

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING APRIL 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 April 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. 2020CW3071; GREEN SATIVA, LLC, c/o Babak Behzadzadeh, 215 Cherry Hills Farm Dr., Englewood, CO 80113** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Chris D. Cummins, #35154 Emilie B. Polley, #51296 Monson, Cummins & Shoheit, LLC 13511 Northgate Estates Dr., Ste. 250 Colorado Springs, Colorado 80921 (719) 471-1212)

Second Amended Application for Plan for Augmentation

Second Amended Application for Plan for Augmentation

**PUEBLO COUNTY**

**II. Background and Summary of Plan for Augmentation.** Applicant is the lessee of approximately 40 acres and an associated well, from lessor Go Go Real Estate, LLC, such property being located in the SW $\frac{1}{4}$  of Section 24 and the NW $\frac{1}{4}$  of Section 25, all in Township 21 South, Range 61 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado ("Property"). 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.). The Property's address is 63500 East Highway 96, Boone, Colorado 81025. The Applicant intends to utilize the Property for a commercial marijuana grow facility, including irrigation and associated commercial and domestic uses. The Applicant seeks approval of a plan for augmentation for replacement of out-of-priority depletions resulting from the pumping of an existing well located on a parcel adjacent to the Property for the purposes of year-round cultivation and irrigation of a crop including cannabis (hemp and marijuana), and the associated commercial, domestic, drinking and sanitary needs for the grow facility. **III. Application for Approval of Plan for Augmentation.**

**A. Structures to be Augmented.** The structure to be augmented consists of an existing well, known as the "Green Well No. 2", DWR Permit No. 1379-R (WDID 1405070) as decreed in Case No. W-2162, for 1,200 gpm with an annual withdraw limit of 850 acre-feet for irrigation uses, located in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 23, Township 21 South, Range 61 West of the 6<sup>th</sup> P.M., Pueblo, Colorado (UTM 571510 Easting, 4229366 Northing). The Green Well No. 2, originally decreed in Case No. W-2162, was drilled to the Arkansas River Alluvium on December 31, 1933. There is also domestic well with Permit No. 142742 located on the Property serving a duplex, which is separate from the grow operations and is not a part of this Application for Augmentation Plan. **B. Water Rights to be Used for Augmentation.** Water rights to be used for augmentation consists of fully consumable water leased from the Pueblo Board of Water Works ("PBWW"). Such lease shall be assigned to the Arkansas Groundwater Users' Association ("AGUA") for

operations consistent with this Application. Applicant reserves the right to transfer its rights and entitlements under this plan for augmentation, when approved, to a well users association or other augmenting entity in the future. Applicant also reserves the right to seek a term and condition in any final decree requesting the Water Court to retain perpetual jurisdiction over the plan for augmentation for the sole purpose to add new or additional sources of augmentation water pursuant to Section C.R.S. §37-92-305(8).

1. Lease with the Pueblo Board of Water Works. Applicant has entered into a lease for 17 acre-feet of fully consumable water with PBWW assigned to, and administered by, AGUA, of which the Applicant is a member. The water rights or sources of water that may be used for augmentation in this augmentation plan include the following:

a. Fully consumable water controlled by AGUA and owned by PBWW. All water to be used in this augmentation plan provided by AGUA by way of Pueblo Water must be decreed or otherwise legally available for augmentation purposes. The source of such water is unspecified in the Lease Agreement, but may include Pueblo Water's water stored in Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, from direct flow transmountain water or from any other reservoir or place from which Pueblo Water may deliver water, the sources of which are at the option of Pueblo Water, as long as they are legally available for augmentation purposes. Water deliveries may include, without limitation, water stored in Twin Lakes Reservoir (located in all or portions of Sec. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in T.11S., R.81W., 6th P.M., in Lake County), Turquoise Reservoir (located on Lake Fork Creek in Sec. 7, 8, 17, 18, 19, and 20, T.9S., R.80W., 6th P.M. and Sec. 10, 11, 12, 13, 14, and 15, T.9S., R.81W., 6th P.M., in Lake County), Clear Creek Reservoir (located in Sec. 7 and 8, T.12S., R.79W, and Sec. 12, T.12S., R.80W., 6th P.M. in Chaffee County), and reusable return flows. The sources of such water may include, but are not limited to, the water rights decreed in Case Nos. 84CW177, District Court, Water Div. No. 2; 84CW177(B), District Court, Water Div. No. 2; 90CW340, District Court, Water Div. No. 5; W-1901, District Court, Water Div. No. 5; 95CW321, District Court, Water Div. No. 5; 90CW55, District Court, Water Div. No. 2; and 04CW130, District Court, Water Div. No. 2.

b. Fully consumable water controlled and owned by AGUA. The source of such water may include AGUA's reusable Excelsior Ditch historical consumptive use credits, as decreed in Case No. 04CW062, along with other fully consumable supplies such as excess Triview Metropolitan District, Donala Water and Sanitation District, and/or Colorado Springs Utilities reusable municipal return flows accruing to the Arkansas River at Fountain Creek. The Excelsior Ditch historical consumptive use credits accrue to the Arkansas River near its confluence with Chico Creek through recharge pits decreed in Case No. 04CW62, but also may be contributed to the Arkansas River from releases from the Stonewall Springs Reservoir Complex, as decreed in Case No. 16CW3093, at a point upstream of the Chico Creek confluence.

C. Statement of Plan for Augmentation.

1. Diversions and Depletions.

a. Uses. Indoor and outdoor cultivation and irrigation of a crop, including cannabis (hemp and marijuana), and the associated commercial, processing, industrial, domestic (including landscape irrigation and stock watering), drinking and sanitary needs for a grow facility.

b. Diversions. Diversions will occur year-round, with all uses generally increasing during the summer months. The anticipated maximum well diversions under this plan is up to 15.0 annual acre feet.

c. Depletions. Water diverted for all uses will be considered to be one-hundred percent consumptive.

d. Return Flows. As all uses are being considered one hundred

percent consumptive Applicant is not claiming any return flows from diversions from the well, including septic and irrigation return flows. However, Applicant reserves the right to claim such return flows in the future. 2. Location and Timing of Depletions. Pumping of the Green Well No. 2 will be entitled to occur on a year-round basis, resulting in year-round lagged depletions to the Arkansas River. Depletions from Green Well No. 2 occur to the Arkansas River in the SE¼ of Section 23, Township 21 South, Range 62 West of the 6<sup>th</sup> P.M., approximately 12 miles downstream from AGUA's Excelsior Ditch Recharge Ponds point of accretion. Applicant's water resource engineer has generated a Unit Response Function (URF) for the wells using the Glover Method (Glover, 1954). The lagging analysis shows that over 95 percent of the depletions are expected to occur within 24 months of pumping. 3. Replacement Water. Replacement water available from Applicant's lease with PBWW, administered by AGUA, to augment the Applicant's well depletions are at least 15.5 acre-feet, accounting for transit losses, and any such additional augmentation water applicant may acquire in the future. Current replacement water provided by AGUA under the PBWW lease is fully consumable and is available to the Applicant at the point of depletion on the Arkansas River caused by the pumping of any well under this plan. D. Name and Address of Owners of Land Upon Which Structures are Located. The well to be augmented under this plan is located on land owned by Go Go Real Estate, LLC whose address is 2215 Cherry Hills Farm Dr., Englewood, CO 80113.

