

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING August 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 August 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. 2021CW13; Previous Case Nos. 01CW135, 08CW69, 15CW5 – JEFFREY and JANET MANCUSO, 1251 Antelope Trail, Cotopoxi, CO 81223, (719) 221-6105 or (845) 304-2873

Application to Make Absolute in Whole or in Part

FREMONT COUNTY

2. Name of Structure: Conn #1 Spring Type: Spring. **3. Describe conditional water right:** **A. Date of Original Decree:** 09/16/2002 **Case No:** 01CW135 **Court:** Water Div #2, CO. **B. List all subsequent decrees:** 05/28/09 **Case No:** 08CW69 **Court:** Water Div #2, CO **C. Legal description:** Within Tract 21 of Montana Verde, filing #1, Fremont County CO, where the SE corner of said tract 21, also being corner #7 of govt., tract 107, T 50N, R 12E, N.M.P.M. Fremont County, CO bears S83° 44'45" E a distance of 366.0 from the spring. See attachment 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.) **D. Source of water:** Spring in Gulch which drains into East Gulch. **E. Appropriation Date:** 12/31/1959. **Amount:** 4 gpm or 0.009 cfs **F. Use:** Stock watering 40 head of cattle, and domestic use conditional. **G. Depth:** N/A **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:** Continued use for watering of livestock. **5. Claim to make absolute in whole or in part. A. Date water applied to beneficial use:** 06/17/19 **Amount:** 4 gpm **Use:** Watering livestock, domestic use conditional. **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:** **C. Description of place of use where water is applied to beneficial use:** N/A **6. If actual location of the structure is different from the location in paragraph 3.C. above, provide actual description:** SE ¼, Section Tract 21 Montana Verde filing 1, Township 50N, Range 12E, N.M.P.M., **UTM Coordinates:** Easting 444604, Northing 4266573 on Nesterville Road, **Subdivision:** Montana Verde filing 1 **Lot:** Tract 21. **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:** Applicant **8. Remarks:** None

CASE NO. 2021CW14; TAYLOR OSWALD LAND L.L.C., 2241 County Road 1A, Cotopaxi, CO 81223, (719) 942-4361

Application for Absolute Water Rights (Surface)

FREMONT COUNTY

2. Name of Structure: Oswald Bog Meadow Spring and Oswald Mountain Meadow Spring, Type: Spring. **3. Location of Structures:** Oswald Bog Meadow Spring, SW/4 of the SW/4, Section 21, Township 47North, Range 12 East, Principal Meridian NM, Oswald Mountain Meadow Spring, NW/4 of the SW/4, Section 31, Township 47 North, Range 12 East, Principal Meridian NM Location Information in UTM: Oswald Bog Meadow Spring Easting: 442549, Northing: 4239920, Oswald Mountain Meadow Spring Easting: 439240, Northing: 236999, Source of UTM: Hand-held GPS Unit. Street Address: 2241 County Road 1A, Cotopaxi, CO 81223. See attachment 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.) **4. Source:** Oswald Bog Meadow Spring and Oswald Mountain Meadow Spring; Spring flows. **5. Date of Appropriation:** A. Oswald Bog Meadow Spring 1992, Oswald Mountain Meadow Spring, 1969. B. How appropriation was initiated: The Oswald Bog Meadow Spring was developed in 1992 by the applicant and has been used to fill livestock tanks on the applicant's ranch property for livestock use. The Oswald Mountain Meadow Spring was developed in the 1960s under the Soil Conservation Service's Great Plains Conservation Program. The Oswald Mountain Meadow Spring waters are also piped to fill livestock tanks on the applicant's ranch property for livestock use. C. Date water applied to beneficial use: Oswald Bog Meadow Spring: 1992 and Oswald Mountain Meadow Spring: 1969. **6. Amount claimed in gallons per minute (gpm):** Oswald Bog Meadow Spring 0.93 gpm, Oswald Mountain Meadow Spring 3 gpm. **7. List all uses or proposed Uses:** Oswald bog Meadow Spring Livestock, Oswald Mountain Meadow Spring Livestock. A. Irrigation: No irrigation use is claimed. B. Non-Irrigation: Livestock use by piping the spring waters to livestock water tanks on the applicant's ranch property. **8. 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 **8. Remarks:** Both the Oswald Bog Meadow Spring and the Oswald Mountain Meadow Spring have been used since their construction. The springs have historically been administered by water officials as being administratively futile. Both springs were also in use during the free river administrative periods of the 1990s.

CASE NO. 2021CW3012; Previous Case Nos. 18CW3009, 11CW38, 98CW172 – SAMUEL N. KNIGHT, JR., 5603 Pennock Point, Jupiter, FL 33458 (Please address all

pleadings and inquiries regarding this matter to Applicant's attorneys: Beattie Houpt & Jarvis, PO Box 1669, Basalt, CO, 970-945-8659)

Amended Application to Make Conditional Water Rights Absolute and for Findings of Reasonable Diligence

HUERFANO COUNTY, Cucharas River

All structures: Original decree entered 03/15/04 in 98CW172; subsequent decrees in 11CW38 and 18CW3009. Appropriation date: 09/03/93. Date water applied to beneficial use: 06/30/06. Dalton Pump & Pipeline: Location: In the SE¼NE¼ Sec 7, T 30 S, R 68

W 6th PM, at a point 2,510 ft S of N Sec Line and 885 ft W of E Sec Line of said Sec 7, also be described by UTM coordinates as: 496654 E. 4145073 N. Source: Cucharas River. Amount: 2.0 cfs, conditional. Uses: Piscatorial, aesthetic, recreational, and wildlife propagation. Place of use: Little Lake Dalton, described below. Water applied to beneficial use: 0.7 cfs for piscatorial, aesthetic, recreational, and wildlife propagation within Little Lake Dalton. Little Lake Dalton: Location: In the SE¼NE¼ Sec 7, T 30 S, R 68 W 6th PM, 890 ft W of E Sec Line and 1,853 ft S of N Sec Line of said Sec 7, also be described by UTM coordinates as: 496679 E. 4145330 N. See attachment 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.) Little Lake Dalton is an off-channel reservoir filled with water diverted from the Cucharas River through the Dalton Pump & Pipeline. Source: Cucharas River and local surface in-flow tributary to the Cucharas River. Decreed amount: 27.3 af, conditional, with right to fill and refill in priority, and when out of priority while operating in accordance with the change of water right and plan for augmentation approved in 98CW172. Max rate of diversion for filling the reservoir: 2.0 cfs. Uses: Piscatorial, aesthetic, recreational, and wildlife propagation. Surface area: 3.43 acres. Max height of dam: 14 ft. Total capacity: 27.3 af. Active capacity: 26.9 af. Dead storage: 0.4 af. Amount of water applied to beneficial use: 27.3 af. Water applied to use with Little Lake Dalton for piscatorial, aesthetic, recreational, and wildlife propagation. Little Lake Dalton was constructed in 2005 and the initial filling was completed in 2006 pursuant to the plan approved in 98CW172. Owner of land: Applicant.

