

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JULY 2021.

(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 July 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. 2021CW11; Previous Case Nos. 15CW3, and 07CW107 – DAVID SISSON and MARIJANE SISSON, 468 Line Road, West Monroe, LA 71292; (318) 348-8238 or (318) 376-4685

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

2. Name of Structure: Avena Spring Type: Spring. **3. Describe conditional water right:** **A. Date of Original Decree:** 3/20/2009, **Case No:** 07CW107, **Court:** Water Division 2. **B. List all subsequent decrees:** **Date of Original Decree:** 8-25-2015, **Case No:** 2015CW3, **Court:** Water Division 2. **C. Legal description:** NW ¼ OF NE ¼ Section 28, Township 17 South, Range 73 West, 6th P.M., Fremont County, CO, approx. 750 feet from north line of Section 28 & 1000 feet east of the north-south center line of section 28. Avena Spring is located on Lot 92, filing 5, South T-Bar Ranch, Fremont County, CO **D. Source of water:** natural spring. **E. Appropriation Date:** 8/29/2019. **Amount:** 1 gpm-intermittent **F. Use:** Domestic purposes inside a single-family residence, irrigation of up to one acre of home, lawn, and gardens, watering of non-commercial livestock and recreation. Feeds Avena Pond. **G. Depth:** not at this time **4. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed:** To date water from Avena Spring remains naturally flowing to Avena Pond and it waters non-commercial, free range livestock for which there is a grazing lease. Additionally, the property now has a USPS address (see attachment to the application) (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) and we applied for and received a well permit. An extension for the well permit has been applied for and granted (see enclosed) **5. Claim to make absolute in whole or in part.** **A. Date water applied to beneficial use:** 3/20/2009 **Amount:** 1 gpm-intermittent **Use:** waters non-commercial free-range livestock for which there is a grazing lease. **B. The application shall include supporting evidence that applicant diverted water in-priority and applied such water to the beneficial uses claimed in the amounts claimed:** N/A. **C. Description of place of use where water is applied to beneficial use:** NW ¼ of the NE ¼ R73W T17S S28 6th P.M. Lot 92, South T-Bar Ranch, Fremont County, CO (see attached maps). **6. If actual location of the structure is different from the location in paragraph 3.C. above, provide actual description:** NW ¼ NE ¼ Section 28 Township 17S Range 73W 6th Principal Meridian. 275-300 Feet from N and 500 Feet from E 900

feet from south boundary. **7. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** N/A **8. Remarks:** No diversion or modification to date.

CASE NO. 2021CW12; MICHAEL BOLLINGER, 6502 QUARTZ CIRCLE, AURORA, CO 80007, (303) 829-6432

Application for Conditional Water Rights (Surface)

CUSTER COUNTY

2. Name of Structure: Bollinger **Type:** Power. **3. Location of structure:** E1/4, SE ¼, Section 9, Township 23, Range 73W, 6th P.M., **UTM coordinates: Easting:** 451807.6, **Northing:** 4212729.3, Zone 13, See map attached to the application for a general location map. (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court). **Source of UTM's:** CDSS Map Viewer. **4. Source:** Hennequin Creek. **5. Date of appropriation:** 07-19-21. How appropriation was initiated: By filing this form. **6. Amount:** 4 cfs, Conditional **7. Use:** "Micro-Hydro" electricity generation to power forthcoming residence and out-building. If non-irrigation, describe purpose fully: A portion of the water in the creek will be carried through a pipe laid in or near creek bed to provide pressure to turn generator – water immediately returns to creek. Water will not be consumed, or appreciably re-timed or diverted. **8 Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new or existing diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant **9. Remarks:** The electricity provided by this small generator will only be used to power my forthcoming residence and out buildings. It will not be sold and will be non-consumptive use.

CASE NO. 2021CW3034; MASON, LLC, Michael Cartmell, Managing Member, 7702 Barnes Road, #140-58, Colorado Springs, Colorado 80922 (Please address all

pleadings and inquiries regarding this matter to Applicant's attorneys: Ryan W Farr, #39394, Emilie B. Polley, #51296, MONSON, CUMMINS & SHOHET, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, (719) 471-1212) Application for Adjudication of Denver Basin Groundwater and for Approval of plan for Augmentation.