---

**CASE NO. 2021CW7; Previous Case Nos. 00CW120, 07CW108 and 14CW19 – GREGORY A. SMITH and SANDRA A. SMITH, 720 Felton Avenue, Gregory, SD 57533, (719) 660-4181, (719) 237-5204**

Application to Make Absolute in Whole or in Part

**HUERFANO COUNTY**

**Name of Structure:** James Spring #1, #2, #3 and #4. **Describe conditional water right:** Date of Original Decree: 18 Sep 2001; Case No.: 00CW120; Court: Water Division 2. List all subsequent decrees awarding findings of diligence: Date of Decree: 21 Nove 2008; Case No.: 07CW108; Court: Water Division 2. Date of Decree: 16 Apr 2015; Case No.: 2014CW19; Court: Water Division 2. Legal description: **James Spring #1:** SW ¼ of the SW ¼ Section 14, T27S, R70W of the 6<sup>th</sup> P.M. in Huerfano County, Colorado, approximately 336.5 feet from the south line and 345 feet from the west line of said Section 14. **James Spring #2:** SW ¼ of the SW ¼ Section 14, T27W, R70W of the 6<sup>th</sup> P.M. in Huerfano County, Colorado, approximately 504.7 feet from the south line and 680 feet from the west line of said Section 14. **James Spring #3:** SW ¼ of the SW ¼ Section 14, T27W, R70W of the 6<sup>th</sup> P.M. in Huerfano County, Colorado, approximately 588.8 feet from the south line and 1035 feet from the west line of said Section 14. **James Spring #4:** NE ¼ of the SW ¼ Section 14, T27W, R70W of the 6<sup>th</sup> P.M. in Huerfano County, Colorado, approximately 1,973 feet from the south line and 2,045 feet from the west line of said Section 14. See general location map attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Source of water: Natural Springs. Appropriation Date: 4 December 1998; Amount: James Spring #1: 0.25 gpm; James Spring #2: 0.13 gpm; James Spring #3: 0.05 gpm; and James Spring #4: 0.5 gpm. **Use:** Irrigation use upon Unit CC-2 Lot 254, which is located within the NW ¼ of the SW ¼ of Section 14, T27S, R70W, 6<sup>th</sup> P.M.,

Huerfano County, Colorado. Depth: N/A. **Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to , a beneficial use as conditionally decreed:** During this diligence period, the Applicants have done more additional shoring of James Springs #1, #3, and #4 with additional digging and using abundant use of primarily rocks and some logs from the area. Applicants visited the property (remote mountain location at approximately 8,800 feet) monthly during summer months for the past 6 years and when weather allowable during spring and fall months. Every 6 months thereafter to clear rocks, debris, leaves, mulch, and any contamination from the springs. The property has been fenced on the west side with controlled access. **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:** Applicants.

-----  
**CASE NO. 2021CW8; HUERFANO COUTY GOVERNMENT, GARDNER WATER SANITATION PUBLIC IMPROVEMENT DISTRICT, c/o Carl Young, County Administrator, 401 Main Street, Suite 201, Walsenburg, CO 81089-2045, (404) 983-0936**

Application for Absolute and Conditional Underground Water Rights  
**HUERFANO COUNTY**

**2. Name of well and permit, registration, or denial number** Name of Well: Gardner Well A (ID 7905005), 78869-F, Gardner Well No. 3 (ID 7905004) 78870-F-R. **3. Location of Structures:** PLSS: Gardner Well A, SW ¼ SE ¼ Section 13 Township 26S Range 70W, 6<sup>th</sup> P.M. Huerfano County. Gardner Well 3, SE ¼ SE ¼ Section 13 Township 26S Range 70W, 6<sup>th</sup> P.M., Huerfano County. Points of Diversion: UTM Coordinates, Gardner Well A: Easting: 485353 Northing: 4181832, Zone 13S, Nad 83, Gardner Well 3: Easting 485830 Northing 4181756, Zone 13S, Nad 83. See general location map attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Source of UTM's: Gardner Well A: Case No. 13CW3062 decree, Gardner Well 3: Well Permit 78870-F-R (2020). **4. Source:** For both Gardner Well A and Gardner Well 3; groundwater tributary to the Huerfano River, tributary to the Arkansas River. Depth: Gardner Well A: 67 feet, Gardner Well No 3: 42 feet. **5. Date of Appropriation:** For Gardner Well A and Gardner Well No 3 conditional claims: August 14, 2014; for Gardner Well No 3 absolute claims: October 31, 2019 & November 30, 2019. How appropriation initiated: For the conditional claims, by incorporation of the Gardner Well A and Gardner Well No. 3 within the Huerfano County Water Conservancy District's substitute water supply plan and the plan for augmentation (Case No. 13CW3062). Also, applications for well permits pursuant to Case No. 13CW3062 requesting flow rates greater than existing decreed flow rates for each well. For absolute claims, by diversion through the Gardner Well No. 3 of 10.628 acre-feet during the 2019 irrigation year and by diversion of an average rate of 11.9 gallons per minute during November 2019. Date water applied to beneficial use: For conditional water claims: not applicable, for absolute claims: 2019. **6. Do the wells withdraw tributary groundwater:** Yes. Flow rate claimed (gpm) and volume claimed annually (acre-feet) Gardner Well A: 12 gallons per minute and 14.65 acre-feet, conditional. Gardner Well No

3: 5.9 gallons per minute and 1.028 acre-feet, absolute. Gardner Well No 3: 13.1 gallons per minute and 13.62 acre-feet, conditional. **7. Do the wells withdraw non-tributary groundwater:** No. **8. Do the wells operate pursuant to a decreed plan for augmentation?** Yes. Case Number of plan for augmentation: 13CW3062 – Huerfano County Water Conservancy District. Is plan for augmentation operation? Yes **9. List all Uses or Proposed Uses:** The Gardner Well A and the Gardner Well No. 3 supply municipal water to the residents of the Gardner Water and Sanitation Public Improvement District. The district also supplies water to the residences of Huerfano County via a bulk water filing station. Depletions from the use of the wells are fully augmented pursuant to the terms of the decree in Case No. 13CW3062 **10. 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 **11. Remarks:** Applicant seeks to have each Gardner well be capable of diversion rates of 25 gallons per minute to provide for physical redundancy of water supply operations. The Gardner Well A is presently decreed in Case No W-4714 for a flow rate of 13 gallons per minute and 20.97 acre-feet per year absolute. Applicant claims an additional 12 gallons per minute and 14.65 acre-feet per year conditionally for Gardner Well A. Gardner Well No. 3 is presently decreed in Case Nos. W-4714 & 85CW033 for a flow rate of 6 gallons per minute and 9.6 acre-feet per year absolute. The applicant claims an additional 5.9 gallons per minute and 1.028 acre-feet per year absolute based upon diversions through Gardner Well No 3 during 2019 and pursuant to the State Engineer’s Office Written Instruction 2020-01. The applicant claims a further 13.1 gallons per minute and 13.62 acre-feet conditionally for the Gardner Well No 3. Depletions from each well will continue to be fully augmented under the terms of the decree in Case No. 13CW3062.

-----  
**CASE NO. 2021CW3020; LAKEMOOR WEST PROPERTY OWNERS ASSOCIATION, a Colorado nonprofit corporation vs. MOUNTAIN MUTUAL WATER COMPANY, a Colorado nonprofit corporation** – Complaint for Declaratory and Injunctive Relief, Accounting and Damages.

This case is being listed in the resume to account for the case number in consecutive order.

