

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING MARCH 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 March 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. 2021CW3044; TRIVIEW METROPOLITAN DISTRICT, ACTING BY AND THROUGH ITS WATER AND WASTEWATER ENTERPRISE, 16055 Old Forest Point, Ste. 300 Monument, CO 80132 (Please address all pleadings and correspondence regarding this matter to Applicant's attorneys: Steven O. Sims, Dulcinea Z. Hanuschak, & Courtney Shephard at Brownstein Hyatt Farber Schreck, LLP, 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432, Phone: 303.223.1100; Fax: 303.223.1111; Emails: ssims@bhfs.com; dhanuschak@bhfs.com; cshephard@bhfs.com)

Third Amended Application For Change Of Water Rights And Approval Of Recharge Plan
CHAFFEE COUNTY

3. Effect of Amendment on Previous Applications. On August 31, 2021, Triview filed an Application for Change of Water Rights to change the types and places of use of the Arkansas Valley Irrigation Canal Company's Ditch (the "Original Application"). On September 2, 2021, Triview filed an Amended Application for Change of Water Rights, which added information regarding the location of the original point of diversion and the current headgate/point of diversion locations (the "First Amended Application"). On November 8, 2022, Triview filed a Second Amended Application for Change of Water Rights and Approval of Recharge Plan, which added a request to use the water in recharge plans to create stream accretions (the "Second Amended Application"). In this Third Amended Application for Change of Water Rights and Approval of Recharge Plan, Triview revised parts of its Original Application and previous Amended Applications, added additional return flow replacement sources, and added storage and other facilities to its changed uses. Triview completely restated its application to include all of its continuing and revised claims into one document. This Third Amended Application supersedes and replaces all previous Triview applications and amendments.

4. Name of Subject Water Right. The Arkansas Valley Irrigation Canal Company's Ditch (the "AVIC Water Right").

5. Name of Structure. Ark Valley Irrigation Co (1100655).

6. Original Decree. The AVIC Water Right was decreed in Case No. CA 1127 on June 19, 1890 with an appropriation date of May 1, 1880 for 18.05 c.f.s.

6.1 The original point of diversion was described in CA 1127 as "the headgate is located on the south bank of [Cottonwood Creek] about 100 feet above the junction of the North and South forks of said Stream, Chaffee County."

7. Point of Diversion. The headgate is currently located on the South bank of Cottonwood Creek about 1,600 feet upstream of the confluence between Cottonwood Creek and North Cottonwood Creek. The point of diversion was moved

upstream pursuant to the provisions of C.R.S. § 37-86-111. **7.1 Current UTM Location.** UTM Zone 13, NAD83, X-48782.79082, Y 4394670.81106. **7.2 Current PLSS Location.** SW ¼ NE ¼ of the SW ¼ of Section 13, Township 14 South, Range 79 West of the 6th P.M. in Chaffee County, Colorado. **8. Source.** Cottonwood Creek, a tributary of the Arkansas River, in Chaffee County, Colorado. **9. Decreed Use.** Irrigation. **10. Amount of Water Right to be Changed.** 18.05 c.f.s. **11. Historical Use.** The AVIC Water Right historically irrigated up to 432 acres of grass hay and pasture. A map showing said irrigated land is attached as Appendix A. **12. Augmentation Stations.** Some or all of the return flows, replacements, and/or water representing the historical consumptive use of the AVIC Water Right shall be measured and returned to the Arkansas River and/or Cottonwood Creek through one or more augmentation stations at locations to be described in the proposed decree, including the augmentation station to be located in the SW ¼ SW ¼ or NW ¼ SW ¼ or NE ¼ SW ¼ of Section 13, Township 14 South, Range 79 West of the 6th P.M in Chaffee County, Colorado. **13. Diversion Records, Map of Historically Irrigated Lands, Method of Analysis.** The map of historically irrigated lands is attached to the application as Appendix A. (All appendix's mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) A summary of records of diversions of the AVIC Water Right is attached as Appendix B. Applicant will add diversion records for irrigation years 2020 and 2021 to Appendix B when those records are added to the State Engineer records. Applicant will evaluate the AVIC Water Right using a modified Blaney-Criddle ET method, or other methods over a study period of 1970 to 2021, excluding 1986 when no records were available. **14. Proposed Change.** Triview seeks approval of the following changes of types and places of use: **14.1 Types of Use.** Municipal, domestic, agricultural, energy production, manufacturing, mechanical and industrial purposes including, but not limited to: fire protection, irrigation, commercial, recreation, fish and wildlife propagation, reserve or evaporation replacement, creation and maintenance and/or enhancement of wetlands, maintenance of storage reserves, recharge including recharge of Denver Basin aquifers and use in the recharge pond to create stream accretions, stock watering, reclamation, revegetation, dust suppression, water treatment and supply, wastewater treatment, storage for such uses, and use as a supply or substitute supply for augmentation, return flow replacement, exchanges decreed or to be decreed, recharge plans decree or to be decreed, and substitute supply plans. All uses include reuse and successive reuse to extinction for the above purposes, or disposition of effluent for the above purposes. **14.2 Places of Use.** Triview seeks to change the place of use for the AVIC Water Right to Triview's current and future service areas served by its municipal water supply and water reuse systems, including areas served by its connections with other systems, and by any current or future water supply contracts or obligations of Triview. Triview may also use the water to meet its replacement or delivery obligations in Water Division 2 including for replacement of depletions on the Arkansas River and its tributaries, including but not limited to Monument Creek, Fountain Creek, Cottonwood Creek, and the South Arkansas River. Triview's service area has changed from time to time and will continue to do so. **14.3 Stored Water.** After diversion and prior to initial use by Triview, water diverted pursuant to the AVIC Water Right may be stored at any of the locations set forth below in Paragraphs 14.4 or 16.5.2. Such water may be delivered to storage by means of the use of natural stream channels, component facilities of any existing and future Fountain