EL PASO COUNTY

II. Summary of Application. Applicant seeks to quantify the Denver Basin groundwater underlying the Applicant's Property, and approval of a plan for augmentation for the use of not-nontributary Denver aquifer to provide water service to a two-lot subdivision. **III. Application for Underground Water Rights.** A. Property Information. 1. Property Description. Applicant owns an approximately 5.37-acre property to be subdivided into two lots of 2.6 +/- acres each. Applicant's property is depicted on **Exhibit A** map attached to the application, (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) located in the N1/2 of Section 4, Township 13 South, Range 65 West of the 6th P.M., specifically described as Lot 10, Pawnee Rancheros Filing No. 2, County of El Paso, State of Colorado and referred to as

8330 Mustang Place, Colorado Springs, Colorado 80908 (“Applicant’s Property”).

2. Existing Wells. There is an existing domestic well with Division of Water Resources Permit No. 131880 (“Mustang Well”). The Mustang Well is drilled to a total depth of 350 feet to the Denver aquifer. Upon approval of this plan for augmentation, this well will be re-permitted.

B. Water Source.

1. Not-Nontributary. The groundwater to be withdrawn from the Dawson, Denver, and Arapahoe aquifers underlying Applicant’s Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer requires the replacement of actual stream depletions and the augmentation requirements for wells in the Denver and Arapahoe aquifers require replacement of four percent of the amount of water withdrawn on an annual basis.

2. Nontributary. The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicant’s Property is nontributary.

C. Estimated Rates of Withdrawal and Ground Water Available.

1. Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for the wells will vary according to aquifer conditions and well production capabilities. Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of any wells to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions.

2. Estimated Average Annual Amounts of Ground Water Available. Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying Applicant’s Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code § 8.4.7(C)(1) which is more stringent than the State of Colorado’s 100-year life requirement pursuant to § 37-90-137(4), C.R.S. Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant’s Property:

AQUIFER	NET SAND (Feet)	Total Appropriation (Acre Feet)	Annual Avg. Withdrawal 100 Years (Acre Feet)	Annual Avg. Withdrawal 300 Years (Acre Feet)
Dawson (NNT)	20	63	0.63	0.21
Denver (NNT)	307	280	2.80	0.93
Arapahoe (NNT)	244	223	2.23	0.74
Laramie Fox Hills (NT)	190	153	1.53	0.51

Decreed amounts may vary from the above to conform with the State’s Determination of Facts. Pursuant to C.R.S. §37-92-305(11), Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer.

D. Requested Uses. Applicant requests the right to use the ground water for beneficial uses upon the Applicant’s Property consisting of domestic, irrigation, commercial, stock water, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant’s Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed.

Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, that Applicant shall only be entitled to construct wells or use water from the not-nontributary Dawson, Denver, and Arapahoe aquifers 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 aquifers in accordance with C.R.S. §37-90-137(9)(c.5). E. Well Fields. Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. F. Averaging of Withdrawals. Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. G. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are to be located as well as the underlying groundwater is owned by Applicant. **IV. Application for Plan for Augmentation.** A. Structures to be Augmented. The structures to be augmented are the Mustang Well and an additional Denver aquifer property well, along with any replacement or additional wells as needed that are constructed to the Denver aquifer underlying the Applicant's Property as requested and described herein ("Mustang Wells"). B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Denver aquifer from the Mustang Wells, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. C. Statement of Plan for Augmentation. Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by an existing well. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: 1. Uses. The Mustang wells will pump a maximum of 0.52 acre-feet of water per year from the Denver aquifer with each lot pumping a maximum of 0.26 acre-feet per year from the Denver aquifer. Such use shall be mainly for in-house use, with any remaining water being available for irrigation of lawn and garden and the watering of domestic livestock. 2. Depletions. Pursuant to § 37-90-137(9)(c.5)(C), C.R.S., replacement obligations for withdrawal from the Denver aquifer in this area requires the replacement of four percent of the amount of water withdrawn on an annual basis. With total pumping of 0.52 acre-feet per year, four percent replacement annually amounts to 0.021 acre-feet. 3. Augmentation of Depletions During Pumping. Applicant's consultant has determined that depletions during pumping will be effectively replaced by residential return flows from a non-evaporative septic system. The annual consumptive use for a non-evaporative septic system is 10% per year. Therefore, at an in-house use rate as low as 0.18 acre feet per year, replacement amounts to 0.324 acre-feet to the stream system annually. Thus, during pumping, stream depletion replacement requirements will be more than adequately met. 4. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Mustang Wells, Applicant will reserve up to the entirety of

the nontributary Laramie-Fox Hills aquifer, accounting for replacements made during the plan pumping period, as necessary to replace any injurious post pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, Applicant will be entitled to apply for and receive a new well permit for the Mustang Wells for use in accordance with this Application and otherwise in compliance with § 37-90-137, C.R.S. **V. Remarks.** A. Applicant requests 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 the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to § 37-90-137(9)(c.5), C.R.S. B. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. C. 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. D. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. E. The well shall be installed and metered as reasonably required by the State Engineer. The well will be equipped with a totalizing flow meter and Applicant, or its successor and assigns, shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. Applicant, or its successors and assigns, shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. F. Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. G. Applicant will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(l), and such notice will be sent within 14 days of the filing of this application.

CASE NO. 2021CW3035; Previous Case No. 12CW99 – SECURITY WATER DISTRICT, c/o Roy E Heald, Manager, 231 Security Blvd., Colorado Springs, CO 80911 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David Shohet, Steven Monson, Emilie Polley, Monson, Cummins & Shohet, LLC., 13511 Northgate Estates Drive, Suite 250, Colorado Springs, CO 80921, (719) 471-1212)

Application for Finding of Reasonable Diligence

EL PASO COUNTY

II. Summary of Application: Applicant applied for and was granted two conditional appropriative rights of exchange in Case No. 12CW99, being the Lock Ditch Exchange and the Chilcott Ditch Exchange, to replace depletions associated with the Applicant's use of the Clear Springs Wells. The exchange-from point of both exchanges is the Chilcott

Augmentation Station's return to Fountain Creek, and the exchange-to point of both exchanges is the Clear Springs Wells' point of depletion to Fountain Creek. Applicant seeks a finding of reasonable diligence for the conditional Lock Ditch Exchange and Chilcott Ditch Exchange adjudicated in Case No. 12CW99, as components of Applicant's integrated water system. **III. Conditional Water Rights:** 1. Lock Ditch Exchange. **A. Description of Location:** 1. Exchange-From Point: Chilcott Augmentation Station's return to Fountain Creek (WDID 1000974) located in the SW ¼ of Section 30, Township 15 South, Range 65 West of the 6th P.M. The UTM coordinates for the Chilcott Ditch Augmentation Station are: Northing (UTMy) 4284338 and Easting (UTMx) 524726 (Zone 13). 2. Exchange-To Point: The Clear Springs Wells' point of depletion to Fountain Creek generally located in the NE¼ of Section 25, Township 15 South, Range 66 West of the 6th P.M. The UTM coordinates for the location of the Clear Springs Wells depletions to Fountain Creek are: Northing (UTMy) 4285900 and Easting (UTMx) 523807 (Zone 13). The Clear Springs Wells are more particularly described as follows: a. Clear Springs Well P-8 (WDID 1005635). Clear Springs Well P-8 is located in the NE¼ NE¼ of Section 10 at a point whence the NE Corner of Section 10, Township 15 South, Range 66 West of the 6th P.M. bears North 56 degrees East, 872 feet, more or less. Well P-8 is permitted under Well Permit No. 2594-F and was decreed on February 10, 1978 in Case No. W-116, District Court for Water Division 2, for 3.99 cfs for irrigation, domestic, and municipal uses with a priority date of 1963. This well has been re-permitted as Well Permit No. 77072-F. The UTM coordinates for this well are: Northing (UTMy) 4290725.5 and Easting (UTMx) 520869 (Zone 13). b. Clear Springs Well P-10 (WDID 1005637). Clear Springs Well P-10 is located in the NE¼ of Section 10, Township 15 South, Range 66 West of the 6th P.M., South 89 degrees 35' West, 1,400.04 feet, more or less, from the NE Comer of Section 10. Well P-10 is permitted under Well Permit No. IR-20396-RF, as decreed on February 10, 1978 in Case No. W-116, District Court for Water Division 2, for 4.01 cfs for irrigation, domestic, and municipal uses with a priority date of December 1953. This well has been re-permitted as Well Permit No. 77073-F. The UTM coordinates for this well are: Northing (UTMy) 4290801.5 and Easting (UTMx) 520771.0 (Zone 13). c. Clear Springs Well P-13 (WDID 1005640). Clear Springs Well P-13 is located in the SE¼ SE¼ of Section 3 at a point whence the SE Corner of Section 3, Township 15 South, Range 66 West of the 6th P.M., bears South 86E East, 631 feet, more or less. Well P-13 is permitted under Well Permit No. 5765-F as decreed on February 10, 1978 in Case No. W-116, District Court for Water Division 2, for 2.67 cfs for irrigation, domestic, and municipal uses, with a priority date of May 29, 1964. This well has been re-permitted as Well Permit No. 77074-F. The UTM coordinates for this well are: Northing (UTMy) 4290891 and Easting (UTMx) 520891 (Zone 13). **B. Exchange Reach:** The reach of Fountain Creek affected by the Lock Ditch Exchange is that reach between the Chilcott Augmentation Station's point of return to Fountain Creek, and the Clear Springs Wells' location of depletion to Fountain Creek. See **Exhibit A** attached to the application for a map showing the location of this exchange reach. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **C. Source:** The source of the exchange as a component of the plan for augmentation is the historical consumptive use credits from Applicant's Lock Ditch Water Rights changed by the Applicant in Case No. 06CW117. **D. Amount of Water Exchanged:** 1.58 cfs, conditional. **E. Date of Original Decree:** August 11, 2012, Case No. 12CW99, District

Court, Water Division 2. **F. Date and Initiation of Appropriation:** October 5, 2012, by application filed with the Water Court, Water Division 2. **G. Uses of Exchanged Water:** Augmentation of depletions from pumping the Clear Springs Wells as described in paragraph III.1.A.2, above. 2. Chilcott Ditch Exchange. **A. Description of Location:** 1. Exchange From Point: Chilcott Augmentation Station as described above. 2. Exchange To Point: The Clear Springs Wells' point of depletion to Fountain Creek as described above. **B. Exchange Reach:** The reach of Fountain Creek affected by the Chilcott Ditch Exchange is that reach between the Chilcott Augmentation Station's point of return to Fountain Creek, and the Clear Springs Wells' location of depletion to Fountain Creek. A map showing this exchange reach is attached as Exhibit A. **C. Source:** The source of the exchange as a component of the plan for augmentation is the historical consumptive use credits of Applicant's shares in the Chilcott Ditch Company, which were quantified and changed to include augmentation uses in Case No. 06CW119. **D. Amount of Water Exchanged:** 2.0 cfs, conditional. **E. Date of Original Decree:** August 11, 2015, Case No. 12CW99, District Court, Water Division 2. **F. Date and Initiation of Appropriation:** October 5, 2012, by application filed with the Water Court, Water Division 2. **G. Uses of Exchanged Water:** Augmentation of depletions from pumping the Clear Springs Wells as described above. **IV. Outline of Work Done Towards Completion of Appropriation and Application of Water to Beneficial Use:** In Case No. 12CW99, the Court decreed to Applicant the conditional use of the Lock Ditch Exchange and the Chilcott Ditch Exchange for the beneficial use of Applicant's water supply system. The Lock Ditch Exchange and the Chilcott Ditch Exchange (collectively the "Exchange Rights"), are a 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 temporarily discontinued the use of all of its wells in 2016 due to the discovery of perfluorinated compounds (PFCs) in the Widefield Aquifer. The Applicant has been working with the United State Air Force, who has committed to design and construct a water treatment system to remove PFCs from the Applicant's groundwater. The system is expected to cost over \$15 million and will allow Security to utilize its groundwater resources, including the Clear Springs Wells. As a result of the contamination of the Widefield Aquifer, applicant has been unable to operate the Exchange Rights. Applicant, however, is prepared to operate the Exchange Rights upon resuming groundwater diversions associated with the Clear Springs Wells. In addition to expending significant time and effort towards remediation of groundwater in the Widefield Aquifer, the Applicant has also performed significant work within its service boundaries and on its municipal water system to develop the decreed exchange as part of its integrated municipal supply system. Applicant has expended approximately \$3,200,000.00 on the operation, repair, maintenance and capital improvements to its integrated water supply system. The Applicant also completed several inclusions of parcels into its service area. All inclusions have been approved by orders entered by the District Court of El Paso County and Applicant has commenced work towards providing water service to these inclusions. This water service anticipates the use of the Clear Springs Wells and the Exchange Rights to augment and replace depletions associated with the Clear Springs Wells. Additionally, Applicant has expended approximately \$18,492,000.00 during this diligence period in acquiring water rights for use in its water

supply system and other capital expenditures. These water rights are to be used as a physical and legal water supply to these annexations as well as the Applicant's current and future demands. Applicant has also prosecuted numerous Water Court applications for changes of water rights and plan for augmentation during this diligence period to provide additional physical and legal water supply for the Applicant's current and future demands. As the Exchange Rights are part of the Applicant's integrated water supply system, work performed on behalf of one component of this integrated system constitutes diligence on behalf of all structures, which are a part of this integrated system. Applicant has also incurred legal, engineering, and administrative fees related to its water supply system consisting of, without limitation, water supply, and distribution analysis, water rights planning, Water Court filings for the protection of its water rights, well permitting, and water rights administration matters. These amounts are further detailed in Applicant's annual budgets and audits during this diligence period. Based on the expenditures and efforts described herein, and the improvement and maintenance of the Clear Springs Wells and other water rights integrated into the use of the subject conditional 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. **V. Claim To Make Absolute in Whole Or In Part.** The applicant does not seek to make any portion of the Exchange Rights absolute. **VI. 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 Clear Springs Wells are located upon land owned by Colorado Springs Utilities, P.O. Box 1103, 11 South Cascade Avenue, Colorado Springs, Colorado 80947-0010.

****Per Order, Resume to be published by Water Division 1****

CASE NO. 2021CW3036, Water Division 2 and CASE NO. 2021CW3119 Water Division 1 – COLLIN BRONES, 6665 Walker Road, Colorado Springs, Colorado 80908 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Ryan W Farr, #39394. MONSON, CUMMINS & SHOHET, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, (719) 471-1212.) Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation

EL PASO COUNTY

II. Summary of Application. Applicant seeks to quantify the Denver Basin groundwater underlying the Applicant's Property and approval of a plan for augmentation for the use of not-nontributary Dawson aquifer to provide water service to a six-lot subdivision. III. Application for Underground Water Rights. A. Property Information. 1. Property Description. Applicant owns an approximately 40-acre property to be subdivided into six lots of 6.5 +/- acres each. Applicant's property is depicted on **Exhibit A** attached to the application. (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) a map comprising the NE1/4 of the SW1/4 of Section 18, Township 11 South, Range 65 West of the 6th P.M., County of El Paso, State of Colorado and referred to as 6665 Walker Road, Colorado Springs, Colorado 80908 ("Applicant's Property"). 2. Existing Wells. There is an existing domestic well with Division of Water Resources Permit No. 130940 ("Brones Well). The Brones Well is

drilled to a total depth of 290 feet to the Dawson aquifer. Upon approval of this plan for augmentation, this well will be re-permitted. B. Water Source. 1. Not-Nontributary. The groundwater to be withdrawn from the Dawson aquifer underlying Applicant's Property is not-nontributary. Pursuant to § 37-90-137(9)(c.5), C.R.S., the augmentation requirements for wells in the Dawson aquifer requires the replacement of actual stream depletions. 2. Nontributary. The groundwater that will be withdrawn from the Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying the Applicant's Property is nontributary. C. Estimated Rates of Withdrawal and Ground Water Available. 1. Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for the wells will vary according to aquifer conditions and well production capabilities. Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of any wells to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available. Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying Applicant's Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code § 8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to § 37-90-137(4), C.R.S. Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

AQUIFER	NET SAND (Feet)	Total Appropriation (Acre Feet)	Annual Avg. Withdrawal 100 Years (Acre Feet)	Annual Avg. Withdrawal 300 Years (Acre Feet)
Dawson (NNT)	477	3,819	38.19	12.73
Denver (NT)	486	3,303	33.03	11.01
Arapahoe (NT)	255	1,731	17.31	5.77
Laramie Fox Hills (NT)	203	1,216	12.16	4.05

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to § 37-92-305(11), C.R.S., Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. D. Requested Uses. Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, irrigation, commercial, stock water, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of § 37-90-137(9)(b), C.R.S., that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, that Applicant shall only be entitled to construct wells or use water from the not-nontributary Dawson aquifer 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 aquifers in accordance with § 37-90-137(9)(c.5), C.R.S. E. Well Fields. Applicant requests that he be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. F. Averaging of Withdrawals. Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. G. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are to be located as well as the underlying groundwater is owned by Applicant.

IV. Application for Plan for Augmentation. A. Structures to be Augmented. The structures to be augmented are the Brones Well along with other Dawson aquifer wells supplying water to the proposed subdivision, including any replacement or additional wells as needed that are constructed to the Dawson aquifer underlying the Applicant's Property as requested and described herein ("Brones Wells"). B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Dawson aquifer from the Brones Wells, together with water rights from the nontributary Denver aquifer for any injurious post pumping depletions. C. Statement of Plan for Augmentation. Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: 1. Uses. The Brones Wells will pump a maximum of 6.0 acre-feet of water per year from the Dawson aquifer with each lot pumping a maximum of 1.0 acre-feet per year from the Dawson aquifer. Such use shall be for domestic, irrigation, commercial, stock water, recreation, wildlife, fire protection, and also for storage and augmentation. 2. Depletions. Pursuant to § 37-90-137(9)(c.5)(C), C.R.S., replacement obligations for withdrawal from the Dawson aquifer requires the replacement of actual stream depletions, which such maximum depletion amounting to 22.19% of withdrawal. With total pumping of 6.0 acre-feet per year, 22.19% replacement annually amounts to 1.332 acre-feet. 3. Augmentation of Depletions During Pumping. Applicant's consultant has determined that depletions during pumping will be effectively replaced by residential return flows from a non-evaporative septic system. The annual consumptive use for a non-evaporative septic system is 10% per year. Therefore, at an in-house use rate of 0.25 acre feet per year per lot, replacement amounts to 1.35 acre-feet to the stream system annually. Thus, during pumping, stream depletion replacement requirements will be adequately met. 4. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Brones Wells, Applicant will utilize non-evaporative septic return flows and irrigation return flows from the subsequent usage of the Denver aquifer. Additionally, Applicant may utilize water directly from the Denver aquifer or water from the Arapahoe or Laramie-Fox Hills aquifers as a replacement source if needed. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval

of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. Upon entry of a decree in this case, Applicant will be entitled to apply for and receive a new well permit for the Brones Wells for use in accordance with this Application and otherwise in compliance with § 37-90-137, C.R.S. **V. Remarks.** **A.** This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the South Platte River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter with the pending Division 2 application in Water Division 1 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient. **B.** Applicant requests a finding that they have complied with § 37-90-137(4), C.R.S., and that the groundwater requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to § 37-90-137(9)(c.5), C.R.S. **C.** The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. **D.** 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. **E.** The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. **F.** The well shall be installed and metered as reasonably required by the State Engineer. The well will be equipped with a totalizing flow meter and Applicant, or its successor and assigns, shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. Applicant, or its successors and assigns, shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. **G.** Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. **H.** Applicant will comply with any lienholder notice provisions set forth in § 37-92-302(2)(b) and §37-90-137(4)(b.5)(I), C.R.S., and such notice will be sent within 14 days of the filing of this application.

CASE NO 2021CW3037; Previous Case No. 07CW119 – REDWING RANCH, LLC, P.O. Box 928, Carmel Valley, CA 93924 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David M. Shoet, #36675, Monson, Cummins & Shoet, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212.)

Application for Finding of Reasonable Diligence

HUERFANO COUNTY

II. Names of Structures: First Enlargement of the Meses Y Company Ditch. Type: Ditch.

III. Description of Conditional Water Rights: A. Date of Original Decree: July 9, 2015. Case No: 07CW119. Court: District Court, Water Division 2. B. List of Subsequent Decrees Awarding Findings of Diligence: None. C. Legal Description: The headgate of the Meses Y Company Ditch is located in the Southwest 1/4 of the Southwest 1/4, Section 19, Township 27 South, Range 70 West, 6th P.M., approximately 470 feet from the West section line and 0 feet from the South section line of said Section 19. A map showing the location of the headgate of the Meses Y Company Ditch 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.) D. Source: Palo Duro Creek. E. Appropriation Date: December 28, 2007; Amount: 1 c.f.s. F. Use: Irrigation of 80 acres located in the SE 1/4 of the SW1/4 and the West 1/2 of the SE 1/4 of Sections 12, the W 1/2 of the NE 1/4 of Section 13, all in Township 27 South, Range 71 West, 6th P.M., livestock and wildlife watering. The approximate location of the irrigated acreage is shown on the attached **Exhibit A** map. **IV. Outline of Work Done Towards Completion of Appropriation and Application of Water to Beneficial Use:** During the last diligence period, the Applicant has worked with the NRCS on improvements to the Meses Y Company Ditch. The Applicant has submitted an EQIP grant application with the NRC seeking to improve and pipe the Meses Y Company Ditch. The pipeline design seeks to carry the full decreed flows of the Meses Y Company Ditch and the First Enlargement of the Meses Y Company Ditch water rights to the Applicant's property. The NRCS is currently processing the Applicant's EQIP grant application. The Applicant has mapped the ditch to identify future repairs to be addressed in the coming years. The Applicant has also performed routine maintenance on the Meses Y Company Ditch and has worked with other owners of the ditch regarding the diversion of water. This work includes installing new culverts on the ditch. The Applicant has spent approximately \$1,000.00 on the maintenance on the Meses Y Company Ditch during this diligence period. **V. Claims to Make Absolute:** None. **VI. Name and address of the owners of land on which structure is located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicant is a currently a 3/8 owner of the Meses Y Company Ditch. The headgate is located on lands owned by Donald Cisneros, 5000 Red Creek Springs, Route 209, Pueblo, CO 81005. All irrigated acreage is located on lands owned by the Applicant.

CASE NO. 2021CW3038; Previous Case No. 200CW146 – TOWN OF MONUMENT, c/o Mike Foreman, Town Manager, 645 Beacon Lite Road, Monument, CO 80132

(Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Robert F. T. Krassa, 2300 Canyon Blvd., Suite 2, Boulder, CO 80302, 303-442-2156)
Application for Finding of Reasonable Diligence and to Make Absolute in Part

EL PASO COUNTY

2. Name of Structures: Monument Lake, also known as Monument Lake Reservoir. **3. Describe conditional water right** giving the following from the Referee's Ruling and Judgment and Decree: **a. Date of Original Decree:** July 10, 2015, as recorded March 3, 2016 at Reception No. 216022070, records of El Paso County. **b. List all subsequent decrees awarding findings of diligence (all in this Court):** None. **c. Location of Dam:** The axis of the dam crosses the thread of Monument Creek in the SE/4 SW/4 Section 15, T. 11 South, R. 67 W. of the 6th P.M. in El Paso County, Colorado, at a point 2320 feet

from the west section line, and 1180 feet from the south section line, of said Section 15 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.) **d. Source:** Monument Creek, tributary to Fountain Creek, tributary to Arkansas River. **e. Date of Appropriation:** March 9, 1939 for the first fill and December 29, 2000 for the refill right, both conditional, both with relative priority dates under C.R.S. §37-92-306 based upon filing of the application in said case 00CW146 during calendar year 2000. **f. Amount:** 304.8 acre feet for original fill and 304.8 acre feet for the refill right, both conditional. **g. Use:** municipal purposes, including domestic, industrial, commercial, manufacturing, stock watering, piscatorial, fish and wildlife, fire protection, street washing, replacement, and augmentation. **4. Provide a detailed outline** of what has been done toward completion or for completion of appropriation and application of water to a beneficial use as conditionally decreed, including expenditures. **a. During the diligence period** from July 10, 2015 through end of July 2021, the following capital improvements were made to the Town's water system: drilled and outfitted a new well, Well #10; designed a new water tank and 5.5 miles of water distribution piping; designed a replacement tank on Monument Hill; designed for expansion of Water Treatment Plant ("WTP") #4/5 building; designed Radium Removal Treatment System for WTP #3/9; Water Lab and Office Expansion Project; WTP #4/5 System Upgrade Project; Water Meter Billing Software upgraded; installed fixed generator to supply emergency power to the Booster Station; emergency transfer switch installed for generator connection; purchased portable 250KW generator for WTP operation; upgraded meter reading software; updated Programmable Logic Controls for the SCADA computer for more efficient and consistent communications in operating the treatment and distribution systems; and WTP 7 upgrades \$65,000.00. During the diligence period the Town has spent over \$2.3 million on these and other water system projects, all of which increased the Town's ability to fully utilize the subject water rights. **b. Paragraph 2013 of the decree** in said case 00CW146 provides, "For the purposes of showing diligence and completion of the conditional storage rights requested, diligence as to any part of Monument's water system shall be considered in finding reasonable diligence has been shown in the development of the conditional storage rights decreed herein." **c. In addition, during the diligence period,** the Town filed and completed a number of Water Court cases to increase the yield of its water system, including 19CW3009 to augment Dawson aquifer water produced from Wells 1, 2 and 3, and 19CW3010 to confirm nontributary status of Denver aquifer water produced from Wells 2 and 3. The Town also participated in water court cases filed by others in order to protect the Town's water rights. **d. Monument Lake Reservoir** is in excellent condition and is fully prepared to store water under augmentation or in priority. **e. The Town of Monument has in all respects diligently worked** toward placing these conditional water rights to beneficial use. **5. Claim to make absolute in part:** **a. Date water stored** under augmentation: November 2019 through October 2020. Amount: 47.3 acre feet. **b. Supporting evidence** showing that applicant stored water under augmentation and applied such water to beneficial uses: a report by Monument's water resources engineers with a summary of the water system records showing storage under augmentation is attached as **Exhibit B**. **c. A decreed conditional water storage right shall be made absolute** for all decreed purposes to the extent of the volume of the appropriation that has been captured, possessed, and controlled at the decreed storage

structure. C.R.S. §37-92-301(e). **d. The water was applied to beneficial use** in the service area of the Town of Monument. This service area is shown on map attached as **Exhibit C. e. The State Engineer** in the exercise of his administrative authority has issued Written Instruction 2020-01 that water produced by a conditional water right pursuant to a plan for augmentation makes the water right absolute. The reasoning, as well as the supporting opinion of the Attorney General's Office, is fully explained in said Written Instruction which is attached as Exhibit D and is incorporated by this reference.

6. Names and addresses of owners or reputed owners of the land upon which any existing or new storage structure for the said conditional water storage rights has or will be constructed or upon which water has or will be stored, including any modification to the existing storage pool: Monument owns the site of Monument Lake and all associated facilities.

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 September 2021, (forms available at Clerk's office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$192.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 10th day of August 2021.

Michele Santistevan

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



(Court seal)
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