-----  
**CASE NO. 2021CW3021; JEFFREY S. JOHNSON and JESSAMY JOHNSON, 7330 Winding Oaks Drive, Colorado Springs, Colorado 80919** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorney: Steven T. Monson, #11329, Emilie B. Polley, #51296, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, Phone Number: (719) 471-1212)

Application for Underground Water Rights and Adjudication of Denver Basin Groundwater  
**EL PASO COUNTY**

**II. Summary of Application.** Applicants are seeking an adjudication quantifying the amount of Denver Basin groundwater underlying their property. The groundwater in the Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying the Applicants’ property was previously adjudicated by Decree dated November 4, 1999 from the District Court,

Water Division 2, in Case No. 96CW133. This Application seek to quantify groundwater in the Dawson aquifer. **III. Application for Underground Water Rights.** A. Property Description. Applicants' property is located in the W $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Section 18, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., County of El Paso, State of Colorado, also known as 0 Burgess Road, Colorado Springs, CO 80908, containing 35 acres. See **Exhibit A** attached to the application for a general location map. ("Applicants' Property"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). B. Proposed Well: Applicants propose to construct a full exempt domestic well permitted under C.R.S. 37-92-602(1)(b) to the Dawson aquifer underlying the Applicants' Property. 1. Water Source. The groundwater to be withdrawn from the Dawson aquifer underlying the Applicants' Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. 2. Nontributary. The groundwater that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers underlying the Applicants' Property is nontributary. C. Estimated Rates of Withdrawal and Ground Water Available. 1. Estimated Rates of Withdrawal. The actual pumping rates for any well constructed on the property will vary according to aquifer conditions and well production capabilities and any limitations imposed pursuant to a subsequently entered augmentation plan, though will not exceed 100 g.p.m. The Applicants request the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed will be determined by topography and actual aquifer conditions. 2. Estimated Annual Average Amounts of Groundwater Available. Applicants request an absolute water right for the withdrawal of all legally available groundwater in the Dawson aquifer of the Denver Basin aquifers underlying the Applicants' Property. Said amount may be withdrawn over the 100-year life of the aquifers as set forth in § 37-90-137(4)(b)(I), C.R.S. Applicants estimate that the following values and average annual amount is representative of the Dawson aquifer underlying the Applicants' Property:

Aquifer	Average Saturated Thickness (Feet)	Total Water Adjudicated (Acre Feet)	Average Annual Withdrawal (Acre Feet)
Dawson (NNT)	184.2	1289	12.89

The Dawson aquifer quantification will be reduced by 3.0 annual acre feet to allow for the issuance of an exempt domestic well to the Dawson aquifer under C.R.S. 37-92-602(1)(b). The water in the Denver, Arapahoe, and Laramie-Fox Hills aquifers were previously adjudicated by Decree dated November 4, 1999 from the District Court, Water Division 2, in Case No. 96CW133, attached as **Exhibit B**. Case No. 96CW133 ("Prior Decree"). The Prior Decree quantified the groundwater in the Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying 419.73 acres within Sections 13 and 18, all in Township 12 South, Range 66 West of the 6<sup>th</sup> P.M., in El Paso County, Colorado, which included the Applicants' Property. The Applicants' pro-rata per acre ownership of the adjudicated groundwater in section 18 under the Prior Decree is as follows:

Aquifer	Percentage of	Pro-rata	Pro-rata
---------	---------------	----------	----------

	<b>Applicants' Ownership of Total Acreage</b>	<b>Ownership of Total Water Adjudicated (Acre Feet)</b>	<b>Ownership of Average Annual Withdrawal (Acre Feet)</b>
Denver (NNT – 4%)	8.34%	2443	24.43
Arapahoe (NT)	12.07%	1485	14.85
Laramie-Fox Hills (NT)	8.34%	1001	10.01

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to § 37-92-305(11), C.R.S., the Applicants further request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from the aquifer.

**D. Requested Uses:** The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, commercial, indoor and outdoor irrigation, stock water, industrial, recreation, wildlife, fire protection, and for storage and augmentation associated with such uses. Provided, however, Applicant shall only be entitled to construct a well or use water from the not-nontributary Dawson and Denver aquifers for non-exempt purposes pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifer in accordance with § 37-90-137(9)(c.5), C.R.S. The Applicants' Property is more than one mile from any point of contact between any natural stream including its alluvium and the not-nontributary Denver aquifer. As such, any augmentation plan for the use of these not-nontributary water rights shall provide for the replacement to affected stream systems of a total amount of water equal to 4 percent of the amount of water withdrawn on an annual basis, pursuant to the decree entered in Case No. 96CW133.

**E. Well Fields:** Applicants request that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicants' Property through any combination of wells. Applicants therefore request that these wells be treated as a well field.

**F. Averaging of Wells:** Applicants request that they be entitled to withdraw an amount of ground water in excess of the average annual amount, so long as the sum of the total withdrawals from all the wells does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicants are entitled to withdraw from the Denver Basin aquifers underlying the Applicants' Property.

**G. Name and Address of Owner of Land Upon Which Wells are to Be Located:** The land upon which the current wells and any future wells may be constructed is owned by the Applicants.

**IV. Remarks.** Applicants request a finding that they have complied with § 37-90-137(4), C.R.S., and that the ground water requested herein is legally available for withdrawal by not-nontributary wells upon an entry of a decree approving an augmentation plan pursuant to § 37-90-137(9)(c.5), C.R.S.

**A.** The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes.

**B.** Any wells constructed pursuant to a future decree for a plan for augmentation shall be installed and metered as reasonably required by the by the State Engineer. If a future augmentation plan is decreed, then each well must be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division

Engineer on an annual basis or as otherwise requested by the Division Engineer. C. The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' Property. D. There is a deed of trust for the benefit of a lender on the Applicant's Property, and the lender will be notified of the filing of this Application by certified or registered mail, return receipt requested, no later than 14 days after the filing of this Application. The Applicant will complete and file with the Court a Certificate of Notice as evidence that the required notices were given, in accordance with lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I).

-----  
**CASE NO. 2021CW3022; TRIVIEW METROPOLITAN DISTRICT, c/o James McGrady, District Manager, 16055 Old Forest Point, Ste. 300, Monument, CO 80132, Name of Co-Applicant: FOUNTAIN MUTUAL IRRIGATION COMPANY, c/o Gary Steen, Manager, 487 Anaconda Drive, Colorado Springs, CO 80919** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: MONSON, CUMMINS & SHOHET, LLC, Chris D. Cummins, #35154, Emilie B. Polley, #51296, David M. Shohet, #36675, Steven T. Monson, #11329, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80903, (719) 471-1212)

