion for Bighorn Park Diversion No. 2 is the Colorado Department of Transportation, whose address is Administrative Office, 4201 East Arkansas Avenue, Denver, CO 80222. The remaining structures are located on the Applicant's property.

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**CASE NO. 2021CW3015; CITY OF COLORADO SPRINGS, acting by and through its enterprise, Colorado Springs Utilities ("Utilities"), c/o Abigail Ortega, PE, Water Resources Manager, 1521 Hancock Expressway, MC 1825, Colorado Springs, CO 80903** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Michael J. Gustafson, Senior Attorney, City Attorney's Office – Utilities Division, 30 South Nevada Avenue, MC 510, Colorado Springs, CO 80903, Phone: (719) 385-5909; and David W. Robbins, No. 6112, Matthew A. Montgomery, No. 44039, Hill & Robbins, P.C., 1660 Lincoln St., Suite 2720, Denver, CO 80202, Phone: (303) 296-8100) Application for Conditional Appropriative Rights of Substitution and Exchange **BENT, CROWLEY, KIOWA, OTERO, AND PUEBLO COUNTIES**

2. Summary of Application: Colorado Springs Utilities ("Utilities") is an enterprise of the City of Colorado Springs and is a four service public municipal utility that provides, among other things, municipal and industrial water service to the City of Colorado Springs, Colorado ("Colorado Springs"), and several areas within the vicinity of Colorado Springs. Areas served by Utilities are referred to as the "Service Area" as it exists now and or as it may exist in the future. Utilities is the owner of 2,500 shares of common stock in the Lower Arkansas Water Management Association ("LAWMA") which is represented by LAWMA Share Certificate No. 829, attached to the application as **Exhibit A** ("Utilities' LAWMA Shares"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Each year the LAWMA Board of Directors allocates a certain amount of fully consumable water to each share of LAWMA common stock under the procedures set forth in LAWMA's Bylaws and Articles of Incorporation (individually, an "Annual Allocation" and collectively, the "Annual

Allocations”). In 2018, LAWMA and Utilities entered into a Water Sharing Agreement under which the Annual Allocation of water attributable to each of Utilities’ LAWMA Shares will be used to implement an Alternative Transfer Method (also known as an “ATM”) pursuant to which Utilities will, in five out of every 10 consecutive years, forgo the Annual Allocation to each of Utilities’ LAWMA Shares in exchange for, in the other five out of every 10 consecutive years, the direct delivery from LAWMA of fully consumable water decreed for all beneficial uses in Utilities’ Service Area in an amount equal to the Annual Allocation to each of Utilities’ LAWMA Shares. This water is a “Temporary Use Agreement Water” or “TU Water” and may be exchanged or used under any existing or future decree or administrative approval that provides for the exchange of TU Water, subject to the terms and conditions of the appropriate decree, including, but not limited to, the Decrees entered in Case Nos. 05CW96, 07CW122, 16CW3056, and the Decrees entered in pending Case Nos. 19CW3052 and 19CW3053 (Water Div. 2). In the five out of every 10 consecutive years that Utilities forgoes the Annual Allocation of water to each of Utilities’ LAWMA Shares, the foregone allocation will be available to LAWMA’s other shareholders. The Water Sharing Agreement provides that Utilities can exchange the TU Water upstream into Pueblo Reservoir or Lake Meredith, for subsequent delivery to Utilities’ municipal system including, without limitation, into the storage components of that system. The Water Sharing Agreement is attached as **Exhibit B**. The Water Sharing Agreement contemplates that, in years when Utilities takes delivery of fully consumable water in an amount equal to the Annual Allocation to each of Utilities’ LAWMA Shares, LAWMA will deliver the TU Water to the Arkansas River or its tributaries in or upstream of John Martin Dam. The Water Sharing Agreement further contemplates that the TU Water will be derived from 3,303 shares of stock in the Fort Lyon Canal Company owned by LAWMA, water available to LAWMA’s Highland Canal water rights changed in Case Nos. 02CW181 and 10CW85 (Water Div. 2), or other source(s) of fully consumable water owned or controlled by LAWMA that are mutually acceptable to LAWMA and Utilities. In 2019, LAWMA filed an application with the Water Court for Water Division 2 in pending Case No. 19CW3036, which seeks, among other things, to change the use of 3,303 shares of stock in the Fort Lyon Canal Company to permit LAWMA to deliver TU Water to the Arkansas River or its tributaries in or above John Martin Dam for subsequent use by Utilities. This Application seeks judicial confirmation, pursuant to C.R.S. §§37-80-120, 37-82-106, 37-83-104, and 37-92-302, of conditional appropriative rights of substitution and exchange, under which the TU Water will be delivered to the Arkansas River or its tributaries upstream of John Martin Dam and an equivalent amount of water will be diverted and stored upstream in the Colorado Canal System or Pueblo Reservoir; or diverted and directly delivered to the intake to the Fountain Valley Conduit (“FVC”) and the intake to the Southern Delivery System (“SDS”), either directly, or by stepped, intermediate exchange(s), to the headgate of the Colorado Canal, the headgate of the Fort Lyon Canal, or the headgate of the Fort Lyon Storage Canal. The TU Water will be subsequently delivered to Utilities’ municipal system, where it will be stored, used, reused, successively used and/or used to extinction, directly, after storage, and/or by exchange, using any structure now existing or hereafter constructed that is lawfully available for use by Colorado Springs for all decreed uses of the TU Water. LAWMA will deliver TU Water attributable to LAWMA’s 3,303 shares of stock in the Fort Lyon Canal Company to the Arkansas River via the Horse Creek Augmentation Station, the Gageby Creek Farm 36