CASE NO. 2021CW3039; Previous Case No. 04CW110 – SHANE MERZ and M. MICHELE MERZ, 4024 Riley Street, Houston, TX 77005 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Chris D. Cummins, #35154, Emilie B. Polley, #51296, MONSON, CUMMINS & SHOHET, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for Plan for Augmentation

LAKE COUNTY

II. Background and Summary of Application. A. Applicants seek to supplement a portion of an existing augmentation plan concerning the use of groundwater underlying an approximately 3.76 acre parcel of land located in Lake County, Colorado. Applicants own Lot 8 of the Elk Trail Subdivision, depicted on **Exhibit A** map attached to the application, (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) also known as 8 Elk Trail, Leadville, CO 80461 (“Applicants’ Property”). B. An augmentation plan for the use of groundwater within the Elk Trail Subdivision, including Applicants’ Property, was decreed in Case No. 04CW110, District Court, Water Division 2 (“04CW110 Decree”), by original applicant and developer of the Elk Trail Subdivision, Arkansas Valley Company, LLC. The 04CW110 Decree established an augmentation plan for approximately 53 acres of land located approximately 2 miles west of the town of Leadville, Colorado in Section 21, Township 9 South, Range 80 West of the 6th P.M., known as the Elk Trail Subdivision. The Elk Trail subdivision consists of fifteen lots, with fifteen individual wells thereon constructed, or to be constructed, to the alluvium of the Arkansas River and utilized for in-house use purposes pursuant to the 04CW110 Decree. The augmentation plan in the 04CW110 Decree provided that a combined 4.05 acre-feet of water per year may be withdrawn from

the Arkansas alluvium from individual wells on each of the fifteen lots, or approximately 0.27 acre-feet per lot. Depletions resulting from such pumping are decreed to be replaced by the one (1) share of stock in the Twin Lakes Reservoir and Canal Company ("TLRCC") dedicated to such purposes in the 04CW110 Decree. Depletions under the 04CW110 Decree were determined to be 10% of pumping, or 0.405 acre feet annually, with 90% of pumping returning to the alluvial aquifer via non-evaporative septic return flows. **III. Proposed Revision.** A. Applicants are the current owners of Lot 8 of the Elk Trail Subdivision. Applicants have acquired an additional ½ share in TLRCC, and wishes to expand their use of water beyond that described in the 04CW110 Decree to include limited outside uses of water, as described herein. Applicants wish to dedicate such ½ share of TLRCC stock to the replacement of increased depletions resulting from such increased pumping and water usage. Applicants do not seek any change or revision to the 04CW110 Decree as would affect the remainder of the 15 lots within the Elk Trail Subdivision, nor as affects Applicants' right to pump the 0.27 acre feet of water from their existing well pursuant to the 04CW110 Decree, but rather seek only to enhance the pumping entitlements on Lot 8 utilizing additional available augmentation supplies. By this application, Applicants request the following supplement to the plan for augmentation set forth in the 04CW110 Decree, only as to Lot 8, as follows: B. Structures to be Augmented: The structure to be augmented is one well, with existing DWR Permit No. 82358-F, attached as **Exhibit B**, as already constructed to the alluvium of the Arkansas River on Lot 8 ("Merz Well"), including any future replacement wells. The Merz Well is located in the NW¼ SW¼ of Section 21, Township 9 South, Range 80 West of the 6th P.M., UTM coordinates, Zone 13, Easting 384037, Northing 4345268. The existing well permit will be cancelled and re-permitted upon approval of this plan for augmentation. C. Water Rights to be Used for Augmentation. The water rights to be used for augmentation is Applicants' pro rata allocation of the 1/15th share in the TLRCC stock previously dedicated to the plan for augmentation in the 04CW110 Decree as concerns the initial 0.27 acre feet of pumping, along with Applicant's additional ½ share in TLRCC, as concerns the additional pumping entitlements sought herein. D. Statement of Plan for Augmentation. Applicants wish to provide for the augmentation of stream depletions caused by pumping the Merz Well in the alluvium of the Arkansas River on Applicants' Property beyond the entitlements previously authorized by the 04CW110 Decree, *i.e.* the "Additional Depletions" as described below. Water use criteria and the consumptive use components for replacement of actual depletions for the Additional Depletions is estimated as follows: A. Uses. a. Landscape Irrigation: 0.037 acre feet annually per 1,000 square feet (1.61 acre feet per acre) per year, with an 85% efficiency. For purposes of conservatism, Applicants' landscape irrigation is presumed to be 100% depletive. Applicant seeks to irrigate no more than 8,200 square feet of land with native grasses, and drip irrigated trees, shrubs and gardens. Such landscape irrigation is conservatively estimated to result in additional pumping and depletions of 0.35 acre feet annually. b. Hot Tub: Applicants' consultant has calculated the demand of Applicants' outdoor hot tub, including fill and re-fill, to be 1,600 gallons annually, or 0.005 acre feet, and for conservatism all such uses are presumed to be 100% depletive. B. The Merz Well will pump a maximum of 0.625 acre feet of water per year from the alluvium of the Arkansas River. As the 04CW110 Decree provided for only 0.27 acre feet of pumping and augmentation of depletions therefrom, this is 0.355 acre feet of additional pumping and depletions not augmented by the

04CW110 Decree which are to be augmented hereby. E. Depletions. Applicants are required to replace all injurious depletions resulting from pumping from the alluvium of the Arkansas River, such groundwater being tributary in nature. The prior 04CW110 Decree established that only 10% of pumping for in-house uses will be depletive. Applicants conservatively assume all irrigation and hot tub uses under this plan for augmentation to be 100% depletive. As such, Applicants must provide an additional 0.355 annual acre feet of augmentation supply to account for depletions resulting from 0.355 annual acre feet of additional pumping (the "Additional Depletions"). F. Water Rights to be Used for Augmentation. Applicants will replace the Additional Depletions resulting from the pumping of the Merz Well utilizing an additional ½ share of stock in TLRCC, to be dedicated to this revised plan for augmentation solely for replacement of the Additional Depletions on Lot 8 described herein. Applicants' ½ share of TLRCC stock is represented by Certificate No. 8929, a copy of which is attached as **Exhibit C** ("Additional TLRCC Share"). The Additional TLRCC Share represents a *pro rata* interest in native Arkansas River diversions and the Independence Pass transmountain diversion system which diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County for storage in the Twin Lakes Reservoirs in southern Lake County, Colorado. Such *pro rata* interest represents a firm annual yield of approximately 0.365 acre feet for the Additional TLRCC Share (based upon 0.73 acre feet per share), more than sufficient for replacement of the Additional Depletions described herein. Each TLRCC share consists of direct flow and storage rights which are available for 100 percent consumptive use and reuse and is available for augmentation. The water rights producing the pro rata interest of the Applicant are described as follows: 1. Colorado River Water Rights. a. Decree: i. Case No. 3082, District Court, Garfield County, August 25, 1936. ii. Case No. W-1901, District Court, Water Division 5, May 12, 1976. b. Priority: August 23, 1930, Priority No. 431. c. Source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Division 5, as more fully set forth in the above referenced Decrees. d. Use: Direct flow and storage purposes, for irrigation, domestic, commercial, industrial, municipal and all beneficial uses. e. Amount: Direct flow amount for diversions through transmountain tunnels of 625 cfs with an annual limit of 68,000 acre feet, a running ten year limit of 570,000 acre feet, and other limitations set forth in the decrees. 2. Arkansas River Water Rights. a. Decree: i. Original Decree, Case No. 2346, District Court, Chaffee County, July 14, 1913. ii. Modified, Case No. W-3965, District Court, Water Division 2, April 19, 1974. b. Priorities: December 15, 1896, Priority No. 3, and March 25, 1897, Priority No. 4. c. Source: Lake Creek and its tributaries tributary to the Arkansas River. d. Use: Storage for irrigation, domestic, commercial, industrial and municipal purposes on any site in the Arkansas River Basin of Colorado below the Twin Lakes Reservoir which are capable of being served water by diversion from said Arkansas River. e. Amount: 54,452 acre feet (20,645.3 acre feet -Priority No. 3; 33,806.7 acre feet - Priority No. 4). G. Applicants note and emphasize that no revision of the decreed plan for augmentation in Case No. 04CW110 is requested, but rather only supplementation as to allow additional pumping and additional augmentation sources for expanded uses of water on Lot 8. **IV. Remarks**. A. The Applicants request a finding that vested water rights of others will not be materially injured by the additional use requested herein. B. Upon entry of a decree in this case, the Applicants shall be entitled to apply for and receive a new well permit in accordance with the provisions of any decree entered in this case. C.