Application for Change of Water Rights

**EL PASO COUNTY**

**II. Background and Summary of Application:** The Triview Metropolitan District ("Applicant", "Triview", or the "District") is the owner of 1,057 shares in the Co-Applicant, Fountain Mutual Irrigation Company ("FMIC") (the "Triview-Owned Shares"). FMIC is a co-Applicant for purposes of protecting the rights of all FMIC shareholders, and is not actively prosecuting this application. Triview previously changed 500 such shares in Case No. 18CW3016. Triview also has decreed plans for augmentation in Case Nos. 18CW3016, 88CW23(A), 88CW23(B), 95CW153, 98CW134, 14CW3053, 15CW3076, 16CW3010 and pending Case No. 21CW3001, ("Existing Augmentation Plans") under which out-of-priority depletions are replaced to Monument Creek, such depletions resulting from Triview's municipal well pumping from not-nontributary Denver Basin aquifers in northern El Paso County, as well as replacement of out-of-priority depletions resulting from the use of conditional alluvial wells to be constructed on Monument Creek, and out-of-priority depletions associated with the use of certain wells tributary to Fountain Creek in southern El Paso County. Triview now seeks to change its remaining 557 shares in FMIC (the "Subject Shares") to Triview's municipal uses. 244 of the Subject Shares, while owned by Triview, are dedicated to the uses of Fountain Valley Power ("FVP") (the "FVP Shares"), and FVP has consented to the inclusion of the FVP Shares in this change of water rights. Winston Conkling has likewise consented to the inclusion of 20 of the Subject Shares in which he has a contractual interest in this change of water rights. **III. Application for Change of Water Rights: 1. By this Application,** Triview seeks to change 557 FMIC Shares, represented by Certificate Nos. 1684, 1685, 1686, 1687, and 1691 to all of Triview's municipal uses, including use as additional augmentation sources in Case No. 18CW3016. All other terms and conditions decreed in Case No. 18CW3016 are to remain unchanged. In Case No. 18CW3016, the Applicant changed water rights and obtained an Augmentation Plan utilizing 500 FMIC shares, as represented by Certificate No. 1679, including replacement for out-of-priority depletions resulting from



Triview's municipal water supply system. The plan allows for direct municipal use of the historical consumptive ("HCU") use portion of such FMIC shares, and further allows for their use and re-use, including as an additional augmentation source for Existing Augmentation Plans. The decree in Case No. 18CW3016 includes the right to use and re-use such HCU to extinction, including the use and re-use of such water supplies through sewer return flows. This case seeks to obtain the same changes of water rights and rights to fully consume the HCU component of the Subject Shares as decreed in Case No. 18CW3016, and is requested for the same service area and under the same standards, terms, and conditions. A map of Triview's current municipal service area 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.). Paragraph 9.9 of the decree in Case No. 18CW3016 states that Triview shall be entitled to add additional shares of FMIC to the plan for augmentation, and this application seeks to do the same.

A. Change in the Type of Use: Applicant requests to change the 557 FMIC shares described above (the "Subject Shares") from their originally decreed uses, to include all of Triview's municipal uses, including as previously decreed to the remainder of the Triview-Owned Shares in Case No. 18CW3016, specifically including as a replacement source in the 18CW3016 augmentation plan and the Existing Augmentation Plans. Of the total 557 shares subject to this application, 166 shares represented by Certificate No. 1686, have previously been changed for augmentation purposes in Case No. 16CW3010, and the remaining 244 FVP Shares represented by Certificate 1686 have been previously changed to FVP's augmentation uses in Case No. 00CW152. Triview requests that these the augmentation uses described in Case No. 00CW152 be maintained for said 244 shares, while adding all of Triview's municipal uses of water thereto. The remaining 147 shares of the Subject Shares are currently unchanged.

B. Amount of water subject of instant change: Triview seeks to change its *pro rata* interest in the Fountain Mutual Ditch water rights associated with its 557 Subject Shares. Based upon the historical 0.7 average annual acre feet of historical consumptive use yield previously decreed to each FMIC share, the Subject Shares on average will yield 389.9 acre feet of historical consumptive use, though actual annual yield will vary from year to year.

C. Change of Type and Manner of Use: Triview seeks to change the type of use of the Subject Shares to include, in addition to existing irrigation uses, all municipal uses including, without limitation, domestic, agricultural, industrial, commercial, irrigation, power generation, stock watering, fire protection, recreation, fish and wildlife preservation and propagation, wetlands maintenance and enhancement, recharge of Denver Basin aquifers, any and all replacement or relinquishment purposes, and augmentation and exchange for all municipal uses, including as described in Case No. 18CW3016, and further including through use through direct diversion and by storage in Big Johnson Reservoir, including storage of HCU components of the Subject Shares. All such uses are to be made by direct diversion, or through storage, and Triview further seeks the right to re-use and successively use to extinction the historical consumptive use component of the water rights attributable to the Subject Shares (including but not limited to lawn irrigation return flows and sewer return flows) following the initial use(s) thereof. Triview will maintain the augmentation uses of the FVP Shares, and such shares shall be unavailable for Triview's municipal use unless and until an alternate source of augmentation is provided through a Court-decreed amendment to FVP's Case No. 00CW152 plan for

augmentation. i. Description of Changed Water Rights: The water rights subject to this application are 557 shares in FMIC which will be in addition to the 500 shares of FMIC already committed to the augmentation plan decreed in Case No. 18CW3016, for a total of 1,057 shares of FMIC that will be used municipally and as an alternate augmentation source in the Existing Augmentation Plans. FMIC diverts its water to the Fountain Mutual Ditch from Fountain Creek, tributary to the Arkansas River, at its headgate located in the SW $\frac{1}{4}$  of Section 20, Township 14 South, Range 66 West of the 6<sup>th</sup> P.M. The Unchanged FMIC shares were originally decreed for irrigation purposes in El Paso County District Court in the general adjudications for Fountain Creek. The FMIC water rights are valid existing water rights that were originally decreed as follows:

DIRECT FLOW

Fountain Creek Priority No.	Priority Date	Decree Date	Total Decree (cfs)
4	9/21/1861	3/6/1882	9.84 (5.38) <sup>1</sup>
7	4/1/1862	3/6/1882	1.125
11	2/11/1863	3/6/1882	16.69
17	12/31/1863	3/6/1882	4.25 (2.125) <sup>2</sup>
21	12/31/1864	3/6/1882	4.65
28	12/31/1866	3/6/1882	8.48
29	12/31/1867	3/6/1882	9.68
41	9/21/1874	3/6/1882	17.05
168	1/31/1903	6/2/1919	343.2

STORAGE

Fountain Creek Priority No.	Priority Date	Decree Date	Total Decree (AF)
39	3/18/1903	6/2/1919	10,000

ii. Legal description of structure: The point of diversion of the Fountain Mutual Ditch is located in the SW $\frac{1}{4}$  of Section 20, Township 14 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado. The W DID number for the Fountain Mutual Ditch headgate is

<sup>1</sup> FMIC's interest in Priority No. 4 is 5.38 cfs. The amount of 1.73 cfs was changed on application of Security Water District in Case No. 90CW28. In addition to the 5.38 cfs, FMIC claims the right to divert any of the remaining 2.73 cfs decreed to this priority which is not used by the owner. Diversions under Priority No. 4 in excess of FMIC's 5.38 cfs interest are not included in calculations of consumptive use for purposes of this Decree. This Decree does not decide what historical use or place of use is attributable to diversions in excess of 5.38 cfs under Priority No. 4. This Decree is without prejudice to any future claim by FMIC for diversions in excess of 5.38 cfs under Priority No. 4.

<sup>2</sup> Priority No. 17 is referred to as the Janitell's right and has not been included in previous quantifications of the historical use of the FMIC water rights. As such, it is not included in this Decree. FMIC has used  $\frac{1}{2}$  of the water, or 2.125 cfs, in return for the carriage of the other 2.125 cfs to its owner through the Fountain Mutual Ditch. By Decree Authorizing Change in Point of Diversion in Civil Action No. 38180, entered July 29, 1959, the point of diversion for this 4.25 cfs of Priority No. 17 of the Laughlin Ditch was changed to the headgate of the Fountain Mutual Ditch. The diversions under this Priority No. 17 are not included in the calculations of consumptive use for purposes of this Decree. This Decree does not decide what historical use or place of use is attributable to diversions under Priority No. 17. This Decree is without prejudice to any future claim by FMIC for diversions under Priority No. 17.