Augmentation Station, the Gageby Creek Farm 27 Augmentation Station, or the Hasty Gate 145 Augmentation Station. When Utilities takes delivery of TU Water attributable to LAWMA's 3,303 shares of common stock in the Fort Lyon Canal Company, the TU Water will be exchanged upstream from the confluence of Horse Creek and the Arkansas River or the John Martin Dam. Utilities acknowledges that it does not have any present right to store water in John Martin Reservoir and that any use of John Martin Reservoir may be subject to local, state, or federal permitting or approvals beyond the scope of this application. LAWMA will deliver TU Water attributable to LAWMA's Highland Canal Water Rights to the confluence of the Purgatoire River and the Arkansas River. When Utilities takes delivery of TU Water attributable to LAWMA's Highland Canal Water Rights, the TU Water will be exchanged upstream from the confluence of the Purgatoire River and the Arkansas River. When the TU Water is exchanged to the headgate of the Fort Lyon Canal or the headgate of the Fort Lyon Storage Canal, such water may be stored in Adobe Creek Reservoir (including a future enlargement of Adobe Reservoir) prior to subsequent exchange upstream. Water exchanged to the headgates of the Fort Lyon Canal and the Fort Lyon Storage Canal, including water stored in Adobe Creek Reservoir, will be subsequently released to Gageby Creek, and exchanged upstream from the John Martin Dam. Utilities acknowledges that any use of the Fort Lyon Canal, the Fort Lyon Storage Canal, or Adobe Creek Reservoir is subject to the approval of and an agreement with the Fort Lyon Canal Company and may be subject to local, state, or federal permitting or approvals beyond the scope of this water court application. When the TU Water is exchanged to the headgate of the Colorado Canal, such water may be stored in Lake Meredith, Lake Henry, or a future reservoir to be constructed on or near Haynes Creek prior to subsequent exchange upstream. TU Water stored in Lake Henry and Lake Meredith will be subsequently exchanged into Utilities' municipal system under the Decree entered in Consolidated Case Nos. 84CW62, 84CW63, and 84CW64 (Water Div. 2), subject to the terms and conditions of that decree. TU Water stored in the reservoir to be constructed on Haynes Creek will be released into the Colorado Canal Wasteway and subsequently exchanged upstream from the confluence of the Colorado Canal Wasteway and the Arkansas River. Utilities acknowledges that any use of a future reservoir to be constructed on Haynes Creek is subject to the approval of and an agreement with the Colorado Canal Company, the owner(s) of the reservoir, and may be subject to local, state, or federal permitting or approvals beyond the scope of this water court application. Utilities acknowledges that the use of FVC and SDS may be subject to local, state, or federal permitting or approvals beyond the scope of this water court application. Utilities acknowledges that the use of Pueblo Reservoir may be subject to local, state, or federal permitting or approvals beyond the scope of this water court application.

**II. Application for Conditional Appropriative Rights of Exchange.**

**3. Name of structures, legal description of exchange from points, exchange to points, and exchange reach:**

**3.1. Structures from which substitute supplies will be measured or released to the Arkansas River or its tributaries:**

**3.1.1 Horse Creek Augmentation Station (WDID 1701000) (Station ID ARF049CO):** Located in the SW1/4 of the NE1/4 of Section 33, T22S, R53W in Bent County, Colorado.

**3.1.2. Gageby Creek Farm 36 Augmentation Station (WDID 6701006) (Station ID ARF125CO):** Located in the SE1/4 of the SW1/4 of Section 14, T22S, R51W in Bent County, Colorado.

**3.1.3. Gageby Creek Farm 27 Augmentation Station (WDID 6701002) (Station ID ARF126CO):** Located in the NW1/4

of the SE1/4 of Section 26, T22S, R51W in Bent County, Colorado. 3.1.4. Hasty Gate 145 Augmentation Station (WDID 6701005) (Station ID ARF145CO): Located in the SW1/4 of the SE1/4 of Section 36, T22S, R50W in Bent County, Colorado. 3.1.5. Purgatoire River Below Highland Dam Near Las Animas Stream Gage: (WDID 1700900): Located in the NE1/4 of the SW1/4 of Section 1, T25S, R 53W in Bent County, Colorado. 3.1.6. Adobe Creek Reservoir (WDID 1703546): In T20S and T21S, R52W of the 6th P.M. UTM coordinates for dam: 650655.6 E, 4233245.9 N. 3.1.7. Haynes Creek Reservoir (WDID 1403621): To be constructed in Sections 5, 8 and 9, T21S, R61W. UTM 565517.0 E 4233461.0 N (Digitized). 3.2. Locations from which substitute supplies will be exchanged (“Exchange from Points”): 3.2.1. John Martin Reservoir Dam: John Martin Reservoir (WDID 6703512) is located in all or portions of Sections 24, 25, 26, 27, 33, 34, 35, and 36, T22S, R51W; Sections 28, 29, 30, 31, 32, 33, 34, and 35, T22S, R50W; Sections 5, 6, 7, 8, 17, and 18, T23S, R49W; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, and 30, T23S, R50W; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, and 18, T23S, R51W; and Sections 1, 12, and 13, T23S, R52W; all of the 6th P.M., in Bent County, Colorado. The dam is located in Sections 5, 8, and 17 of T23S, R49W of the 6th P.M., in Bent County, Colorado. UTM coordinates for dam: 680795.0 E, 4215646.0 N. 3.2.2. The Confluence of the Purgatoire River and the Arkansas River: Located in the SW1/4 of the NW1/4 of Section 7, T23S, R51W in Bent County, Colorado. UTM 659871.4 E, 4214598.6 N (Digitized). 3.2.3. The Confluence of Horse Creek and the Arkansas River: Located in the SE1/4 of the SW1/4 of Section 2, T23S, R53W. UTM 647337.6 E, 4214948.4 N (Digitized). 3.2.4. The Confluence of the Colorado Canal Wasteway and the Arkansas River: On the north bank of the Arkansas River in the NW1/4 of the SE1/4 of Section 8, T21S, R61W of the 6th P.M., in Pueblo County, Colorado. UTM 565998.4 E, 4231966.5 N (Digitized). 3.2.5. Supplemental Locations: Any other location on the main stem of the Arkansas River or its tributaries at or above John Martin Dam where LAWMA is capable of delivering water. A map depicting the approximate locations of the release points and Exchange from Points is attached as **Exhibit C** to this Application. 3.3 Locations to which substitute supplies will be exchanged (“Exchange to Points”) and stored: 3.3.1. Pueblo Reservoir (WDID 1403526): The Reservoir is located at a point at the intersection of Pueblo Dam axis and the Arkansas River whence the NE corner of Section 36, T20S, R66W of the 6th P.M. bears north 61°21'20” east a distance of 2,511.05 feet, in Pueblo County, Colorado. Said Reservoir will inundate all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, T20S, R66W; Sections 1, 2, 3, 4, 5, 9, 10, and 11, T21S, R66W; and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, 24, and 25, T20S, R67W; all of the 6th P.M. in Pueblo County, Colorado. UTM coordinates for dam: 524076.0 E, 4235362.0 N. 3.3.2. The Inlet to the Southern Delivery System: The inlet to the SDS Pipeline is in Pueblo Reservoir. The location of Pueblo Reservoir is described in paragraph 3.3.1., above. 3.3.3. The Inlet to the Fountain Valley Conduit: The Inlet to the FVC Pipeline is in Pueblo Reservoir. The location of Pueblo Reservoir is described in paragraph 3.3.1., above. 3.3.4. Headgate of the Fort Lyon Canal (WDID 1700553): On the north bank of the Arkansas River in the SW1/4 of the SE1/4 of Section 29, T23S, R55W of the 6th P.M., in Otero County, Colorado. UTM 623873.7 E, 4207975.0 N (GPS). TU Water diverted at the headgate may be delivered through the Fort Lyon Canal System to storage in Adobe Creek Reservoir, described in subparagraph 3.3.6 below. 3.3.5. Headgate of the Fort Lyon Storage Canal (WDID 1700648): A point