The Water Court has jurisdiction over the subject matter of this application pursuant to §§ 37-90-137(6) and 37-92-302, C.R.S. D. The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' Property. E. The Merz Well shall be installed, maintained and metered as reasonably required by the State Engineer. The well will be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicants shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. F. Compliance with the bylaws of the Twin Lakes Reservoir and Canal Company relative to submission of the Additional TLRCC Share of stock for legending restrictions on sale or transfer, and a specific restriction that only that amount of water that is actually available for replacement purposes from the shares of stock will be available for this plan. At the direction of the Division Engineer, additional shares of stock in the Twin Lakes Reservoir and Canal Company may be added to this plan without an amendment to the plan being necessary. **V. Names and Addresses of Owners of Land on which Structures will be Located.** The Applicants' Property as described herein consists of Lot 8 of the Elk Trail subdivision. All wells and the location upon which water will be placed to beneficial use are owned by the Applicants. Applicants' address is set forth in Section I, above.

CASE NO. 2021CW3040; Water Division 2 and CASE NO. 2021CW3149, Water Division 1 – JOHN A. FREDELL, 2980 Bent Lane, Colorado Springs, CO 80921

(Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Chris D. Cummins, #35154, Emilie B. Polley, #51296, MONSON, CUMMINS & SHOHEE, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and Plan for Augmentation
EL PASO COUNTY

II. Summary of Application. John A. Fredell ("Applicant") seeks to quantify the Denver Basin groundwater underlying his approximately 5-acre property in El Paso County, Colorado. **III. Application for Underground Water Rights.** A. **Legal Description of Well.** 1. **Property Description.** The Applicant's approximately 5-acre property ("Applicant's Property") is located at 2980 Benet Lane, Colorado Springs, CO 80921 in El Paso County, Colorado, more specifically described as N $\frac{1}{2}$ E $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, Township 11 South, Range 66 West of the 6th P.M. Applicant's property is depicted on **Exhibit A** map attached to the application, (All Exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 2. **Existing Well.** There is an existing well on the Applicant's Property. This exempt well with Permit No. 288139 ("Fredell Well No. 1"), attached as **Exhibit B**, is located approximately 990 feet from the west section line, and 2,475 feet from the south section line of Section 27, Township 11 South, Range 66 West of the 6th P.M., and constructed to the non-tributary Dawson aquifer. Applicant intends for the well to be re-permitted for non-exempt uses upon entry of a decree approving the plan for augmentation requested herein. B. **Water Source.** 1. **Not-Nontributary.** The ground water to be withdrawn from the Dawson and Denver aquifers underlying the 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 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 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 each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of any well 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 the Applicant's Property. Said amounts may be withdrawn over the 100-year aquifer life pursuant to C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

Groundwater Quantification			
Acres: 5.0		N½ E½ N½ NW¼ SW¼ 27-11-66, 6th P.M.	
Denver Basin Aquifer	Net Sand (ft)	Total (AF)	100 Year (AF)
Upper Dawson (NNT)	428	428	4.28
Denver (NNT)	545	464	4.64
Upper Arapahoe (NT)	226	192	1.92
Laramie Fox Hills (NT)	191	143	1.43

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the 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. The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, irrigation, stock water, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. The 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, Applicant shall only be entitled to use water from the not-nontributary Dawson or Denver 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 aquifer in accordance with C.R.S. §37-90-137(9)(c.5). E. Well Field. 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 he 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 well 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 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 and underlying groundwater upon which the wells are located is owned by the Applicant. **IV. Application for Approval of Plan for Augmentation.** A. Structure to be Augmented. The structure to be augmented is the Fredell Well No. 1 as is currently constructed to the not-nontributary Dawson aquifer underlying the Applicant's Property, and as will be re-permitted pursuant to this plan for augmentation, as requested and described herein along with any replacement or additional wells associated therewith. 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 Fredell Well No. 1, 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 one well herein. Water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: 1. Use. Fredell Well No. 1, will pump a maximum total of 1.4 acre feet of water from the Dawson aquifer annually. Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock, or other outdoor uses to include the use of hot tubs, water features, etc. An example breakdown of this combination of use is household use at 0.25 acre feet, plus outdoor use including the watering of up to 2 horses or equivalent livestock with a water use of 0.022 acre feet per year (10 gallons/day/head or 0.011 annual acre feet per head); and irrigation of lawn and garden of 0.50 acre feet per year (0.05 annual acre feet per 1,000 sq. ft.). 2. Depletions. It is estimated that maximum stream depletions over the 100 year pumping period for the Dawson aquifer amounts to approximately 8% percent of pumping. Maximum annual depletions for total residential pumping from all wells are therefore 0.112 acre feet, in year 100. Should Applicant's pumping be less than the 1.4 acre feet described herein, resulting depletions will be correspondingly reduced. 3. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of augmented wells to the Dawson aquifer. Depletions during pumping will be effectively replaced by residential return flows from a non-evaporative septic system. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.25 acre feet per residence per year, 0.225 acre-feet is replaced to the stream system per year, assuming the use of a non-evaporative septic system. Thus, during pumping, stream depletions will be adequately augmented. 4. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Fredell Well No. 1, Applicant will reserve water from the nontributary Laramie-Fox Hills aquifer, less the amount of actual stream depletions replaced during the plan pumping period. 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, the Applicant will be entitled to apply for and receive a new well permit for the Fredell Well No. 1, for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137.

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 Arkansas River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter in Water Division 2 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 Arkansas River as set forth herein, and for a finding that those replacements are sufficient. B. Applicant requests a finding that he has complied with C.R.S. §37-90-137(4), 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 C.R.S. §37-90-137(9)(c.5). C. The term of this augmentation plan is for 100 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 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 shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. G. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. H. The 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)(I), and such notice will be sent within 14 days of the filing of this application.