1000736 and the UTM coordinates are: Northing (UTMy) 4296006 and Easting (UTMx) 516466 (Zone 13). The location of the point of diversion of the Fountain Mutual Ditch is shown on the map attached to the application as **Exhibit B**. iii. Decreed source of water: Fountain Creek, tributary to the Arkansas River. iv. Decreed use or uses: The FMIC water rights are valid existing water rights and were originally decreed for irrigation purposes. Portions of the FMIC water rights have been changed and decreed for other uses, including augmentation, including but not limited to in the following changes of water rights and plans of augmentation in Water Court, Division 2: Case Nos. 81CW229, 85CW110, 86CW031, 90CW28, 90CW7, 95CW3, 99CW146, 00CW152, 01CW146, 01CW149, 01CW153, 02CW112, 03CW81, 04CW55, 04CW118, 05CW33, 06CW66, 07CW47, 07CW51, 09CW6, 09CW92, 09CW105, 09CW115, 10CW43, 12CW99, 15CW3002, 16CW3080, 17CW3023, 17CW3036, 17CW3072, 18CW3016, and 16CW3010 (collectively the "Previous Change Cases"). v. Historical Use. FMIC water rights have been decreed for use in numerous other changes of water rights and plans of augmentation. In those previous cases, this Court has determined that each share of FMIC has historically yielded on the average the equivalent of 0.7 acre foot of net replacement or consumptive use water each year, which number represents a portion of the farm headgate delivery. The replacement or augmentation credit allowed to FMIC water rights, as also determined in previous cases, is a percentage of the FMIC actual delivery to its shareholders computed on the basis of the following table.

FMIC REPLACEMENT CREDIT

<u>Month</u>	<u>Replacement Credit as a Percentage of Farm Headgate Delivery</u>
January	47
February	58
March	70
April	70
May	70
June	70
July	72
August	72
September	74
October	66
November	40
December	49

This historic consumptive use of FMIC shares determined in Case No. 95CW3 was affirmed by the Colorado Supreme Court, which findings are binding as a matter of *res judicata*. Williams v. Midway Ranches Property Owners Association, Inc., 938 P.2d 515 (Colo. 1997). This same historic consumptive use was most recently affirmed in Case No. 12CW99. There have been no material changed circumstances since the last decree to modify these historical consumptive use determinations. Recent diversion records are therefore not relied upon or supplied with this Application. vi. Triview requests that the Court find that each of the Subject Shares have historically yielded on the average the equivalent of 0.7 acre foot of net replacement or consumptive use water each year, which

number represents a portion of farm headgate delivery. For the 557 Subject Shares, this represents an average consumptive use of 389.9 annual acre feet which may be used for Triview's municipal and replacement uses. The total amount of consumptive use pursuant to the FMIC water rights varies from year to year based upon the amount of water available for diversion under those rights. Therefore, the actual consumptive use available from such Subject Shares shall be based on actual in-priority diversions applied to the above monthly replacement credit schedule. Augmentation credits will be limited to a maximum of one acre foot per share per year, and to an average of 0.7 acre foot per year over a 20 year running average. vii. Triview's FMIC water rights related to the Subject Shares are to be changed herein for all municipal purposes, including but not limited to augmentation purposes, and will be permanently removed from their historical use for irrigation at such time as these shares are committed to municipal use, including to replace out-of-priority depletions under the plan for augmentation decreed in Case No. 18CW3016 and the Existing Augmentation Plans. Until so used, including in existing or pending plans of augmentation, such FMIC shares may be continued to be used through the Fountain Mutual Ditch in accordance with the terms of its decrees. Subject to rotation of shares as the historical practice of FMIC, once shares have been municipally used, including as may be dedicated to existing or pending augmentation plans for replacement purposes, those shares will not be used for other purposes absent a new water court application. As to the FVP Shares, while Triview seeks a decree for its municipal and augmentation uses herein, until and unless the decree in Case No. 00CW152 is amended to provide for an alternate replacement supply, the FVP Shares shall remain dedicated to FVP's augmentation uses described therein. The Fountain Mutual system is a water short system, and the withdrawal of water deliveries under the Fountain Mutual Ditch to lands under the FMIC system results in naturally reduced irrigation and the dry up of property. No dry up covenant for Fountain Mutual lands is therefore required for shares committed to the plan of augmentation decree in Case No. 18CW3016. Williams v. Midway Ranches Property Owners Association, Inc., 938 P.2d 515 (Colo. 1997); and Case Nos. 07CW54, 07CW47, and 09CW119. D. Change in Place of Use: Triview seeks to change the place of use of the Subject Shares, including after release from the Spring Creek augmentation station, McRae Reservoir augmentation station, Big Johnson Reservoir, or such other facilities utilized by FMIC, to include all of Triview's municipal service area, as it exists now and as it may exist in the future, including any areas served by Triview pursuant to extraterritorial agreement or any other contract or lease, and including for replacement of depletions on the Arkansas River and its tributaries, including but not limited to Monument Creek and Fountain Creek. Triview seeks a change in place of use to include any location within the Arkansas River Basin to which water may be delivered for augmentation, sale, or lease for such other uses as may be allowed by law. A map of the current boundaries/service area of the Triview Metropolitan District is attached to the application as **Exhibit A. 2. Plan of Operations**: Water available under the Subject Shares may be diverted at the headgate of the FMIC Ditch and released back to Fountain Creek at the Spring Creek augmentation station, McRae Reservoir augmentation station, Big Johnson Reservoir, or such other augmentation station/measurement facilities as may be lawfully utilized by FMIC, or such other augmentation station/measurement facility as Triview may construct to which the FMIC water rights may be lawfully delivered, now or in the future, and Triview has and will continue to contract with FMIC for the use of such facilities for

the Subject Shares, to the extent such water is to be utilized for augmentation purposes through such FMIC facilities. The consumptive use credits associated with the Subject Shares will be computed as the historical depletion percentage multiplied by actual in-priority diversions under the Subject Shares. **A.** Triview may also utilize augmentation stations/measurement facilities other than those referenced in Paragraph 2, above, whether currently in use or developed in the future, and such alternate augmentation stations may be used in substitution or combination with one another. Triview's use of such alternate augmentation and measurement facilities shall be approved by the State and Division Engineer's offices prior to such use, unless otherwise decreed. **B.** The consumptive use credits associated with the Subject Shares may be exchanged up Fountain Creek, and up Monument Creek, to Triview's service area for the changed uses, through Triview does not seek approval of any such appropriate right of exchange by this Application. Such consumptive use credits may instead be left in Fountain Creek for delivery downstream for the changed uses within the Arkansas Basin after measurement and release from the augmentation stations, subject to future or existing leases for such supplies, or subject to future water rights decrees including future decrees for such appropriate rights of exchange. Such consumptive use credits may further be re-diverted from the Arkansas River once delivered thereto, including at the headgate of the Excelsior Ditch, including for delivery to storage in the Stonewall Springs Reservoir Complex ("SSRC"). Triview is a shareholder in the Excelsior Irrigating Company ("EIC"), which owns and controls the Excelsior Ditch, and the majority shareholder in the Stonewall Springs Reservoir Company ("SSRCo"), which owns and controls the SSRC. Once stored in the SSRC, such consumptive use credits may be exchanged or otherwise transferred upstream to storage in Pueblo Reservoir where Triview is in the process of contracting with the United States Bureau of Reclamation for a long-term storage account, and then delivered through existing or alternate infrastructure to Triview's municipal use in northern El Paso County. Such consumptive use credits will be assessed appropriate transit loss from the augmentation stations to the point of use, including as may be calculated based upon the current Fountain Creek Transit Loss Model. Triview may, alone or in concert with partners, appropriate additional rights of exchange, or develop/utilize such physical infrastructure as necessary for physical delivery of the water rights attributable to the Subject Shares to Triview's service area, or other legal places of use, including storage and release from Big Johnson Reservoir, and from the SSRC. **C.** Triview's *pro rata* share of water attributable to the Subject Shares may be placed into storage in FMIC's decreed storage vessel, Big Johnson Reservoir (a/k/a Fountain Valley Reservoir No. 2), together with any excess consumptive use credits from FMIC shares put through the augmentation stations. Such storage and use shall be in accordance with FMIC rules and regulations. The water so stored in Big Johnson Reservoir may be used for the augmentation purposes described herein, and may be delivered to any of the augmentation stations discussed herein, including the Spring Creek augmentation station by means of an intraditch exchange during any month in which Triview's deliveries of water under its direct flow water rights under the Subject Shares to the Spring Creek augmentation station, or other augmentation station, may be inadequate. Such water stored in Big Johnson Reservoir may likewise be delivered downstream to the Arkansas River for re-diversion and municipal use, as described in Paragraph 2.B., above. **3. Return Flows.** Return flows from the historical use of the Subject Shares have accrued