Creek and Arkansas River diversion and conveyance systems that Triview owns or has a right to use, the AVIC Ditch, and/or any points of diversion authorized in the decrees for the storage structures Triview is authorized to use. Reusable effluent or return flows resulting from the initial use for the changed uses of the historical consumptive use component of the water diverted pursuant to the AVIC Water Right also may be stored in any reservoir Triview is authorized to use. 14.4. **Places of Storage.** 14.4.1 Big Johnson Reservoir, a 10,000 acre-foot reservoir located under the Fountain Mutual Canal in Sections 8, 17, and 18 of Township 15 South, Range 65 West of the 6th P.M. in El Paso County, Colorado. 14.4.2. Stonewall Springs Reservoir Complex (“SSRC”), a 19,537 acre-foot complex of reservoirs, filled by the Excelsior Ditch in Sections 35 and 36 of Township 20 South, Range 63 West of the 6th P.M. in Pueblo County, Colorado. 14.4.3. Pueblo Reservoir, as operated as part of the Fryingpan-Arkansas Project by the United States Bureau of Reclamation and the Southeastern Colorado Water Conservancy District, located on-channel on the Arkansas River located in Section 24 of Township 20 South, Range 67 West, Sections 19, 25, 29, 33, 34, 35, and 36 of Township 20 South, Range 66 West, Sections 1, 2, 3, 10 and 11 of Township 21 South, Range 66 West of the 6th P.M. in Pueblo County, Colorado. Triview has a long-term Excess Storage Capacity contract for the storage of 999 acre-feet in Pueblo Reservoir. 14.4.4. Storage and other facilities owned, controlled, or planned by the Upper Arkansas Water Conservancy District. 14.4.5. The recharge pond described in Paragraph 16.5. **15. Return Flow Replacement.** In connection with the change of the AVIC Water Right, Triview will have return flow replacement obligations resulting from the historical use of the AVIC Water Right. 15.1. **Return Flow Replacement Obligation.** Triview will replace return flows at times when there is a valid call from an in-priority water right or unsatisfied instream flow on Cottonwood Creek and/or the Arkansas River senior to August 31, 2021 in a location that could result in the curtailment of the Arkansas Valley Irrigation Canal Company’s Ditch. 15.2. **Return Flow Replacement Locations.** Triview will replace return flows at the recharge pond identified in Paragraph 16 and at the Augmentation Station to be located in the SW ¼ SW ¼ or NW ¼ SW ¼ or NE ¼ SW ¼ of Section 13, Township 14 South, Range 79 West of the 6th P.M. in Chaffee County, Colorado. 15.3. **Replacement Sources.** Triview may use the following sources to meet its replacement obligations resulting from the historical use of the AVIC Water Right: 15.3.1. Water diverted pursuant to the priorities identified in Paragraph 6 for the AVIC Water Right. 15.3.2. Accretions created by discharging the AVIC Water Right into the recharge pond pursuant to the recharge plan described in Paragraph 16. 15.3.3. Water available for release to the Arkansas River above the confluence with Cottonwood Creek pursuant to the water exchange agreement between Triview and the Board of Water Works of Pueblo, Colorado. 15.3.4. Storage or recharge accretions that Triview has the right to use pursuant to any lease or contract with the Upper Arkansas Water Conservancy District. 15.3.5. Water derived from other water rights not listed in this paragraph provided the water released is fully consumable and Triview has given notice of its intent to use such water as required in the decree entered in this case. **16. Statement of Recharge Plan.** Triview seeks Water Court approval for a recharge plan that accounts for, quantifies, times, reports, and administers the use of stream accretions created by discharging the AVIC Water Right into a recharge pond consisting of up to two cells. Triview will divert its AVIC Water Right at the current point of diversion and discharge some or all of that

water into the recharge pond located on the AVIC Water Right's historically irrigated acreage to create stream accretions. 16.1. **Name of Recharge Plan.** The AVIC Recharge Plan. 16.2. **Source of Recharge.** The AVIC Water Right diverted from Cottonwood Creek, a tributary of the Arkansas River, in Chaffee County, Colorado. Triview may also use water from other water rights for recharge in this recharge plan if the other sources are decreed for recharge use and subject to the same terms and conditions concerning this Recharge Plan. 16.3. **Amount of AVIC Water Right to be Recharged.** Up to 18.05 c.f.s. 16.4. **Original AVIC Decree & Point of Diversion.** See Paragraphs 6 and 7, above, for a description. 16.5. **Recharge Pond.** Triview's first pond site will be approximately 468,000 square feet consisting of two cells of equal size; each cell will have a capacity of approximately 47 acre-feet. Triview will propose terms and conditions to allow it to modify the size, number, and location of recharge ponds if needed in the future. 16.5.1. **Location.** The first pond will be located in the SW ¼ of the SW ¼ of Section 19, Township 14 South, Range 78 West of the 6th P.M. in Chaffee County, Colorado, at or near the location shown in Appendix C. 16.5.2. **Incidental Storage.** Triview does not plan to store the water in the recharge pond because the water discharged into the recharge pond is designed to seep out of the recharge pond into the alluvial aquifer as soon as it reaches the recharge pond. To the extent that the water discharged into the recharge pond does not seep out of the recharge pond within 72 hours, Triview seeks approval to store the recharge water in the recharge pond until it seeps into the alluvial aquifer. 16.6. **Use of Recharge Accretions.** 16.6.1. Recharge use to create stream accretions for all the proposed changes of use described in this application, and; 16.6.2. Recharge use to create stream accretions to replace some or all AVIC Water Right return flow obligations arising in this Case No. 21CW3044, and; 16.6.3. Recharge use to create stream accretions to retime certain AVIC Water Right historical consumptive use credits for all changed uses sought in this application and; 16.6.4. Recharge use to create stream accretions to replace irrigation return flow and augmentation obligations in other Triview decrees and applications including without limitation those in Case No. 22CW3004, Division 2. 16.7. **Terms and Conditions.** Triview will propose terms and conditions in the final decree that prevent injury to any other vested water user or conditional water right and to account for, quantify, time, report, and administer the AVIC Recharge Plan and the use of stream accretions created by the Recharge Plan. 17. **Lack of Injury.** Triview will propose terms and conditions in the final decree so that this change of water right will not injuriously affect the owner of or persons entitled to use of water under a vested water right or a decreed conditional water right. 18. **Names and Addresses of Owners of Structures.** 18.1. Triview owns the headgate and ditch works that diverts and conveys the Arkansas Valley Irrigation Canal Company's Ditch and the land upon which the recharge pond and related infrastructure are located. 18.2. The headgate of the Arkansas Valley Irrigation Canal Company's Ditch and some augmentation stations are located on land owned by Hargrove Family Trust, 28395 County Road 361, P.O. Box 365, Buena Vista, CO 81211. 18.3. The Excelsior Irrigating Company owns the Excelsior Ditch of which Triview owns an approximately 40% share in said ditch, allowing diversion of water to the SSRC. The address of the Excelsior Irrigating Company is P.O. Box 11446, Pueblo, CO 81001. 18.4. The headgate of the Excelsior Ditch is located on land owned by Kirkland Property Holdings LLC, P.O. Box 580, Rye, CO 81069-0580. 18.5. Triview owns the land upon which the storage facilities

known as the SSRC are/will be constructed, and the storage structures and rights in the SSRC are owned by the Stonewall Springs Reservoir Company. 18.6. The Bureau of Reclamation owns Pueblo Reservoir. The Bureau of Reclamation Eastern Colorado Office is 11056 W. County Rd 18E, Loveland, CO 80537-9711. 18.7. The Fountain Mutual Irrigation Company (“FMIC”) owns the Big Johnson Reservoir and the Fountain Mutual Ditch through which water may be delivered to Big Johnson Reservoir. Triview owns approximately 17.6% of the shares in FMIC. FMIC’s address is P.O. Box 75292, Colorado Springs, CO 80970. 18.8. The Upper Arkansas Water Conservancy District (“Upper Ark”) owns the “storage and other facilities owned, controlled, or planned” referenced in Paragraph 14.4.4, above. Upper Ark’s address is 339 E, Highway 50, Salida, CO 81201. WHEREFORE, the Applicant requests that the Third Amended Application for Change of Water Rights and Approval of Recharge Plan be approved as requested herein and for such other relief and conditions that the Court deems appropriate.

CASE NO. 2022CW3080; Water Division 2 and CASE NO. 2022CW3175, Water Division 1 – ALFRED C STEWART AND DONNA M STEWART, 16850 Stepler Road, Colorado Springs, CO 80908 (Please address all pleadings and correspondence regarding this matter to Applicant’s attorneys: James J. Petrock, Eric K. Trout, Hayes Poznanovic Korver LLC, 700 17th Street, Suite 1800, Denver, CO 80202, (303) 825-1980)

Amended Application for Underground Water Rights from Nontributary and Not-Nontributary Sources and Approval of Plan for Augmentation in the Nontributary Denver, Arapahoe and Laramie-Fox Hills Aquifers, and the Not-Nontributary Upper Dawson Aquifer

EL PASO COUNTY

Amended Application: This amended application amends the proposed augmentation plan to include up to 14 wells for use on the Subject Property. Applicant claims that this amendment relates back to the original application. Subject Property: 36.38 acres generally located in the NE1/4 of the SE1/4 of Section 23, Township 11 South, Range 66 West of the 6th P.M., also known as 16850 Stepler Road, Colorado Springs, El Paso County, State of Colorado, as shown on **Exhibit A** (“Subject Property”) 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.) The Subject Property is located in Water Division 1 close to the border with Water Division 2. This Application is being filed concurrently in Water Division 1 and 2 for notice purposes. A motion to consolidate multidistrict litigation into Water Division 1 will be filed once the time for filing statements of opposition has expired. Property Certification: Applicants certify that they have provided notice to all parties that have a mortgage or lien interest in the Subject Property as required under C.R.S. § 37-92-302(2)(b). Well Permits: There is currently one well on the Subject Property under Well Permit No. 101508. This well will be re-permitted under the augmentation plan applied for herein. Additional well permits will be applied for prior to construction of wells. Source of Water Rights: The Dawson Aquifer is non-tributary as defined in C.R.S. § 37-90-103(10.7), and the Denver, Arapahoe, and

Laramie-Fox Hills aquifers are nontributary as defined in C.R.S. § 37-90-103(10.5). Estimated Amounts: Applicants estimate the following annual amounts may be available for withdrawal based on a 300-year withdrawal period:

Aquifer	Annual Amount (acre-feet)
Dawson (NNT)	11.38
Denver (NT)	11.23
Arapahoe (NT)	4.82
Laramie-Fox Hills (NT)	3.62

Proposed Uses: Use, reuse, and successive use for domestic, including in-house use, commercial, irrigation, industrial, stockwatering, fire protection, recreation, and augmentation purposes, including storage, both on and off the Subject Property. Jurisdiction: The Court has jurisdiction over the subject matter of this application pursuant to C.R.S. §§ 37-90-137(6), 37-92-203(1), 37-92-302(2). Summary of Plan for Augmentation: Groundwater to be Augmented: Approximately 3.15 acre-feet per year for 300 years of Dawson Aquifer groundwater. Water Rights to be Used for Augmentation: Return flows from the use of not-nontributary and nontributary groundwater and direct discharge of nontributary groundwater. Statement of Plan for Augmentation: The Dawson Aquifer groundwater will be used in up to fourteen (14) wells, each well providing in-house use in up to one (1) single-family home (0.3 acre-feet per well, 4.2 acre-feet per year total), irrigation, including home lawn, garden, and trees, of up to 6,000 square-feet (0.3 acre-feet per well, 4.2 acre-feet per year total), stock watering for up to 4 large domestic animals (0.05 acre-feet per well, 0.7 acre-feet per year total), and fire protection, on the Subject Property. Applicants reserve the right to amend the amount and uses without amending the application or republishing the same. Sewage treatment for in-house use will be provided by non-evaporative septic systems. Return flow from in-house use will be approximately 90% of that use, and return flow from irrigation use will be approximately 15% of that use. During pumping Applicants will replace actual depletions pursuant to C.R.S. § 37-90-137(9)(c.5). Depletions occur to the East and West Cherry Creek, and Monument Creek, stream systems and return flows accrue to those stream systems and are sufficient to replace actual depletions while the subject groundwater is being pumped. Applicants will reserve an equal amount of nontributary groundwater underlying the Subject Property to meet post-pumping augmentation requirements. Applicants request the Court approve the above underground water rights and augmentation plan, find that Applicants have complied with C.R.S. § 37-90-137(4) and water is legally available for withdrawal, find there will be no material injury to the owners of or persons entitled to use water under any vested water right or decreed conditional water right, and grant such other and further relief as is appropriate.

CASE NO. 2023CW3014; CANDA RANCH, LPA (“Canda Ranch” or “Applicant”), 404 5th Street, Westcliffe, Colorado 81252 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Richard J. Mehren, Molly K Haug, Moses,

Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Blvd., Suite 240, Boulder, CO 80302 (303) 443-8782)

Application For Simple Change In Surface Point Of Diversion Pursuant To § 37-92-305(3.5), C.R.S.

CUSTER COUNTY

2. Introduction: Canda Ranch entered into a settlement agreement with Wilbur C. Miller Family LLLP, 2 R's Land Holdings, LLC, and Manual Fornasier Jr., an individual, to resolve Case No. 2017CV30016 on March 22, 2018 ("Settlement Agreement"). As required by the Settlement Agreement, Canda Ranch seeks a simple change in surface point of diversion for all of Canda Ranch's Frank and Elze Ditch Water Right Priority No. 376 and for a portion of Canda Ranch's Frank and Elze Ditch Water Right Priority No. 393, to a new point of diversion located downstream of the decreed point of diversion of the Frank and Elze Ditch and just upstream of the Jarvis-Aldrich Diversion Point. Canda Ranch will divert water at the new point of diversion for the continued irrigation of a 60-acre parcel of land owned by Canda Ranch that is a decreed place of use for the Frank and Elze Ditch Water Rights Priority Nos. 376 and 393.

3. Decreed water rights for which a simple change in surface point of diversion is sought:

3.1 Name of structure: Frank and Elze Ditch (WDID 1300782). **3.2 Date of original decree:** Decree in the Matter of the Priorities of Water Rights and the Adjudication thereof in Water District No. 13, District Court, County of Fremont, State of Colorado, dated March 12, 1896. **3.3 Decreed point of diversion:** On the south side of Dry Creek, at a point whence the NE corner of the SE1/4 NW1/4 of Section 11, T23S, R73W of the 6th P.M., bears N 10 degrees east 550 feet, and in the SE1/4 NW1/4 of Section 11, as shown on **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.) The UTM location obtained from Colorado Decision Support System ("CDSS") is: 454539.0 M East, 4213530.7 M North, Zone 13, NAD 83. **3.4 Decreed source of water:** Dry Creek. **3.5 Appropriation dates:** **3.5.1 Priority No. 376:** June 5, 1884. **3.5.2 Priority No. 393:** June 15, 1885. **3.6 Amounts decreed to structure:** **3.6.1 Priority No. 376:** 1.4 cfs. **3.6.2 Priority No. 393:** 1.4 cfs. **3.7 Decreed use:** Irrigation of 60 acres of land lying in the S1/2 SW1/4 of Section 1 (the "Canda Irrigated Land") and 5 acres lying in the NW1/4 NE1/4 of Section 11, all in T23S, R73W of the 6th P.M. **3.8 Amount of water to be changed:** **3.8.1 Total:** 2.58 cfs. **3.8.2 Priority No. 376:** all 1.4 cfs ("Senior F&E Ditch Water Right"). **3.8.3 Priority No. 393:** 1.18 cfs of the 1.4 cfs ("Junior F&E Ditch Water Right").