CASE NO. 2021CW3041; CHRISTOPHER and JESSICA BOYD, 6238 Gilmer Way, Westerville, OH, 43081

(Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: James J. Petrock and Eric K. Trout, Hayes Poznanovic Korver LLC, 1999 Broadway, Suite 3200, Denver, CO, 80202, (303) 825-1980)

Application for Underground Water Rights From Nontributary And Not Nontributary Sources And Approval Of Plan For Augmentation, In The Nontributary Denver, Arapahoe And Laramie-Fox Hills Aquifers And The Not-Nontributary Dawson Aquifer

EL PASO COUNTY

Subject Property: 35.88 acres generally located in the SW1/4 SW1/4, Section 7, Township 11 South, Range 65 West of the 6th P.M., also known as 18735 Brown Road, Colorado Springs, El Paso County, State of Colorado, See **Exhibit A** ("Subject Property")

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
Property Certification: Applicants are the 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. Well Permits: There are no wells on the Subject Property. Well permits will be applied for prior to construction of wells. Source of Water Rights: The Dawson Aquifer is not-nontributary as defined in C.R.S. § 37-90-103(10.7), and the Denver, Arapahoe, and Laramie-Fox Hills aquifers are nontributary as defined in C.R.S. § 37-90-103(10.5). Estimated Amounts: Applicants estimate the following annual amounts may be available for withdrawal:

Aquifer	Annual Amount (acre-feet)
Dawson (NNT)	33.24
Denver (NT)	29.94
Arapahoe (NT)	15.90
Laramie-Fox Hills (NT)	11.11

Proposed Uses: Domestic, commercial, irrigation, including use in greenhouses, swimming pool filling, stockwatering, fire protection, and augmentation purposes, including storage, both on and off the Subject Property. Jurisdiction: The Court has jurisdiction over the subject matter of this application pursuant to C.R.S. §§ 37-90-137(6), 37-92-203(1), 37-92-302(2). Summary of Plan for Augmentation: Groundwater to be Augmented: 2.25 acre-feet per year of Dawson aquifer groundwater. The Dawson Aquifer groundwater will be withdrawn in up to three (3) individual wells. Each individual well will withdraw up to 0.75 acre-feet per year, as follows: 0.3 acre-feet per year for in-house use, 0.4 acre-feet per year for up to 8,000 square-feet of irrigation, including use in greenhouses, and 0.05 acre-feet per year for 4 large domestic animals. Water Rights to be Used for Augmentation: Return flows from the use of not nontributary and nontributary groundwater and direct discharge of nontributary groundwater. Statement of Plan for Augmentation: The Dawson Aquifer groundwater will be used for domestic purposes, including in-house use, irrigation, commercial, stockwatering, and fire protection, including storage, through one or more wells, both on and off the Subject Property. Applicants reserve the right to amend the amount and uses without amending the application or republishing the same. Sewage treatment for in-house use will be provided by non-evaporative septic systems. Return flow from in-house use will be approximately 90% of that use, and return flow from irrigation use will be approximately 15% of that use. During pumping Applicants will replace actual depletions pursuant to C.R.S. § 37-90-137(9)(c.5). Depletions occur to the Cherry Creek and Monument Creek stream systems and return flows accrue to that creek system and are sufficient to replace actual depletions while the subject groundwater is being pumped. Applicants will reserve an equal amount of nontributary groundwater underlying the Subject Property to meet post pumping augmentation requirements. Applicants request the Court approve the above underground water rights and augmentation plan, find that Applicants have complied with C.R.S. § 37-90-137(4) and water is legally available for withdrawal, find there will be no material injury to the owners of or persons entitled to use water under any vested water

right or decreed conditional water right, and grant such other and further relief as is appropriate.

CASE NO. 2021CW3042; CHARLES C. COOK, 2794 Migliara Ln., Ocoee, FL 34761

(Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David M. Shohet, #36675, 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

EL PASO COUNTY

II. Summary of Application. Applicant seeks to quantify all Denver Basin groundwater in each aquifer underlying the property as described below in order to vest such water rights in anticipation of future uses thereof. No plan for augmentation for the use of the not-nontributary groundwater is sought herein, but rather may be the subject of a subsequent and separate application. **III. Application for Underground Water Rights.**

A. Property Description. Applicant's property consists of six parcels legally described as the E $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, and N $\frac{1}{2}$ of Section 17, the S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 20, all in Township 13 South, Range 60 West of the 6th P.M., El Paso County, Colorado, and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 25, Township 13 South, Range 61 West of the 6th P.M., El Paso County, Colorado ("Applicant's Property"). Applicant's property is shown on **Exhibit A** map attached to the application and contains approximately 850 total acres. (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **B. Water Source.** 1. **Not-Nontributary.** The groundwater to be withdrawn from the Arapahoe aquifer of the Denver Basin 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 not-nontributary Arapahoe aquifer will require the replacement of actual stream depletions, or, in the alternative, pursuant to § 37-90-137(9)(c.5)(I)(C), C.R.S., the augmentation requirements for wells constructed to the Arapahoe aquifer will require replacement of four percent (4%) of pumping, as applicable, and no such withdrawals shall be made of the not-nontributary groundwater in the Arapahoe aquifer sought to be quantified herein absent a subsequently decreed plan for augmentation. 2. **Nontributary.** The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer of the Denver Basin underlying Applicant's Property is nontributary. **C. Estimated Rates of Withdrawal and Ground Water Available.** 1. **Estimated Rates of Withdrawal.** The actual pumping rates for any well will vary according to aquifer conditions and well production capabilities. Applicant requests 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 within the respective aquifers will be determined by topography and actual aquifer conditions. 2. **Estimated Average Annual Amounts of Groundwater Available.** Applicant requests a vested right for the withdrawal of all legally available groundwater in the Denver Basin aquifers underlying Applicant's Property. Said amounts may be withdrawn over the 100-year life of the aquifers pursuant to § 37-90-137(4), C.R.S. Applicant's estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property.

Parcel A – E $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ of Section 17, Township 13 South, Range 60 West of the 6th P.M.

Containing 440 acres, more or less

Aquifer	Sand Thickness (Feet)	Total Volume (Acre-Feet)	Annual Average Withdrawal – 100 Years (Acre-Feet)
Arapahoe (NNT)	91.3	4,269	42.7
Arapahoe (NNT – 4%)	89.0	2,560	25.6
Laramie Fox Hills (NT)	198.5	13,101	131.01

Parcel B – Lots 2 and 3, the SE¼ NW¼ and NE¼ SW¼ of Section 19, Township 13 South, Range 60 West of the 6th P.M.

Containing 171 acres, more or less

Aquifer	Sand Thickness (Feet)	Total Volume (Acre-Feet)	Annual Average Withdrawal – 100 Years (Acre-Feet)
Arapahoe (NNT)	108.5	3,136	31.36
Laramie Fox Hills (NT)	195.7	4,990	49.90

Parcel C – SW¼ NE¼ of Section 19, Township 13 South, Range 60 West of the 6th P.M.

Containing 40 acres, more or less

Aquifer	Sand Thickness (Feet)	Total Volume (Acre-Feet)	Annual Average Withdrawal – 100 Years (Acre-Feet)
Arapahoe (NNT)	102.0	694	6.94
Laramie Fox Hills (NT)	195.5	1,173	11.73

Parcel D – SE¼ NE¼ of Section 19, Township 13 South, Range 60 West of the 6th P.M.

Containing 40 acres, more or less

Aquifer	Sand Thickness (Feet)	Total Volume (Acre-Feet)	Annual Average Withdrawal – 100 Years (Acre-Feet)
Arapahoe (NNT)	96.5	656	6.56
Laramie Fox Hills (NT)	195.0	1,170	11.70

Parcel E – W½ SE¼ of Section 20, Township 13 South, Range 60 West of the 6th P.M.

Containing 80 acres, more or less

Aquifer	Sand Thickness (Feet)	Total Volume (Acre-Feet)	Annual Average Withdrawal – 100 Years (Acre-Feet)
Arapahoe (NNT)	73.7	1,276	10.02
Laramie Fox Hills (NT)	191.9	2,334	23.03

Parcel F – N½ NE¼ of Section 25, Township 13 South, Range 61 West of the 6th P.M.

Containing 80 acres, more or less

Aquifer	Sand Thickness (Feet)	Total Volume (Acre-Feet)	Annual Average Withdrawal – 100 Years (Acre-Feet)
Denver (NT)	19.7	268	2.68
Arapahoe (NNT – 4%)	93.8	1,276	12.76
Laramie Fox Hills (NT)	194.5	2,334	23.34

Decreed amounts of quantified groundwater underlying Applicant's Property may vary based upon the State's Determination of Facts. D. Requested Uses. Applicant requests the right to use the groundwater for beneficial uses both on and off the Applicant's Property consisting of domestic, commercial, industrial, indoor and outdoor irrigation, stock water, agricultural, recreational, wildlife, fire protection, and also for storage and

augmentation purposes associated with such uses. Applicant also requests that the nontributary groundwater may be used, reused, and successively used to extinction, subject, however, to the requirement of § 37-90-137(9)(b), C.R.S., that no more than ninety-eight percent (98%) of the amount withdrawn annually shall be consumed. Applicant seeks to use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct a well or use water from the nontributary Arapahoe aquifer pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such nontributary Arapahoe aquifer in accordance with § 37-90-137(9)(c.5), C.R.S. 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 groundwater in excess of the average annual amount decreed to the aquifers underlying 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 Applicant's Property. G. Owner of Land. The land upon which the wells will be located, and under which lies the herein requested Denver Basin water is owned by the Applicant. **IV. Remarks.** A. Applicant requests a finding that it has complied with § 37-90-137(4), C.R.S. and that the not-nontributary groundwater requested herein is legally available for withdrawal, as conditioned only upon the entry of a subsequent decree approving an augmentation plan pursuant to § 37-90-137(9)(c.5), C.R.S. B. Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater subject of this Application. C. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of groundwater withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. D. Any well constructed shall be installed and metered as reasonably required by the State and Division Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. E. Applicant intends to waive the 600-foot well spacing requirement for any wells to be located upon Applicant's Property. F. The Applicant owns the Subject Property free and clear of all liens and encumbrances and no other person or entity has a financial interest in the Subject Property. Accordingly, Applicant certifies compliance with the notice requirements of § 37-92-302(2), C.R.S.

CASE NO. 2021CW3043; BRITTON and JANA ELY, 8510 Kirk Drive, Colorado Springs, CO, 80908 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys; James J. Petrock and Eric K. Trout, Hayes Poznanovic Korver LLC,

1999 Broadway, Suite 3200, Denver, CO, 80202, (303) 825-1980)

Application for Underground Water Rights From Nontributary And Not Nontributary Sources And Approval Of Plan For Augmentation, In The Nontributary Denver, Arapahoe And Laramie-Fox Hills Aquifers And The Not-Nontributary Dawson Aquifer

EL PASO COUNTY

Subject Property: 5 acres generally located in the SW1/4 SE1/4, Section 33, Township 11 South, Range 65 West of the 6th P.M., also known as 8510 Kirk Dr, Colorado Springs, El Paso County, State of Colorado, See **Exhibit A** (Subject Property) 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.) 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. Well Permits: There is one existing Dawson Aquifer household-use only well on the Subject Property under Well Permit Number 259398. This well will be re-permitted under the plan for augmentation requested in this application. Additional well permits will be applied for prior to construction of additional wells. Source of Water Rights: The Dawson Aquifer is not-nontributary as defined in C.R.S. § 37-90-103(10.7), and the Denver, Arapahoe, and Laramie-Fox Hills aquifers are nontributary as defined in C.R.S. § 37-90-103(10.5). Estimated Amounts: Applicants estimate the following annual amounts may be available for withdrawal:

Aquifer	Annual Amount (acre-feet)
Dawson (NNT)	5.15
Denver (NT)	3.47
Arapahoe (NT)	2.19
Laramie-Fox Hills (NT)	1.39

Proposed Uses: Domestic, commercial, irrigation, stockwatering, fire protection, and augmentation purposes, including storage, both on and off the Subject Property. Jurisdiction: The Court has jurisdiction over the subject matter of this application pursuant to C.R.S. §§ 37-90-137(6), 37-92-203(1), 37-92-302(2). Summary of Plan for Augmentation: Groundwater to be Augmented: 0.875 acre-feet per year of Dawson aquifer groundwater, as follows: 0.3 acre-feet per year for in-house use, 0.525 acre-feet per year for up to 10,500 square-feet of irrigation, 0.05 acre-feet per year for 4 large domestic animals. Water Rights to be Used for Augmentation: Return flows from the use of not nontributary and nontributary groundwater and direct discharge of nontributary groundwater. Statement of Plan for Augmentation: The Dawson Aquifer groundwater will be used for domestic purposes, including in-house use, irrigation, commercial, stockwatering, and fire protection, including storage, through one or more wells, both on and off the Subject Property. Applicants reserve the right to amend the amount and uses without amending the application or republishing the same. Sewage treatment for in-house use will be provided by non-evaporative septic systems. Return flow from in-house use will be approximately 90% of that use and return flow from irrigation use will be approximately 15% of that use. During pumping Applicants will replace actual depletions pursuant to C.R.S. § 37-90-137(9)(c.5). Depletions occur to the Cherry Creek and Monument Creek stream systems and return flows accrue to that creek system and are sufficient to replace actual depletions while the subject groundwater is being pumped. Applicants will reserve an equal amount of nontributary groundwater underlying the Subject Property to meet post pumping augmentation requirements. Applicants request

the Court approve the above underground water rights and augmentation plan, find that Applicants have complied with C.R.S. § 37-90-137(4) and water is legally available for withdrawal, find there will be no material injury to the owners of or persons entitled to use water under any vested water right or decreed conditional water right, and grant such other and further relief as is appropriate.

CASE NO. 21CW3044; TRIVIEW METROPOLITAN DISTRICT Acting by and through its Water and Wastewater Enterprise (“Applicant or Triview”), 16055 Old Forest Point, Ste. 300 Monument, CO 80132 (Please address all pleadings and inquiries in this

matter to Applicant’s attorneys: Steven O. Sims, Reg. No. 9961 and Dulcinea Z. Hanuschak, Reg. No. 44342 of Brownstein Hyatt Farber Schreck, LLP at 410 Seventeenth Street, Suite 2200, Denver, CO 80202-4432, Phone: 303.223.1100)

Amended Application for Change of Water Rights

CHAFFEE COUNTY.

Applicant, Triview Metropolitan District Acting by and through its Water and Wastewater Enterprise (“Applicant or Triview”) at the request of the Water Referee and prior to the time any statement of opposition or any other responsive pleading was filed to the original application filed August 31, 2021, pursuant to CRCP 15(a) states this amended application: **3. Name of Subject Water Rights.** The Arkansas Valley Irrigation Canal Company’s Ditch. (“Subject Water Rights”) **4. Name of Structure.** Ark Valley Irrigation Co (1100655). **5. Original Decree:** The Ark Valley Irrigation Co was decreed in Case No. CA 1127 on June 19, 1890 with an appropriation date of May 1, 1880 for 18.05 c.f.s. a. The original point of diversion was described in CA 1127 as “the headgate is located on the south bank of [Cottonwood Creek] about 100 feet above the junction of the North and South forks of said Stream, Chaffee County.” **6. Point of Diversion:** The headgate currently is located on the South bank of Cottonwood Creek about 1600 feet upstream of the confluence between Cottonwood Creek and North Cottonwood Creek. The point of diversion was moved upstream pursuant to the provisions of § 37-86-111 C.R.S. a. Current UTM location. UTM Zone 13, NAD83, X-48782.79082, Y 4394670.81106 b. Current PLSS Location. SW ¼, NE ¼ of the SW ¼ of Section 13, T 14 S, R. 79 W. 6th P.M. in Chaffee, County, Colorado. **7. Source.** Cottonwood Creek a tributary of the Arkansas River, in Chaffee County, Colorado. **8. Decreed Uses.** Irrigation. **9. Amount of Water Rights to be changed.** 18.05 c.f.s. **10. Historical Use.** The Subject Water Rights historically irrigated up to 432 acres of grass hay and pasture. A map showing said irrigated land is attached as Appendix A. **11. Augmentation Stations.** Return flows, replacements and/or water representing the historical consumptive use of the Subject Water Rights shall be measured and returned to the Arkansas River and/or Cottonwood Creek through one of more augmentation stations at locations to be described in the proposed decree that are designed to prevent injury to other vested water rights. **12. Diversion Records, Map of Historically Irrigated Lands, Method of Analysis.** See **Appendix A** map of Historically Irrigated Lands 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 summary of records of diversions of The Arkansas Valley Irrigation Canal Company’s Ditch is attached as **Appendix B**. Applicant will add diversion records for irrigation years 2020 and 2021 to **Appendix B** when those records are added to the State Engineer records. Applicant will evaluate the Subject Water Rights

using a modified Blaney-Criddle ET method over a study period of 1970 to 2021, excluding 1986 when no records were available. **13. Proposed Change:** Triview seeks approval of the following changes of type and place of use: a. Types of Use. Municipal, domestic, agricultural, energy production, manufacturing, mechanical and industrial purposes including, but not limited to: fire protection, irrigation, commercial, recreation, fish and wildlife propagation, reservoir evaporation replacement, creation and maintenance and/or enhancement of wetlands, maintenance of storage reserves, recharge of Denver Basin aquifers, stock watering, reclamation, revegetation, dust suppression, water treatment and supply, wastewater treatment, storage for such uses, and use as a supply or substitute supply for augmentation, replacement, exchanges decreed or to be decreed, and substitute supply plans. All uses include reuse and successive reuse to extinction for the above purposes, or disposition of effluent for the above purposes b. Places of Use. Triview seeks to change the place of use for the subject water rights to Triview' s current and future service areas served by its municipal water supply and water reuse systems, including areas served by its connections with other systems, and by any current or future water supply contracts or obligations of Triview. Triview may also use the water to meet its replacement or delivery obligations in Water Division 2 including for replacement of depletions on the Arkansas River and its tributaries, including but not limited to Monument Creek, Fountain Creek, Cottonwood Creek and the South Arkansas River. Triview' s service area has changed from time to time and will continue to do so. c. Stored Water. After diversion and prior to initial use by Triview, water diverted pursuant to the Subject Water Rights may be stored at any of the locations set forth below in paragraph 13 d. Such water may be delivered to storage by means of the use of natural stream channels, component facilities of Triview' s future Fountain Creek and Arkansas River diversion and conveyance system and/or any points of diversion authorized in the respective decrees for the storage structures Triview is authorized to use. Reusable effluent or return flows resulting from the initial use for the changed uses of the historical consumptive use component of the water diverted pursuant to the Subject Water Rights may be stored in any reservoir Triview is authorized to use. d. Places of Storage. i. Big Johnson Reservoir a 10,000 AF reservoir located under the Fountain Mutual Canal in Sections 8, 17 and 18, T 15S, R 65W 6th P.M in El Paso County, Colorado. ii. Stonewall Springs Reservoir Complex ("SSRC"), a 19,537-acre foot complex of reservoirs, filled by the Excelsior Ditch in Pueblo County, Colorado in Sections 35 and 36, T 20S, R 63 W 6th P.M. iii. Pueblo Reservoir, as operated as part of the Fryingpan-Arkansas project by the United States Bureau of Reclamation and the Southeastern Colorado Water Conservancy District, located on-channel on the Arkansas River in Pueblo County, Colorado located in Section 24, T20S, R 67W, Sections 19, 25, 29, 33, 34, 35 and 36 T 20S, R 66W, Sections 1, 2, 3, 10 and 11 T 21S, R 66W in the 6th P.M. Triview has an application pending for a long-term Excess Storage Capacity contract for the storage of 999 acre feet in Pueblo Reservoir. **14. Return Flow Replacement.** In connection with the change of the Subject Water Rights, Triview will have return flow replacement obligations resulting from the historical use of the Subject Water Rights. Triview will replace return flows at times when there is a call or unsatisfied instream flow on Cottonwood Creek and/or the Arkansas River senior to August 31, 2021 in a location that could result in the curtailment of the Arkansas Valley Irrigation Canal Company's Ditch. In addition to water diverted pursuant to the priorities identified in Paragraph 5,

Triview may use fully consumable water diverted pursuant to the water rights adjudicated or changed as set forth in Appendix C to this application to meet its obligations (“Replacement Sources”). Triview may also use water derived from water rights in addition to those set forth in Appendix C provided the water so released is fully consumable and provided Triview has given notice of its intent to use such water as required in the decree entered in this case. **15. Lack of Injury.** Triview will propose terms and conditions in the final decree so that this change of water right will not injuriously affect the owner of or persons entitled to use of water under a vested water right or a decreed conditional water right. **16. Names and Addresses of Owners of Structures.** a. Triview owns the headgate and ditch works that diverts and conveys the Arkansas Valley Irrigation Canal Company’s Ditch. b. The headgate of the Arkansas Valley Irrigation Canal Company’s Ditch is located on land owned by Hargrove Family Trust, 28395 County Road 361, PO Box 365, Buena Vista, CO 81211. c. The Excelsior Irrigating Company owns the Excelsior Ditch of which Triview owns an approximately 40% share in said ditch, allowing diversion of water to the SSRC. The address of the Excelsior Irrigating Company is P.O. Box 11446 Pueblo, CO 81001 d. The headgate of the Excelsior Ditch is located on land owned by Kirkland Property Holdings LLC, P.O. Box 580, Rye, CO 81069-0580. e. Triview owns the land upon which the storage facilities known as the SSRC are/will be constructed, and the storage structures and rights in the SSRC are owned by the Stonewall Springs Reservoir Company. f. The Bureau of Reclamation owns Pueblo Reservoir. The Bureau of Reclamation Eastern Colorado Office is 11056 W. County Rd 18E; Loveland, CO 80537-9711. g. The Fountain Mutual Irrigation Company (“FMIC”) owns the Big Johnson Reservoir and the Fountain Mutual Ditch through which water may be delivered to Big Johnson Reservoir. Triview owns approximately 17.6% of the shares in FMIC. FMIC’s address is P.O. Box 75292, Colorado Springs, CO 80970. **WHEREFORE**, the Applicant requests that the Amended Application for Change of Water Rights be approved as requested herein and for such other relief and conditions that the Court deems appropriate

CASE NO. 2021CW3045; Previous Case No. 2017CW3009 – SILOAM WELL ASSOCIATION, A Colorado Nonprofit Corporation, 1965 Pope Valley Ranch Rd. Pueblo, CO 81005 (Please address all pleadings and inquiries in this matter to Applicant’s Attorney: Steven L. Janssen, Esq., 410 Main St., Longmont, CO 80501, Telephone: 303-717-7667)

**Application to Amend Plan for Augmentation to Add Covered Well
PUEBLO COUNTY.**

2. Description of Applicant: Applicant, Siloam Well Association (“SWA”) is a Colorado Nonprofit Corporation organized exclusively for the nonprofit use of its members, a group of well users in the Siloam Road –Highway 96 area, southwest of Pueblo Reservoir (“Pueblo Complex Area”) in Pueblo County. SWA was established, among other purposes, to obtain replacement water through a group lease from the Board of Water Works of Pueblo, Colorado (Pueblo Water) and pursue an Augmentation Plan Decree for SWA Member wells. **3. Prior Decree:** On July 18, 2018, in case no. 2017 CW 3009, this Court entered its Findings of Fact, Conclusions of Law, Amended Ruling of Referee, Judgment and Decree (“2017CW3009 Decree”) approving a Plan for Augmentation for SWA Member wells, utilizing replacement water provided by SWA’s Water Lease with

Pueblo Water and establishing terms and conditions for administration of SWA Member wells and accounting of replacement water derived from the Pueblo Water Lease. **4. Purpose of Application:** Applicant has a new member whose name is Veritas Farms, Inc. (“Veritas”). Veritas owns 271 Lake Davis Holdings, LLC which owns 138.84 acres in the NW/4 of Section 2, Township 21 South, Range 68 West of the 6th P.M., and also two existing wells located on such property known as Sansal Well #2 and Sansal Well #3. These wells were previously subject to a Decree of this Court in case no. 2016 CW 3036 approving a Plan of Augmentation with their depletions to the Arkansas River being calculated based on the parameters set forth therein. Sansal Well #2 has since been deactivated. The Applicant and Veritas now seek to add Sansal Well #3 as a “Covered Well” under the 2017CW3009 Decree and agree that thereafter Sansal Well #3 shall be operated and used, and its out-of-priority depletions replaced, pursuant to the terms and conditions of the 2017CW3009 Decree. **5. Name of Structure to be Augmented:** Sansal Well #3 (WDID 1408324), DWR Permit #80604-F (formerly DWR Permit #79931-F). 5.1. Sansal Well #3 is not decreed. 5.2. Sansal Well #3 is located within the SW/4 of the NW/4 of Section 2, Township 21 South, Range 68 West of the 6th P.M., at a point 1,693 feet from the North section line and 939 feet from the West section line. 5.3. Point of diversion of Sansal Well #3 is located at UTM Coordinates (Meters, Zone:13, NAD83) Easting: 502380, Northing: 4233943. 5.4. The location of Sansal Well #3 and the location of Use of Sansal Well #3 is shown 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.) 5.5. The water source for Sansal Well #3 is the Dakota aquifer, tributary to the Arkansas River. **6. Water right(s) to be used for Augmentation:** Fully consumable replacement water owned or controlled by Pueblo Water and available under the Pueblo Water Lease. 6.1. Pueblo Water Lease. Applicant has entered a Water Lease Agreement dated January 31, 2017 (“Lease”), amended February 21, 2017 (“First Amendment”), amended November 1, 2017 (“Second Amendment”) and supplemented by Letters dated September 11, 2017, October 2, 2017, September 4, 2018, September 6, 2019 and September 18, 2020 (collectively: “Pueblo Water Lease”) with Pueblo Water for supplying fully consumable replacement water for augmentation of depletions from Sansal Well #3 and the other SWA Member wells authorized under the 2017CW3009 Decree. Said Pueblo Water Lease, as amended and supplemented, is attached as **Exhibit B**. 6.2. Amount of Augmentation Water. The Pueblo Water Lease is for a specific amount of fully consumable replacement water annually, however such amount may be modified annually upon request of SWA and in the discretion of Pueblo Water. This amount may be increased or decreased for subsequent water years, depending upon demand from SWA Members and upon Pueblo Water’s approval. The amount of replacement water currently leased by SWA from Pueblo Water is 65 acre feet for Water Year 2021. 6.3. Legally Available Replacement Water. All replacement water to be used by Applicant in the 2017CW3009 Decree, including the Decree sought by this Application, and provided by Pueblo Water under the Pueblo Water Lease must be decreed or otherwise legally available for augmentation purposes and deliverable upstream of the point of replacement, the Pueblo Reservoir. The sources of such water are unspecified in the Pueblo Water Lease, which sources are at the option of Pueblo Water, as long as they are legally available for augmentation purposes at the point of replacement, but such sources do not currently include Fryingpan-Arkansas Project Water. Fully consumable

water available for use in the 2017CW3009 Decree, including the Decree sought by this Application, may include, without limitation: 6.3.1. Water stored in Twin Lakes Reservoir in Lake County, if allowed hereafter by the Bureau of Reclamation; 6.3.2. Water stored in Turquoise Reservoir in Lake County, if allowed hereafter by the Bureau of Reclamation; 6.3.3. Water stored in Clear Creek Reservoir in Chaffee County. Currently, Pueblo Water anticipates making all deliveries of replacement water to Applicant from Clear Creek Reservoir; however, in the event Pueblo Water determines to make any deliveries of replacement water from sources other than Clear Creek Reservoir, the Division Engineer will be notified; 6.3.4. The sources of such replacement water may also include, but are not limited to, the water rights decreed in: Case Nos. 84-CW-177 & 84-CW-177(B), District Court, Water Division 2, including the reusable return flows decreed therein; Case Nos. 90-CW-340, W-1901, & 95-CW-321, District Court, Water Division 5; and Case Nos. 90-CW-55 & 04-CW-130, District Court, Water Division 2.

7. Annual Water Report. Pursuant to the 2017CW3009 Decree, SWA files an Annual Water Report with the Water Court by October 1st of each year, which includes: 7.1. the total amount of proposed SWA Member withdrawals and depletions to occur in the following water year; 7.2. the source and quantity of replacement water available to replace these depletions (attaching a current copy of the Pueblo Water Letter demonstrating the amount of water leased by SWA for the following water year); 7.3. a current table of SWA's members showing the amount of water allocated to each SWA Member for the following water year; 7.4. the amount of allowable pumping for all SWA Members based on the quantity and source of available replacement water to replace current depletions and lagged depletions resulting from all previous pumping; and 7.5. the projected total stream depletions from projected pumping in the following water year and previously authorized pumping and identifying the entities responsible for replacement of said depletions. Pursuant to the 2017CW3009 Decree, the Division Engineer shall review the Annual Water Report during the month of October so that approval will be complete before the following water year commences. In the event the Division Engineer does not approve the Annual Notice due to a determination that injury to other water rights will occur, then SWA Members, including Veritas, will not be allowed to withdraw water from any SWA Member Wells, including Sansal Well #3, during the following water year until and unless acceptable modifications have been made.

8. Applicant does not intend to change a water right to provide a source of augmentation. **9.** The plan for augmentation does not include an exchange of water right(s).

10. Complete Statement of Plan for Augmentation:

10.1. Purpose: This Application seeks to add Sansal Well #3 as a "Covered Well" under the 2017CW3009 Decree and provide for the augmentation of lagged stream depletions to the Arkansas River, in time, location and amount, as caused by the pumping of Sansal Well #3.

10.2. Diversions: Sansal Well #3 will make out-of-priority withdrawals of ground water from the Dakota aquifer which is tributary to the Arkansas River.

10.3. Uses: The entirety of the diversions from Sansal Well #3 will be used for supply of hemp or marijuana grow operations, including beneficial use for indoor and outdoor irrigation, greenhouse operations and cooling, processing facilities, and related commercial, drinking, sanitary, domestic or residential purposes.

10.4. Depletions: Ground water diversions from Sansal Well #3, and its corresponding out-of-priority depletions, are considered to be one hundred percent (100%) consumptive.

10.5. Point of Depletion: The pumping of Sansal Well #3, results in depletions to the Arkansas River at the Pueblo Reservoir in Section

36, Township 20 South, Range 66 West of the 6th P.M., Pueblo County, Colorado. 10.6. Timing of Depletions: Timing of all depletions caused by pumping of Sansal Well #3 was previously determined in Case No. 2016 CW 3036 and are based upon the following aquifer parameters: 10.6.1. Distance to Stream Depletion Point: 69,000 feet; 10.6.2. Distance from No-Flow Boundary to Well: 28,000 feet; 10.6.3. Distance from No-Flow Boundary to Stream: 97,000 feet; 10.6.4. Transmissivity: 1,077 gallons per day per foot; and 10.7.5. Storage Coefficient: 0.00005. Replacement timing for all lagged depletions was based on a Glover method analysis which was used to create a unit response function (“URF”) for the centroid of Sansal Well #2 and Sansal Well #3. When developing the URF, lagged depletions were determined by using the wrapped URF, which was calculated by proportionally wrapping the last 10% of depletions into the first 90% of the depletions. The resulting URF table, as approved by the Decree in Case No. 2016 CW 3036, is attached hereto as **Exhibit C**. 10.7. Replacement of Depletions: Replacement of depletions from all SWA Member Wells, including Sansal Well #3, during pumping and post-pumping, is achieved pursuant to the Pueblo Water Lease, as amended and supplemented from time to time and subject to the terms thereof. Replacement water is provided by fully consumable water owned or controlled by Pueblo Water that is decreed or otherwise legally available for augmentation purposes and further described in paragraph 6.3 above. 10.8. Point of Replacement: Replacement water is delivered to the Arkansas River at the Pueblo Reservoir at or above Section 36, Township 20 South, Range 66 West of the 6th P.M., Pueblo County, Colorado. 10.9. Limitation of Pumping: Withdrawals from Sansal Well #3, shall be limited so that monthly depletions do not exceed the replacement water delivered to the Arkansas River at or above the point of depletion, taking into account transit losses on deliveries of replacement water and that the total amount of annual depletions of all SWA Members, including Veritas, do not exceed the total amount of annual replacement water available to Applicant under the Pueblo Water Lease. 10.10. Transit Losses: Any replacement water that is released to the Arkansas River upstream of the point of depletion shall be subject to river transit losses on delivery to the point of depletions, as determined by the Division Engineer and assessed in accordance with the standard administrative procedures used by the Division Engineer. 10.11. Credit for Replacement Water: Applicant will only claim credit for its fully consumable replacement water at the point of depletion, after assessment of transit losses. The Division Engineer’s Office and the State Engineer’s Office will administer the replacement water decreed herein from the points it enters the river system to the point of depletion less the above transit losses. The replacement water will not be considered native water available for diversion by other water rights until it reaches the point of depletion. Applicant shall not seek any credits, off-sets, reductions in obligations, etc. for transit losses when Pueblo Water supplied replacement water is released from whatever source Pueblo Water determines it will release from. 10.12. Single Credit: Applicant shall only claim a single credit for the augmentation use of fully consumable replacement water made available under the 2017CW3009 Decree. 10.13. Measurement: Applicant requires all SWA Members to install and maintain totalizing flow meters on all Covered Wells, including Sansal Well #3, or any additional or replacement wells associated therewith, and thereafter maintain records and provide reports to the State Engineer or Division Engineer for Water Division 2 by the 10th day of the month following the month of pumping. 10.14. Accounting: Applicant has established an on-line data base

(http://siloam-data.com/depletions_accounting) accessible to the State and Division Engineers and Opposers, containing all required reporting information required by the 2017CW3009 Decree. Applicant will prepare and provide accounting forms subject to approval and revision at the direction of the Division Engineer. The accounting form or format will adhere to all applicable policy, guidelines, and protocol established by the State and Division Engineers for such accounting as long as consistent with the terms of the 2017CW3009 Decree and Colorado law. All accounting shall be submitted monthly, unless required more often at the request of the Division Engineer or Water Commissioner. 10.15. Administration: Applicant's use of the water provided by Pueblo Water under the Pueblo Water Lease, and any amendment(s) and supplement(s) thereto, pursuant to the 2017CW3009 Decree, including this Decree, for replacement of depletions of Sansal Well #3 will ensure that the Applicant has provided replacement water necessary to meet the lawful requirements of senior diverters at the time and location and to the extent that seniors would otherwise be deprived of their lawful entitlement by the Applicant. **11. 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:** Sansal Well #3 is an existing well; no new diversion or storage structure or modification to existing diversion or storage structure is sought by this Application. The owner of the property on which Sansal Well #3 is located is: 271 Lake Davis Holdings, LLC, 15964 NW 79th Place, Miami Lakes, FL 33016-6647

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 October 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 8th day of September 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

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