to Fountain Creek, and will be replaced by Triview consistent with the terms and conditions of the prior FMIC change decrees, as described herein. The sources of water for replacement of historical return flows will be the historical return flow portion of the Subject Shares, or as an alternative, any other water owned or leased by Triview that is decreed for replacement and/or augmentation purposes and available at the required time, location and amount in order to prevent injury to other water rights. Historical return flows will be replaced only to calling water rights senior to the date of the filing of this Application, and Triview hereby appropriates for the uses described herein, any historical return flows not required to be so replaced. **IV. Name and address of the owners or reputed owners of 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 of existing storage pool.** The FMIC Ditch headgate, the Spring Creek augmentation station, and Big Johnson Reservoir, are all located upon land or easements owned by co-Applicant FMIC, c/o Gary Steen, Manager, 487 Anaconda Drive, Colorado Springs, CO 80919.

---

**CASE NO. 2021CW3023; CRAIG AND SALLY MCDERMOTT, 12930 Herring Road, Colorado Springs, CO 80908** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: James J. Petrock, Eric K. Trout, 1999 Broadway, Suite 3200, Denver, CO 80202, (303) 825-1980)

Application for Amendment of Augmentation Plan

**EL PASO COUNTY**

**Subject Property:** 30 acres generally located in the NE1/4 SE1/4 of Section 8, Township 12 South, Range 65 West of the 6th P.M., El Paso County, Colorado, See **Exhibit A** attached to the application for a general location map. ("Applicants' Property"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). **Property Certification:** Applicants are sole owners of the Subject Property and certify that it is free and clear of all liens and encumbrances and no other person or entity has a financial interest in the property. **Decree for Which Amendment is Sought:** Case No. 2019CW3031, decreed on February 20, 2020 ("Original Decree"). **Proposed Amendment:** In the Original Decree, an augmentation plan was approved for use of 1.25 acre-feet per year for 2 houses for 300 years of not nontributary Dawson aquifer groundwater. By this application, Applicants request an additional 1.3 acre-feet per year for 2 additional houses for 300 years of use as follows: In-house use in up to two (2) residences: 0.3 acre-feet per residence, 0.6 acre-feet total. 6,000 sq/ft of lawn, garden, and trees per residence: 0.3 acre-feet per residence, 0.6 acre-feet total. Stockwatering of up to 4 large animal per residence: 0.05 acre-feet per residence, 0.1 acre-feet total. Total additional use of up to 1.3 acre-feet annually of Dawson Aquifer groundwater. The actual depletion at 300 years of the additional pumping is 23.2% of the annual amount withdrawn or 0.30 acre-feet, and return flows from in-house use is sufficient to replace the required actual depletion for 300 years. Depletions occur to the Monument Creek stream system and return flows accrue to that stream system. No other provisions of the original decree will be changed. Applicants request that this Court enter a decree granting this application and for a finding that the change requested herein will not injuriously affect other owners or users of vested or conditional water rights, and for such other relief as it deems proper in the premises.

---

**CASE NO. 2021CW3024; Previous Case No. 96CW233 – CITY OF CRIPPLE CREEK, P.O. Box 430, Cripple Creek, CO 80813** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: J Chris D. Cummins, #35154, Emilie B. Polley, #51296, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921. (719) 471-1212)

Application for Finding of Reasonable Diligence

**PARK AND TELLER COUNTIES**

**II. Summary of Application.**

Applicant, a political subdivision of the State of Colorado, applied for and was approved for surface water storage and surface water rights and appropriate rights of exchange, in Case No. 96CW223. Applicant seeks a finding of reasonable diligence for the conditional rights adjudicated in Case No. 96CW223. **III. Conditional Surface Water Storage Right.** 1. Name of Structure: Oil Creek Reservoir.

A. Legal Description of Center of Dam: i. Original Location: An on-channel reservoir, in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 28, Township 14 South, Range 69 West of the 6<sup>th</sup> P.M., approximately 145 feet west of the east line and 1,250 feet north of the south line of said Section 28. These distances are based on a BLM re-survey of Sections 28 and 33 dated November 7, 1987<sup>3</sup>. The location of the Oil Creek Reservoir is depicted on **Exhibit A** attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). ii. Alternate Location: An off-channel reservoir in the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 4, Township 15 South, Range 69 West of the 6<sup>th</sup> P.M., approximately 2,470 feet west of the east line and 100 feet south of the north line of said Section 4. These distances are based on a BLM re-survey of Sections 28, and 33 dated November 7, 1987, and represents the alternate location of the Oil Creek Reservoir, as depicted on the attached Exhibit A Map. B. Source: i. Original Location: Surface flows of Oil Creek, tributary to Fourmile Creek, tributary to the Arkansas River. ii. Alternate Location: Surface flows of Oil Creek, tributary to Fourmile Creek, tributary to the Arkansas River, as delivered through the Oil Creek Pipeline, as decreed in Case No. 96CW233. C. Date of Original Decree: April 10, 2015, Case No. 96CW233, Water Court, Division 2. D. Date and Initiation of Appropriation: June 26, 1996 by taking steps to place water to beneficial use. The appropriation date for the alternate location is May 13, 2014, the date of filing of the 2<sup>nd</sup> Amended Application in Case No. 96CW233. E. Amounts of Water: i. Original Location: 252 acre-feet, conditional, representing the maximum capacity of the Oil Creek Reservoir. The amount of water decreed is for the capacity of the reservoir and is for the storage of in-priority impoundment of water and all or any portion of the depletion credits decreed in Case No. 96CW190, or other water rights exchanged to the reservoir via exchanges decreed in Case No. 96CW233, or subject of prior or subsequent adjudications. ii. Alternate Location: 240 acre-feet, conditional, representing the maximum capacity of the Oil Creek Reservoir at the alternate location decreed herein. The amount of water decreed is for the capacity of the reservoir and is for the storage of in-priority impoundment of water and all or any portion of the depletion credits decreed in Case No. 96CW190, or other water rights exchanged to storage in the Oil Creek Reservoir via exchanges decreed in Case No. 96CW233, or subject of prior or