4. Detailed description of proposed simple change in a surface point of diversion: As required by the Settlement Agreement described in paragraph 2 above and as described herein, Canda Ranch seeks a simple change in surface point of diversion for the Senior and Junior F&E Ditch Water Rights. The new point of diversion for the Senior and Junior F&E Ditch Water Rights is described in paragraph 4.1, below, ("New Point of Diversion") and is at a point on Dry Creek downstream of the decreed point of diversion for the Frank and Elze Ditch, as described in paragraph 3.3, above, and just upstream of the Jarvis-Aldrich Diversion Point, as described in paragraph 4.1, below. Canda Ranch will divert water at the New Point of Diversion for irrigation of the Canda Irrigated Land. **4.1 Location of new point of diversion:** In the SW1/4 SE1/4 of Section 2, T23S, R73W of the 6th P.M. at a point 145 feet from the South section line and 1,421 feet from the East section line. The UTM location taken by the Applicant is: 455128 M East, 4214157 M North, Zone 13, NAD 83.

Exhibit A shows the location of the claimed New Point of Diversion. As required by paragraph 13 of the Settlement Agreement, the measurement point for diversions of the Senior and Junior F&E Ditch Water Rights at the New Point of Diversion will be at or upstream of the Jarvis-Aldrich Diversion Point. The Jarvis-Aldrich Diversion Point (WDID: 1300781) is located in the SW1/4 SE1/4 of Section 2, T23S, R73W of the 6th PM, at a point 150 feet from the South section line and 1400 feet from the East section line. The UTM location for the Jarvis-Aldrich Diversion Point taken from the decree entered on May 20, 2016, in Case No. 15CW3015, District Court, Water Division No. 2, State of Colorado is: 455133 M East, 4214169 M North, Zone 13, NAD 83. **Exhibit A** shows the location of the Jarvis-Aldrich Diversion Point. 4.2 No other change requested: By this application, Canda Ranch seeks only a simple change in surface point of diversion for Canda Ranch's Senior and Junior F&E Ditch Water Rights for diversion at the New Point of Diversion as described above. Canda Ranch does not seek a change in the decreed use, place of use, or any other change of the Senior and Junior F&E Ditch Water Rights. 4.3 No intervening diversions or inflows: There are no intervening surface diversion points or inflows into Dry Creek between the decreed point of diversion for the Frank and Elze Ditch as described in paragraph 3.3, above, and the New Point of Diversion. There are no instream flow water rights within this reach. 4.4 No greater diversion in rate or amount: The simple change in surface point of diversion requested herein will not result in diversion of a greater flow rate or amount of water than has been decreed to the Senior and Junior F&E Ditch Water Rights and that is physically and legally available at the diversion point from which this change is being made. 4.5 No injury to other water rights: The simple change in surface point of diversion requested herein also will not injure the owner of or persons entitled to use water under a vested water right or decreed conditional water right. 5. **Abandonment of a portion of the Junior F&E Ditch Water Right**: As required by paragraph 12 of the Settlement Agreement, Canda Ranch agrees to abandon the remaining 0.22 cfs of the junior Frank and Elze Ditch Water Right, Priority No. 393 upon entry of a decree by the Water Court approving the simple change in surface point of diversion requested by this application. 6. Name and address of owner or reputed owner 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: 6.1 Linda Gentsch, 4830 County Road 140 #6, Westcliffe, CO 81252 6.2 Manuel Fornasier Jr., 379 Dry Creek Drive, Westcliffe, CO 81252. WHEREFORE, Canda Ranch respectfully requests that the Court enter a decree adjudicating the simple change in surface diversion point requested for the Canda Ranch's Frank and Elze Ditch Water Rights, Priority Nos. 376 and 393 requested herein, and for such other relief as the Court may deem proper.

CASE NO. 2023CW3015; The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2

CASE NO. 2023CW3016; STATE ENGINEER AND WATER DIV 2 ENGINEER vs. LARRY K. HIGINBOTHAM, JR., and YVETTE M. FRANSUA; Verified Complaint for Injunctive Relief, Penalties, and Costs. This case is being listed in the resume to account for the case number in consecutive order.

CASE NO. 2023CW3017; TURKEY CANON RANCH WATER DISTRICT, 15582 Cala Rojo Dr., Colorado Springs, CO 80907

(Please address all pleadings and correspondence regarding this matter to Applicant's attorneys: Chris D. Cummins and W. James Tilton, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921; (719) 471-1212)