in the county of Crowley, state of Colorado, on the north bank of the Arkansas River, in the NW1/4 of the SE1/4 of Section 20, T22S, R57W of the 6th P.M., UTM 604443.0 E, 4219543.8 N (GPS). TU Water diverted at the headgate may be delivered through the Fort Lyon Canal System to storage in Adobe Creek Reservoir, described in subparagraph 3.3.6 below. 3.3.6. Adobe Creek Reservoir (WDID 1703546): In T20S and T21S, R52W of the 6th P.M. UTM coordinates for dam: 650655.6 E, 4233245.9 N. 3.3.7. Headgate of the Colorado Canal (WDID 1700540): On the north bank of the Arkansas River in the NW1/4 of the NW1/4 of Section 11, T21S, R62W, in Pueblo County, Colorado. UTM 560241.3 E, 4233243.3 N (GPS). TU Water diverted at the headgate may be delivered through the Colorado Canal System to storage in Lake Meredith, Lake Henry, and Haynes Creek Reservoir described in subparagraphs 3.3.8, 3.3.9, and 3.3.10 below. 3.3.8. Lake Meredith (WDID 1403525): Located in all or portions of Sections 15, 16, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, and 33, Township 21 S, Range 56 W; Sections 1 and 12, Township 22S, Range 57W; Section 6, Township 22 S, Range 56 W; and Sections 24, 25, and 36, Township 21 S, Range 57 W; all in the 6th P.M., in Crowley County, Colorado. Lake Meredith Reservoir dam axis and the centerline of the outlet canal intersect at a point located in the NW1/4 of the SW1/4 of Section 12, Township 22S, Range 57W of the 6th P. M., at a point from which the W1/4. 3.3.9. Lake Henry (WDID 1403524): In Sections 31 and 32, T20S, R56W, and Sections 5 and 6, T21S, R56W. UTM 612088.0 E, 4234275.1 N. 3.3.10. Haynes Creek Reservoir (WDID 1403621): To be constructed in Sections 5, 8 and 9, T21S, R61W. UTM 565517.0 E 4233461.0 N (Digitized). A map depicting the approximate locations of the Exchange to Points and storage locations is attached as **Exhibit D** to this Application. 4. Stream Reaches of Exchange: The exchange reaches requested herein extend from the Exchange from Points described in paragraph 3.2, above, to the Exchange to Points described in paragraph 3.3, above. 5. Sources of Water to be Exchanged: The TU Water that will be delivered to Utilities by LAWMA pursuant to the Water Sharing Agreement which includes, but is not limited to, water derived from LAWMA's *pro rata* interest in the Fort Lyon Canal Company water rights described in **Exhibit E** that are subject of the change Case filed by LAWMA in District Court, Water Division 2, Case No. 19CW3036, hereto, and the Highland Canal water rights described in **Exhibit F**, hereto. 6. Exchange Operation: Fully consumable water derived from the sources described in paragraph 5, above, will be released from the release points and delivered to the Exchange from Points on the Arkansas River and an equal amount of water will be diverted by exchange upstream at the Exchange to Points for subsequent storage, delivery, use, reuse, successive reuse, and/or use to extinction in Applicant's municipal water supply system and Service Area. Use in Applicant's municipal water supply system includes all beneficial uses including, without limitation, all decreed uses, all places of use, and places of storage of the source of the substitute supply, such as all decreed uses recognized in LAWMA's Decree in Case No. 19CW3036 or in a future change decree obtained by LAWMA for its Highland Canal water rights. Transit losses shall be assessed by State water administration officials as necessary. 7. Appropriation: 7.1 Appropriation Date: June 26, 2018. 7.2 How Appropriation was Initiated: Approval of a resolution by the Colorado Springs City Council directing the filing of an application requesting the proposed exchanges. 7.3 Date Water Applied to Beneficial Use: Not applicable as the requested appropriative rights of exchange are conditional. 8. Amount Claimed: The exchanges described herein will

operate on the Arkansas River and its tributaries from the Exchange from Points identified in paragraph 3.2 to the Exchange to Points identified in paragraph 3.3. The proposed rates of the exchanges requested herein are the lesser amount of the maximum rate of release of the TU Water from the Exchange from Points or the maximum rate of inflow into the Exchange to Points: 8.1 Maximum Release Rates from Structures from which substitute supplies will be released to the Arkansas River or its tributaries: 8.1.1 Horse Creek Augmentation Station: 22.91 cfs. 8.1.2 Gageby Creek Farm 36 Augmentation Station: 33.10 cfs. 8.1.3 Gageby Creek Farm 27 Augmentation Station: 67.10 cfs. 8.1.4 Hasty Gate 145 Augmentation Station: 6.78 cfs. 8.1.5 Purgatoire River Below Highland Dam Near Las Animas: 36.16 cfs. 8.1.6 Adobe Creek Reservoir: 400 cfs. 8.1.7 Haynes Creek Reservoir: 400 cfs. 8.2 Maximum Release Rates from the Exchange From Points: 8.2.1. The John Martin Reservoir Dam: 506.98 cfs. 8.2.2. The Confluence of the Purgatoire River and the Arkansas River: 36.16 cfs. 8.2.3. The Confluence of Horse Creek and the Arkansas River: 22.91 cfs. 8.2.4. The Confluence of the Colorado Canal Wasteway and the Arkansas River: 400 cfs. 8.3 Maximum Inflow to Exchange to Points using sources claimed herein: 8.3.1 Pueblo Reservoir: 966.05 cfs. 8.3.2 SDS Pipeline: 120.68 cfs. 8.3.3 FVC Pipeline: 19.80 cfs. 8.3.4 Headgate of Fort Lyon Canal: 566.05 cfs. 8.3.5 Headgate of Fort Lyon Storage Canal: 566.05 cfs. 8.3.6 Headgate of the Colorado Canal: 566.05 cfs. 9. Use or Proposed Use: The water diverted pursuant to these appropriative rights of substitution and exchange will be stored, used, reused, successively used and/or used to extinction, directly, after storage, and/or by exchange, using any structure now existing or hereafter constructed that is lawfully available for use by Colorado Springs for any decreed beneficial use of the TU Water. 10. Place of Use: The place of use of water diverted pursuant to the exchanges shall include Applicant's service area as it exists now and as it may exist in the future, including any areas served by Applicant by extraterritorial agreement or other contract; for replacement of depletions on Fountain Creek accruing between Colorado Springs and the confluence of Fountain Creek and the Arkansas River; and in any location within the Arkansas River Basin for which water may be delivered by Applicant for augmentation, sale, or lease, and for such other uses as may be allowed by law. Applicant's current service area is located as shown on **Exhibit G**. 11. Substituted water: The substituted water identified in paragraph 5 above is of a quality and continuity to meet the requirements for which the water of the senior appropriation normally has been used. 12. Integrated System: The Applicant owns and operates an integrated system for water diversion, transmission, storage, treatment, and distribution, as well as collection and treatment of the resultant wastewater for release, exchange, or reuse. The conditional appropriative exchange rights that are the subject of this Application are a part of this integrated water system comprising all water rights decreed and used for development and operation of the Colorado Springs' municipal water supply system. Applicant requests that reasonable diligence in the development of one component of the system comprises reasonable diligence in the development of all components. **III. Name and Address of Owner of Land Upon Which Structures are Located.** 13. Structures described in subparagraphs 3.1.1 - 3.1.4: Arkansas River Farms, LLC, 1400 16th Street, Suite 320, Denver, CO 80202. 14. Pueblo Reservoir: U.S. Department of Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18 E, Loveland, CO 80537-9711. 15. John Martin Reservoir: U.S. Army Corps of Engineers, Reservoir Manager, 29955 County Road

25.75, Hasty, CO 81044; Caddoa Sands LLC, 2010 Fox Mountain Point, Colorado Springs, CO 80906. 16. Lake Meredith: Lake Meredith Reservoir Company, 331 Main Street, Ordway, CO 81063. 17. Lake Henry: Lake Henry Reservoir Company, 331 Main Street, Ordway, CO 81063. 18. Colorado Canal: Colorado Canal Company, 331 Main Street, Ordway, CO 81063. 19. Haynes Creek Reservoir: Steven L. Fossel, 708 Soda Creek Drive, Evergreen, CO 80439. 20. Fort Lyon Canal, Fort Lyon Storage Canal and Adobe Reservoir: Fort Lyon Canal Company, 750 Bent Ave., Las Animas, CO 81054. 21. Purgatoire River Below Highland Dam Near Las Animas Stream Gage: Davidson Ranch, LLP, 6145 County Road V½, Las Animas, CO 81054.

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**CASE NO. 2021CW3016; Previous Case Nos: W-3205; 79CW34; 83CW23; 87CW18; 95CW134; 01CW126; 08CW54; 14CW3051 – OCHS BROTHER, LLP (“Ochs Brothers”) P.O. Box 603 Colorado Springs, Colorado** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorney: MONSON, CUMMINS & SHOHEE, LLC, Ryan W. Farr, #39394, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921, (719) 471-1212)

Application for a Filing of Reasonable Diligence.

## **EL PASO COUNTY**

**II. Name of Structure:** Ochs Brothers Well. **III. Description of Conditional Water Right:** A. Date of Original Decree: The original decree was entered on April 11, 1975 in Case No. W-3205, District Court, Water Division No. 2. B. Previous Diligence Findings: There have been previous findings of diligence with the last having occurred on March 23, 2015 in Case No. 14CW3051, District Court, Water Division 2. C. Decreed Location: In the NW1/4 of the NW1/4 of Section 8, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M., in El Paso County, Colorado, being at a point from whence the NW corner of said Section 8 bears N 55° 06’ 18” W 1,324.92 feet. See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) On May 19, 1989 this Court entered its judgment and decree in Case No. 88CW67 granting a change of water right to correct the legal description for the point of diversion for the Ochs Brothers Well to this location. D. Source: Alluvium of Jimmy Camp Creek, tributary to Fountain Creek, tributary to the Arkansas River. E. Appropriation Date: June 30, 1972. F. Amount: 1.222 cfs (550 gpm). G. Uses: This well is conditionally decreed for domestic, municipal, and industrial use. H. Ownership: Ochs Brothers is the owner of the property where all water rights are to be used. **IV. 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 Ochs Brothers Well along with Ochs Brothers Wells Nos. 1 – 5, as originally decreed in Case No. W-1314, District Court, Water Division 2, are structured to be part of an integrated domestic and municipal water supply system, with diligence last maintained on these additional water rights in Case No. 15CW3046. The Ochs Brothers Well along with the Ochs Brothers Wells 1 through 5 are currently in a position to be taken over to complete development of the wells into a condition to be utilized by the specific demands of a purchasing or other receiving entity. As such, Ochs Brothers has invested time and money to accomplish such transfer. Ochs Brothers contracted in 2016 with HRS Water Consultants, Inc., to first research and review property ownership and water quality issues. This was done at an expense of



\$2,451.00. Additionally, Ochs Brothers employed HRS Water Consultants, Inc., to study and generate an appraisal and options report on the Ochs Brothers Well and Ochs Brothers Wells Nos 1 – 5 for transfer and donation purposes. Ochs Brothers spent \$11,261.50 for the generation of this report. Ochs Brothers sought research and assistance to determine and correct transactions and holdings in order to make sure that all title and ownership issues were resolved with well sites and easements and to make sure that Ochs Brothers was the entity in sole ownership and control of all related property and infrastructure. Such efforts included payments for legal and accounting services in the amount of \$13,748.91. Finally, principals of Ochs Brothers, Harlan Ochs and Charles Ochs, have spent time and energy determining ownership interests in the Ochs Brothers and related entities in relation to transferring the well sites and easements and have inspected and investigated the well sites and easements to maintain them in a state satisfactory for transfer.

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**CASE NO. 2021CW3017; Previous Case Nos. (2012CW38) (2004CW100) (96CW32) (89CW62) (80CW44) – COLORADO CITY METROPOLITAN DISTRICT, c/o Jim Eccher, District Manager, P.O. Box 20229, Colorado City, CO 81019-9390** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: c/o Richard J. Mehren, Joshua B. Boissevain, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Blvd., Suite 300, Boulder, Colorado 80302, (303) 443-8782)

Application for Finding of Reasonable Diligence

**PUEBLO COUNTY**

2. Names of structures: 2.1 Colorado City Reservoir No. 2 (WDID 1503509). 2.2 Greenhorn Creek Feeder (WDID 1500727). 3. Description of conditional water rights (“Conditional Water Rights”): 3.1 Colorado City Reservoir No. 2: 3.1.1 Date of original decree: October 7, 1985, Case No. 80CW44, District Court, Water Division No. 2. 3.1.2 Date of subsequent decrees: A finding of reasonable diligence for this conditional water right was made and decreed in Case No. 89CW62, District Court, Water Division No. 2, dated March 13, 1990; in Case No. 96CW32, District Court, Water Division No. 2, dated November 30, 1998; in Case No. 04CW100, District Court, Water Division No. 2, dated April 21, 2006, and in Case No. 12CW38, District Court, Water Division No. 2, dated March 23, 2015. 3.1.3 Location: Located in Sections 14, 15, 22 and 23, Township 24 South, Range 67 West of the 6<sup>th</sup> P.M., on a site more particularly described as follows: The north abutment of the dam is located in the SW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub>, Section 14, Township 24 South, Range 67 West of the 6<sup>th</sup> P.M. at a point approximately 700 feet East of the West section line and 550 feet North of the South section line of said Section 14. The south abutment of the dam is located in the NW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>, Section 23, Township 24 South, Range 67 West of the 6<sup>th</sup> P.M. at a point approximately 600 feet East of the West section line and 150 feet South of the North section line of said Section 23. The location of Colorado City Reservoir No. 2 is shown on the map attached to the application as **Exhibit A**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 3.1.4 Source: Graneros Creek, Greenhorn Creek and nontributary ground water. 3.1.5 Appropriation date: May 14, 1980. 3.1.6 Amount: 3,000 acre-feet, CONDITIONAL. 3.1.7 Use: Irrigation, domestic, municipal, and all other beneficial uses by exercise of direct flow and storage rights and exchange with treatment plant effluent and releases out of Colorado City Reservoir No. 3 and Colorado City

Reservoir No. 4. 3.2 Greenhorn Creek Feeder: 3.2.1 Date of original decree: October 7, 1985, Case No. 80CW44, District Court, Water Division No. 2. 3.2.2 Date of subsequent decrees: A finding of reasonable diligence for this conditional water right was made and decreed in Case No. 89CW62, District Court, Water Division No. 2, dated March 13, 1990; in Case No. 96CW32, District Court, Water Division No. 2, dated November 30, 1998; in Case No. 04CW100, District Court, Water Division No. 2, dated April 21, 2006, and in Case No. 12CW38, District Court, Water Division No. 2, dated March 23, 2015. 3.2.3 Location: Headgate located in the NE¼ NW¼, Section 4, Township 25 South, Range 67 West of the 6<sup>th</sup> P.M., at a point on the North bank of Graneros Creek, approximately 1,500 feet East of the West section line and 500 feet South of the North section line of said Section 4. The location of the Greenhorn Creek Feeder is shown on the map attached to application as **Exhibit A**. 3.2.4 Source: Graneros Creek. 3.2.5 Appropriation date: May 14, 1980. 3.2.6 Amount: 10 cfs, CONDITIONAL. 3.2.7 Use: Irrigation, domestic, municipal, and all other beneficial uses. 4. Outline of work and expenditures during the diligence period towards completion of the appropriations and application of water to beneficial use: 4.1 In Paragraph 8.2.4 of the 12CW38 Decree, the Water Court for Water Division 2 found that the Conditional Water Rights were part of a unified and integrated water supply system that is being constructed and maintained to supply water to Colorado City residents and users for municipal and other purposes. “When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.” C.R.S. § 37-92-301(4)(b). Consequently, all work and expenditures by the District in connection with its projects directly and indirectly constitute part of the District’s reasonable diligence in developing the Conditional Water Rights to be used in its water system. 4.2 The diligence period for the Conditional Water Rights is March 2015 through March 2021 (“Diligence Period”). During the Diligence Period, the District worked diligently to develop the Conditional Water Rights, complete the appropriations, and place the water to beneficial use, as demonstrated by the following representative but non-exhaustive list of activities and expenditures: 4.2.1 In 2020, the District requested a quote from RJH Consultants to perform a dam survey and develop a plan for constructing for Colorado City Reservoir No. 2. The District was preparing to finance the project but were unable to continue due to emergency repairs and state mandates to the District’s system. 4.2.2 The District’s Board of Directors adopted a Resolution on March 30, 2021 pursuant to which the District resolved to continue the Conditional Water Rights. 4.2.3 The Conditional Water Rights are part of a unified and integrated water supply system that is being constructed and maintained to supply water to Colorado City residents and users for municipal and other purposes. During the diligence period, the District conducted other activities and incurred other expenses to develop, operate and maintain its municipal water system, including: 4.2.3.1 The District has incurred approximately \$69,000 in engineering costs based on a contract with NOCO Engineering, related to work performed during 2015 to the present. 4.2.3.2 The District has expended in excess of \$76,000 on legal fees and costs between March 2015 and February 2021 for participating in various Water Court cases to protect its water rights, including the Conditional Water Rights, from injury due to claims of other water users and in consulting with its water attorneys on various matters related to the District’s water rights, including development of the Conditional Water Rights. 4.2.3.3

The District has expended approximately \$240,000 on work and other contracts related to operation, maintenance, and repair of its water system during the diligence period, including for repairs to breaks in the infrastructure, cleaning and maintenance of the headgate, and updates to the pressure release valves and replacements of the shutoff valve in the system. 4.2.3.4 The District has expended approximately \$885,000 in capital improvement projects, including but not limited to: a project to upgrade all meters in the District to auto-read meters; the rehabilitation of the Main Water plant; installation of the DOVE system in the water treatment plant to increase the chlorine contact time; a project to reclaim backwash water, replacement of filter membranes, and replacing/repairing of communication to the operation of plant. 5. Names and addresses of 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: 5.1 To the best of the District's knowledge and information, the names and addresses of the owners of the lands on which Colorado City Reservoir No. 2 will be constructed and upon which water will be stored are described in **Exhibit B**, attached hereto. 5.2 To the best of the District's knowledge and information, the names and addresses of the owners of the lands on which the Greenhorn Creek Feeder will be constructed are described in **Exhibit C**, attached hereto. Based on the foregoing, the District requests that the Court enter a decree (i) granting this Application; (ii) finding that the District has exercised reasonable diligence in developing and completing the appropriations of the Conditional Water Rights; and (iii) continuing the Conditional Water Rights in full force and effect for an additional diligence period.

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**CASE NO. 2021CW3018; BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, c/o Sarah Mudge, Commissioner, P.O. Box 964, Leadville, CO 80461**

(Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Sara M. Dunn and David C. Hallford, Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602, Ph: (970) 945-6546)

Application for Finding of Reasonable Diligence

**LAKE COUNTY, BIRDSEYE GULCH, TRIBUTARY TO EAST FORK ARKANSAS RIVER, TRIBUTARY TO THE ARKANSAS RIVER.**

Summary of Application: This Application requests a finding that Applicant has been reasonably diligent in the development of the conditional water rights decreed to the Birdseye Gulch Reservoir and the Hayden Meadows Recreation Pond. **CLAIM FOR FINDING OF REASONABLE DILIGENCE, Name of Structure: Birdseye Gulch Reservoir.** Legal Description of location of dam centerline: The center of the dam near the outlet is located in the NW1/4 SE1/4 of Sec. 33, T. 8 S., R. 79 W., 6th P.M., 2,367 ft. from the E. line and 2,348 ft. from the S. line of said Sec. 33, see **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) UTM NAD83 Z13: 0394447 E, 4351936 N. Source: Birdseye Gulch, tributary to the East Fork Arkansas River, tributary of the Arkansas River. The Reservoir will be constructed in a manner that does not intercept groundwater. Name and capacity of ditch used to fill reservoir: Birdseye Gulch Ditch, 2.2 c.f.s. Legal Description of point of diversion of Birdseye Gulch Ditch: NW1/4 SE1/4 of Sec. 33, T. 8 S., R. 79 W., 6th P.M., 2,920 ft. from W. line, 1,700 ft. from the S.

line of said Sec. 33. UTM NAD83 Z13: 0394485 E, 4351753 N. Date of Approp.: 12/19/2011 for 20 AF and 10/16/2013 for 10 AF. Amt. Claimed: 30 AF, cond., and refill once annually to maintain full capacity as necessary to replace seepage, evaporation losses, and to make releases for beneficial use, including aug. purposes in accordance with the plan for aug. approved in Case No. 98CW173; therefore, the maximum annual amt. claimed is 60 AF. Uses: Dom., municipal, irr., creation and maintenance of wetlands, comm., industrial, aesthetic, snowmaking, rec., livestock watering, piscatorial, fire protection, and aug. either directly or through storage in and release from the reservoir, including by exchange with Lake Cty. Applicant intends to utilize this reservoir as a source of replacement water for such uses in its plan for aug. approved in Case No. 98CW173. Use of the water stored in this reservoir under this Decree shall be limited to the reservoir site, together with the aug. area described in the decree entered in Case No. 98CW173. Name of Structure: **Hayden Meadows Recreation Pond.** Legal description: The center of the dam is located in the SE1/4 NW1/4 of Sec. 22, T. 10 S., R. 80 W., 6th P.M., 1,510 ft. from W. line and 2,120 ft. from N. line of said Sec. 22 as depicted on **Exhibit B** to the Application. UTM NAD83 Z13: 0385673E, 4336019 N. Source: Arkansas River. Name and capacity of ditch used to fill reservoir: Upper River Ditch Lake County Enlargement, 3.0 c.f.s. Legal description of point of diversion of Upper River Ditch Lake Cty. Enlargement: A point located within the NE1/4 SE1/4 of Sec. 16, T. 10 S., R. 80 W. 6th P.M., 790 ft. from the E. line, 1,850 ft. from the S. Line of said Sec. 16. UTM NAD83 Z13: 0384980 E, 4337239 N. Date of approp: 12/19/2011. Amt. claimed: 51 AF, cond., and refill once annually in order to maintain full capacity as necessary to replace seepage, evaporation losses, and to make releases for beneficial use, including aug. purposes in accordance with the plan for aug. approved in Case No. 98CW173; therefore, the maximum annual amt. claimed is 102 AF. Uses: Dom., municipal, irr., creation and maintenance of wetlands, comm., industrial, aesthetic, snowmaking, rec., livestock watering, piscatorial, fire protection, and aug. either directly or through storage in and release from the reservoir, including by exchange with Lake Cty. Applicant intends to utilize this reservoir as a source of replacement water for such uses in its plan for aug. approved in Case No. 98CW173. Use of the water stored in this reservoir under this Decree shall be limited to the reservoir site, together with the aug. area described in the decree entered in Case No. 98CW173. Total capacity of reservoir in acre feet: 51 AF. Active capacity: 49.2 AF. Dead storage: 1.8 AF. The Birdseye Gulch Reservoir and the Hayden Meadows Recreation Pond are part of an integrated water supply system, together with the water rights and plan for aug. approved in Case No. 98CW173, to supply water within Lake Cty. In the diligence period preceding the filing of this Application, Applicant has diligently pursued development of the conditional water rights described above. The Application on file with the Court contains examples of work performed to establish diligence. Landowner Information: Names and addresses of owners or reputed owners of the land upon which any new or existing 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: Birdseye Gulch Reservoir and Ditch: U.S. Department of Interior, BLM, 3028 E. Main St. Canon City, CO 81212. Hayden Meadows Recreation Pond: Applicant. Upper River Ditch: City of Aurora, 15151 E. Alameda Pkwy, Suite 3600, Aurora, CO 80012.

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**CASE NO. 2021CW3019; Previous Case Nos. 11CW45 and 15CW3048 – DEBORAH BLOUIN, P.O. Box 1068, La Veta, CO 81055** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: c/o Panorama Law Practice, LLC, Marjorie Sant, P.O. Box 4086, Boulder CO 80306, (303) 323-1931)

Application to Make Absolute, to Confirm Water Rights, to Confirm Appropriative Right of Exchange, and for Approval of Augmentation Plan

**HUERFANO COUNTY**

**CLAIMS TO MAKE ABSOLUTE 2.** Name of Water Right: Ojo Springs No. 1 (2011 Personal Right) A. Decree: 2011CW45 B. Point of Diversion: SE¼ SE¼ of Section 31, Township 28 South, Range 69 West, 6<sup>th</sup> P.M., Huerfano County, Colorado, 390 feet from the South section line and 110 feet from the East section line of Section 31. C. Source: Spring tributary to South Abeyta Creek, tributary to Middle Creek, tributary to the Cucharas River. D. Appropriation Date: July 12, 2011 E. Date applied to beneficial use: May-November 2019 F. Amount: i. 10 gpm ABSOLUTE ii. 1 acre-foot annually, cumulative with Ojo Springs No. 1 2011 Hauling Right, ABSOLUTE G. Uses: Applicant's personal domestic and livestock watering H. Diversions Perfecting the Water Right: The Ojo Springs No. 1 (2011 Personal Right) was decreed on the condition that the Applicant obtain approval of an augmentation plan prior to diverting any water under the right. The Applicant obtained a decree in Case No. 2015CW3048 approving an augmentation plan, which was entered on February 28, 2018. The 2015CW3048 Decree confirms a water right for an additional two acre-feet cumulatively diverted at Ojo Springs No. 1 and Blouin Spring No. 1 in addition to approving an augmentation plan to replace two acre-feet of depletions from all of the water rights confirmed for Ojo Springs No. 1 and Blouin Spring No. 1: the 2011CW45 rights and the 2015CW3048 rights. Accounting confirms the Applicant has diverted more than three acre-feet of water collectively at Ojo Springs No. 1 and Blouin Spring 1, all in accordance with the terms of the 2015CW3048 Augmentation Plan and an approved SWSP. **3.** Name of Water Right: Ojo Springs No. 1 (2011 Hauling Right) A. Decree: 2011CW45 B. Point of Diversion: See 1. B., above. C. Source: Spring tributary to South Abeyta Creek, tributary to Middle Creek, tributary to the Cucharas River. D. Appropriation Date: July 12, 2011 E. Date applied to beneficial use: May-November 2019 F. Amount: i. 80 gpm ABSOLUTE ii. 1 acre-foot annually, cumulative with Ojo Springs No. 1 2011 Personal Right, above, ABSOLUTE G. Uses: Hauling of water to homeowners G. Uses: See 1.G., above **4.** Name of Water Right: Ojo Springs No. 1 (First Enlargement) A. Decree: 2015CW3048 B. Point of Diversion: See 1.B., above. C. Source: Spring tributary to South Abeyta Creek, tributary to Middle Creek, tributary to the Cucharas River. D. Appropriation Date: September 30, 2015 E. Date applied to beneficial use: May-November 2019 F. Amount: i. 0.2 cfs ABSOLUTE ii. 2 acre-feet annually, cumulative with Blouin Spring No. 1, described in paragraph 5, below, ABSOLUTE G. Uses: Commercial purposes for non-domestic uses, including the hauling of water for such purposes H. Diversions Perfecting the Water Right: See 1.G., above **5.** Name of Water Right: Blouin Spring No. 1 (2015 Right) A. Decree: 2015CW3048 B. Point of Diversion: SW¼SE¼ of Section 4, Township 29 South, Range 69 West, 6<sup>th</sup> P.M., Huerfano County, Colorado, 1,560 feet from the East section line and 1,090 feet from the South section line of Section 4 C. Source: South Abeyta Creek, tributary to Middle Creek, tributary to the Cucharas River. D. Appropriation Date: September 30, 2015 E. Date applied to beneficial use: May-November 2019 F. Amount: i. 0.2 cfs ABSOLUTE ii. 2 acre-feet annually, cumulative with

Ojo Springs No. 1 (First Enlargement), described in paragraph 4, above, ABSOLUTE G. Uses: Commercial purposes for non-domestic uses, including the hauling of water for such purposes. H. See 1.G., above **CLAIM FOR WATER RIGHTS 6.** Name of Water Right: Ojo Springs No. 1 (Second Enlargement) A. Points of Diversion: i. Primary: See 1.B., above ii. Alternate Points of Diversion: a. On the Cucharas River at the point where the Coler Reservoir System Cucharas Delivery Flume releases water from storage in Lakes Miriam and Oehm to the Cucharas River in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 17, Township 28 South, Range 66 West of the 6<sup>th</sup> P.M., Huerfano County at a point approximately 1,600 feet from the West section line and 2,150 feet from the South section line of said Section 17. b. On the Cucharas River near the intersection of Highway 160 and CR 340 at the point where CR 340 crosses the river in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 17, Township 28 South, Range 66 West of the 6<sup>th</sup> P.M., Huerfano County. c. On the Cucharas River near County Road 346 in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 19, Township 28 South, Range 66 West of the 6<sup>th</sup> P.M. in Huerfano County. B. Source: Spring tributary to South Abeyta Creek, tributary to Middle Creek, tributary to the Cucharas River and directly from the Cucharas River. C. Appropriation Date: September 13, 2019 D. Amount: i. 0.2 cfs ABSOLUTE ii. 4 acre-feet annually, cumulative with Blouin Spring No. 1 Enlargement, described in paragraph 7, below; 0.39 acre-feet ABSOLUTE, 3.61 acre-feet CONDITIONAL E. Uses: Commercial purposes for non-domestic uses, including the hauling of water for such purposes 7. Name of Water Right: Blouin Spring No. 1 Enlargement A. Points of Diversion: i. Primary: See 4.B., above ii. Alternate Points of Diversion: a. On the Cucharas River at the point where the Coler Reservoir System Cucharas Delivery Flume releases water from storage in Lakes Miriam and Oehm to the Cucharas River in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 17, Township 28 South, Range 66 West of the 6<sup>th</sup> P.M., Huerfano County at a point approximately 1,600 feet from the West section line and 2,150 feet from the South section line of said Section 17. b. On the Cucharas River near the intersection of Highway 160 and CR 340 at the point where CR 340 crosses the river in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 17, Township 28 South, Range 66 West of the 6<sup>th</sup> P.M., Huerfano County. c. On the Cucharas River near County Road 346 in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 19, Township 28 South, Range 66 West of the 6<sup>th</sup> P.M. in Huerfano County. B. Source: South Abeyta Creek, tributary to Middle Creek, tributary to the Cucharas River and directly from the Cucharas River. C. Appropriation Date: September 13, 2019 D. Amount: i. 0.2 cfs ABSOLUTE ii. 4 acre-feet annually, cumulative with Blouin Spring No. 1 Second Enlargement, described in paragraph 6, above; 0.39 acre-feet ABSOLUTE, 3.61 acre-feet CONDITIONAL E. Uses: Commercial purposes for non-domestic uses, including the hauling of water for such purposes. **PLAN FOR AUGMENTATION 8.** Structures to be Augmented: A. Ojo Springs No. 1 (2011 Personal Right) B. Ojo Springs No. 1 (2011 Hauling Right) C. Ojo Springs No. 1 (First Enlargement) D. Blouin Spring No. 1 (2015 Right) E. Ojo Springs No. 1 Second Enlargement F. Blouin Spring No. 1 Enlargement Summary The cumulative diversion limits for the Ojo Springs No. 1 (2011 Personal Right), Ojo Springs No. 1 (2011 Hauling Right), Ojo Springs No. 1 First Enlargement right and the Blouin Spring No. 1 (2015 Right) is 3.0 acre-feet annually. The augmentation plan approved in Case No. 2015CW3048 to replace out-of-priority depletions from all of those rights only addresses depletions for 2.0 acre-feet of diversions. The first 2.0 acre-feet of diversions under those rights will continue to be replaced in accordance with the terms of the 2015CW3048 plan. Depletions resulting from the next 1.0 acre-foot of diversions under those rights together with

depletions resulting from the Ojo Springs No. 1 Second Enlargement and the Blouin Spring No. 1 Enlargement will be replaced in accordance with the terms of the augmentation plan claimed in this Application. **9. Water Right to be Used for Augmentation:** Applicant has a lease with the Navajo Western Water District for seven acre-feet of replacement water from the Coler Ditch and Reservoir System. Previously, the Applicant obtained a decree in Case No. 2015CW3048 approving an augmentation plan to replace two acre-feet of depletions from Ojo Springs No. 1 and Blouin Spring No. 1. With this application, the Applicant seeks an additional augmentation plan to replace out-of-priority depletions associated with the rights decreed in 2011 and the water rights claimed in this Application. A. Change Decree: In Case No. 2002CW121, Navajo Western Water District changed water rights associated with a 1/30<sup>th</sup> interest less 3 acre-feet in the Coler Ditch and Reservoir System, including the following water rights, to add augmentation use. i. Lake Miriam Ditch: 20 cfs direct flow ii. Lake Miriam Reservoir (a/k/a Horseshoe Reservoir): 1,148 acre-feet of storage iii. Lake Oehm Reservoir (a/k/a Martin Lake): a. 2,296 acre-feet of storage b. 277 acre-feet of enlarged storage iv. The Coler Reservoir System Cucharas Delivery Flume, which releases water from storage in the above-described reservoirs to the Cucharas River. B. Locations: i. Lake Miriam Ditch: The headgate diverts from the Cucharas River in the NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub> of Section 32, Township 28 South, Range 67 West of the 6<sup>th</sup> P.M., Huerfano County, Colorado. ii. Lake Miriam Reservoir (a/k/a Horseshoe Reservoir): In the W<sup>1</sup>/<sub>2</sub> of Section 13 and the NW<sup>1</sup>/<sub>4</sub> Section 24, Township 28 South, Range 67 West of the 6<sup>th</sup> P.M., Huerfano County, Colorado. iii. Lake Oehm Reservoir (a/k/a Martin Lake): In the E<sup>1</sup>/<sub>2</sub> of Section 13, Township 28 South, Range 67 West of the 6<sup>th</sup> P.M., Huerfano County, Colorado. iv. The Coler Reservoir System Cucharas Delivery Flume: In the NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 17, Township 28 South, Range 66 West of the 6<sup>th</sup> P.M., Huerfano County at a point approximately 1,600 feet from the West section line and 2,150 feet from the South section line of said Section 17. C. Source: Cucharas River D. Appropriation Dates: i. Lake Miriam Ditch: March 1, 1884, Priority No. 61 confirmed by the District Court, Third Judicial District, Huerfano County on June 12, 1889. ii. Lake Miriam Reservoir (a/k/a Horseshoe Reservoir): April 14, 1901 confirmed by the District Court, Water District 16, Huerfano County on October 3, 1921. iii. Lake Oehm Reservoir (a/k/a Martin Lake): a. April 30, 1901 confirmed by the District Court, Water District 16, Huerfano County on October 3, 1921. b. Enlargement appropriation date of November 25, 1905 confirmed by the District Court, Water District 16, Huerfano County on October 3, 1921. E. Use: Augmentation **10. Statement of Plan for Augmentation:** The Applicant will release water to the Cucharas River from the Lake Miriam and Lake Oehm storage locations to replace out-of-priority depletions resulting from use of the Ojo Springs No. 1 Enlargement and Blouin Spring No. 1. Enlargement rights. The Applicant will request releases in amounts equal to the amounts of diversions from the Enlargement rights. **APPROPRIATIVE RIGHT OF EXCHANGE 11. Name:** Blouin 2021 Exchange **12. Location:** A. Downstream terminus/exchange from location: On the Cucharas River at the point where the Coler Reservoir System Cucharas Delivery Flume releases water from storage in Lakes Miriam and Oehm to the Cucharas River in the NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 17, Township 28 South, Range 66 West of the 6<sup>th</sup> P.M., Huerfano County at a point approximately 1,600 feet from the West section line and 2,150 feet from the South section line of said Section 17. B. Upstream termini/exchange to locations: i. Ojo Springs No. 1: SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub> of Section 31, Township 28 South, Range 69 West, 6<sup>th</sup> P.M.,

Huerfano County, Colorado, 390 feet from the South section line and 110 feet from the East section line of Section 31. ii. Blouin Spring No. 1: SW¼SE¼ of Section 4, Township 29 South, Range 69 West, 6<sup>th</sup> P.M., Huerfano County, Colorado, 1,560 feet from the East section line and 1,090 feet from the South section line of Section 4 iii. On the Cucharas River near the intersection of Highway 160 and CR 340 at the point where CR 340 crosses the river in the NE¼NE¼ Section 17, Township 28 South, Range 66 West of the 6<sup>th</sup> P.M., Huerfano County iv. On the Cucharas River near County Road 346 in the NE¼NW¼ Section 19, Township 28 South, Range 66 West of the 6<sup>th</sup> P.M. in Huerfano County **13.** Appropriation date: September 13, 2019 **14.** Amount: A. Exchange Rate: 0.2 cfs B. Volume: 5 acre-feet. **15.** 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: Ag Real, LLC, 1630A 30<sup>th</sup> St., Suite 468, Boulder, CO 80301, Navajo Western Water District, 705 Navajo Road, Walsenburg, CO 81089, Huerfano County, 401 Main Street, Suite 201, Walsenburg, CO 81089, City of Walsenburg, 525 South Albert Avenue, Walsenburg, CO 81089.

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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 May 2021, (forms available at Clerk's office or at [www.courts.state.co.us](http://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.

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Witness my hand and the seal of this Court this 12<sup>th</sup> day of April 2021.





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

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