---

<sup>3</sup> This legal description represents the same physical location described in the application in this matter, but rather than referencing outdated section lines which exist on USGS Quad mapping, the new legal description references updated section line locations based upon the more recent and established BLM re-survey.

subsequent adjudications. F. Reservoir Specifications: i. Original Location: The maximum surface area of Oil Creek Reservoir at the high-water line will be approximately 15.5 acres. The maximum height of the dam across Oil Creek is 60 feet, and the length of the crest of the dam is 380 feet. ii. Alternate Location: The maximum surface area of Oil Creek Reservoir at the high-water line will be approximately 11 acres. The maximum height of the dam at the alternate site is approximately 40 feet, and the maximum length of the crest of the dam is approximately 510 feet. G. Capacity: i. Original Location: The total capacity of the Oil Creek Reservoir shall not exceed 252 acre-feet, all of which shall be active capacity, at the high water line. ii. Alternate Location: The total capacity of the Oil Creek Reservoir shall not exceed 240 acre-feet, all of which shall be active capacity, at the high-water line. H. Uses: Oil Creek Reservoir is decreed for municipal beneficial use, including without limitation, domestic, stock watering, irrigation, recreational, wildlife habitat and fish propagation, commercial, industrial, and also for exchange and augmentation. I. Land Ownership: The land upon which the dam for the Oil Creek Reservoir is to be located, both original and alternate, and the land within the high-water line, is owned by parties other than the Applicant. Applicant can and will acquire the necessary interests in land and/or land use authorizations, as applicable, for the construction, use, maintenance and operation of the Oil Creek Reservoir from the fee owner(s) of the real property effected thereby prior to construction of the Oil Creek Reservoir and storage or beneficial use of water therein. J. Remarks: The approximate locations of the Oil Creek Reservoir and its areas of inundation are depicted on the attached Exhibit A, including the Alternate Location. Applicant will construct the Oil Creek Reservoir at one, but not both, of the locations provided, such locations being alternate locations for the same water storage right, not independent water storage rights. Water shall be delivered to the Oil Creek Reservoir Alternate Location, if so constructed, via the Oil Creek Pipeline, as decreed in Case No. 96CW233 and described herein (and coincident Oil Creek Pipeline II, as decreed in Case No. 98CW174). **IV. Conditional Surface Water Rights.** 1. Name of Structure: Oil Creek Pipeline. A. Legal Description of Point of Diversion: i. Original Point of Diversion: The point of diversion for the Oil Creek Pipeline is located on the left (south) bank of Oil Creek in the In the SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 28, Township 14 South, Range 69 West of the 6<sup>th</sup> P.M., approximately 145 feet west of the east line and 1,250 feet north of the south line of said Section 28. These distances are based on a BLM re-survey of Sections 28 and 33 dated November 7, 1987<sup>2</sup>. The location of the Oil Creek Pipeline point of diversion, coincident with Oil Creek Reservoir, is depicted on the attached Exhibit A map. ii. Alternate Point of Diversion: The alternate point of diversion for the Oil Creek Pipeline is located on the left (south) bank of Oil Creek in the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 33, Township 14 South, Range 69 West of the 6<sup>th</sup> p.m., Teller County Colorado, lying 1,815 feet west of the east line and 20 feet south of the north line of said Section 33. The location of the alternate point of diversion for the Oil Creek Pipeline, coincident with the Oil Creek II Pipeline in Case No. 98CW174, is depicted on the attached **Exhibit A** map, and these distances are based on a BLM re-survey of Sections 28 and 33 dated November 7, 1987<sup>2</sup>. B. Decreed Source: The source of the Oil Creek Pipeline is Oil Creek, Tributary to Fourmile Creek, tributary to the Arkansas River.

---

<sup>2</sup> This legal description represents the same physical location described in the application in this matter, but rather than referencing outdated section lines which exist on USGS Quad mapping, the new legal description references updated section line locations based upon the more recent and established BLM re-survey.



C. Date of Original Decree: April 10, 2015, Case No. 96CW233, Water Court, Division 2. D. Date and Initiation of Appropriation: June 26, 1996 by taking steps to place water to beneficial use. E. Decreed Amount of Water: Direct flow right of 4.6 cfs, conditional. F. Uses: The water diverted through the Oil Creek Pipeline is decreed for municipal beneficial use, including without limitation, domestic, stock watering, irrigation, recreational, wildlife habitat, fish propagation, commercial, industrial, and also for exchange and augmentation, either by direct diversion or by storage of the same in such structures as may be available to Applicant, including Oil Creek Reservoir, as described herein. **V. Appropriative Rights of Exchange.** 1. Oil Creek Pipeline Appropriative Right of Exchange: A. Description of Exchange Reach: The exchange reach is from a downstream terminus of the confluence of West Fourmile Creek and Fourmile Creek in the NE¼ NE¼ of Section 12, Township 15 South, Range 71 West of the 6<sup>th</sup> P.M. (both direct flow HCU credits, and as stored in West Fourmile Creek Reservoir and subsequently released), upstream along Fourmile Creek to the confluence of Oil Creek and Fourmile Creek, and further upstream along Oil Creek to (a) the site of the Oil Creek Pipeline, and/or (b) the site of the Alternate Point of Diversion for the Oil Creek Pipeline (including for diversion to storage in the Oil Creek Reservoir Alternate Location); and/or to (c) the original location site of the Oil Creek Reservoir, located as described above. B. Source of Water Rights: The source of water for this exchange is up to 102.1 annual acre feet of the consumptive use stream credits decreed in Case No. 96CW190, either by direct flow or storage, or other water lawfully stored in West Fourmile Reservoir for subsequent release therefrom<sup>3</sup>. C. Date of Original Decree: April 10, 2015, Case No. 96CW233, Water Court, Division 2. D. Rate and Amount of Water Exchanged: The volumetric limit of the exchange is up to the 102.1 average annual acre feet of consumptive use stream credits decreed in Case No. 96CW190 at a maximum exchange rate of 4.6 cfs, conditional, representing the maximum rate of diversion at the Oil Creek Pipeline. When a direct flow exchange is implemented using consumptive use stream credits (attributable to the Howard Ditch, George Ditch or Spring Ditch as decreed in 96CW190), the maximum exchange rate allowed shall be calculated as diversions allowed per the 96CW190 decree as measured through the augmentation station, multiplied by the depletion percentages given Paragraph 12.B. of the 96CW190 decree. E. Date of Appropriation: June 26, 1996. F. Uses of Exchanged Water: Municipal use, including without limitation, domestic, stock watering, irrigation, recreational, wildlife habitat, fish propagation, commercial, industrial, and also for exchange and augmentation, either by direct diversion or by storage of the same in such structures as may be available to Cripple Creek, including the Oil Creek Reservoir Alternate Location. 2. Oil Creek Reservoir Appropriative Right of Exchange: A. Description of Exchange Reach: The exchange reach is from a downstream terminus of the confluence of West Fourmile Creek and Fourmile Creek in the NE¼ NE¼ of Section 12, Township 15 South,

---

<sup>3</sup> Other water may be legally exchanged to and stored in West Fourmile Creek Reservoir, and subsequently exchanged to the Oil Creek Pipeline by Cripple Creek. Specifically, the decree in Case No. 98CW174 contemplates such exchange of any re-usable sewer return flows or other exchangeable supply from the below Cripple Creek WWTF to West Fourmile Creek Reservoir, and which may subsequently be further exchanged therefrom to the Oil Creek Pipeline. Exchange of such re-usable sewer return flow supplies of water from West Fourmile Creek Reservoir to the Oil Creek Pipeline shall occur under the exchange decreed in Case No. 98CW174, not under the instant exchange.