Amended Application for Change of Water Right

EL PASO COUNTY

Turkey Canon Ranch Well No. 2 (Well Permit No. 67871). Original Decree. TCR Well Nos. 1 and 2 were decreed in Case No. 94CW6, District Court, Water Division 2 on December 17, 1997. The decreed source of water for TCR Well Nos. 1 and 2 is the Manitou Formation. The appropriation date for TCR Well No. 1 is May 24, 1994. The appropriation date for TCR Well No. 2 is August 31, 1994. Findings to make these water rights partially absolute and for continued diligence on portions thereof were decreed in Case Nos 97CW171, 02CW11, 09CW16, and 16CW3071. Decreed Uses. Water is decreed for each well to pump a maximum of 100 gallons per minute ("gpm"), with TCR Well No. 1 decreed for 3.06 acre feet annual pumping absolute, and 17.59 acre feet annual pumping, conditional (20.65 annual acre feet maximum). The total annual amount of water pumped between TCR Well No. 1 and TCR Well No. 2 may not exceed 27.26 acre feet annually. The wells serve a subdivision known as The Pinons of Turkey Canon Ranch. Uses include in-house domestic uses, commercial use for fire station and restaurant, and replacement purposes. Location of Water Rights to be Changed. As referenced in the decree for Case No. 16CW3071, granting reasonable diligence findings, the office of the Division Engineer for Water Division No. 2 identified in its Consultation Report that TCR Well No. 2 was located more than 200 feet from its decreed location, and required Applicant to file a change of water rights application prior to any subsequent diligence application. The Applicant hereby submits this Application for Change of Water Right to correct the location of TCR Well No. 2. No further change of water rights is sought. Location as Decreed. TCR Well No. 2 was decreed to be located as follows: SE ¼ of Section 5, Township 17 South, Range 67 West of the 6th P.M., being 3,650 feet from the north section line and 1,300 feet from the east section line of said Section 5. Location as Constructed/Change Requested. TCR Well No. 2, WDID 1206698, is constructed in the NW ¼ SE ¼ of Section 5, Township 17 South, Range 67 West of the 6th P.M., 2,452 feet from the south section line and 1,566 feet from the east section line of said Section 5. UTM coordinates 13S 507777.6 E and 4272274.3 N. This location is approximately 560 feet to the northwest of the decreed location.

CASE NO. 2023CW3018; Previous Case Nos: 94CW06; 97CW171; 02CW11; 09CW16; 16CW3071 – TURKEY CANON RANCH WATER DISTRICT, 15580 Cala Rojo

Dr., Colorado Springs, CO 80907 (Please address all pleadings and correspondence regarding this matter to Applicant's attorneys: Chris D. Cummins and W. James Tilton of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921 (719) 471-1212)

Application for Findings of Diligence

EL PASO COUNTY

II. Turkey Canon Ranch Water District ("Applicant") is a quasi-municipal special district operating a water system servicing owners of real property located southwest of the City

of Colorado Springs, Colorado. Applicant withdraws its water through TCR Well No. 1 and TRC Well No. 2, which provide water to the public water system. Date of Initial decree: January 18, 1996, Case No. 94CW06, District Court, Water Division 2; Date of final decree: December 17, 1997, Case No. 94CW06, District Court, Water Division 2; Date of amended decree: November 6, 1998, Case No. 97CW171, District Court, Water Division 2; Date of first diligence decree: January 14, 2003, Case No. 02CW11, District Court, Water Division 2; Date of second diligence decree: October 15, 2010, Case No. 09CW16, District Court, Water Division 2; Date of third diligence decree: March 21, 2017, Case No. 16CW3071, District Court, Water Division 2. **III. Name of Structure**: TCR Well No. 1 (WDID No. 1206697). Legal Description: NE1/4 of the NE1/4 of Section 5, Township 17 South, Range 67 West of the 6th P.M., being 1,100 feet from the North Section line, and 20 feet from the East Section line. The UTM location of the TCR Well No. 1 is Zone 13S, NAD83, Easting: 508235, Northing: 4272849. Source: Manitou Formation. Date of Appropriation: May 24, 1994. Amount: One-hundred (100) gpm, not to exceed 20.65 acre feet limited to a maximum annual combined diversion with TCR Well No. 2 of 27.26 acre feet. The Court decreed 3.06 annual acre feet as absolute at 100 gpm in Case No. 02CW11, with 17.59 acre feet remaining conditional. Diligence was granted on this conditional component in Case Nos. 02CW11, 09CW16, and 16CW3071. Depth: Approximately 617 feet. Use: Domestic/in-house use, commercial (for fire protection), and replacement. Name of Structure: TCR Well No. 2 (WDID No. 1206698) Legal Description: NW¼ of the SE¼ of Section 5, Township 17 South, Range 67 West of the 6th P.M., being 2,452 feet from the North Section line and 1,566 feet from the East Section line. The UTM location of the TCR Well No. 2 is Zone 13S, NAD83, Easting: 507777.6, Northing: 4272274.3¹. Source: Manitou Formation. Date of Appropriation: August 31, 1994. Amount Claimed: One-hundred (100) gpm, limited to a maximum annual combined diversion with TCR Well No. 1 of 27.26 acre feet. TCR Well No. 2 has been previously awarded diligence in Case Nos. 02CW11, 09CW16, and 16CW3071 for a combined diversion with TCR Well No. 1 of 27.26 acre feet at 100 gpm. Appropriation Date and Amount: August 31, 1994. Depth: The decreed depth is 620 feet; the well was constructed to 662 feet. Use: Domestic/in-house use, commercial (for fire protection), and replacement. Remarks: Applicant, pursuant to the Court's order in 16CW3071, has submitted an Application for Change of Water Right. This application is currently pending in District Court, Water Division 2, Colorado, under Case No. 23CW3017. The Application seeks to change the decreed location of TCR Well No. 2, as it was determined to be more than 200 feet from its decreed location. The location provided herein is the actual physical location of TCR Well No. 2. **IV.** TCR Well Nos. 1 and 2 are currently used to provide water to fifty (50) constructed homes in the subdivision. This is an increase from forty-two (42) homes which occurred during the current diligence period. TCR also provides fire protection services for all of these residences. Applicant is a quasi-municipal special district operating an integrated water system for its residents, and diligence as to any part of the Applicant's water rights shall be diligence as to all aspects of the Applicant's water rights pursuant to C.R.S. §37-92-301(4)(b). TCR Well No. 1 pumped no additional

¹ The location described is the as-constructed location of TCR Well No. 2. The decreed location is Zone 13S, NAD83, Easting: 507859.7, Northing: 4272086.1, approximately 680 feet to the southeast. Applicant has filed a change of water rights application in Case No. 23CW3017 to change the location of TCR Well No. 2 to its as-constructed location.

conditional appropriations during the diligence period. TCR Well No. 2 pumped no additional conditional appropriations during the diligence period. As such, Applicant seeks to make no additional portion of pumping absolute by this Application. During this diligence period TCR Well Nos. 1 and 2 each had their downhole pumps replaced, at the cost of \$3,311 and \$5,138, respectively. In October/November of 2017 a service line leak near the water main was repaired at the cost of \$11,050. TCR had the fire hydrants' pressure and flow tested, and minor repairs done, in 2021 at the cost of \$935. Well meter certifications were obtained in 2018 and 2022, at the cost of \$300 and \$600, respectively. A new flow meter was installed on TCR Well No. 1 in 2020 at the cost of \$1,194. A leak on the water transmission line between TCR Well No. 2 and the water treatment plant was repaired early 2023 for \$3,255. Applicant has spent over \$28,000 during this diligence period for the included incidents and legal fees associated with these water rights and the performance of TCR Well Nos. 1 and 2. Applicant has filed a change of water rights application in pending Case No. 23CW2017 to change the location of TCR Well No. 2 and all conditional water rights associated therewith. **V.** Applicant is not seeking to make any additional water absolute at this time for TCR Well No. 1 or 2, Applicant seeks only a finding of continued diligence given the facts stated herein. **VI.** Turkey Canon Ranch Well Nos. 1 and 2 are located on land owned by the Applicant. The place of beneficial uses are the subdivision known as The Pinions of Turkey Canon Ranch and three additional properties adjacent to the subdivision belonging to Matt Shirola III, James F. Dickey, and Ramona F. Smith, successors to those property owners as set forth in the decree in 97CW171.

CASE NO. 2023CW3019; DESERT REEF, LLC, c/o Shawn Bertini, P.O. Box 770740, Steamboat Springs, Colorado 80477 (Please address all pleadings and correspondence regarding this matter to Applicant's attorney: Tod J. Smith, Law Office of Tod J. Smith, LLC, 5777 Central Ave., Suite 228, Boulder, Colorado 80301, Telephone: (303) 956-1106, tod@tjs-law.com)

Application For Water Rights Of Desert Reef, LLC For Change Of Water Right And Plan For Augmentation

FREMONT COUNTY.

2. Introduction and Background. Desert Reef, LLC ("Desert Reef" or "Applicant") is the owner of the Desert Reef Hot Springs located in Fremont County, Colorado at the following street address: 1194 County Road 110, Florence, Colorado 81226. A full property description is attached to the application as **Exhibit A**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The hot springs has operated for approximately 35 years, and was acquired by Desert Reef in 2020. Water is provided to the hot springs from an artesian well located on the property which was originally decreed for industrial use in Case No. W-2114, District Court, Water Division No. 2, Well Permit No. 10651-F (the "Well"). The Well withdraws water from the Dakota Aquifer. The Applicant seeks in this application to change the use of that water right to commercial use including operation and maintenance of the hot springs, and related domestic uses for locker room, showers, bathrooms, and recreational vehicle and tiny home overnight rentals. The Well was originally drilled as an oil well and subsequently refitted as a water well. It is under artesian pressure and has flowed constantly since it was refitted as a water well in about 1966. Original reports


indicate the well flowed at 250 g.p.m. utilizing a pump. It currently flows naturally, without a pump, at approximately 120 g.p.m. The Applicant also seeks in this Application approval of a plan for augmentation to replace the out of priority depletions resulting from use of water flowing from the artisan well for the operations of the hot springs and related domestic uses described above. **3. Decree Information for Water Rights to be Changed.** 3.1. Water Rights. Well No. 1, Permit No. 10651-F and its associated water right decreed in Case No. W-2114 as follows: 3.1.1. Location of Well: SW1/4 NW1/4 Section 30, Township 19 South, Range 68 West of the 6th P.M., in Fremont County, Colorado. 3.1.2. Depth: 1096 feet. 3.1.3. Priority Date: February 7, 1966. 3.1.4. Rate of flow: 0.56 c.f.s or 250 g.p.m. 3.1.5. Use: Industrial purposes. 3.1.6. Means of Diversion: Well and pump. 3.2. Place of Delivery. The Well was decreed to CF&I Steel Corporation. The Applicant understands that water flowed continuously from the Well and was delivered to the Minnequa Canal which delivered the water to the CF&I facility in Pueblo, Colorado. When used by the previous owners of the hot springs, the water flowed continuously from the Well and was delivered through the hot springs pools and discharged from the hot springs pools into a small channel that delivered the water to the Minnequa Canal. **4. Change of Use.** 4.1. The Applicant seeks to change the Well water rights described in paragraph 3 from industrial use to commercial use for the hot springs operation. Those uses include filling and maintaining the hot spring pools, as well as related domestic uses for bathrooms, showers, locker rooms, and small overnight facilities for guests. 4.1.1. Location of the Well: The location of the Well remains as set forth above in paragraph 3.4.1. 4.1.2. Depth: 1096 feet. 4.1.3. Priority Date: February 7, 1966. 4.1.4. Rate of flow: 0.56 c.f.s or 250 g.p.m. 4.1.5. Use: Commercial Use and related domestic uses as described above. 4.1.6. Means of Diversion: Well and pump. 4.2. Place of Delivery and Use: Water will be delivered, as it has for the past 35 years, from the Well to the hot spring facilities. The Well water will fill and then be run through up to 15 hot springs pools with a total surface area of approximately 2,832 square feet. After running through the hot springs pools, the water is returned to Hardscrabble Creek and delivered to the Arkansas River in the SW1/4 NW1/4 of Section 17, Township 19 South, Range 68 West of the 6th P.M., in Fremont County, Colorado. When the pools are being drained and cleaned, the Water runs directly from the Well to Hardscrabble Creek and from there to the Arkansas River. Water will also be delivered from the Well to an on-site water filtration and reverse osmosis treatment system and then distributed to bathroom and locker room facilities as well as to recreational vehicle hook-ups and tiny home overnight rentals. Once used, that water is delivered to a septic system and, once treated, returns to Hardscrabble Creek. 4.3. Return Flows. Water from the Well was historically delivered to the Minnequa Canal. Following Applicant's acquisition of the hot springs, delivery of the water to the Minnequa Canal after use in the hot springs ceased at the direction of the Division Engineer and the return flows are now delivered to Hardscrabble Creek which discharges into the Arkansas River in the SW1/4 NW1/4 Section 17, Township 19 South, Range 68 West of the 6th P.M., in Fremont County, Colorado. **5. Plan for Augmentation.** 5.1. General Overview of Plan. The Well withdraws water from the Dakota Aquifer and depletions from the Well withdrawals accrue to Eight Mile Creek in the SE1/4 SE1/4 of Section 15, Township 18 South, Range 69 West of the 6th P.M., in Fremont County, Colorado. The location of the Well and the point of depletion are depicted on **Exhibit B.** Applicant seeks a plan for augmentation to set forth the terms and conditions under which

it may continue to deliver water from the Well for operation of the Desert Reef Hot Springs including the replacement of evaporative losses and losses resulting from bathroom and locker room uses and guest facilities described above. The Well may continue to operate under annual Substitute Water Supply Plans during the pendency of this Application and upon approval of the change of water right and plan for augmentation sought in this Application. 5.2. Name of Structure to be Augmented. Well No. 1, Permit No. 10651-F, decreed in Case No. W-2114, District Court, Water Division No. 2. 5.3. Water to be Used for Augmentation and Replacement. 5.3.1. Applicant may truck water to the point at which its out of priority depletions accrue to Eight Mile Creek. 5.3.2. Depletions which accrue to the mainstem of the Arkansas River below its confluence with Eight Mile Creek will be replaced pursuant to a contract with the Upper Arkansas Water Conservancy District which Applicant is actively negotiating. 5.3.3. Applicant seeks approval to add temporary and permanent sources of augmentation and replacement water to this plan for augmentation. 5.3.4. Applicant is actively negotiating with the holder of the potential senior calling water right on Eight Mile Creek and may enter into a forbearance agreement with that water user as needed. 5.4. Statement of Plan for Augmentation. 5.4.1. Based upon Applicant's analysis, the Well depletes Eight Mile Creek, a tributary of the Arkansas River. Applicant's depletions resulting from evaporation in the hot spring pools and related domestic uses may be out of priority and subject to a call on Eight Mile Creek or a call on the Arkansas River below its confluence with Eight Mile Creek. The Well has run constantly since 1966 and its depletions have reached a steady state, accruing in the SE1/4 SE1/4 of Section 15, Township 18 South, Range 69 West of the 6th P.M. on Eight Mile Creek. Based upon Applicant's current analysis of the use of water as described in this Application, depletions related to the consumptive use from the hot springs operations accruing to Eight Mile Creek are approximately 6.15 acre-feet annually. 5.4.2. Replacement of Out of Priority Depletions. Applicant will utilize the supplies listed above and other supplies that it may acquire by purchase, lease, or otherwise to replace its out of priority depletions to Eight Mile Creek and the Arkansas River. Applicant may also utilize water exchanges and forbearance agreements under this plan for augmentation, although no right of exchange is sought in this Application and any exchange would need to be decreed in a subsequent case. 5.4.3. Accounting and Reporting. Applicant will provide accounting, projection, and reporting as required by the Division Engineer and the decree entered in this case. Applicant may develop appropriate forms to report the required information in a format acceptable to the Division Engineer. **7. Names and Addresses of Owners, Structures and of Land on which Structures Are Located.** The Applicant owns the Well, the water right associated with the Well, and the land on which the Well is located. WHEREFORE, the Applicant, Desert Reef, LLC, requests entry of a decree approving the change of water right and plan for augmentation described herein, and granting such other relief as is deemed proper.

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 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 11TH day of April 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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