Range 71 West of the 6<sup>th</sup> P.M. (both direct flow HCU credits, and as stored in West Fourmile Creek Reservoir and subsequently released), upstream along Fourmile Creek to the confluence of Oil Creek and Fourmile Creek, and further upstream along Oil Creek to (a) the site of the Oil Creek Reservoir located as described above; and/or (b) to the site of the Oil Creek Pipeline Alternate Point of Diversion for diversion to storage in the Oil Creek Reservoir Alternate Location, located as described above. B. Source of Water Rights: The source of water for this exchange is up to 102.1 annual acre feet of the consumptive use stream credits decreed in Case No. 96CW190, either by direct flow or storage, or other water lawfully stored in West Fourmile Reservoir for subsequent release therefrom<sup>3</sup>. C. Date of Original Decree: April 10, 2015, Case No. 96CW233, Water Court, Division 2. D. Rate and Amount of Water Exchanged: The volumetric limit of the exchange is up to the 102.1 average annual acre feet of consumptive use stream credits decreed in Case No. 96CW190 at a maximum exchange rate of 10.0 cfs, conditional, should Oil Creek Reservoir be constructed at its original location, and at a maximum exchange rate of 4.6 cfs, representing the maximum rate of diversion at the Oil Creek Pipeline as the source of supply, should the Oil Creek Reservoir be constructed at its alternate location. When a direct flow exchange is implemented using consumptive use stream credits (attributable to the Howard Ditch, George Ditch or Spring Ditch as decreed in 96CW190), the maximum exchange rate allowed shall be calculated as diversions allowed per the 96CW190 decree as measured through the augmentation station multiplied by the depletion percentages in Paragraph 12.B. of the 96CW190 decree. E. Date of Appropriation: June 26, 1996. F. Uses of Exchanged Water: Municipal use including without limitation, domestic, stock watering, irrigation, recreational, wildlife habitat, fish propagation, commercial, industrial, and also for exchange and augmentation, either by direct diversion or by storage of the same in such structures as may be available to Cripple Creek. 3. 1. West Fourmile Creek Appropriative Right of Exchange: A. Description of Exchange Reach: The exchange reach is from the downstream terminus of the confluence of Cripple Creek and Fourmile Creek in the in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 9, Township 16 South, Range 70 West of the 6<sup>th</sup> P.M., upstream on Fourmile Creek to the confluence with West Fourmile Creek, and further upstream on West Fourmile Creek to the upstream terminus of the site of the West Fourmile Creek Reservoir located in the S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 3, Township 15 South, Range 71 West of the 6<sup>th</sup> P.M., as decreed in Case No. 96CW190. B. Source of Water Rights: The source for this exchange is 77.2 percent of the consumptive use credits decreed in Case No. 96CW190 as exchanged into the Oil Creek Pipeline and used through the Applicant's municipal system, pursuant to the appropriative right of exchange described above. C. Date of Original Decree: April 10, 2015, Case No. 96CW233, Water Court, Division 2. D. Rate and Amount of Water Exchanged: The volumetric limit of the exchange within this exchange reach is the 77.2 percent of the consumptive use credit decreed in Case No. 96CW190 as exchanged and

---

<sup>3</sup> Other water may be legally exchanged to and stored in West Fourmile Creek Reservoir, and subsequently exchanged to the Oil Creek Pipeline by Cripple Creek. Specifically, the decree in Case No. 98CW174 contemplates such exchange of any re-usable sewered return flows or other exchangeable supply from the below Cripple Creek WWTF to West Fourmile Creek Reservoir, which may subsequently be further exchanged therefrom to the Oil Creek Pipeline. Exchange of such supplies of water from West Fourmile Creek Reservoir to the Oil Creek Pipeline shall occur under the exchange decreed in Case No. 98CW174, not under the instant exchange.

re-exchanged into the Oil Creek Pipeline and processed through Applicant's municipal water system at a maximum exchange rate of 1.1 cfs, conditional. All volumes of HCU decreed in 96CW190 and utilized in Applicant's municipal system, and all volumes of water exchanged, shall be accounted for with monthly totals for the same. E. Date of Appropriation: June 26, 1996. F. Uses of Exchanged Water: Municipal use including without limitation, domestic, stock watering, irrigation, recreational, wildlife habitat, fish propagation, commercial, industrial, and also for exchange and augmentation, either by direct diversion or by storage of the same. **VI. Outline of Work Done Towards Completion of Appropriation and Application of Water to Beneficial Use.** In Case No. 96CW233, the Court decreed to Applicant the conditional use of the surface water and storage rights, and appropriative rights of exchange for the beneficial use of Applicant's municipal water supply system. The Oil Creek Reservoir, Oil Creek Pipeline, Oil Creek Reservoir Exchange, Oil Creek Pipeline Exchange, and West Fourmile Creek Exchange (collectively the "Conditional Water Rights"), are a part of a single integrated municipal water supply system. The Conditional Water Rights are part of Applicant's integrated water supply system. Pursuant to C.R.S. § 37-92-301(4)(b), work on one component of an integrated system shall be considered in finding that reasonable diligence has been shown for all components of the integrated system. During this diligence period, Applicant has outlaid the following expenditures and completed the following work related to the Conditional Water Rights in their integrated water system: **A.** The Applicant has accumulated over \$8,500 for engineering analysis for replacement and repair of water mains for their integrated water system. **B.** The Applicant has expended over \$1,200,000.00 for repairs and maintenance to their integrated water system. **C.** The Applicant has incurred extensive legal fees associated with drafting and filing of documents pertaining to the Water Rights, including previous related applications and decrees as well as the present filing, obtaining legal advice as to the use and development of Applicant's integrated water system, and protecting its water rights in water court cases. **D.** Additionally, the Applicant has expended significant time and resources building and maintaining infrastructure necessary to place the Water Rights to beneficial use. Based on the expenditures and efforts described herein, and the improvement and maintenance of other water rights integrated into the use of the subject conditional surface water and storage rights, and appropriative rights of exchange, the Applicant has established that it can and will complete the development of the adjudicated conditional water rights and place them to beneficial use within a reasonable period of time. **VII. Name of the Owners of the Land on Which Structure is Located Upon Which Water Is or Will Be Stored or Upon Which Water is or Will Be Placed to Beneficial Use:** The land upon which the Oil Creek Reservoir point of diversion and the alternate point of diversion are located is owned by Daniel and Shelli Tezak, 1229 Tezak Dr., Canon City, CO 81212 (as to the point of diversion) and Janice M. Wallace, 10878 W Evans Ave Apt 67, Lakewood, CO 80227 (as to the alternate point of diversion). The land upon which the Oil Creek Pipeline will be constructed for conveyance of water diverted therein to Applicant's beneficial uses is owned by multiple parties, potentially including Daniel and Shelli Tezak, and the United States of America through the United States Forest Service, c/o Pikes Peak National Forest District Office, 601 S. Weber Street, Colorado Springs, Colorado 80903, and the United States Forest Service Regional Office, P.O. Box 25127, Lakewood, Colorado 80255; and the United States of America

through the Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

-----  
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 June 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.

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

/s/ Michele M. Santistevan

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

(Court seal)  
Published: