

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING OCTOBER 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 October 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. 2021CW15; WILMA KATTNIG and DAVID KATTNIG, 3540 County Road 119, Westcliffe, CO 81252, (719) 783-2645

Application for Simple Change in Surface Point of Diversion Pursuant to § 37-92-305(3.5), C.R.S.

CUSTER COUNTY

2. Decreed water right for which change is sought: **A. Name of Structures:** Monitor Ditch and Charley Ditch. **B. Date of original and all relevant subsequent decrees:** Monitor Ditch and Charley Ditch - 03/12/1896, **Court:** Fremont. **C. Legal Description:** Monitor Ditch - The head of said ditch is located on the eastside of the north branch of Colony Creek at a point whence the South Quarter Corner of Sec. 16, T23S., R72W., bears South 23° 15' West for 504 feet SW¼ SE¼ Sec 16. It is used to irrigate 20 acres lying in the W1/2, SE¼, Sec 16, T23S., R72W. Charley Ditch – The head of said ditch is located on the west side of North Colony Creek at a point whence the S ¼ corner of Sec. 16, T23S, R72W, bears South 20°30' west 1753 feet, NW¼ SE¼, Sec 16, T23S, R72W **D. Decreed source of water:** Monitor Ditch and Charley Ditch – North Colony Creek. **E. Appropriation Date:** Monitor Ditch and Charley Ditch – 06/01/1887. **F. Total amount decreed to structure in gallons per minute (gpm) or cubic feet per second (cfs):** Monitor Ditch – 1.11 cfs Absolute, Charley Ditch – 0.41 cfs Absolute. **G. Decreed use or uses:** Monitor Ditch and Charley Ditch – Irrigation. **H. Amount of water that applicant intends to change:** Monitor Ditch - Absolute 1.11 cfs, Charley Ditch – 0.41 cfs Absolute. **3. Detailed description of proposed change in a surface point of diversion:** **A. Complete statement of change:** Monitor Ditch and Charley Ditch - (I) There are no intervening water rights with this change case. (II) There are no inflows in this stream reach. The irrigated acres will be unchanged and not enlarged. See attachment to the application for a general location map of irrigated area. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court. There will be no injury to other vested water rights. Monitor Ditch – We propose to move the decreed point of diversion up stream of North Colony Creek 338 feet to existing point of diversion for the Aqua Ditch (WDID 130057), Charley Ditch – We propose to move the decreed point of diversion down to North Colony Creek 231 feet to existing point of diversion of the Emma Ditch (WDID 1300584). **B. Legal Description of the corrected point of diversion:** Monitor Ditch - Custer County, SW¼, SE¼, Section 16, T23 S, R72 W, 6th P.M., Charley Ditch – Custer County, NW¼ SE¼, Section 16, T23S, R72W, 6th P.M. **UTM Coordinates:** Monitor Ditch -

Easting: 461148; Northing 4210728, Zone 13. Charley Ditch - Easting: 461369; Northing 4211322, Zone 13. UTM Source: Monitor Ditch and Charley Ditch – Garmin 12XLS, Accuracy: 11 feet. 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.) **4. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants

CASE NO. 2021CW16; DAVID VOLENTINE, PO Box 3, Rye , CO 81069; (719) 568-7961

Application for Simple Change in Surface Point of Diversion Pursuant to § 37-92-305(3.5), C.R.S.

CUSTER COUNTY

2. Decreed water right for which change is sought: **A. Name of Structure:** wm schulz ditch # 2 and 4. **B. Date of original and all relevant subsequent decrees:** 3-12-1896. **Court:** Fremont. **C. Legal description of structure as described in most recent decree that adjudicated the location:** Wm. Schulz Ditch No. 2. The head of said ditch is located on the NE side of the N. Branch of Colony Creek, at a point whence the NW Cor. SW ¼ NE ¼ Section 31, township 23 S. Range 72 West bears North 7 degrees west 394 feet and in the SW ¼ NE ¼ section 31. Wm. Schulz Ditch No. 4. The head of said ditch is located on the SE side of the North Branch of Colony Creek at a point whence the NW Cor SW ¼ NE ¼ Section 31, township 23 South, Range 72 West, bears North 74 degrees 40 minutes west 545 ft. and in the SW 1/4 NE ¼ Section 31. **D. Decreed source of water:** north colony creek. **E. Appropriation Date:** wm schulz #2, 6-16-1884 – wm schulz #4, 7-18-1881. **F. Total amount decreed to structure in gallons per minute (gpm) or cubic feet per second (cfs):** Absolute: wm schulz #2 0.31 cfs / wm schulz #4 0.48 cfs. **G. Decreed use or uses:** Irrigation. **H. Amount of water that applicant intends to change:** Absolute: wm schulz #2 0.31 cfs / wm schulz #4 0.48 cfs. **3. Detailed description of proposed change in a surface point of diversion:** **A. Complete statement of change:** Applicant intends to reestablish the adjudicated point of diversion for wm schulz #3. Applicant wishes to move the diversion point of wm schulz #2 and wm schulz #4 to the diversion point of the wm schulz #3. There will be no diversion of a greater flow than adjudicated. There will be no injury to other adjudicated water rights. **B. Location of the new surface point of diversion:** Custer County. SE ¼ NW ¼ Section 31 Township 23S Range 72W 6th PM. **UTM Coordinates:** Easting: 457754; Northing 4206990, Zone 13, **Source of UTM:** Garmin, **Accuracy of location:** 12 feet. 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.) **4. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Drummond Family Trust, PO Box 1273, Westcliffe, CO 81252.

CASE NO. 2021CW3056; JAMES D. HULL and LYNETTE M. HULL, 3255 Hay Creek Rd., 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 & SHOHET, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212)

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

II. Summary of Application. Applicants seek to utilize up to one (1) non-exempt well to the not-nontributary Dawson aquifer, and to construct up to four (4) non-exempt wells to the not-nontributary Denver aquifer to provide water service to an equivalent number of single-family lots, based on an anticipated subdivision of Applicant's 30.05-acre parcel. Applicant therefore seeks to quantify the Denver Basin groundwater underlying the Applicant's Property, and approval of a plan for augmentation for the use thereof. **III. Application for Underground Water Rights.** A. Legal Description of Wells. 1. Property Description. All wells will be located on Applicants' approximately 30.05-acre property ("Applicants' Property") anticipated to be subdivided into five lots, with current schedule number 7133007025. Applicant's Property is depicted on the **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.) located in the SE¼ of Section 33, Township 11 South, Range 67 West of the 6th P.M., and more particularly described as Hay Creek Road, Colorado Springs, CO 80921, El Paso County, Colorado. 2. Existing Well. There is an existing "exempt" domestic well with Division of Water Resources Permit No. 163509 ("Hull Well No. 1), permit attached as **Exhibit B**. It is drilled to a total depth of 430 feet to the Dawson aquifer, and located 2300 feet from the South Section Line, and 1400 feet from the East Section Line. There is an existing well agreement in place for the operation of this well. Should the well agreement be cancelled, then the Applicant requests that the existing domestic exempt well be re-permitted in accordance with the augmentation plan described herein as concerns the Dawson aquifer. 3. Proposed Wells. Applicant proposes that up to five wells (one well per lot) will be located on the Applicant's Property at specific locations not yet determined ("Hull Wells Nos. 2 through 6"). Of the proposed wells, only one may be constructed to the Dawson aquifer, with the remaining to be constructed to the Denver aquifer. B. Water Source. 1. Not-Nontributary. The ground water to be withdrawn from the Dawson and Denver aquifers underlying the Applicants' Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson and Denver aquifers will require the replacement of actual stream depletions. 2. Nontributary. The groundwater that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers underlying the Applicants' Property is nontributary. C. Estimated Rates of Withdrawal and Ground Water Available. 1. Estimated Rates of Withdrawal. 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 Applicants request the right to withdraw ground water 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 Ground Water Available. Applicants request a vested right for the withdrawal of all legally available

ground water in the Denver Basin aquifers underlying the Applicants' 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 C.R.S. §37-90-137(4). Applicants estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants' 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)	78.5	471.00	4.71	1.57
Denver (NNT)	230.5	1175.55	11.76	3.92
Arapahoe (NT)	344.7	1757.97	17.58	5.86
Laramie Fox Hills (NT)	181.6	817.20	8.17	2.72

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), the Applicants further request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. D. Requested Uses. The Applicants request the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic, irrigation for lawn, garden, and greenhouse, stock water, ponds, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicants also request that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicants' 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. Applicants may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicants shall only be entitled to construct wells or use water from the not-nontributary Dawson and 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 aquifers in accordance with C.R.S. §37-90-137(9)(c.5). E. Well Fields. Applicant requests that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicants' Property through any combination of wells. Applicants request that these wells be treated as a well field. F. Averaging of Withdrawals. Applicants request that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicants' 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 the Applicants are entitled to withdraw from the aquifers underlying the Applicants' Property. G. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are and will be located as well as the underlying groundwater is owned by the Applicants. H. **IV. APPLICATION FOR PLAN FOR AUGMENTATION**. A. Structures to be Augmented.

The structures to be augmented are the Hull Wells Nos. 2 through 6, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson or Denver aquifers of the Denver Basin underlying the Applicants' Property as requested and described herein.

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 and Denver aquifers from the Hull Wells Nos. 2 through 6, together with water rights from the nontributary Arapahoe and Laramie-Fox Hills aquifers for any injurious post pumping depletions.

C. Statement of Plan for Augmentation. Applicant wish to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson and Denver aquifers by up to five wells proposed herein for the development of up to five residential lots. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows:

- 1. Uses.**
 - i. Household Use Only:** 0.26 acre-feet annually within single family dwellings on up to five (5) lots, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for each lot will therefore be 0.026 acre feet per well, with return flows of 0.234 acre-feet per lot, or 1.17 acre-feet per year.
 - ii. Landscape Irrigation:** 0.05 acre-feet annually per 1,000 square feet (2.18 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre feet.
 - iii. Horses (or equivalent livestock):** 0.011 acre-feet annually (10 gallons per day) per head with a one hundred percent consumptive use component.
- 2. Amounts.** The well drilled to the Dawson aquifer will pump a maximum of 0.972 acre-feet of water annually, while the wells drilled to the Denver aquifer will pump a maximum combined total of up to 2.9 acre-feet annually, or 0.725 acre-feet per lot (assuming that four wells are constructed to the Denver aquifer). Such use shall be a combination of those uses described in paragraph III.D., above. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.26 acre-feet of water per year per residence with the additional amounts available for irrigation of lawn, garden, and greenhouse, and the watering of up to four horses or equivalent livestock on each residential lot.
- 3. Depletions.** Applicants' consultant has determined that maximum stream depletions over the 300-year pumping period for the Dawson aquifer amounts to approximately 8.04% of pumping, and that maximum depletions over the 300-year pumping period for the Denver aquifer amount to 26.12% of pumping. Maximum annual depletions for residential pumping from the Dawson aquifer well are therefore 0.126 acre-feet in year 300, and maximum annual depletions for total residential pumping from the Denver aquifer will equate to 0.757 acre-feet in the 300th year of pumping. Should Applicants' pumping be less than the maximum annual totals described herein, resulting depletions and required replacements will be correspondingly reduced.
- 4. Augmentation of Depletions During Pumping.** Pursuant to C.R.S. §37-90-137(9)(c.5), Applicants are required to replace actual stream depletions attributable to pumping of up to five residential wells. Applicants' consultant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.26 acre-feet per residence per year, total of 1.3 acre-feet, 1.17 acre-feet is replaced to the stream system per year (assuming five residences), utilizing non-evaporative septic

systems. Thus, during pumping, stream depletions will be more than adequately augmented. 5. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Hull Wells Nos. 2 through 6, Applicants will reserve up to the entirety of the nontributary Laramie Fox Hills aquifer and up to 368 acre-feet of the nontributary Arapahoe aquifer, accounting for actual stream depletions replaced during the plan pumping period, as necessary to replace any injurious post pumping depletions. Applicants also reserve 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, Applicants reserve the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Arapahoe and Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicants will be entitled to apply for and receive a new well permit for the Hull Wells Nos. 2 through 6 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. 6. If the Hull Well No. 1 should be re-permitted as a non-exempt well pursuant to the augmentation plan described herein, then total residential pumping from the Denver wells will amount to 3.89 acre-feet annually, or 0.972 acre-feet per lot. Pumping from the Dawson well will remain 0.972 annual acre-feet. Household use for up to five residences is estimated to be 1.3 annual acre-feet, with return flows of 0.234 acre-feet per lot, or 1.17 acre-feet per year, assuming five wells. Maximum annual depletions for the 300-year pumping period for the Dawson aquifer for residential pumping of 0.972 acre-feet are 0.126 acre-feet in the 300th year, being 8.04% of total annual pumping, and maximum annual depletions for the Denver aquifer for residential pumping of 3.89 acre-feet are 1.016 acre-feet in the 300th year, being 26.12% of total annual pumping. Therefore, at a total household use rate of 1.3 acre-feet per year (assuming five residences), 1.17 acre-feet of septic system return flows will adequately augment stream depletions during pumping. Should Applicant's pumping be less than the totals described in this paragraph, resulting depletions and required replacements will be correspondingly reduced. For the replacement of any injurious post-pumping depletions which may be associated with the use of the up to five wells, Applicants will reserve the entirety of the nontributary Laramie Fox Hills aquifer, and up to 671 acre-feet in the nontributary Arapahoe aquifer to replace any injurious post pumping depletions. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions and prove that post pumping depletions will be noninjurious upon further approval of the Court under its retained jurisdiction. **V. Remarks**. A. Applicants request a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). 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 Applicants request 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 wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. 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. The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' 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)(I), and such notice will be sent within 14 days of the filing of this application.

CASE NO. 2021CW3057; Previous Case Nos. 15CW3022; 99CW98 – THE MOYER RANCH, LLC. (“Moyer Ranch”), 1524 Mt. Massive Drive, Leadville, CO 80461

(Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Thomas W. Korver Esq., Hayes Poznanovic Korver, LLC, 1999 Broadway, Suite 3200 Denver, CO 80202, (303) 825-1980)

Application for Finding of Reasonable Diligence

LAKE COUNTY, COLORADO

2. Name of Structures: a. Fairview Ditch. Type: Direct Flow. b. Brookside No. 1 Ditch, Brookside No. 2 Ditch, Brookside No. 3 Ditch, Brookside No. 4 Ditch, Brookside No. 5 Ditch. Type: Direct Flow. **3. Description of Conditional Water Rights:** A. Date of original decree: May 27, 2009, Case No. 99CW98, District Court, Water Division No. 2 (the “Water Court”). A subsequent diligence decree was entered by the Water Court on October 28, 2015, in Case No. 15CW3022. B. Fairview Ditch. (i) Legal description of the point of diversion: Fairview Ditch is located on the west bank of Iowa Gulch in the SE1/4 of the SW1/4 of Section 36, T. 9 S., R. 80 W. of the 6th P.M., at a point 168 feet from the south section line and 1620 feet from the west section line of said Section 36. UTM (NAD 83): X=388975 Y=4341545 State Engineer Structure: 1101171. (ii) Source: Iowa Gulch, tributary to the Arkansas River. (iii) Date of Appropriation: December 31, 1903, for irrigation; July 22, 1999, for stock watering and fire protection. (iv) Amount and Uses: 9.8 cubic feet per second, absolute, for irrigation purposes, and conditional for stock watering and fire protection. C. Brookside No. 1 Ditch. (i) Legal description of the point of diversion: Brookside No. 1 Ditch is located on the south bank of Iowa Gulch in the SW1/4 of the NW1/4 of Section 2, T. 10 S., R. 80 W. of the 6th P.M., at a point 2501 feet from the north section line and 353 feet from the west section line of said Section 2. UTM (NAD 83): X=386953 Y=4340746. State Engineer Structure: 1101172. (ii) Source: Iowa Gulch, tributary to the Arkansas River. (iii) Date of Appropriation: December 31, 1890, for irrigation; July 22, 1999, for stock watering and fire protection. (iv) Amount and Uses: 6.9 cubic feet per second, absolute, for irrigation purposes, and conditional for stock watering and fire protection. D. Brookside No. 2 Ditch. (i) Legal description of the point of diversion: Brookside No. 2 Ditch is located on the north bank of Iowa Gulch in the SW1/4 of the NW1/4 of Section 2, T. 10 S., R. 80 W. of the 6th P.M., at a point 2520 feet from the north section line and 110 feet from the west section line of said Section 2. UTM (NAD 83): X=386911 Y=4340828 State Engineer Structure: 1101173. (ii) Source: Iowa Gulch, tributary

to the Arkansas River. (iii) Date of Appropriation: December 31, 1890, for irrigation; July 22, 1999, for stock watering and fire protection. (iv) Amount and Uses: 5.5 cubic feet per second, absolute, for irrigation purposes, and conditional for stock watering and fire protection. E. Brookside No. 3 Ditch. (i) Legal description of the point of diversion: Brookside No. 3 Ditch is located on the south bank of Iowa Gulch in the NE1/4 of the SE1/4 of Section 3, T. 10 S., R. 80 W. of the 6th P.M., at a point 1959 feet from the south section line and 810 feet from the east section line of said Section 3. UTM (NAD 83): X=386675 Y=4340503 State Engineer Structure: 1101174. (ii) Source: Iowa Gulch, tributary to the Arkansas River. (iii) Date of Appropriation: December 31, 1890, for irrigation; July 22, 1999, for stock watering and fire protection. (iv) Amount and Uses: 7.5 cubic feet per second, absolute, for irrigation purposes, and conditional for stock watering and fire protection. F. Brookside No. 4 Ditch. (i) Legal description of the point of diversion: Brookside No. 4 Ditch is located on the south bank of Iowa Gulch in the SW1/4 of the SE1/4 of Section 3, T. 10 S., R. 80 W. of the 6th P.M., at a point 1174 feet from the south section line and 2092 feet from the east section line of said Section 3. UTM (NAD 83): X=386259 Y=4340273 State Engineer Structure: 1101175. (ii) Source: Iowa Gulch, tributary to the Arkansas River. (iii) Date of Appropriation: December 31, 1890, for irrigation; July 22, 1999, for stock watering and fire protection. (iv) Amount and Uses: 8.0 cubic feet per second, absolute, for irrigation purposes, and conditional for stock watering and fire protection. G. Brookside No. 5 Ditch. (i) Legal description of the point of diversion: Brookside No. 5 Ditch is located on the north bank of Iowa Gulch in the SW1/4 of the SE1/4 of Section 3, T. 10 S., R. 80 W. of the 6th P.M., at a point 1016 feet from the south section line and 2392 feet from the east section line of said Section 3. UTM (NAD 83): X=386125 Y=4340186 State Engineer Structure: 1101176. (ii) Source: Iowa Gulch, tributary to the Arkansas River. (iii) Date of Appropriation: December 31, 1890, for irrigation; July 22, 1999, for stock watering and fire protection. (iv) Amount and Uses: 6.0 cubic feet per second, absolute, for irrigation purposes, and conditional for stock watering and fire protection. **4. Detailed Outline of Work Done to Complete Project and Apply Water to Beneficial Use**: During the diligence period, Applicant has performed considerable work and invested resources toward maintaining the subject conditional uses and toward perfecting the conditional water rights. Applicant has conducted improvements and maintenance toward utilizing all conditional uses in the full amount of the appropriation in order to maximize agricultural opportunities on Applicant's ranch. The application contains an outline of specific activities that demonstrate diligence toward the application of water to the decreed beneficial uses and is available for inspection at the office of the Division 2 Water Clerk or Colorado Courts E-filing. **5. Ownership**: The structures described in paragraphs 3.C-G above and the land upon which they are located are owned by the Applicant. The structure described in paragraph 3.B above is on or near the boundary of the Applicant's property and land owned by Lake County, 505 Harrison Ave., Leadville, CO 80461. A map depicting the location of said structures and the general vicinity for which they will be used for the subject conditional uses 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 or via Colorado Courts E-filing.) WHEREFORE, Applicant respectfully requests that this Court enter a decree finding that Applicant has exercised reasonable diligence toward making the remaining

uses of the conditional water rights described in paragraphs 2-3 above absolute, and for such other relief as the Court deems just and proper.

CASE NO. 2021CW3058; TRIVIEW METROPOLITAN DISTRICT, c/o James McGrady, District Manager, 16055 Old Forest Point, Ste. 300, Monument, CO 80132

(“Applicant” or “Triview”) (Please address all pleadings and inquiries regarding this matter to Applicant’s attorney’s: MONSON, CUMMINS & SHOHET, LLC, Chris D. Cummins, #35154, Emilie B. Polley, #51296. 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80903, (719) 471-1212)

Application for Appropriative Rights of Exchange

PUEBLO and EL PASO COUNTIES

I. **Summary of Application.** Applicant requests conditional appropriative rights of exchange on both the mainstem of the Arkansas River and on Fountain Creek. On the Arkansas River such exchanges are from the Stonewall Springs Reservoir Complex and from the confluence of Fountain Creek and the Arkansas River to Pueblo Reservoir, and to the headgate of the Excelsior Ditch. On Fountain Creek such exchanges are from the Stonewall Springs Reservoir Complex and from the confluence of Fountain Creek and the Arkansas River to the headgate of the Chilcott Ditch, and to the headgate of the Fountain Mutual Ditch.

III. **Sources of Supply for the Exchange.** Except where such sources are by their nature fully consumable, Applicant seeks to exchange the Historical Consumptive Use (“HCU”) component of each of the following sources of water, as quantified and decreed by the water court, or as may in the future be so quantified and decreed. A. **Fountain Mutual Ditch.** Applicant owns 1,057 shares in the Fountain Mutual Irrigation Company (“FMIC”), as represented by Certificate Nos. 1679, 1684, 1685, 1686, 1687, 1691 (“Applicant’s FMIC Shares”). Applicant’s FMIC Shares have been changed to municipal and augmentation uses, including as changed by decree in Case Nos. 16CW3010 and 18CW3016, and pending change Case No. 21CW3022. FMIC diverts its water to the Fountain Mutual Ditch from Fountain Creek tributary to the Arkansas River, at its headgate located in the SW¼ of Section 20, Township 14 South, Range 66 West, 6th P.M. The FMIC water rights were originally decreed for irrigation purposes in El Paso County District Court in the general adjudications for Fountain Creek. The FMIC water rights are valid existing water rights that were originally decreed as follows:

DIRECT FLOW

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

STORAGE

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

1. Legal description of structure: The point of diversion of the Fountain Mutual Ditch is located in the SW¼ of Section 20, Township 14 South, Range 66 West of the 6th P.M., El Paso County, Colorado. The WDID number for the Fountain Mutual Ditch headgate is 1000736 and the UTM coordinates are: Northing (UTMy) 4296006 and Easting (UTMx) 516466 (Zone 13). 2. Decreed source of water: Fountain Creek, tributary to the Arkansas River. 3. Decreed use or uses: The FMIC water rights are valid existing water rights and were originally decreed for irrigation purposes. Portions of the FMIC water rights have been changed and decreed for other uses, including augmentation and municipal purposes, including but not limited to in the following changes of water rights and plans of augmentation in Water Court, Division 2: Case Nos. 81CW229, 85CW110, 86CW031, 90CW28, 90CW7, 95CW3, 99CW146, 00CW152, 01CW146, 01CW149, 01CW153, 02CW112, 03CW81, 04CW55, 04CW118, 05CW33, 06CW66, 07CW47, 07CW51, 09CW6, 09CW92, 09CW105, 09CW115, 10CW43, 12CW99, 15CW3002, 16CW3080, 17CW3023, 17CW3036, 17CW3072, 18CW3016, and 16CW3010 (collectively the “Previous Change Cases”). B. Excelsior Ditch. Applicant owns 1,341 shares of the outstanding 3,333 total shares, or a 40.23% ownership interest, in the Excelsior Irrigating Company, which is the owner of the Excelsior Ditch Water Rights. 1. Legal Description of Point of Diversion: The Excelsior Ditch headgate is located on the north bank of the Arkansas river in the SE¼ SE¼ in Section 36, Township 20 South, Range 64 West of the 6th P.M., Pueblo County, Colorado. 2. Source: Arkansas River. 3. Appropriation date and amounts: May 1, 1887 (priority No. 55) and January 6, 1890 (priority No. 60). 4. Decree Information: The Excelsior Ditch Water Rights were originally adjudicated in Case No. 2535, Pueblo County District Court, March 23, 1896; a. Case No. 9532, Pueblo County District Court, September 15, 1905 transferred the rights from the Bessemer Irrigation Company and Rocky Ford High Line Canal Company to Excelsior Irrigation Ditch; b. Case No. 04CW62, District Court, Water Division 2, June 18, 2007 changed uses of the Excelsior Ditch from irrigation only, to include both irrigation and augmentation, including rights of recharge. Applicant’s Excelsior Irrigating Company shares were included in the 04CW62 change decree. In addition to adding augmentation uses, the 04CW62 Decree further authorized the use of the Excelsior Ditch Augmentation Station Outlet Canal, and the Excelsior Ditch Recharge Ponds as means of delivery of augmentation supplies. c. Applicant’s interests in the Excelsior Irrigating Company were further changed to additional augmentation uses in Case No. 16CW3094 and decreed to allow the storage of the water and water rights attributable to the Applicant’s shares in the SSRC in Case No. 16CW3093. The Decrees in both 16CW3093 and 16CW3094 were issued by the Division 2 Water court on January 21, 2020. d. The Excelsior Ditch Water Rights are anticipated to be pending further change to Applicant’s municipal uses by Application to this Court under separate application filed coincident with or shortly following the instant application. 1. Decreed Uses: Irrigation; augmentation, and rights of recharge (and municipal uses pending court approval). 2. Capacity: 60 cfs (20 cfs under May 1, 1887 priority, and 40 cfs under January 6, 1890 priority). The physical capacity of the Excelsior Ditch is currently approximately 200 cfs. 3. Comments: Applicant has the right to the use

of the Excelsior Ditch structure for delivery of the water and water rights associated with Applicant's approximately 40.23% interest in the Excelsior Irrigating Company as an appurtenance to such ownership interests. Applicant has a license agreement with the Excelsior Irrigating Company allowing diversion of water carried in the Excelsior Ditch to the South Reservoir of the SSRC, and Applicant has installed diversion and measuring structures to allow delivery of such water to storage in the South Reservoir of the SSRC. Applicant anticipates the filing of an application to further change the Excelsior Ditch Water Rights to Applicant's municipal uses. In addition, Applicant has a right of first refusal on the use of 40.23% of excess capacity in the Excelsior Ditch, and a first priority right of use in expanded capacity of the Excelsior Ditch. The Excelsior Ditch may fill the Stonewall Springs Reservoir Complex at the maximum capacity of the Excelsior Ditch structure, as extended or modified, and not to exceed 400 cfs.

C. Arkansas Valley Irrigation Canal. Triview is the owner of 100% of the total 18.05 cfs decreed to the Arkansas Valley Irrigation Canal ("AVIC"), diverting from Cottonwood Creek near the Town of Buena Vista in Chaffee County, Colorado.

1. Legal description of Point of Diversion: The AVIC headgate is located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, Township 14 South, Range 79 West of the 6th P.M., at a point approximately 1,600 feet upstream from the confluence of the North and South Forks of Cottonwood Creek.
2. Source: Cottonwood Creek, tributary to the Arkansas River.
3. Decree Information: The AVIC was adjudicated in Case No. CA1127 by decree dated June 19, 1890.
4. Appropriation Date/Amount: May 1, 1880 (priority no. 76); 18.05 cfs.
5. Decreed Uses: Irrigation.
6. WDID: 1100655.
7. Comments: Triview filed with the Division 2 Water Court an application to change the AVIC water rights to Triview's municipal purposes in pending Case No. 21CW3044. Such change application includes a claim for the right to store water and water rights attributable to the AVIC in both Pueblo Reservoir and in the SSRC.

D. Bale Ditch Nos. 1 & 2. Triview is the owner of 100% of the Bale Ditch No. 1 water rights, and 50% of the Bale Ditch No. 2 water rights, with a total interest of 3.33 cfs of the total 4.33 cfs decreed to these structures.

1. Legal description of Point of Diversion: The headgates for the Bale Ditch No. 1 and Bale Ditch No. 2 are each located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, Township 49 North, Range 9 East of the N.M.P.M., at a point approximately 3,000 feet upstream from the confluence of the South Arkansas River with the Arkansas River.
2. Source: South Arkansas River, tributary to the Arkansas River.
3. Decree Information: The Bale Ditch Nos. 1 and 2 were originally adjudicated in Case No. CA1724 by decree dated July 21, 1902, with supplemental water rights decreed in Case Nos. CA5141 by decree dated July 9, 1969.
4. Dates of Appropriation and Amounts: April 30, 1875, 1.3 cfs of the Bale No. 1 and 0.5 cfs of the Bale No. 2; and, December 31, 1898, 1.0 cfs of the Bale No. 1 and 0.5 cfs of the Bale No. 2.
5. Decreed Uses: Irrigation (pending change to municipal use).
6. WDID: 1100563 (Bale No. 1), and 1100564 (Bale No. 2).
7. Comments: Triview anticipates the filing of an application to change the Bale Ditches to Triview's municipal purposes during the pendency of the instant matter. Such change application will specifically include a claim for the right to store water and water rights attributable to the Bale Ditches in both Pueblo Reservoir and in the SSRC.

E. Stonewall Springs Reservoir Complex Conditional Water Storage Right. Triview is the owner of the 2,050 acre foot conditional water storage right decreed in Case No. 16CW3093 for the SSRC.

1. Legal description of Point of Diversion: Water is diverted to storage in the SSRC at the headgate of the Excelsior Ditch, as described above. Water is then diverted from the Excelsior Ditch to storage in the

SSRC, currently to the South Reservoir a point on the Excelsior Ditch located in the SW¼ NE¼ of Section 35, Township 20 South, Range 63 West of the 6th P.M., at a point approximately 2,592 feet from the east section line, and approximately 1,655 feet from the north section line of said Section 35. 2. Source: Arkansas River. 3. Decree Information: The SSRC Junior Water Storage Right was adjudicated in Case No. 16CW3093 by decree dated January 21, 2020. 4. Date of Appropriation and Amounts: December 27, 2016, maximum diversion rate of 6 cfs, annual volumetric limitation of 2,050 acre feet. 5. Decreed Uses: Irrigation, commercial, industrial, recreation, fish propagation, fire protection, augmentation or exchange for replacement of out-of-priority flood control storage on Fountain Creek and its tributaries, creation and maintenance of wildlife and wetlands habitat, and for augmentation, replacement, recharge, and exchange purposes. 6. WDID: 1403593. F. Denver Basin Groundwater. Triview has the right to the use of all nontributary and not-nontributary groundwater underlying the lands included within the District, as well as groundwater located to the north of the District's existing boundaries underlying the "Northgate Parcel". Such ground water is withdrawn from the not-nontributary and nontributary Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers pursuant to previous decrees, including decreed plans for augmentation, and pending decrees in the following Case Nos.: 81CW173, 82CW295, 82CW22, 85CW13, 87CW40, 87CW173, 88CW23(A), 95CW153, 97CW39, 97CW68, 98CW134, 14CW3053, 15CW3076 and 21CW3001 (pending). G. Dakota Hot Springs. Triview has a contractual interest in the Dakota Hot Springs, a/k/a Higgins Well No. 1, a municipally decreed nontributary well located in the SW¼ SE¼ of Section 1, Township 19 South, Range 69 West of the 6th P.M., Fremont County, Colorado. The Dakota Hot Springs were decreed for municipal, domestic and irrigation uses in Case Nos. 81CW45 (W-345) and 82CW193, each of which confirmed the nontributary nature of the water produced by the Dakota Hot Springs. Water Produced by the Dakota Hot Springs is currently delivered to public bathing pools, and then by easement to the Arkansas River. Water derived from the Dakota Hot Springs may then be carried in the Arkansas River to storage in Pueblo Reservoir, or released therefrom to storage in the SSRC or for exchange, as requested herein. The Dakota Hot Springs are decreed for the production of up to 300 gallons per minute for municipal purposes. H. Reusable Effluent. All of the above described water sources are, or will be, anticipated to be utilized in Triview's municipal water supply system. Water so used, once treated through Triview's municipal wastewater system, will be discharged to Monument Creek, tributary to Fountain Creek, tributary to the Arkansas River. Once augmentation obligations are met, the remainder of such resulting sewer effluent is reusable and fully consumable to extinction, and Applicant claims the right to the use and re-use of all such legally and physically available effluent in the subject exchanges. In addition, Applicant has the right to claim reusable lawn irrigation return flows ("LIRFs") accruing to the alluvium of tributaries to Monument Creek as decreed in Case No. 88CW23(B). All such reusable effluent derived from any of the sources described in Paragraphs III.A. through H., above, shall be included as a source of water for the appropriative rights of exchange requested herein. **IV. Appropriative Rights of Exchange**. Applicant requests appropriate rights of exchange on the mainstem of the Arkansas River, and on Fountain Creek, as more particularly described below. The appropriate rights of exchange will operate on all stretches of stream between the following identified structures: A. Exchange-from Points. 1. Stonewall Springs Reservoir

Complex. The exchange-from point of the requested appropriative rights of exchange is the outlet(s) of the Stonewall Springs Reservoir Complex ("SSRC"), consisting of a total of three reservoirs, as decreed in Case No. 16CW3093, Water Court, Division 2. a. Reservoir Legal Descriptions: i. South Reservoir: The centroid of South Reservoir is approximately located at UTM coordinates (NAD83 datum, Zone 13, meters) 551523.0 Easting, 4234870.0 Northing. The outlet from South Reservoir will discharge water to the Arkansas River in the NE1/4, SW1/4, Section 1, Township 21 South, Range 63 West of the 6th P.M. ii. Central Reservoir: The centroid of the Central Reservoir is approximately located at UTM coordinates (NAD83 datum, Zone 13, meters) 553075.0 Easting, 4235190.0 Northing. The outlet from Central Reservoir will discharge water to the Arkansas River in the NW 1/4, SW1/4, Section 6, Township 21 South, Range 62 West of the 6th P.M. or through the outlets in the North or East Reservoirs. iii. East Reservoir: The centroid of the East Reservoir is approximately located at UTM coordinates (NAD83 datum, Zone 13, meters) 554241.6 Easting, 4234846.0 Northing. The outlet from East Reservoir will discharge water to the Arkansas River in the SW¼, SE¼, Section 6, Township 21 South, Range 62 West of the 6th P.M. or through the outlet in the Central Reservoir. b. Points of Contribution to the Arkansas River. Of the SSRC reservoirs, the South Reservoir has been constructed and is capable of being operational. The South Reservoir currently discharges water to the Arkansas River via a column pump station located in its southeast corner, with flows being contributed to the Arkansas river approximately at UTM coordinates (NAD83 datum, Zone 13, meters) 551682.14 Easting, 4233932.03 Northing. Upon completion of the Central Reservoir, both the South Reservoir and the Central Reservoir may discharge water to the Arkansas River via gravity/pumped outlet works at a point just upstream of the Nyberg Road bridge over the Arkansas River, which is likewise the location of the Avondale Gage. Said location is approximately at UTM coordinates (NAD83 datum, Zone 13, meters) 552572.75 Easting, 4233604.46 Northing. Upon completion, the East Reservoir will discharge to the Arkansas River at one of two locations, being the shared South/Central reservoir discharge point described immediately above, or at a point downstream at approximately UTM coordinates (NAD83 datum, Zone 13, meters) 554572.34 Easting, 4233224.11 Northing. Each of these points of contribution represent an "exchange-from" point, and each is likewise depicted on the **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.) 1. Fountain Creek Confluence. Reusable treated effluent derived from all sources of water supply described above, as well as nontributary Denver Basin supplies, and water supplies attributable to Applicant's interests in FMIC, may all be delivered to the Arkansas River via Fountain Creek, to which all such sources of water accrue. Applicant therefore seeks an additional "exchange-from" point being the confluence of Fountain Creek with the Arkansas River, located at approximately UTM coordinates (NAD83 datum, Zone 13, meters) 535916.91 Easting, 4233986.54 Northing. 2. Excelsior Ditch Augmentation Station Outlet Canal. The above described water rights sources, and reusable treated effluent derived therefrom, may accrue to the Arkansas River and be re-diverted at the Excelsior Ditch, including after prior exchange to Pueblo Reservoir and release therefrom. Such water rights may subsequently be placed in storage in the SSRC or may be re-delivered to the Arkansas River without storage after measurement and discharge at the Excelsior Ditch Augmentation Station Outlet Canal.

Applicant therefore seeks an additional “exchange-from” point being the Excelsior Ditch Augmentation Station Outlet Canal, approximately UTM coordinates (NAD83 datum, Zone 13, meters) 536000.77 Easting, 4233953.05 Northing. B. Exchange-to Points. 1. Pueblo Reservoir. a. Legal Description of Structure: Pueblo Reservoir is located in all or portions of Sections 7, 18-22, and 25-36 of Township 20 South, Range 66 West of the 6th P.M., and Sections 1-5, and 9-11 of Township 21 South, Range 66 West of the 6th P.M., and Sections 5, 8, 9, 13-16, and 22-25 of Township 20 South, Range 67 West of the 6th P.M., all in Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section 36 bears North 61°21’20” East, a distance of 2,511.05 feet, all more particularly described in the decree in Case No. 42135, District Court, Pueblo County, Colorado as corrected in Case No. 02CW37. b. Triview Long-Term Storage Contract. Applicant has acquired from the United States Bureau of Reclamation (“Reclamation”) a long-term storage contract for the storage of water in Pueblo Reservoir, including the use of the North Outlet Works (“NOW”) where water can be released to the Southern Delivery System pipeline and related infrastructure, owned and controlled by Colorado Springs Utilities (“CS-U”). Said Contract has a 40-year term and allows Applicant to store up to 999 acre feet of water in Pueblo Reservoir at any one time, subject to the terms and conditions of Applicant’s contract with Reclamation. c. Convey, Treat and Deliver Contract. Applicant has initiated negotiations with CS-U for CS-U’s conveyance, treatment and delivery of Applicant’s water supplies as stored in Pueblo Reservoir, including pursuant to the appropriative right of exchange requested herein, through certain infrastructure owned and controlled by CS-U, including SDS, to Applicant’s municipal water facilities in northern El Paso County, Colorado. Such anticipated contract will allow for CS-U to take delivery of water and water rights owned and controlled by Applicant and stored in Pueblo Reservoir, and delivery such water through the NOW and SDS, and subsequently through CS-U’s municipal treatment and delivery system, to Triview’s use. However, Triview currently has no ownership interest in the CS-U infrastructure, nor any contractual right to utilize the CS-U infrastructure or facilities. Triview shall make no use of any infrastructure associated with the SDS project or other CS-U infrastructure without first acquiring the requisite real property interests or contractual entitlements to do so. 2. Chilcott Ditch Headgate/Calhan Reservoir. a. Legal Description of Structure/Facilities. The point of diversion of the Chilcott Ditch is at a point on the north bank of Fountain Creek in the SE¼ of Section 25, Township 15 South, Range 66 West of the 6th P.M., approximately 746 feet from the east line, and approximately 1,957 feet from the south line of said Section 25. The Chilcott Ditch then proceeds southeasterly until terminating in the Calhan Reservoir in Sections 22 and 27, Township 16 South, Range 65 West of the 6th P.M. b. Right to use Chilcott Ditch/Calhan Reservoir Facilities. Triview is currently a participant in studies concerning the use of the Chilcott Ditch and Calhan Reservoir as a means of conveyance of municipal water supplies, including effluent. However, Triview currently has no ownership interest in the Chilcott Ditch Company, nor any contractual right to utilize the Chilcot Ditch infrastructure or facilities, nor any right to store water in Calhan Reservoir. Triview shall make no use of any infrastructure associated with the Chilcott Ditch or Calhan Reservoir without first acquiring the requisite real property interest or contractual entitlements to do so. 3. Fountain Mutual Ditch Headgate/Big Johnson Reservoir. a. Legal Description of

Structure/Facilities. The structures and infrastructure facilities associated with the Fountain Mutual Ditch and Big Johnson Reservoir are more particularly described in Paragraph III.A., above. b. Right to use FMIC Facilities. Triview is a major shareholder in FMIC, and as such as the right to utilize the FMIC facilities for the transport and storage of the Applicant's FMIC Shares, and Triview is currently a participant in studies concerning the use of the Fountain Mutual Ditch and Big Johnson Reservoir as a means of conveyance of municipal water supplies, including effluent. However, Triview does not currently have any contractual arrangement with FMIC for carriage of non-FMIC water rights in the FMIC ditch, nor for storage of non-FMIC water rights in Big Johnson Reservoir. Triview shall make no use of any infrastructure associated with the Fountain Mutual Ditch or Big Johnson Reservoir for water rights other than those associated with the Applicant's FMIC Shares, without first acquiring the requisite real property interest or contractual entitlements to do so. C. Exchange Rate. Applicant claims an exchange rate of 32 cfs, conditional for all exchanges on the Arkansas River, and 15 cfs, conditional, for all exchanges on Fountain Creek, as further described herein. D. Operation of Exchange. The above described sources of supply may be exchanged upstream from each of the "exchange-from" points described in Paragraph IV.A. to each of the "exchange-to" points described in Paragraph IV.B. An exchange will only be operated when there is a live stream between the exchange-from point and the exchange-to point within the exchange reaches. An exchange will only be operated to the extent that other vested water rights senior to this exchange are not deprived of water to which they would have been entitled in the absence of such exchange. E. Uses. Applicant will use the water diverted by exchange for all beneficial municipal uses under existing and future decrees for the water so exchanged, including, without limitation, direct use and storage and subsequent release for municipal, irrigation, stock watering, fire protection and suppression, domestic, commercial, industrial, and recreational uses, fish and wildlife preservation and propagation, wetlands, augmentation, replacement, substitution, exchange, and recharge, including use, reuse, successive use, and full consumption and disposition to extinction. The water will be stored or placed to immediate beneficial use in Triview's municipal water supply system or augmentation plans and used and successively used to extinction pursuant to Triview's existing decrees, including but not limited to those listed in Paragraph III.F., above, and Case Nos. 16CW3010 and 18CW3016. F. Appropriation Dates. The appropriation date for the appropriative rights of exchange on the Arkansas River requested herein is December 18, 2019, which is the date identified in Resolution No. 2020-08 of the Board of Directors of the Triview Metropolitan District as passed in a public meeting held on July 23, 2020, after provision of public notice as required by applicable law. Such Resolution No. 2020-08 described the acts necessary to demonstrate and provide interested 3rd parties the requisite notice of Applicant's intent and actions to initiate and appropriate the water rights for the beneficial uses as set forth herein. The appropriation date for the appropriative rights of exchange on Fountain Creek requested herein is July 22, 2021, at which time the Board of Directors instructed staff and consultants to explore such exchanges, as documented by the minutes of the Triview Board of Directors public meeting dated July 22, 2021. G. Use of water stored in Pueblo Reservoir: Triview recognizes that Pueblo Reservoir and other Fryingpan-Arkansas Project ("Project") facilities are part of the Fryingpan-Arkansas Project, and use of Pueblo Reservoir and other Project facilities must be pursuant to a contract with Reclamation,

and consistent with such policies, procedures, contracts, charges and terms as may be lawfully determined by Reclamation, and, where applicable, Southeastern Colorado Water Conservancy District or their respective successors in interest, in their good faith discretion. Triview shall not operate exchange rights decreed on this application in a manner that would interfere with lawful operation of the Project. H. Use of Facilities not owned or controlled by Triview. Certain structures and infrastructure identified in this application are owned by 3rd parties. Triview agrees and acknowledges that Triview may utilize such infrastructure only after either acquiring the requisite property interests, or upon entering a contract with the owners of such infrastructure allowing Triview's use. I. No injury. Use of the appropriative right of exchange described herein, in accordance with the terms, conditions and restrictions described in this application, will not cause injury to vested water rights.

CASE NO. 21CW3059; Previous Case Nos. 94CW41; 02CW7; 09CW32; 15CW3036 – UPPER ARKANSAS WATER CONSERVANCY DISTRICT, acting through the Upper Arkansas Water Activity Enterprise (“UAWCD”), P.O. Box 1090, Salida, CO 81201

(Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Law of the Rockies, Kendall K. Burgemeister, Atty. Reg. No. 41593, 525 North Main Street, Gunnison, CO 81230, (970) 641-1903)

Application for Finding of Reasonable Diligence and Making Absolute in Part

CHAFFEE COUNTY

2. UAWCD seeks to make absolute a portion of the following conditional appropriative rights of exchange decreed in Case No. 94CW41, and a finding of reasonable diligence for any portion thereof that is not made absolute in this proceeding. Name of right: Chalk Creek Exchange. Original Decree: 94CW41, entered January 18, 1996, by the District Court, Water Division No. 2. Subsequent decrees: 02CW7, entered February 3, 2003, 09CW32, entered July 7, 2009, 15CW3036, entered October 29, 2015, all in the District Court, Water Division No. 2. Exchange Reach: From the confluence of Chalk Creek and the Arkansas River in Section 13, Township 15 South, Range 78 West, 6th PM. up Chalk Creek, in Chaffee, County, Colorado. The exchange reach 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.) Source of exchange water: Applicant's pro rata share of water represented by shares of Twin Lakes Reservoir and Canal Company and such Fryingpan-Arkansas Project water as is legally available to Applicant. The water rights producing Applicant's pro rata share of water represented by shares of Twin Lakes Reservoir and Canal Company are: Colorado River Water Rights: Case No. 3802, District Court, Garfield County, August 25, 1963 and Case No. W-1901, District Court, Water Div. No. 5, May 12, 1976; priority: August 23, 1930, No. 431; source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Div. No. 5; use: direct flow and storage purposes for irrigation, domestic, commercial, industrial, municipal, and all beneficial uses; amount: direct flow amount for diversions through transmountain tunnels of 625 c.f.s., with an annual limit of 68,000 acre-feet, a running ten year limit of 570,000 acre-feet; and Arkansas River Water Rights: Case No. 2346, District Court, Chaffee County, July 14, 1913 as modified in Case No. W-3965, District Court, Water Div. No. 2, April 19, 1974; priorities: December 15, 1896, No. 3 and March 25, 1897, No. 4; source: Lake Creek and its tributaries, tributary to the Arkansas

River; 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 by water by diversion from said Arkansas River; amount: 54,452 acre-feet (20,645.3 acre-feet for Priority No. 3 and 33,806.7 acre-feet for Priority No. 4). The water rights of the Fryingpan-Arkansas Project consist of: West Slope Decrees: The Project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County, Colorado. The principal water rights were adjudicated by the decrees in Civil Action No. 4613, District Court, Garfield County on June 20, 1958 and August 3, 1959, and were modified by the Decree in Case No. W-829-76, District Court, Water Division No. 5, dated November 27, 1979, and supplemented by the Decree in Case No. 83CW352, District Court, Water Division No. 5, dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travels under the Continental Divide through the Boustead Tunnel and empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir, and elsewhere, and may be applied to beneficial use within the SECWCD's boundaries; and East Slope Decrees: The Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont, and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141, District Court, Chaffee County, dated July 9, 1969, and Civil Action No. B-42135, District Court, Pueblo County, dated June 25, 1962, and were modified and supplemented by the Decree in Case No. 80CW6, District Court, Water Division No. 2, dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir, and elsewhere. The decree in this case will not give Applicant any rights of use of Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocation of Fryingpan-Arkansas Project water or return flows therefrom, but will not alter any existing rights Applicant may otherwise have. Fryingpan-Arkansas Project water, and return flows therefrom, may be exchanged by Applicant only if, when, and to the extent such water is allocated by Southeastern Colorado Water Conservancy District to Applicant. Appropriation Date: August 5, 1994. Amount: 1 cfs, of which 0.0145 cfs was decreed absolute in Case No. 02CW7 on February 3, 2003, leaving 0.9855 cfs conditional. Uses: Replacement of out-of-priority depletions from wells and on-stream reservoirs in specified reaches of Chalk Creek, which may be augmented from time to time under the provisions of Case No. 92CW84. **3.** Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: UAWCD performed, *inter alia*, the following activities since the entry of the decree in Case No. 09CW32: UAWCD augments numerous structures in the Chalk Creek drainage with calculated stream depletions from these structures total 11.295 acre-feet per year. The maximum daily depletion is 0.0656 acre-feet per day in the month of July, which equates to an exchange rate of 0.033 cfs. Continued to augment and offer to augment, for UAWCD constituents, out-of-priority depletions pursuant to its decree plans for augmentation, Rule 14 replacement plans, and other plans for augmentation, substitute water supply plans, and replacement plans through leases to third parties. In particular, UAWCD continued to augment and offer to augment, for UAWCD constituents, out-of-priority depletions in the Chalk Creek basin pursuant to augmentation plans and appropriative rights of exchange approved in Case Nos.

92CW84 and 94CW41. Routinely performed inspection, maintenance, and operation activities at its facilities, such as internal inspections, channel and spillway clearing, installation, maintenance, and operation of measurement and recording devices and systems; Pursued and completed purchases or other agreements for the use of water resources, including but not limited to purchase of annual allocations of Fryingpan-Arkansas Project Water, which were used, in part, as a source of substitute supply for various exchanges; Prosecuted applications to change water rights for use in UAWCD's plans for augmentation; Prosecuted an application in Case No. 18CW3076 to expand the geographic coverage of UAWCD's plans for augmentation; Obtained approval from the U.S. Forest Service of special use permits for North Fork Reservoir and O'Haver Reservoir; Applied for a new special use permit for Cottonwood Lake; Defended UAWCD's and its constituents' water rights by participation as an opposer in water court applications filed by others; UAWCD, including its water activity enterprise, made expenditures of approximately \$1,291,210 in 2015; \$1,194,970 in 2016; \$1,428,374 in 2017; \$1,677,111 in 2018; \$1,645,515 in 2019; and \$1,716,831 in 2020 to directly and indirectly support the development and operation of its water system, including operation of this exchange and the facilities used therein. **4. Relief Requested.** UAWCD seeks to make absolute a portion of the Chalk Creek Exchange decreed in Case No. 94CW41 in the aggregate amount of 0.033 cfs, and a finding of reasonable diligence for any portion thereof that is not made absolute in this proceeding.

CASE NO. 21CW3060; Previous Case Nos. 94CW42; 02CW8; 09CW33; 15CW3037 – THE UPPER ARKANSAS WATER CONSERVANCY DISTRICT, acting through the Upper Arkansas Water Activity Enterprise (“UAWCD”), P.O. Box 1090, Salida, CO 81201 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Law of the Rockies, Kendall K. Burgemeister, Atty. Reg. No. 41593, 525 North Main Street, Gunnison, CO 81230, (970) 641-1903)

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

2. UAWCD seeks to make absolute a portion of the following conditional appropriative rights of exchange decreed in Case No. 94CW42, and a finding of reasonable diligence for any portion thereof that is not made absolute in this proceeding. Name of right: Cherry Creek Exchange. Original Decree: 94CW42, entered January 18, 1996, by the District Court, Water Division No. 2. Subsequent decrees: 02CW8, entered February 3, 2003; 09CW33, entered July 7, 2009; 15CW3037, entered October 29, 2015, all in the District Court, Water Division No. 2. Exchange Reach: From the confluence of Cherry Creek and the Arkansas River in Section 12, Township 48 North, Range 10 East, N.M.P.M. up Cherry Creek to the Allen Ditch headgate located 84 rods east of the quarter section corner between Section 14 and 15, Township 48 North, Range 10 East, N.M.P.M., in Fremont County, Colorado. The exchange reach 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.) Source of exchange water: Applicant's pro rata share of water represented by shares of Twin Lakes Reservoir and Canal Company and such Fryingpan-Arkansas Project water as is legally available to Applicant. The water rights producing Applicant's pro rata share of water represented by shares of Twin Lakes Reservoir and Canal Company are: Colorado River Water Rights: Case No.

3802, District Court, Garfield County, August 25, 1963 and Case No. W-1901, District Court, Water Div. No. 5, May 12, 1976; priority: August 23, 1930, No. 431; source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Div. No. 5; use: direct flow and storage purposes for irrigation, domestic, commercial, industrial, municipal, and all beneficial uses; amount: direct flow amount for diversions through transmountain tunnels of 625 c.f.s., with an annual limit of 68,000 acre-feet, a running ten year limit of 570,000 acre-feet; and Arkansas River Water Rights: Case No. 2346, District Court, Chaffee County, July 14, 1913 as modified in Case No. W-3965, District Court, Water Div. No. 2, April 19, 1974; priorities: December 15, 1896, No. 3 and March 25, 1897, No. 4; source: Lake Creek and its tributaries, tributary to the Arkansas River; 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 by water by diversion from said Arkansas River; amount: 54,452 acre-feet (20,645.3 acre-feet for Priority No. 3 and 33,806.7 acre-feet for Priority No. 4). The water rights of the Fryingpan-Arkansas Project consist of: West Slope Decrees: The Project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County, Colorado. The principal water rights were adjudicated by the decrees in Civil Action No. 4613, District Court, Garfield County on June 20, 1958 and August 3, 1959, and were modified by the Decree in Case No. W-829-76, District Court, Water Division No. 5, dated November 27, 1979, and supplemented by the Decree in Case No. 83CW352, District Court, Water Division No. 5, dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travels under the Continental Divide through the Boustead Tunnel and empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir, and elsewhere, and may be applied to beneficial use within the SECWCD's boundaries; and East Slope Decrees: The Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont, and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141, District Court, Chaffee County, dated July 9, 1969, and Civil Action No. B-42135, District Court, Pueblo County, dated June 25, 1962, and were modified and supplemented by the Decree in Case No. 80CW6, District Court, Water Division No. 2, dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir, and elsewhere. The decree in this case will not give Applicant any rights of use of Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocation of Fryingpan-Arkansas Project water or return flows therefrom, but will not alter any existing rights Applicant may otherwise have. Fryingpan-Arkansas Project water, and return flows therefrom, may be exchanged by Applicant only if, when, and to the extent such water is allocated by Southeastern Colorado Water Conservancy District to Applicant. Appropriation Date: August 5, 1994. Amount: 0.10 cfs (conditional). Uses: Replacement of out-of-priority depletions from wells and on-stream reservoirs below the Allen Ditch headgate on Cherry Creek, which may be augmented from time to time under the provisions of Case No. 92CW84. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: UAWCD performed, *inter alia*, the following activities since the entry of the decree in Case No. 15CW3037: UAWCD has augmented 53 structures in the

Cherry Creek drainage. Based on 92CW84, the calculated stream depletions from these structures total 7.0392 acre-feet per year. The maximum daily depletion is 0.04087 acre-feet per day in the month of July, which equates to an exchange rate of 0.021 cfs. Continued to augment and offer to augment, for UAWCD constituents, out-of-priority depletions pursuant to its decree plans for augmentation, Rule 14 replacement plans, and other plans for augmentation, substitute water supply plans, and replacement plans through leases to third parties. In particular, UAWCD continued to augment and offer to augment, for UAWCD constituents, out-of-priority depletions in the Cherry Creek basin pursuant to augmentation plans and appropriative rights of exchange approved in Case Nos. 92CW84 and 94CW42. Routinely performed inspection, maintenance, and operation activities at its facilities, such as internal inspections, channel and spillway clearing, installation, maintenance, and operation of measurement and recording devices and systems; Pursued and completed purchases or other agreements for the use of water resources, including but not limited to purchase of annual allocations of Fryingpan-Arkansas Project Water, which were used, in part, as a source of substitute supply for various exchanges; Prosecuted applications to change water rights for use in UAWCD's plans for augmentation; Prosecuted an application in Case No. 18CW3076 to expand the geographic coverage of UAWCD's plans for augmentation; Obtained approval from the U.S. Forest Service of special use permits for North Fork Reservoir and O'Haver Reservoir; Applied for a new special use permit for Cottonwood Lake; Defended UAWCD's and its constituents' water rights by participation as an opposer in water court applications filed by others; UAWCD, including its water activity enterprise, made expenditures of approximately \$1,291,210 in 2015; \$1,194,970 in 2016; \$1,428,374 in 2017; \$1,677,111 in 2018; \$1,645,515 in 2019; and \$1,716,831 in 2020 to directly and indirectly support the development and operation of its water system, including operation of this exchange and the facilities used therein. **3. Relief Requested.** UAWCD seeks to make absolute a portion of the Cherry Creek Exchange decreed in Case No. 94CW42 in the amount of 0.021 cfs, and a finding of reasonable diligence for any portion thereof that is not made absolute in this proceeding.

CASE NO. 2021CW3061; Previous Case Nos. 15CW3031; 08CW92; 17CW3008; 10CW45 – R. JAY JOLLY RANCH, LLC, c/o Cody Jolly, 31111 Co. Rd 23, Hugo, CO 80820 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Steven J. Bushong, Cassidy L. Woodard, Bushong & Holleman PC, 1525 Spruce Street, Suite 200, Boulder, CO 80302, (303) 431-9141)

Application for Finding of Reasonable Diligence

LINCOLN COUNTY

2. Name of Structure: Spring Area No. 1 (aka "Jolly Spring Area No. 1"). There are two conditional water rights decreed to the Spring Area No. 1 subject to this application called herein the "2008 Appropriation" and the "2010 Appropriation," as further described in Paragraph 3 below. 3. Description of Conditional Water Rights: A. 2008 Appropriation: i. Decrees: The 2008 Appropriation to the Jolly Spring Area No. 1 was originally decreed in the District Court in and for Water Division 2, State of Colorado ("Water Court"), Case No. 08CW92, dated June 9, 2009 (the "08CW92 Decree"). A subsequent finding of reasonable diligence was entered in Water Court Case No. 15CW3031, dated October 28, 2015 (the "15CW3031 Decree"), ii. Legal Description: NW1/4 of the SE1/4 Section

33, Township 12 South, Range 56 West, 6th P.M., Lincoln County, Colorado, 3,168 feet from the North line and 3,696 feet from the West line of Section 33. A single metered diversion point must be established at this location for administrative purposes. See **Exhibit A**, iii. Source: springs tributary to Middle Rush Creek, iv. Appropriation Date: June 4, 2008, v. Amount: 58 gallons per minute (“gpm”) absolute; 617 gpm conditional, vi. Uses: industrial purposes for intermittent oil and gas well drilling operations upon Applicant’s property. B. 2010 Appropriation: i. Decrees: The 2010 Appropriation to the Jolly Spring Area No. 1 was originally decreed in Water Court Case No. 10CW45, decreed on February 11, 2011 (the “10CW45 Decree”). A subsequent finding of reasonable diligence was entered in Water Court Case No. 17CW3008, dated June 30, 2017, ii. Legal Description: NW1/4 of the SE1/4 Section 33, Township 12 South, Range 56 West, 6th P.M., Lincoln County, Colorado, 3,168 feet from the North line and 3,696 feet from the West line of Section 33. UTM: 0615230, 4313098. 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.) iii. Source: springs tributary to Middle Rush Creek, iv. Appropriation Date: August 13, 2010, v. Amount: 58 gallons per minute (“gpm”) absolute; 617 gpm conditional, vi. Uses: industrial purposes for intermittent oil and gas well drilling operations, wind energy development, and other intermittent industrial purposes. 4. Remarks. By Order Granting Applicant’s Motion Pursuant to Uniform Local Rule 3(c) for All State Water Court Divisions for Leave to Combine Conditional Water Rights in a Single Application for Findings of Reasonable Diligence, dated October 21, 2021, Applicant was allowed to combine the 2008 Appropriation and 2010 Appropriation into this single application for diligence. 5. Request for Findings of Reasonable Diligence: Applicant seeks findings that it has exercised reasonable diligence in the development of the remaining 617 gpm conditional for the 2008 Appropriation and the remaining 617 gpm conditional for the 2010 Appropriation for all decreed uses. 6. Diligence Activities: Applicant owns and operates a commercial cow-calf herd consisting of, on-average, 525 pairs, 125 replacement heifers, and 30 bulls. Applicant also owns 14,000 deeded acres and holds the leasing rights to an additional 6,000 acres of state trust lands. To supplement ranch income, Applicant has in the past sold water from the Jolly Spring Area No. 1 for various decreed uses including oil and gas production both on and off Applicant’s property. The water rights decreed to Spring Area No. 1 and subject to this Application are used and decreed for such purposes. A. Previously, there was significant oil and gas production and activity in the areas around Applicant’s ranch. In recent years, due to a multitude of factors, oil and gas production in the area has declined, resulting in decreased demand for water for such industrial uses. Regardless, Applicant seeks to maintain the conditional portions of the water rights in order to provide water service when such production increases once again creating additional demand. B. In 2018, Applicant sold approximately 2.2 acre-feet of water from the water right decreed to the 2010 Appropriation for oil and gas well drilling operations. C. Applicant conducts routine maintenance activities around Jolly Spring Area No. 1. Such maintenance is performed on an annual basis and includes cleaning out vegetation and loose debris from around the spring using a rented backhoe and mowing cattails in the area between the spring and nearby Middle Rush Creek to ensure the uninterrupted flow of water for use under the subject water rights. D. Applicant invested heavily in succession planning to ensure that the ranch, including the land, water rights, and other

interests, would successfully pass to the next generation of the family, Douglas Cody Jolly. In 2018, Applicant expended considerable amounts on legal fees to conduct such extensive estate planning. E. As part of Applicant's estate planning, R. Jay Jolly Ranch, LLC, was created as a Colorado limited liability company to hold the ranch's real property rights, including water rights. On September 19, 2018, R. Jay Jolly, a/k/a Robert Jay Jolly, and Diana Lynne Jolly conveyed via Bargain and Sale Deed (Water Rights) any and all water rights associated with certain lands to R. Jay Jolly Ranch, LLC. This deed included the water rights decreed to both the 2008 Appropriation and the 2010 Appropriation. On October 12, 2021, Applicant filed Notices of Transfer of Conditional Water Rights for the 2008 Appropriation and the 2010 Appropriation in the necessary cases. 7. Land Ownership: Applicant. WHEREFORE, Applicant respectfully requests that the Court enter a decree (1) entering a finding of reasonable diligence on the remaining conditional portions of the 2008 Appropriation and 2010 Appropriation for all decreed uses as requested in Paragraph 5, above, and allowing said conditional water rights to continue in full force and effect; and (2) granting such other and further relief as the Court deems just and proper.

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

CASE NO. 2021CW3062, Water Division 2 and CASE NO. 2021CW3189 Water Division 1; Previous Case Nos. 15CW3031; 08CW92; 17CW3008; 108CW45 – CHRISTINE and DONALD PERING (“Applicants”), 409 Pelican Circle, Chesapeake, Virginia 23322 (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

DOUGLAS COUNTY

II. Summary of Application. Applicants seek to quantify the Denver Basin groundwater underlying the Applicants' Property, as defined below, and approval of a plan for augmentation for the use of a not-nontributary Dawson aquifer well for water provision to the Applicants' Property. **III. Application for Underground Water Rights.** A. Property Information. 1. Property Description. Applicants own an approximately 4.85-acre property that is depicted on the **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.), located in the SE1/4 of the SE1/4 of Section 17, Township 10 South, Range 67 West of the 6th P.M., specifically described as Tact 13A Greenland Acres, County of Douglas, State of Colorado and referred to as 12778 Greenland Acres Road, Larkspur, Colorado 80908 (“Applicants' Property”). 2. Existing Wells. There is no current existing well on the Applicants' Property. There is a Division of Water Resources Permit issued for the Applicants' Property under Permit No. 321881. However, no well has yet been constructed and the intent is to apply for a different well permit to operate pursuant to a decree issued in this case. B. Water Source. 1. Not-Nontributary. The groundwater to be withdrawn from the Dawson aquifer underlying Applicants' Property is not-nontributary. Pursuant to C.R.S. § 37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer require 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 Applicants' 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. Applicants request 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. Applicants request a vested right for the withdrawal of all legally available groundwater in the Denver Basin aquifers underlying Applicants' Property. Said amounts may be withdrawn over a 100-year life of the aquifers pursuant to C.R.S. § 37-90-137(4). Applicants estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants' Property:

AQUIFER	NET SAND (Feet)	Total Appropriation (Acre Feet)	Annual Avg. Withdrawal 100 Years (Acre Feet)
Dawson (NNT)	267	259	2.59
Denver (NT)	445	367	3.67
Arapahoe (NT)	371	306	3.06
Laramie Fox Hills (NT)	183	133	1.33

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 Applicants' Property consisting of domestic, irrigation, commercial, stock water, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. Applicants also request that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicants' 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. Applicants may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, that Applicants 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 C.R.S. § 37-90-137(9)(c.5). E. Well Fields. Applicants request that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicants' Property through any combination of wells. Applicants request that these wells be treated as a well field. F. Averaging of Withdrawals. Applicants request that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicants' 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 Applicants are entitled to withdraw from the aquifers underlying the

Applicants' 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 the Applicants. **IV. Application for Plan for Augmentation.** A. Structures to be Augmented. The structure to be augmented is a Dawson aquifer well constructed on the Applicants' Property, along with any replacement or additional wells as needed that are constructed to the Dawson aquifer underlying the Applicants' Property. 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 wells, together with water rights from the nontributary Denver aquifer for any injurious post-pumping depletions. C. Statement of Plan for Augmentation. Applicants wish to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer. 1. Uses. Pumping from the Dawson aquifer will be a maximum of 2.05 acre-feet of water per year. Such uses shall be for domestic, irrigation, commercial, stock water, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. 2. Depletions. Applicants' consultant has determined that maximum stream depletions over the 100-year pumping period for the Dawson aquifer amounts to approximately 15.78% of pumping. Maximum annual depletions are therefore 0.324 acre-feet in year 100. Should Applicants' pumping be less than the 2.05 acre-feet total described herein, resulting depletions and required replacements will be correspondingly reduced. 3. Augmentation of Depletions During Pumping. Applicants' 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 0.26 acre-feet per year, replacement amounts to 0.468 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 pumping from the Dawson aquifer as set forth herein, Applicants will utilize non-evaporative septic return flows and potentially irrigation return flows from the subsequent usage of the Denver aquifer underlying the Applicants' Property. Additionally, Applicants may utilize water from the Arapahoe or Laramie-Fox Hills aquifers as a replacement source if needed. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Applicants reserve the right in the future under the Court's retained jurisdiction to prove that post pumping depletions will be noninjurious. Upon entry of a decree in this case, Applicants will be entitled to apply for and receive a new well permit for the uses in accordance with this Application and otherwise in compliance with C.R.S. § 37-90-137. **V. Remarks.** A. The 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 Applicants' intent to consolidate the instant matter with the pending Division 1 application in Water Division 1 upon completion of publication. Applicants request 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 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 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. All wells shall be installed and metered as reasonably required by the State Engineer. The well will be equipped with a totalizing flow meter and Applicants, or their successors and assigns, shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. Applicants, or their 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. Applicants intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' Property. H. Applicants 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. 2021CW3063; Previous Case No. 12CW124 – CLIMAX MOLYBDENUM COMPANY, % Aaron Hilshorst, Henderson Mine, P.O. Box 68, Empire, Colorado 80438 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Brian M. Nazarenus, Esq., Sheela S. Stack, Esq., Nazarenus Stack & Wombacher, 5299 DTC Blvd, Suite 610, Greenwood Village, Colorado 80111, (720) 647-5661)

Application for Finding of Reasonable Diligence

LAKE, CHAFFEE, FREMONT, and PUEBLO COUNTIES

2. Introduction. Climax owns and operates the Climax Mine, located approximately twelve miles northeast of the Town of Leadville, Colorado, at a point intersecting the Continental Divide and encompassing various headwaters of the Arkansas River, Eagle River, and Blue River (Tenmile Creek) watersheds. The Climax Mine has, over time, appropriated or acquired numerous water rights and constructed a complex network of water diversion, conveyance, and storage facilities to support its mining and milling operations. In 2001, in Consolidated Case Nos. 92CW233 and 92CW336, Climax's water rights located in the Colorado River basin were readjudicated into a single integrated unit known as the Climax Water Supply System. These water rights have since been administered in accordance with the terms and conditions set forth in the decree entered in Consolidated Case Nos. 92CW233 and 92CW336 ("Readjudication Decree"). By the decree entered in Case No. 12CW124, Climax adjudicated a conditional water right for the Storke Wastewater Pump Station ("SWPS Water Right"), which has operated in the Arkansas River basin for decades as part of the Climax Water Supply System, but was not included in the Readjudication Decree. In addition, Climax appropriated exchanges

to the SWPS (“Arkansas Basin Exchanges”) and obtained a plan for augmentation to replace out-of-priority depletions to the Arkansas River resulting from the SWPS operation. By this Application, Climax seeks a finding of reasonable diligence to continue as conditional the SWPS Water Right and the Arkansas Basin Exchanges decreed in Case No. 12CW124. See **Exhibit 1** attached to the application a map depicting the general locations of the boundaries of the Climax Mine and the facilities that are relevant to this Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **3. Original Decree.** The original amended decree was entered by the Water Court, Water Division 2, on October 29, 2015, in Case No 12CW124. **4. Description of the SWPS Water Right.** 4.1. Name of Structure. Storke Wastewater Pump Station (Water District Identification Number (“WDID”) 1101223). 4.2. Legal Description. The Storke Wastewater Pump Station is located near the headwaters of the East Fork of the Arkansas River in the NE ¼ of the NE ¼ of Section 14, Township 8 South, Range 79 West of the 6th P.M., Lake County, Colorado, at a point approximately 346 feet from the North section line and 803 feet from the East section line of said Section 14, approximately 10 miles northeast of the town of Leadville in Lake County, Colorado at an elevation of approximately 11,100 feet mean sea level (NAD-83 UTM Easting, Northing 398457, 4357360 meters Zone 13N). The SWPS collects and pumps snowmelt and runoff from a drainage area of approximately 93.3 acres. 4.3. Source. Precipitation and snowmelt runoff water tributary to the East Fork of the Arkansas River. 4.4. Date of Appropriation. December 28, 2012. 4.5. Decreed Amount. 10.0 cubic feet per second (“cfs”), conditional. 4.6. Decreed Uses. The water will be used for all beneficial uses, including domestic, industrial, commercial, evaporation replacement, mining, milling, mine reclamation and continuing mine depletions from the exposure of groundwater, and fire protection uses. Additionally, the water may be produced for immediate application to beneficial use; for storage, and subsequent application to beneficial use or release and re-diversion to storage; for exchange purposes; and for replacement of depletions resulting from the use of water from other sources. Additionally, the water may be used, reused, and successively used to extinction, and may be used by disposition to other parties by sale, lease, trade, or other means. The water will be used within the boundaries of the Climax Mine as it currently exists or may exist in the future. If water is used by disposition to other parties by sale, lease, trade, or other means, and outside of the boundaries of the Climax mine as it currently exists or may exist in the future, such use must be pursuant to a subsequent decree authorizing such use, with an appropriately detailed reuse plan, pursuant to a substitute water supply plan approved under C.R.S. § 37-92-308 or successor statute, or pursuant to an interruptible water supply agreement approved under C.R.S. § 37-92-309 or successor statute. **5. Description of Appropriative Rights of Exchange.** 5.1. Exchange Reach No. 2. Columbine Ditch to SWPS. 5.1.1. Exchange-From Points. The exchange-from point is the location identified as the delivery location to the Arkansas River described for the structure described below. The approximate locations of the exchange-from point and related structure are shown on **Exhibit 2.** 5.1.1.1. Columbine Ditch. Water from the Columbine Ditch will be delivered to the confluence of Chalk Creek and the East Fork of the Arkansas River. The Columbine Ditch is located in portions of Sections 4, 5, 6 and 9, Township 8 South, Range 79 West of the 6th P.M., Eagle and Lake Counties, Colorado. The Ditch starts at Headgate No. 1, which is the furthest

northwest, and runs generally southeast to Headgate No. 2, then to Headgate No. 3, then across the Continental Divide at Columbine Pass, and discharges the collected waters into the West Branch of Chalk Creek, a tributary of the Arkansas River. Surface runoff is diverted by the ditch along its entire course. Three unnamed branches of the East Fork of the Eagle River are intercepted by the ditch at the following points of diversion:

5.1.1.1.1. Headgate No. 1. Headgate No. 1 is situated at a point from whence the Southeast corner of Section 5, Township 8 South, Range 79 West of the 6th P.M. bears South 55°39' East a distance of 7,127.6 feet in Eagle County, Colorado. The UTM coordinates of this headgate are in Zone 13 North and are as follows: Northing 4360235m, Easting 392178m. The WDID is 3701067.

5.1.1.1.2. Headgate No. 2. Headgate No. 2 is situated at a point from whence the said Southeast corner of Section 5, Township 8 South, Range 79 West of the 6th P.M. bears South 57°29' East a distance of 4,957.3 feet in Eagle County, Colorado. The UTM coordinates of this headgate are in Zone 13 North and are as follows: Northing 4359871.841m, Easting 392690.277m. WDID: 3701066.

5.1.1.1.3. Headgate No. 3. Headgate No. 3 is situated at a point from whence the said Southeast corner of Section 5, Township 8 South, Range 79 West of the 6th P.M. bears South 65°38' East a distance of 1,091 feet in Eagle County, Colorado. The UTM coordinates of this headgate are in Zone 13 North and are as follows: Northing 4359186.678m, Easting 393634.282m. WDID: 3704641.

5.1.1.2. Arkansas River Delivery Location. Confluence of Chalk Creek and East Fork Arkansas River, in the SW¼ of the SE¼ of Section 16, Township 8 South, Range 79 West of the 6th P.M., Lake County, Colorado. The UTM coordinates in Zone 13 North are as follows: Northing 4356124m, Easting 394786m. WDID: 1120096.

5.1.2. Exchange-To Point. SWPS, described in paragraph 4, above. The approximate locations of the Exchange-To Point and related structure are shown on **Exhibit 2**.

5.1.3. Use of Water. The substitute supplies exchanged to the SWPS will be used by Climax to replace out-of-priority depletions resulting from water pumped from the Arkansas River basin via the SWPS.

5.2. Exchange Reach No. 3: Pueblo Water Delivery Points to SWPS.

5.2.1. Exchange-From Points. The exchange-from points are the locations identified as the delivery locations to the Arkansas River described for each location and/or structure listed below. The approximate locations of the exchange-from points and related structures are shown on **Exhibit 2**.

5.2.1.1. Pueblo Water Delivery Points ("Pueblo Water Delivery Points"). Pueblo may deliver water to Climax from any of the following structures, pursuant to the lease described in paragraph 5.3.6.3, below:

5.2.1.1.1. Clear Creek Reservoir. Clear Creek Reservoir is located on Clear Creek in all or part of Sections 7 and 8, Township 12 South, Range 79 West of the 6th P.M., and Section 12, Township 12 South Range 80 West of the 6th P.M., Chaffee County, Colorado. The Clear Creek Reservoir Dam axis and the centerline of Clear Creek intersect at a point whence the South quarter corner of Section 8, Township 12 South, Range 79 West of the 6th P.M. bears South 27° West a distance of 2,255 feet. The UTM coordinates in Zone 13 North and are as follows: Northing 4319850m, Easting 392217m. WDID: 1103504.

5.2.1.1.1.1. Arkansas River Delivery Location. Confluence of Clear Creek and Arkansas River, in the SE¼ of the NE¼ of Section 8, Township 12 South, Range 79 West of the 6th P.M., Chaffee County, Colorado. The UTM coordinates in Zone 13 North and are as follows: Northing 4319999m, Easting 392558m. WDID: 1120033.

5.2.1.1.2. Turquoise Reservoir. Turquoise Reservoir is located in all or portions of Sections 7, 8, 17, 18, 19, and 20, Township 9 South, Range 80 West, and Sections 10,

11, 12, 13, 14, and 15, Township 9 South, Range 81 West of the 6th P.M., Lake County, Colorado. The Turquoise Reservoir Dam axis and the centerline of Lake Fork of the Arkansas River intersect at a point whence the Northwest corner of Section 16, Township 9 South, Range 80 West of the 6th P.M. bears N 44°46'18" East a distance of 10,344.35 feet, as more particularly described in the decree entered in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980. It is decreed to store 129,432 acre-feet. The UTM coordinates in Zone 13 North and are as follows: Northing 4345718m, Easting 381548m. WDID: 1103500. 5.2.1.1.2.1. Arkansas River Delivery Location. Confluence of Lake Fork Creek and Arkansas River, in the SW¼ of the SE¼ of Section 5, Township 10 South, Range 80 West of the 6th P.M., Lake County, Colorado. The UTM coordinates in Zone 13 North and are as follows: Northing 4340052m, Easting 383097m. WDID: 1120007. 5.2.1.1.3. Twin Lakes Reservoir. Twin Lakes Reservoir is located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 30, Township 11 South, Range 80 West of the 6th P.M., Lake County, Colorado. The Twin Lakes Dam axis and centerline of Lake Creek intersect at a point whence the Southeast corner of Section 23, Township 11 South, Range 80 West of the 6th P.M. bears South 54°13'8" East a distance of 3,803.10 feet as more particularly described in the decree entered in Case No. 80CW6, District Court, Water Division No. 2, dated October 23, 1980. It is decreed to store 141,000 acre-feet. The UTM coordinates in Zone 13 North and are as follows: Northing 4326098m, Easting 387247m. WDID: 1103503. 5.2.1.1.3.1. Arkansas River Delivery Location. Confluence of Lake Creek and Arkansas River, in the NW¼ of the SE ¼ of Section 24, Township 11 South, Range 80 West of the 6th P.M., Lake County, Colorado. The UTM coordinates in Zone 13 North and are as follows: Northing 4326220m, Easting 389238m. WDID: 1120035. 5.2.1.1.4. The Ewing Placer Ditch (a/k/a the Ewing Ditch). The Ewing Placer Ditch was decreed a water right for 18.5 cfs on November 13, 1911, with an appropriation date of June 1, 1906, by the District Court, Eagle County, Civil Action No. 507. The headgate of the ditch is located at a point on the left bank of said Piney Creek, whence the Northwest corner of Section 14, Township 8 South, Range 80 West of the 6th P.M., bears South 72°45' West 5,436 feet (NE¼ SE¼ Section 11, Township 8 South, Range 80 West of the 6th P.M.). The UTM coordinates in Zone 13 North and are as follows: Northing 4358087m, Easting 388688m. WDID: 1100500/3704642. 5.2.1.1.4.1. Arkansas River Delivery Location. The Ewing Placer Ditch diverts water from Piney Creek, a tributary of the Eagle River, and carries the water across the Continental Divide into Tennessee Creek for delivery to the Arkansas River. 5.2.1.1.5. The Warren E. Wurtz Ditch (a/k/a the Warren E. Wurts Ditch). The Warren E. Wurtz Ditch was decreed a water right for a total of 85 cfs on October 3, 1936, with an appropriation date of June 8, 1929, by the District Court, Eagle County, Civil Action No. 963. WDID Ditch: 3704648, WDID Extension: 3701290. 5.2.1.1.5.1. Decreed Points of Diversion. 5.2.1.1.5.1.1. Headgate No. 1. Headgate No. 1 is located at a point on the right bank of Bennett Creek, a tributary of the Eagle River, from which it derives 60 cfs of its supply of water, whence the Southeast corner of Section 32, Township 7 South, Range 80 West of the 6th P.M., bears South 66°58' East 3,307.9 feet (NE¼ SW¼ Section 32, Township 7 South, Range 80 West of the 6th P.M.). The UTM coordinates in Zone 13 North and are as follows: Northing 4361232m, Easting 382926m. WDID: 3701283. 5.2.1.1.5.1.2. Headgate No. 2. Headgate No. 2 is located at a point on the right bank of the South Fork of Bennett Creek, from which it derives 15 cfs of its supply of water, whence the Southeast corner of Section 32,

Township 7 South, Range 80 West of the 6th P.M. bears South 89°3' East 2,547 feet (SW¼ SE¼ Section 32, Township 7 South, Range 80 West of the 6th P.M). The UTM coordinates in Zone 13 North and are as follows: Northing 4360857m, Easting 383079m. WDID: 3701284. 5.2.1.1.5.1.3. Headgate No. 3. Headgate No. 3 is located at a point on the right bank of Mitchell Creek, a tributary of the Eagle River, from which it derives 18 cfs of its supply of water, whence the Southwest corner of Section 8, Township 8 South, Range 80 West of the 6th P.M. bears South 22°23' West 3,902 feet (SW¼ NW¼ Section 8, Township 8 South, Range 80 West of the 6th P.M). The UTM coordinates in Zone 13 North and are as follows: Northing 4358711m, Easting 382742m. WDID: 3701285. 5.2.1.1.5.1.4. Headgate No. 4. Headgate No. 4 is located at a point on the right bank of a small tributary of said Mitchell Creek from which it derives 2 cfs of its supply of water, whence the Southwest corner of Section 8, Township 8 South, Range 80 West of the 6th P.M. bears South 24°3' West 3,800 feet (SW¼ NW¼ Section 8, Township 8 South, Range 80 West of the 6th P.M). The UTM coordinates in Zone 13 North and are as follows: Northing 4358686m, Easting 382723m. 5.2.1.1.5.1.5. Headgate No. 5. Headgate No. 5 is located at a point on the right bank of the South Fork of said Mitchell Creek, from which it derives 5 cfs of its water, whence the Southwest corner of Section 8, Township 8 South, Range 80 West of the 6th P.M. bears South 50°48' West 2,799 feet (NE¼ SW¼ Section 8, Township 8 South, Range 80 West of the 6th P.M). The UTM coordinates in Zone 13 North and are as follows: Northing 4358102m, Easting 382926m. WDID: 3701286. 5.2.1.1.5.2. Arkansas River Delivery Location. The Warren E. Wurtz Ditch diverts water from Bennett Creek, Mitchell Creek, and tributaries of those creeks, all of which are tributaries of the Eagle River. The ditch carries water across the Continental Divide into West Tennessee Creek for delivery to the Arkansas River (SW¼ NE¼ Section 17, Township 8 South, Range 80 West of the 6th P.M). The UTM coordinates in Zone 13 North and are as follows: Northing 4356946m, Easting 383452m. WDID: 1100501. 5.2.1.1.6. Other. Any other reservoir or place from which Pueblo Water may legally deliver water from storage or by exchange within Exchange Reach No. 1 described herein, pursuant to the lease described in paragraph 5.3.6.3, below. 5.2.2. Exchange-To Point: SWPS. This point is described in paragraph 4, above. The approximate locations of the exchange-to point and related structure are shown on **Exhibit 2**. 5.2.3. Use of Water. The substitute supplies exchanged to the SWPS will be used by Climax to replace out-of-priority depletions resulting from water pumped from the Arkansas River basin via the SWPS. 5.3. Exchange Reach No. 4: Arkansas Well Pipeline Discharge Point to SWPS. 5.3.1. Exchange-From Point: Arkansas Well Pipeline Discharge Point. The Arkansas Well and Pipeline system is a transbasin diversion that moves water from the Arkansas River basin to the Colorado River basin. Water from the Arkansas Well is pumped through the Arkansas Well Pipeline to an interchange location that can route water to either Buffehr's Lake or Chalk Mountain Reservoir, both of which are in the Colorado River basin, for subsequent beneficial use by Climax. In addition, water from the Arkansas Well can be delivered from the Arkansas Well Pipeline for immediate beneficial use by Climax. The Arkansas Well is also used in the plan for augmentation decreed in Case No. 12CW124 to deliver replacement water from Climax's Colorado River Basin facilities to the East Fork Arkansas River via the Arkansas Well Pipeline. The Arkansas Well Pipeline runs from a point whence the Southeast corner of Section 10, Township 8 South, Range 79 West of the 6th P.M. bears South 9°20' East a distance of

520 feet. The Pipeline's Arkansas River basin outfall is located at the Arkansas Well, which is located near the headwaters of the East Fork of the Arkansas River, in the SE¼ SE¼ of Section 10, Township 8 South, Range 79 West of the 6th P.M., whence the Southeast corner of Section 10 bears South 17°37" East, a distance of 364.8 feet on the East Branch of the Arkansas River in Lake County, Colorado (NAD-83 UTM Easting, Northing 397016, 4357610 meters Zone 13N, WDID 1100759). The approximate locations of the exchange-to point and related structure are shown on **Exhibit 2**. 5.3.2. Exchange-To Point: SWPS. This point is described in paragraph 4, above. The approximate locations of the exchange-to point and related structure are shown on **Exhibit 2**. 5.3.3. Use of Water. The substitute supplies exchanged from the Arkansas Well Pipeline Discharge Point will be used by Climax to replace out-of-priority depletions resulting from water pumped from the Arkansas River basin via the SWPS. 5.3.4. Decreed Rate and Volume Limits on the Appropriative Rights of Exchange. 5.3.4.1. Exchange Matrix. The maximum exchange rates in cfs for the conditional appropriative rights of exchange are set forth in the following Exchange Matrix:

EXCHANGE-TO POINT	EXCHANGE-FROM POINTS						
	Climax		Pueblo Water Delivery Points				
	Columbine Ditch	Arkansas Well Pipeline	Ewing Placer Ditch	Warren E. Wurtz Ditch	Turquoise Reservoir	Twin Lakes Reservoir	Clear Creek Reservoir
SWPS	10 cfs, cond.	10 cfs, cond.	5 cfs, conditional				

5.3.4.2. Maximum Total Aggregate Exchange Rate. The maximum total aggregate rate of the appropriative rights of exchange for the simultaneous operation of one or more of the exchanges decreed herein shall not exceed 10 cfs. 5.3.4.3. Sources of Substitute Supply. The exchange rates and volumetric limits decreed herein shall apply to all sources of substitute supply. 5.3.4.4. Source. The source of water diverted at the exchange-to points identified in paragraphs 5.1.1, 5.1.2, and 5.1.3, above, is the Arkansas River. 5.3.4.5. Volumetric Limits. The estimated maximum annual pumping from the SWPS is 200 acre-feet, but up to a maximum of 1,000 acre-feet may need to be pumped during a year of extraordinary snowpack. 5.3.5. Appropriation Dates. 5.3.5.1. June 27, 2011 for Exchange Reach No. 2: Columbine Ditch to SWPS. 5.3.5.2. December 28, 2012 for Exchange Reach No. 3: Pueblo Water Delivery Points to SWPS, and for Exchange Reach No. 4: Arkansas Well Pipeline Discharge Point to SWPS. 5.3.6. Decreed Sources of Substitute Supply. The sources of substitute supply for these exchanges are the following waters owned, leased, controlled, or available for use by Climax which may be lawfully diverted from the Arkansas River in Chaffee and Lake Counties: 5.3.6.1. Columbine Ditch. 5.3.6.1.1. Date of original and all relevant subsequent decrees. Civil Action No. 963, District Court for Eagle County, entered on October 3, 1936. The Columbine Ditch water right was changed for use by the Board of Water Works of Pueblo in Case No. 90CW340, District Court, Water Division 5 (consolidated with Case No. 90CW052, District Court, Water Division 2), in which a decree was entered November 15, 1993. By the decree entered in Case No. 09CW187, District Court, Water Division 5, the type and place of use of the Columbine Ditch water right was changed for use by Climax and the City of Aurora. A junior direct flow right for 60 cfs for municipal, domestic, industrial, and all other beneficial uses was decreed in Case No. 09CW188, and continued as conditional in Case No. 19CW3098, District Court, Water Division 5. 5.3.6.1.2. Legal description of points of diversion. The Columbine Ditch is located in

portions of Sections 4, 5, 6, and 9, Township 8 South, Range 79 West of the 6th P.M., Eagle and Lake Counties, Colorado. 5.3.6.1.3. Source of Water. Three unnamed branches of the East Fork of the Eagle River, as well as snowmelt, sheet flow, and surface runoff tributary to the East Fork above the line of the Columbine Ditch and from other water along the course of the ditch. 5.3.6.1.4. Amount decreed. 60 cfs, and subject to additional quantitative limitations decreed in Case No. 90CW340. 5.3.6.1.5. Decreed Uses. All beneficial uses, including municipal, domestic, irrigation, commercial, industrial, mechanical, power generation and cooling, wastewater treatment, recreation, fish and wildlife, replacement, exchange, augmentation, substitution and storage in aid of the foregoing purposes, together with the right to use, reuse, and successively use to extinction the water changed as foreign water pursuant to C.R.S. §37-82-106. The decree entered in Case No. 09CW187 added the uses of fire protection, creation and maintenance of wetlands, stock watering, revegetation, mining purposes; milling purposes, including but not limited to flotation, drying, and in scrubbers and to transport tailing slurry, processing waste rock and to settle out tailing in the decant water pool, concrete batching, reclamation, dust suppression, reservoir evaporation replacement, disposition following initial use, and reuse until extinction. Climax's use of the Columbine Ditch water right is subject to the terms and conditions decreed in Case Nos. 09CW187, 09CW188, and 19CW3098. 5.3.6.2. Chalk Mountain Reservoir. 5.3.6.2.1. Date of original and all relevant subsequent decrees. The Chalk Mountain Reservoir storage right was decreed on October 23, 1953 by the Eagle County District Court in Civil Action 1193, and changed by the Readjudication Decree. The Readjudication Decree determined the historic consumptive use and associated consumptive use credits for the Climax Mine's water rights in Tenmile Creek and the Eagle River, including Chalk Mountain Reservoir. 5.3.6.2.2. Legal Description. Chalk Mountain Reservoir is a 205 acre feet reservoir located in the drainage of the East Fork of the Eagle River, in the Southwest corner of Section 34, Township 7 South, Range 79 West of the 6th P.M. 5.3.6.2.3. Sources of Water. Tenmile Creek and tributaries thereof, as decreed by the Summit County District Court in Civil Action 1710; also, that part of the drainage basin of the East Fork of the Eagle River lying above and tributary to Chalk Mountain Reservoir, being an area of approximately .32 square miles, including both surface run-off and underground flow. 5.3.6.2.4. Appropriation date. July 24, 1951. 5.3.6.2.5. Amount. 204.1 acre-feet. 5.3.6.2.6. Decreed Uses. The Chalk Mountain Reservoir water right is decreed by the Readjudication Decree for delivery to the Arkansas River basin for exchange, replacement and augmentation purposes. 5.3.6.3. Leased Water from Pueblo Water. Climax secured a lease for delivery of fully consumable water from the Pueblo Board of Water Works ("Pueblo Water") to the Arkansas River at the locations specified in paragraph 5.1.1.1, above, in Chaffee or Lake Counties. Under the lease, Climax will divert by exchange any water leased from Pueblo Water at or upstream of the confluence of Chalk Creek and the East Fork of the Arkansas River. The water rights to be used as sources for this leased water include Pueblo Water's ownership or contract rights in the Ewing Placer Ditch, the Warren E. Wurtz Ditch, the Busk-Ivanhoe System, and the Independence Pass Transmountain Diversion System, described below. Pueblo Water has agreed to deliver to Climax transmountain water or other totally consumable water in Chaffee or Lake Counties above the confluence of Clear Creek and the Arkansas River, including, but not limited to, reusable return flows from transmountain water rights or other

fully consumable water, except that Pueblo Water may not deliver to Climax any Fryingpan-Arkansas Project Water. Climax shall obtain prior approval of the Division Engineer for Water Division No. 2 before making “first-use” of Pueblo Water’s transmountain water rights changed in Consolidated Case Nos. 90CW340 (Water Division No. 5) and 90CW55 (Water Division No. 2) as a source of substitute supply in this Decree.

5.3.6.3.1. The Ewing Placer Ditch (a/k/a the Ewing Ditch). Ewing Placer Ditch diverts water from Piney Creek, a tributary of the Eagle River, and carries the water across the Continental Divide into Tennessee Creek for delivery to the Arkansas River. The Ewing Placer Ditch was decreed a water right for 18.5 cfs on November 13, 1911, with an appropriation date of June 1, 1906, by the District Court, Eagle County, Civil Action No. 507.

5.3.6.3.1.1. Decreed Point of Diversion. The headgate of the ditch is located at a point on the left bank of said Piney Creek, whence the Northwest corner of Section 14, Township 8 South, Range 80 West of the 6th P.M., bears South 72°45' West 5,436 feet.

5.3.6.3.1.2. Decreed Use. By decree dated November 15, 1993, the District Court for Water Division 5, in Case No. 90CW340, changed the use of the water right to include, in addition to the originally decreed uses of direct flow and storage for irrigation and agricultural use in the Arkansas River watershed, Pueblo Water’s use of the water rights for all beneficial uses related to Pueblo Water’s operation, including municipal, domestic, irrigation, commercial, industrial, mechanical, power generation and cooling, waste water treatment, recreation, fish and wildlife, replacement, exchange, augmentation, substitution, and storage in aid of the foregoing purposes, together with the right to use, reuse, and successively use to extinction as foreign water pursuant to C.R.S. § 37-82-106.

5.3.6.3.2. The Warren E. Wurtz Ditch (a/k/a the Warren E. Wurts Ditch). Warren E. Wurtz Ditch diverts water from Bennett Creek, Mitchell Creek, and tributaries of those creeks, all of which are tributaries of the Eagle River. The ditch carries water across the Continental Divide into West Tennessee Creek for delivery to the Arkansas River. The Warren E. Wurtz Ditch was decreed a water right for a total of 85 cfs on October 3, 1936, with an appropriation date of June 8, 1929, by the District Court, Eagle County, Civil Action No. 963.

5.3.6.3.2.1. Decreed Points of Diversion.

5.3.6.3.2.1.1. Headgate No. 1. Headgate No. 1 is located at a point on the right bank of Bennett Creek, a tributary of the Eagle River, from which it derives 60 cfs of its supply of water, whence the Southeast corner of Section 32, Township 7 South, Range 80 West of the 6th P.M., bears South 66°58' East 3,307.9 feet.

5.3.6.3.2.1.2. Headgate No. 2. Headgate No. 2 is located at a point on the right bank of the South Fork of Bennett Creek, from which it derives 15 cfs of its supply of water, whence the Southeast corner of Section 32, Township 7 South, Range 80 West of the 6th P.M., bears South 89°3' East 2,547 feet.

5.3.6.3.2.1.3. Headgate No. 3. Headgate No. 3 is located at a point on the right bank of Mitchell Creek, a tributary of the Eagle River, from which it derives 18 cfs of its supply of water, whence the Southwest corner of Section 8, Township 8 South, Range 80 West of the 6th P.M., bears South 22°23' West 3,902 feet.

5.3.6.3.2.1.4. Headgate No. 4. Headgate No. 4 is located at a point on the right bank of a small tributary of said Mitchell Creek, from which it derives 2 cfs of its supply of water, whence the Southwest corner of Section 8, Township 8 South, Range 80 West of the 6th P.M., bears South 24°3' West 3,800 feet.

5.3.6.3.2.1.5. Headgate No. 5. Headgate No. 5 is located at a point on the right bank of the South Fork of said Mitchell Creek, from which it derives 5 cfs of its water, whence the Southwest corner of Section 8, Township 8 South, Range 80 West of the 6th

P.M., County, Colorado, bears South 50°48' West 2,799 feet. 5.3.6.3.2.2. Decreed Uses. By decree dated November 15, 1993, the District Court for Water Division 5, in Case No. 90CW340, changed the use of the water right to include, in addition to the originally decreed uses of irrigation of land for agricultural purposes in the Arkansas River Valley, the same new uses decreed to the Ewing Ditch described above. 5.3.6.3.3. The Busk-Ivanhoe System. Busk-Ivanhoe System (the "System") diverts water from Hidden Lake Creek, Pan Creek, Lyle Creek, and Ivanhoe Creek, all tributaries of the Fryingpan and Roaring Fork Rivers, and carries such water through the Continental Divide for delivery into the headwaters of the Arkansas River. The System was decreed by absolute decree of the District Court, Garfield County, in Case No. 2621 dated January 9, 1928, with appropriation dates differing for various components of the System as more fully set forth in the referenced decree. Other absolute decrees were entered in Civil Actions No. 3082 and 4033 by the District Court, Garfield County. Pueblo Water owns an undivided one-half interest in these water rights. 5.3.6.3.3.1. Sources. Ivanhoe Creek, Hidden Lake Creek, Pan Creek and Lyle Creek, all tributary to the Fryingpan River. This water is carried across the Continental Divide and delivered into Pueblo Water's storage space in Turquoise Reservoir. 5.3.6.3.3.2. Appropriation Dates. Ivanhoe Reservoir: June 27, 1921; Ivanhoe Tunnel: June 27, 1921; Lyle Ditch: September 28, 1924; Pan Ditch: October 5, 1924; Hidden Lake Creek Ditch: August 30, 1927. 5.3.6.3.3.3. Amounts. Ivanhoe Reservoir: 1,200 acre-feet; Ivanhoe Reservoir and Tunnel: 35 cfs; Lyle Ditch: 50 cfs; Pan Ditch: 25 cfs; Hidden Lake Creek Ditch: 70 cfs, all subject to the limitations contained in the decree dated November 15, 1993, the District Court for Water Division 5, in Case No. 90CW340. 5.3.6.3.3.4. Decreed Points of Diversion. 5.3.6.3.3.4.1. Ivanhoe Reservoir. Ivanhoe Reservoir is formed by a dam approximately 21 feet high across the natural bed of Ivanhoe Creek, a tributary of Fryingpan Creek, and situated in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, Township 9 South, Range 82 West of the 6th P.M., with its Northeasterly end located at or about a point from which the Southeast Corner of Section 13 in the township and range aforesaid bears South 26°45' East, 7,021.3 feet, and by a bulkhead dam approximately 10 feet high at the upper end of said reservoir, situated in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13 in the township and range aforesaid and with its Southerly end located at or about a point from which the Southeast corner of said Section 13 bears South 8°11' East, 2,739.2 feet, it overflows all or portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ of Section 13. The Lyle, Pan, and Hidden Lake Creek Ditches, which divert from the points described below, all flow into Ivanhoe Reservoir. 5.3.6.3.3.4.2. Ivanhoe Tunnel. Ivanhoe Tunnel has its westerly portal at or about a point from which the Southeast corner of Section 13, Township 9 South, Range 81 West, 6th P.M., bears South 8°11' East, 2,739.2 feet, runs from thence South 54°25' East a distance of approximately 9,400 feet to its easterly portal, in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20, Township 9 South, Range 81 West of the 6th P.M., crosses in its course all or parts of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, Township 9 South, Range 82 West of the 6th P.M., and the SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, and the NE $\frac{1}{4}$ of Section 19 and the S $\frac{1}{2}$ NW $\frac{1}{4}$ and the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 20, all in Township 9 South, Range 81 West of the 6th P.M. 5.3.6.3.3.4.3. Lyle Ditch. Lyle Ditch diverts from Lyle Creek, a tributary of Ivanhoe Creek at or about a point on the Southeast bank of said stream in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, Township 9 South, Range 82 West of the 6th P.M., from which the Southeast corner of Section 13 in township and range aforesaid bears South 23°19'

East, 16,607.2 feet, runs from thence in Southeasterly direction a distance of about 2 miles to said Ivanhoe Reservoir. 5.3.6.3.3.4.4. Pan Ditch. Pan Ditch diverts from Pan Creek, a tributary of South Fryingpan Creek, at the North bank of said stream, in the NW¼ of NE¼ of Section 24, Township 9 South, Range 82 West of the 6th P.M., from which the Southeast Corner of Section 13 in said township and range bears North 52°14' East, 2,022.1 feet will run thence in a Northwesterly direction a distance of about 1.6 miles to said Ivanhoe Reservoir. 5.3.6.3.3.4.5. Hidden Lake Creek Ditch. Hidden Lake Creek Ditch diverts from Hidden Lake Creek, a tributary of Ivanhoe Creek, at the East bank of said stream, in the NE¼ SW¼ of Section 11, Township 9 South, Range 82 West of 6th P.M., from which the Southeast Corner of Section 13 in said township and range bears South 46°14' East, 11,392.5 feet will run thence in a Southeasterly direction a distance of about 1.1 miles to said Ivanhoe Reservoir. 5.3.6.3.3.5. Decreed Uses. By decree dated November 15, 1993, the District Court for Water Division 5, in Case No. 90CW340, changed the use of the water right to include, in addition to the originally decreed uses of irrigation of lands along Lake Fork Creek and the Arkansas River, the same new uses decreed to the Ewing Ditch described above. 5.3.6.3.4. The Independence Pass Transmountain Diversion System ("IPTDS"). IPTDS diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County in Water Division 5, and delivers the same to Twin Lakes Reservoir in Water Division 2. These water rights were adjudicated by a decree entered in Civil Action No. 3082 (District Court, Garfield County) dated August 25, 1936, and were modified by a decree entered in Case No. W-1901 (District Court, Water Division 5), dated May 12, 1976. These water rights have an appropriation date of August 23, 1930. Pueblo Water has the right to utilize a portion of such waters and the return flows therefrom by virtue of its ownership of shares of the Twin Lakes Reservoir and Canal Company. **6. Detailed Outline of Work Done For the Completion of the Conditional Appropriation and the Application of Water to a Beneficial Use**. The activities described below support Climax's claims for a finding of reasonable diligence. 6.1. Engineering Costs. During the diligence period, engineering costs were expended related to the Climax Water Supply System, to perform water rights planning, water rights protection and opposition, and water rights accounting. The total amount is approximately \$45,000.00. 6.2. Maintenance and Improvement Costs. During this diligence period, Climax engaged in maintenance projects and made improvements to Climax Water Supply System, including repair and replacement of components of the SWPS, replacement of parts to the Arkansas Well generator, replacement of valves on the Arkansas Well surge tank, and replacement and repair of the Arkansas Well Pump #1, compressor, and piping. The total amount is approximately \$90,000.00. In addition, during the diligence period Climax, as a shareholder of the Fremont Pass Ditch Company, paid \$190,529.00 for operation and maintenance of the Columbine Ditch. 6.3. Legal Fees. Legal fees were expended during the diligence period in water rights protection and opposition on behalf of Climax to protect the Climax Water Supply System. The total amount is approximately \$25,000.00. WHEREFORE, Climax respectfully requests that this Court enter an order finding that reasonable diligence has been exercised in the development of the SWPS Water Right and the Arkansas Basin Exchanges, and that the 10 cfs of the SWPS Water Right and the exchange rates set forth in paragraph 5.3.4.1, above for the Arkansas Basin Exchanges be continued as conditional.

CASE NO. 2021CW3064; Previous Case No. 15CW3030; 04CW125 – CITY OF SALIDA c/o David Lady, Director of Public works, 340 W. Hwy 291, Salida CO 81201

(Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Jennifer M. DiLalla, Joshua B. Boissevain, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Blvd., Suite 300, Boulder, CO 80302, (303) 443-8782)

Application for finding of Reasonable Diligence and to Make Absolute in Part

CHAFFEE COUNTY

2. Description of conditional appropriative rights of exchange: 2.1 South Arkansas River Exchange: 2.1.1 Original decree: June 30, 2009, Case No. 04CW125, Water Division 2 ("04CW125 Decree"). 2.1.2 Prior diligence decree: Oct. 29, 2015, Case No. 15CW3030, Water Division No. 2 ("15CW3030 Decree"). 2.1.3 Source of substitute supply: Augmentation credits generated by Salida's Tensassee Ditch water rights changed in Case No. 04CW125. The augmentation credits are measured at the turnback structure at the Salida Reservoir Ditch (a/k/a Champ Ditch) headgate, as described in paragraph 9.3 of the 04CW125 Decree ("Turnback Structure"). The approximate location of the Turnback Structure is shown on **Ex. 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.) 2.1.4 Exchange reach: The downstream extent of the exchange reach is the decreed point of diversion for the Tensassee Ditch, which is located on the South Arkansas River at a point North 47° 47' East 800.2 feet from the North 1/4 Corner of Section 7, T49N, R9E of the N.M.P.M., Chaffee County, Colorado. The upstream extent of the exchange reach is the headgate of the Harrington Ditch, which is located at a point in the NW 1/4 of the SE 1/4 of Section 10, T49N, R8E of the N.M.P.M., on the North bank of the South Arkansas River whence the Southwest Corner of said Section 10 bears South 64° 6' West a distance of 3,969 feet, in Chaffee County, Colorado. As confirmed in the 04CW125 Decree, measurement of the augmentation credits for exchange at the Turnback Structure at the Salida Reservoir Ditch does not change the downstream extent of the exchange. The approximate locations of the Tensassee Ditch's decreed point of diversion, the Harrington Ditch headgate, and the exchange reach are shown on **Ex. A**. 2.1.5 Amount: 2.23 cfs, CONDITIONAL. 2.1.6 Appropriation date: December 29, 2004. 2.1.7 Use: Water diverted under the South Arkansas River Exchange will be used as a source of augmentation water under the plan for augmentation decreed in Case No. 84CW158, as amended by the 04CW125 Decree and by any subsequent decrees amending that plan for augmentation, and will be used to replace out-of-priority depletions for all municipal purposes, including without limitation domestic, industrial, commercial, irrigation, stockwatering, recreation, fish and wildlife preservation and propagation, and fire protection, including both immediate application for such purposes and storage for subsequent application for such purposes; and for use, reuse, and successive use to extinction as allowed by Salida's decrees. 2.2 Arkansas River Exchange: 2.2.1 Original decree: The 04CW125 Decree. 2.2.2 Prior diligence decree: The 15CW3030 Decree. 2.2.3 Source of substitute supply: Augmentation credits generated by Salida's Tensassee Ditch water rights changed in Case No. 04CW125. The augmentation credits are measured at the Turnback Structure and delivered to the confluence of the Arkansas River and South Arkansas River, located as described in paragraph 2.2.4 below. 2.2.4 Exchange reach: The downstream extent of the exchange reach is the confluence of the Arkansas River and the South Arkansas

River, located near the point where the South Section line of Section 4, T49N, R9E of the N.M.P.M. crosses the Arkansas River. The upstream extent of the exchange reach is Pasquale Springs, the point of diversion for which is in the NW 1/4 of Section 32, T50N, R9E of the N.M.P.M., at a point approximately 2,000 feet from the North section line and 2,300 feet from the West section line of said Section 32. An underground collection system diverts water from various underground springs lying generally to the west, northwest of the described point of diversion at a distance of approximately 800 feet. Diversions at Pasquale Springs deplete the Arkansas River adjacent to the described springs. In addition to Pasquale Springs, water will be diverted under the Arkansas River Exchange at two exchange-two points within the exchange reach, as follows: (i) Marvin Park Irrigation System, diversions at which will be made from the Arkansas River through use of a pumping plant or collection gallery at a point approximately 3,223 feet North of the South section line of Section 32, T50N, R9E of the N.M.P.M., and 3,552 feet West of the East section line of said Section 32; and (ii) Riverside Park Irrigation System, diversions at which will be made from the Arkansas River through use of a pumping plant or collection gallery at a point approximately 1,107 feet North of the South section line of Section 32, T50N, R9E of the N.M.P.M., and 850 feet West of the East section line of said Section 32. The approximate locations of the confluence of the Arkansas River and the South Arkansas River, the points of diversion for Pasquale Springs, Marvin Park Irrigation System, Riverside Park Irrigation System, and the exchange reach are shown on **Ex. A.**

2.2.5 Amount: 2.23 cfs, **CONDITIONAL.** Diversions at Marvin Park Irrigation System will be at a maximum rate of 0.66 cfs, and diversions at Riverside Park Irrigation System will be at a maximum rate of 0.36 cfs. **2.2.6 Appropriation date:** December 29, 2004. **2.2.7 Use:** Water diverted by exchange at Pasquale Springs will be used as a source of augmentation water under the plan for augmentation decreed in Case No. 84CW158, as amended by the 04CW125 Decree and by any subsequent decrees amending that plan for augmentation, and will be used to replace out-of-priority depletions for all municipal purposes, including without limitation domestic, industrial, commercial, irrigation, stockwatering, recreation, fish and wildlife preservation and propagation, and fire protection, including both immediate application for such purposes and storage for subsequent application for such purposes; and for use, reuse, and successive use to extinction as allowed by Salida's decrees. Water diverted by exchange at Marvin Park Irrigation System will be used for irrigation of Marvin Park; water diverted by exchange at Riverside Park Irrigation System will be used for irrigation of Riverside Park. **2.3 Exchange of Excess Credits to North Fork Reservoir ("North Fork Reservoir Exchange"):**

2.3.1 Original decree: The 04CW125 Decree. **2.3.2 Prior diligence decree:** The 15CW3030 Decree. **2.3.3 Source of substitute supply:** Augmentation credits generated by Salida's Tensassee Ditch water rights changed in Case No. 04CW125, in excess of those needed by Salida pursuant to the plan for augmentation decreed in Case No. 84CW158, as amended by the 04CW125 Decree and any subsequent decrees amending that plan for augmentation. The excess augmentation credits are measured at the Turnback Structure. **2.3.4 Exchange reach:** The downstream extent of the exchange reach is the decreed point of diversion for the Tensassee Ditch, as described in paragraph 2.1.4 above. The upstream extent of the exchange reach is North Fork Reservoir, which is located on the North Fork of the South Arkansas River in the SE 1/4 of Section 5, T50N, R6E of the N.M.P.M. As confirmed in the 04CW125 Decree, measurement of the

augmentation credits for exchange at the Turnback Structure at the Salida Reservoir Ditch does not change the downstream extent of the exchange. The approximate locations of the Turnback Structure, the decreed point of diversion for the Tennessee Ditch, the inlet to North Fork Reservoir, and the exchange reach are shown on **Ex. A.** 2.3.5 Amount: 2.23 cfs, CONDITIONAL. 2.3.6 Appropriation date: December 29, 2004. 2.3.7 Operation of exchange: Consistent with paragraph 15.3.1 of the 04CW125 Decree, this exchange will operate pursuant to the terms of the 04CW125 Decree and the decree entered in Case No. 87CW61, Water Division 2, on September 19, 1988 (“87CW61 Decree”). 2.3.8 Use: Consistent with paragraph 15.3.7 of the 04CW125 Decree and paragraph 7 of the 87CW61 Decree, the excess augmentation credits stored by exchange in North Fork Reservoir will be used for municipal purposes, including incidental irrigation, and will retain all the uses for which they were decreed, including replacement of out-of-priority depletions under the plan for augmentation decreed in Case No. 84CW158. 2.4 The South Arkansas River Exchange, the Arkansas River Exchange, and the North Fork Reservoir Exchange are referred to collectively in this Application as the “Subject Conditional Water Rights.”

3. Detailed outline of work and expenditures toward completion of the appropriation and application of the water to beneficial use: 3.1 Integrated system: The Subject Conditional Water Rights are part of the integrated system of water rights that makes up Salida’s municipal water supply. “When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.” C.R.S. § 37-92-301(4)(b). 3.2 Diligence Period: The diligence period for the Subject Conditional Water Rights is October 2015 through October 2021 (“Diligence Period”). During the Diligence Period, Salida worked diligently to develop the Subject Conditional Water Rights, complete the appropriations, and place the water to beneficial use, as demonstrated by the following activities and expenditures: 3.2.1 Salida spent approximately \$5,799 in engineering consulting fees and \$23,678 in legal fees related to Salida’s compliance with and operations under the 04CW125 Decree. That decree approved the Tennessee Ditch change of water rights under which Salida generates the augmentation credits that make up the source of substitute supply for the Subject Conditional Water Rights. 3.2.2 Salida spent approximately \$91,094 on operation and maintenance of and repairs to the Harrington Ditch, including installation of a new headgate and intensive cleanup of the ditch. Salida also spent approximately \$6,210 in engineering consulting fees and \$8,019 in legal fees related to the Harrington Ditch, including both engineering and legal work related to a planned project to pipe a portion of the ditch. The Harrington Ditch is the exchange-to point for the South Arkansas River Exchange. 3.2.3 Salida devoted significant personnel resources to operating and maintaining the Harrington Ditch, including three annual walks of the entire ditch and daily checks of the headgate and screen during the irrigation season. 3.2.4 Salida devoted significant personnel resources to operating, maintaining, and repairing the Tennessee Ditch Turnback Structure, including installation of a new headgate, annual installation and removal of the recording device, daily checks of the structure during irrigation season, and weekly downloading of data from the recorder during that season. The augmentation credits that make up the substitute supply for the each of the Subject Conditional Water Rights are measured at the Turnback Structure. 3.2.5 Salida spent approximately \$3,232

in legal fees for work related to the Tennessee Ditch, which generates the augmentation credits that make up the source of substitute supply for the Subject Conditional Water Rights. 3.2.6 Salida rebuilt the pumps at the Pasquale Springs collection galleries, which is one of the exchange-to points for the Arkansas River Exchange. Salida also incurred costs for outside engineering consulting work related to the Pasquale Springs rebuild project. 3.2.7 Salida spent approximately \$56,530 in legal fees related to filing and prosecuting statements of opposition in Water Court to protect Salida's water rights, including the Subject Conditional Water Rights, from injury. 3.2.8 Salida spent approximately \$41,689 in legal fees related to filing and prosecuting Water Court applications to maintain and develop the water rights that, along with the Subject Conditional Water Rights, make up Salida's integrated municipal system. 3.2.9 Salida spent approximately \$29,704 in costs for engineering consultants in support of the Water Court activity described in paragraphs 3.2.7 and 3.2.8 above. 3.2.10 Salida spent approximately \$37,943 in engineering to review and update the City's Water Operations Master Plan, and also devoted significant personnel and legal resources to that project. 3.2.11 Salida spent approximately \$6,328 in engineering fees and \$716 in legal fees related to Salida's lease of capacity in North Fork Reservoir. In addition, Salida devoted significant personnel time to meeting with the Upper Arkansas Water Conservancy District ("UAWCD") to discuss plans for operating the North Fork Reservoir Exchange. 3.2.12 Salida paid \$2,700 in fees to UAWCD annually to maintain Salida's lease of capacity in North Fork Reservoir.

4. Claim to make absolute: 4.1 Arkansas River Exchange: 4.1.1 Date of operation: June 13, 2020. 4.1.2 Rate: 0.90 cfs. 4.1.3 Use: Augmentation of out-of-priority depletions under the plan for augmentation decreed in Case No. 84CW158, as amended by the 04CW125 Decree. 4.1.4 Place of beneficial use: The point of diversion described in paragraph 2.2.4, above, which is the point at which the augmented structure depletes the stream and which is shown on **Ex. A**. 4.1.5 Evidence of in-priority diversion by exchange and beneficial use: The report from Hendrix Wai Engineering, Inc., attached as **Ex. B** ("HWE Report"). 4.1.6 Rate remaining conditional: Based on Salida's in-priority operation of the exchange at the rate of 0.90 cfs, 1.33 cfs will remain conditional. 4.2 North Fork Reservoir Exchange: 4.2.1 Date of operation: June 6, 2020. 4.2.2 Rate: 1.38 cfs. 4.2.3 Use: Delivery into storage for subsequent beneficial use. See C.R.S. § 37-92-301(4)(e). 4.2.4 Place of storage by exchange: Water was stored by exchange in North Fork Reservoir, as described in paragraph 2.3.4 above and as shown on **Ex. A**, for subsequent beneficial use in Salida's municipal system. 4.2.5 Evidence of in-priority exchange to storage for subsequent beneficial use: The HWE Report. 4.2.6 Rate remaining conditional: Based on Salida's in-priority operation of the exchange at the rate of 1.38 cfs, 0.85 cfs will remain conditional.

5. Names and addresses of owners 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: North Fork Reservoir is located on land owned by the United States Forest Service, P.O. Box 25127, Lakewood, Colorado 80225. The reservoir is owned, managed, and operated by the Upper Arkansas Water Conservancy District, 339 East Highway 50, Salida, Colorado 81201. Based on the foregoing, Salida asks that the Court enter a decree (i) granting this Application; (ii) finding that Salida has exercised reasonable diligence in developing and completing the

appropriations of the Subject Conditional Water Rights during the Diligence Period; (iii) making the Arkansas River Exchange and the North Fork Reservoir Exchange partially absolute as described in paragraphs 4.1 and 4.2 above; and (iv) continuing those portions of the Subject Conditional Water Rights that remain conditional in full force and effect for six years from the month in which a final decree is entered in this case.

CASE NO. 2021CW3065; Previous Case No. 08CW38 – HILL RANCH, LTD., c/o B. F. Hill, 3794 C Highway 67W, Glen Rose, Texas 76043 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Alan E. Curtis, Virginia M. Sciabbarrasi, White & Jankowski LLC, 1333 West 120th Avenue, Suite 302, Westminster, CO 80234, (303) 595-9441)

Application for Finding of Reasonable Diligence

LAS ANIMAS COUNTY

2. Name of Structure. Legend Lake. **3. Name and Address of Owners of Land Upon Which Structure is Located.** Legend Lake is located on land owned by the Hill Ranch as described in paragraph 4.c. **4. Description of Conditional Water Rights.** **a.** Date of Original Decree: The water right for Legend Lake (Legend Lake Water Right) was confirmed by the decree entered on October 9, 2015 in Case No. 08CW38, Water Division 2 (08CW38 Decree). **b.** Subsequent Decrees Awarding Findings of Diligence: None. This is the first diligence filing for the Legend Lake Water Right. **c.** Location: NE¼ NE¼ Section 4, Township 34 South, Range 66 West of the 6th P.M., Las Animas County, Colorado. The midpoint of the reservoir is approximately 364 feet south of the north section line, and approximately 452 feet west of the east section line, of said Section 4, at a point located by G.P.S. by the Division of Water Resources during a field inspection at NAD 83, 520342.4 East, 4107874 North. **i.** Dimensions: **1.** Surface area of high water line: 9.7 acres. **2.** Maximum height of dam: 8.75 feet. **3.** Length of dam: 1557 feet. **d.** Source: Purgatoire River. **e.** Amount: 121.25 annual acre-feet, conditional. Hill Ranch can make gravity releases of 43.65 acre-feet and can pump the remaining balance of 77.60 acre-feet. **f.** Rate of Diversion in c.f.s. and Point of Diversion for Filling Legend Lake: 10 c.f.s. filled by diversions at the headgate of the Velasquez and Chacon No. 2 Ditch on the south bank of the Purgatoire River in the NW¼ of Section 4, Township 34 South, Range 66 West of the 6th P.M., at a point located by G.P.S. by the Division of Water Resources during a field inspection at NAD 83, 519321.1 East, 4108065 North. **g.** Appropriation Date: February 8, 2007. **h.** Uses: (1) Industrial use, including mining use, dust control, coal washing, augmentation, incidental domestic and fire protection purposes at the New Elk Mine; (2) Stock watering, recreational, piscatorial, fish and wildlife, fire protection, replacement of reservoir evaporation and augmentation purposes at Legend Lake; and (3) Augmentation and replacement purposes. Water may be diverted for immediate application to said uses, for storage and subsequent application to said uses and by exchange and subsequent application to said uses as limited by the terms and conditions of the 08CW38 Decree. **5. Diligence Claim.** **a.** Diligence Period. The most recent diligence period for the Legend Lake Water Right was from October 9, 2015, when the 08CW38 Decree was entered, through October 31, 2021 (Diligence Period). **b.** Activities and Expenditures. During the Diligence Period, Hill Ranch, with the assistance of White & Jankowski LLC and Hill Ranch’s consultants, completed activities and expended funds exceeding Ninety Nine Thousand Eight Hundred Dollars (\$99,800). These actions and

expenditures confirm Hill Ranch's steady and diligent effort to complete the appropriation of the Legend Lake Water Right. These activities and expenditures include: **i.** Continuing Use of Legend Lake Water Right. Hill Ranch continued to use the Legend Lake Water Right for all decreed purposes. **ii.** Installation, Maintenance and Repair of Diversion and Measurement Devices. Hill Ranch: (1) installed a flowmeter, a staff gage and a diversion structure and performed a pond storage study necessary for diversion and operation of the Legend Lake Water Right; (2) repaired and performed weed control on the ditch that supplies the Legend Lake Water Right and the perimeter of Legend Lake; and (3) installed a pump and power supply to pump water from Legend Lake, if desired by Hill Ranch or required by State water administration officials. **iii.** Monitoring and Reporting of Legend Lake Operations. Hill Ranch monitored diversions to and storage in Legend Lake and provided accounting of these operations to State water administration officials. **iv.** Lease/Sale of Hill Ranch Water Rights. Hill Ranch actively explored lease and sale of various Hill Ranch water rights, including the Legend Lake Water Right, to the New Elk Mine. As of this filing, Hill Ranch and New Elk have executed a water lease that includes use of the Legend Lake Water Right. **v.** Negotiations For Storage in Trinidad Reservoir. Hill Ranch explored storage of Hill Ranch water rights, including the Legend Lake Water Right, in Trinidad Reservoir. **vi.** Protection of Water Rights. Hill Ranch: (1) actively managed its water rights portfolio, including the Legend Lake Water Right to maximize long-term beneficial use; (2) reviewed Water Division 2 resumes and substitute water supply plan notices to identify applications requiring opposition; (3) filed statements of opposition and actively participated in numerous matters in Water Division 2 as necessary to protect Hill Ranch's water rights, including the Legend Lake Water Right; and (4) reviewed the 2020 Division 2 water rights abandonment list and prepared objections to the same. **6. Requested Ruling.** Based on the foregoing, Hill Ranch respectfully requests that the Water Court enter a decree finding that the entire Legend Lake Water right in the amount of 121.25 annual acre-feet to be filled at a rate of 10 c.f.s. by diversions at the headgate of the Velasquez and Chacon No. 2 Ditch be continued in full force and effect for all decreed purposes. **7. Names and Addresses of Owners or Reputed Owners of Land Upon Which Structures are Located.** All the facilities and structures identified in this Application are on land owned by Hill Ranch. WHEREFORE, Hill Ranch respectfully requests that the Court find the foregoing actions and expenditures demonstrate Hill Ranch's steady effort to apply the full decreed amount of the Legend Lake Water Right to beneficial use in a reasonably expedient and efficient manner under all pertinent facts and circumstances and that Hill Ranch is entitled to continuation of the Legend Lake Water Right for additional diligence periods at its full decreed rate for all decreed purposes.

CASE NO. 2021CW3066; Previous Case Nos. 15CW3027; 85CW134(B) – PUEBLO WEST METROPOLITAN DISTRICT, 109 E. Industrial Boulevard, P.O. Box 7005, Pueblo West, Colorado 81007 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Robert F. T. Krassa, Krassa & Miller, LLC, 2300 Canyon Blvd., Suite 2, Boulder, CO 80301, 303-442-2156)
Application for Finding of Reasonable Diligence
PUEBLO COUNTY

2. Introduction, Description of Decree. Pueblo West Metropolitan District ("Pueblo West") seeks a finding of reasonable diligence for appropriative rights of reuse and exchange decreed on June 8, 2009 in Case 85CW134(B), Water Division No. 2. That decree may be inspected at the office of the Clerk of this Court or at the office of the Pueblo County Clerk and Recorder under Reception # 1810233, recorded June 29, 2009.

a. Said decree in 85CW134(B) adjudicated a plan of use, re-use and successive use by exchange of reusable return flows attributable to all sources other than measured reusable return flows from Pueblo West's wastewater treatment plants. The sources of reusable water for the exchange decreed in Case 85CW134(B), which are the subject of the present application, are sources which by their nature cannot be measured directly at those sources. Those sources include by way of example and not limitation, lawn irrigation return flows and septic system return flows.

b. Said decree in 85CW134(B) also adjudicated Pueblo West's exchange of water from Lake Meredith to Pueblo Reservoir as part of its exchange and reuse plan, and all issues arising thereunder, as well as consideration of return flow credits based on calculation or estimation of sub-surface flows at Pueblo West's measurement points.

c. Other appropriative rights of exchange for Pueblo West were decreed by this Court in Case 85CW134(A). The description of the bifurcation of original case 85CW134, and the distinction between 85CW134(A) and 85CW134(B), is set out on page numbers ii and iii of the decree in 85CW134(A) and was re-stated at page 2 of the said 85CW134(B) decree. The 85CW134(A) decree may be inspected at the office of the Clerk of this Court or at the office of the Pueblo County Clerk and Recorder under Reception # 1029671, Book 2703, page 68 as recorded December 28, 1993.

3. Names of Structures Utilized under Case 85CW134(B).

(a) Pueblo Reservoir. Pueblo Reservoir is formed by a dam across the Arkansas River in Pueblo County in Sections 25 and 36, Township 20 South, Range 66 West of the 6th Principal Meridian, and in Section 1, Township 21 South, Range 66 West of 6th Principal Meridian, as depicted on the U.S. Geological Survey 7.5' series, topographic map of the Northwest Pueblo quadrangle (1974 photo revision), and as described in the Decree in Case No. B-42135 (District Court, Pueblo County), dated June 25, 1962.

(b) Pueblo West Trifurcation Point. The previous trifurcation point connection was to the Pueblo Dam South Outlet Works at the South end of the concrete portion of the dam of Pueblo Reservoir, in the SW 1/4 of the NE 1/4 of said Section 36. A second connection, to the North Outlet Works of the same dam, is located in the NW/4NE/4 of the same Section 36 and has come into use as part of Pueblo West's connection to the Southern Delivery System. This second connection was approved in previous diligence decree 15CW3027 as the functional equivalent of the previous connection for purposes of the subject exchange. Both connections are 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.)

(c) Pueblo West Wastewater Treatment Plant, located in Section 16, T.20S, R.65W of the 6th P.M. in Pueblo County, whose outfall flows into a tributary of Dry Creek (also known as Wildhorse Creek) and thence into the Arkansas River.

4. Description of Sources of Water for Exchange and Reuse.

(a) Twin Lakes. Pueblo West owns 5912.295 shares of the capital stock of the Twin Lakes Reservoir and Canal Company ("Twin Lakes"). This stock represents pro rata ownership of the Independence Pass Transmountain Diversion System which diverts water from the headwaters of the Roaring Fork River and its

tributaries in Pitkin County. These water rights were adjudicated by a Decree in Civil Action No. 3082 (District Court, Garfield County) dated August 25, 1936 and were modified by a Decree in Case No. W-1901 (District Court, Water Division No. 5) dated May 12, 1976. These water rights have an appropriation date of August 23, 1930, with a direct flow amount for diversions through the transmountain tunnel of 625 cubic feet per second with an annual limit of 68,000 acre feet, a running ten year limit of 570,000 acre feet, and various other limitations recited in the Decrees. These water rights are decreed for all beneficial uses. By virtue of its ownership of such stock, Pueblo West has the right to utilize such waters and the return flows therefrom. These are transmountain waters not native to the Arkansas River. Also, Pueblo West has, by virtue of its ownership of shares in the Twin Lakes Reservoir and Canal Company, a right to use and occupy a portion of the storage capacity of Twin Lakes Reservoir. Pueblo West's Twin Lakes water derived from Arkansas River Basin sources is not legally available for re-use. **(b) Case 80CW160.** Non-tributary underground water adjudicated in Case No. 80CW160 by Decree of the District Court for Water Division No. 2 dated November 18, 1985. This Decree adjudicated 17 wells which withdraw water from the Dakota Sandstone and Purgatoire formations. All of the wells are located within the municipal boundaries of Pueblo West. The total amount of water which may be diverted from said wells is 3303 g.p.m. or about 7.3 c.f.s. All of the wells were constructed prior to June 20, 1972, and are decreed for the following uses: "municipal, including domestic, industrial, commercial, irrigation, fire protection, stock water, recreation, and any other beneficial use, including the right to store the water, use it for augmentation purposes, and to consume all of the water withdrawn from said wells." The location, construction date and amount of water from each well are as follows. (P.W. means Pueblo West, G.C. means Golf Course and T. means Teckla. Location is given as quarter of quarter, section, township and range West of the 6th P.M. in that sequence.)

Name	Location	Date	Amount
P.W. #1	SE1/4 SW1/4 12-19-66	March 17, 1969	50 gpm
P.W. #2	SE1/4 NE1/4 16-20-66	Aug. 10, 1969	500 gpm
P.W. #3	SW1/4 NE1/4 11-20-66	Aug. 14, 1969	83 gpm
P.W. #4	SE1/4 NW1/4 9-20-66	May 30, 1962	45 gpm
P.W. #5	SW1/4 SE1/4 12-20-66	Aug. 17, 1969	15 gpm
P.W. #6	NE1/4 NW1/4 22-20-66	Aug. 20, 1969	500 gpm
P.W. #7	NE1/4 NE1/4 7-20-66	Aug. 20, 1969	175 gpm
P.W. #8	NW1/4 NW1/4 8-20-65	Sept. 10, 1969	55 gpm
P.W. #11	Ctr. of NW1/4 3-20-66	April 12, 1971	500 gpm
P.W. #12	NW1/4 NE1/4 1-20-66	April 15, 1970	65 gpm
P.W. #14	NW1/4 NW1/4 2-20-66	Aug. 4, 1970	500 gpm
P.W. #15	SE1/4 NW1/4 17-19-65	May 4, 1972	200 gpm
P.W. #16	NE1/4 NW1/4 2-20-66	April 26, 1972	100 gpm
P.W. #17	NW1/4 NW1/4 21-19-65	June 19, 1972	80 gpm
G.C. #1	NE1/4 NW1/4 11-20-66	March 27, 1972	150 gpm
T. #1	NW1/4 NW1/4 24-20-66	June 10, 1971	180 gpm
T. #3	NE1/4 NE1/4 24-20-66	March 1, 1976	105 gpm

The remaining provisions of the said Decree in case 80CW160, which is recorded at Book 2264, pages 790 through 807, records of Pueblo County, are incorporated by reference.

This water is non-tributary to the Arkansas River and may be used and re-used to extinction subject to C.R.S. 37-82-106. **(c) Case 80CW171.** Non-tributary underground water adjudicated in Case No. 80CW171 by Decree of the District Court for Water Division No. 2 dated August 13, 1985, for Pueblo West Well No. 18, located in the SW 1/4 NW 1/4, Section 18, T. 19 S., R. 65 W. of the 6th P.M. in Pueblo County, withdrawing water from the Dakota and Lytle Sandstone formations, in an amount of 40 gpm or 0.09 c.f.s., with a limitation to 650 acre feet in any ten consecutive years. The construction date is November 15, 1976, and the decreed uses are the same as recited in subparagraph (b) hereinabove. The remaining provisions of the said Decree in case 80CW171, which is recorded at Book 2253 pages 308 through 312, records of Pueblo County, are incorporated by reference. This water is non-tributary to the Arkansas River and may be used and re-used to extinction pursuant to C.R.S. 37-82-106. **(d) Successive Use Waters.** Return flows from the re-use of waters described in paragraphs 5(a) through 5(c) hereof, will be successively reused to extinction. **(e) Other Sources.** Water from such additional or replacement wells as are constructed by Pueblo West pursuant to the provisions of the Decrees for the water rights identified in foregoing subparagraphs (b) and (c), or pursuant to applicable rules, regulations or permits, to recover the amount of groundwater to which Pueblo West is entitled. **5. Description of Exchange and Re-Use Plan, With Appropriation Date.** **a. Date of original decree:** June 8, 2009, Case 85CW134(B), District Court, Water Division No. 2, State of Colorado, as recorded June 29, 2009 at Reception # 1810233, records of Pueblo County. **b. Subsequent decrees awarding findings of diligence:** Case 15CW3027, decree dated October 6, 2015. **c. Priority Date:** December 1, 1978, **d. Use:** All municipal purposes, including domestic, industrial, commercial, irrigation, stock water, recreation and fire fighting, and all uses for which the waters to be exchanged and reused are decreed, including the uses decreed in said Case 85CW134(A). A map of Pueblo West's service area is attached as Exhibit B. **e. Location of exchange reaches and amounts of exchange decreed: (1) For return flows delivered** to the Arkansas River below Pueblo Reservoir and which are simultaneously exchanged to Pueblo Reservoir storage and to the Trifurcation Point, the rate of flow shall be a maximum of 30.0 cfs on an average daily basis. **(2) For return flows stored** in Lake Meredith and then released to the Arkansas River, the rate of flow for exchange to Pueblo Reservoir and to the Trifurcation Point shall be a maximum of 100.0 cfs on an average daily basis. **(3) For return flows delivered** to the Arkansas River upstream of the dam forming Pueblo Reservoir, Pueblo West may simultaneously divert at the Pueblo West Trifurcation Point, or store in Pueblo Reservoir, at the rate those return flows accrue to the stream as determined under this Decree. **6. 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:** Pueblo West owns and operates a single, unified and integrated municipal water supply and wastewater collection and treatment system that contain numerous components. Those components include, but are not limited to, the individual water rights and points of diversion described in this application, and the appropriative rights of exchange and reuse rights that are the subject of this application. Paragraph 108 of the said decree in Case 85CW134(A) provides that, "The proposed exchange and reuse program is part of a single extensive system of water supply and distribution. Pueblo West's ability to complete and make absolute the appropriative rights

of exchange is dependent in large part on growth in water demand in the Pueblo West Water Service Area. Therefore, based on the foregoing Findings of Fact, for purposes of showing diligence in completing the appropriate rights of exchange, diligence as to any part of the system by which Pueblo West brings the Reusable Waters to the Pueblo West Water Service Area and reuses the Reusable Sewered Return Flows shall be considered diligence as to completion of the appropriate rights of exchange. Sec. 37-92-301(4)(b), C.R.S.” This provision, along with all other provisions of the decree in 85CW134(A) not specifically changed by the decree in 85CW134(B) was incorporated by reference into the decree in 85CW134(B) by paragraph 2 thereof. During the period from October 6, 2015 through October 26, 2021 (the "Diligence Period"), Pueblo West has among other things conducted the following activities. **a. On the water system**, constructed North Tank and booster station at a cost of \$ 2.5 million, upgraded River Pump Station pump and manifolds at a cost of \$ 1.3 million and Wildhorse Pipeline design work at a cost of \$ 300,000. **b. On the wastewater system**, constructed Tract 220/States Avenue sewer main cost \$3.5 million, Lift Station # 3 cost \$ 1.5 million and Lift Station #2 Overflow pond \$ 1.3 million. **c. participated in a number of water court cases** in which other entities seek exchanges in the Arkansas River between the Fountain Creek confluence and Pueblo Reservoir, in order to protect Pueblo West’s ability to operate the subject exchange as decreed in said case 85CW134. **d. Pueblo West has expended over \$800,000** in engineering fees during the diligence period in water supply development, protection, acquisition, and accounting, over \$70,000 of which can be directly attributable to the exchange of sewer and non-sewered return flows decreed in Case 85CW134(A) and (B). **e. The total amount spent by Pueblo West** on activities related to the exchange and reuse rights decreed in Case 85CW134(B) during the Diligence Period exceeds \$ 10 million. All of these activities were necessary to fully utilize the subject conditional water rights. The work performed and actions taken by Pueblo West during the Diligence Period demonstrate Pueblo West's continuing intent to develop the conditional appropriate rights of exchange and reuse described in this application. Pueblo West has shown that it can and will divert, store or otherwise capture, possess or control and beneficially use the subject exchange and reuse rights and that the subject exchange and reuse rights can and will be completed with diligence and within a reasonable time. Pueblo West has in all respects diligently worked toward placing the subject conditional water right to beneficial use. **7. Names and addresses of owners 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. **a. Pueblo Reservoir and both of the above** described the Pueblo West Trifurcation Point locations are on land owned the U.S. Department of Interior, Bureau of Reclamation, (“Reclamation”), Eastern Colorado Area Office, 11056 West County Rd. 18-E, Loveland, Colorado 80537-9711. **b. The Pueblo West Wastewater Treatment Plant** is on land owned by Pueblo West.

CASE NO. 2021CW3067; Previous Case Nos. 12CW210; 85CW134 (A) – PUEBLO WEST METROPOLITAN DISTRICT, 109 E. Industrial Boulevard, P.O. Box 7005, Pueblo West, Colorado 81007 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorney: Robert F. T. Krassa, Krassa & Miller, LLC, 2300 Canyon Blvd., Suite 2, Boulder, CO 80301, 303-442-2156)

Application to Make Absolute in Part

PUEBLO COUNTY

Introduction, Description of Decree. Pueblo West Metropolitan District ("Pueblo West") seeks to make partly absolute its appropriative rights of reuse and exchange decreed on September 21, 1993 in Case 85CW134(A), Water Division No. 2. That decree may be inspected at the office of the clerk of this Court or at the office of the Pueblo County Clerk and Recorder under Reception # 1029671, Book 2703, page 68, recorded Dec. 28, 1993. Said decree adjudicated a plan of use, reuse and successive use by exchange of reusable return flows attributable to the measured discharge from Pueblo West's wastewater treatment plants. **a. The decree in Case 85CW134(A)** excluded all issues and claims of use, re-use and successive use by exchange of reusable return flows attributable to all other sources, which by their nature cannot be measured directly at those sources. Those sources include by way of example and not limitation, lawn irrigation return flows and septic system return flows. Those claims and issues were determined in Case 85CW134(B) and are not the subject of the present application. In addition, Pueblo West's request to exchange water from Lake Meredith to Pueblo Reservoir as part of its exchange and reuse plan, and all issues arising thereunder, as well as consideration of return flow credits based on calculation or estimation of sub-surface flows at Pueblo West's measurement points, were allocated to Case 85CW134(B). **b. Previous diligence determinations** regarding the water rights confirmed in case 85CW134(A) were approved by this Court on June 23, 2000 in Case 99CW118, October 10, 2006 in Case 06CW53, February 9, 2013 in Case 12CW110 and December 28, 2019 in Case 19CW3013. **3. Names of Structures Utilized under Case 85CW134(A).** **a. Pueblo Reservoir.** Pueblo Reservoir is formed by a dam across the Arkansas River in Pueblo County in Sections 25 and 36, Township 20 South, Range 66 West of the 6th Principal Meridian, and in Section 1, Township 21 South, Range 66 West of 6th Principal Meridian, as depicted on the U.S. Geological Survey 7.5' series, topographic map of the Northwest Pueblo quadrangle (1974 photo revision), and as described in the Decree in Case No. B-42135 (District Court, Pueblo County), dated June 25, 1962. **b. Pueblo West Trifurcation Point.** The previous trifurcation point connection was to the Pueblo Dam South Outlet Works at the South end of the concrete portion of the dam of Pueblo Reservoir, in the SW 1/4 of the NE 1/4 of said Section 36. A second connection, to the North Outlet Works of the same dam, is located in the NW/4NE/4 of the same Section 36 and has come into use as part of Pueblo West's connection to the Southern Delivery System. This second connection was approved in the decree in Case 15CW3027 entered October 6, 2015 as the functional equivalent of the previous connection for purposes of the subject exchange. Both connections are 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.) **c. Pueblo West Wastewater Treatment Plant,** located in Sections 7 and 16, T.20S, R.65W of the 6th P.M. in Pueblo County, whose outfall flows into a tributary of Dry Creek (also known as Wildhorse Creek) and thence into the Arkansas River. **4. Description of Sources of Water for Exchange and Reuse.** **a. Twin Lakes.** Pueblo West owns 5912.295 shares of the capital stock of the Twin Lakes Reservoir and Canal Company ("Twin Lakes"). This stock represents pro rata ownership of the Independence Pass Transmountain Diversion System which diverts water from the headwaters of the Roaring Fork River and its

tributaries in Pitkin County. These water rights were adjudicated by a Decree in Civil Action No. 3082 (District Court, Garfield County) dated August 25, 1936 and were modified by a Decree in Case No. W-1901 (District Court, Water Division No. 5) dated May 12, 1976. These water rights have an appropriation date of August 23, 1930, with a direct flow amount for diversions through the transmountain tunnel of 625 cubic feet per second with an annual limit of 68,000 acre feet, a running ten year limit of 570,000 acre feet, and various other limitations recited in the Decrees. These water rights are Decreed for all beneficial uses. By virtue of its ownership of such stock, Pueblo West has the right to utilize such waters and the return flows therefrom. These are transmountain waters not native to the Arkansas River. Also, Pueblo West has, by virtue of its ownership of shares in the Twin Lakes Reservoir and Canal Company, a right to use and occupy a portion of the storage capacity of Twin Lakes Reservoir. Pueblo West's Twin Lakes water derived from Arkansas River Basin sources is not legally available for re-use. **b. Case 80CW160.** Non-tributary underground water adjudicated in Case No. 80CW160 by Decree of the District Court for Water Division No. 2 dated November 18, 1985. This Decree adjudicated 17 wells which withdraw water from the Dakota Sandstone and Purgatoire formations. All of the wells are located within the municipal boundaries of Pueblo West, generally described in paragraph 2 hereinabove. The total amount of water which may be diverted from said wells is 3303 g.p.m. or about 7.3 c.f.s. All of the wells were constructed prior to June 20, 1972, and are decreed for the following uses: "municipal, including domestic, industrial, commercial, irrigation, fire protection, stock water, recreation, and any other beneficial use, including the right to store the water, use it for augmentation purposes, and to consume all of the water withdrawn from said wells." The location, construction date and amount of water from each well are as follows. (P.W. means Pueblo West, G.C. means Golf Course and T. means Teckla. Location is given as quarter of quarter, section, township and range West of the 6th P.M. in that sequence.)

Name	Location	Date	Amount
P.W. #1	SE1/4 SW1/4 12-19-66	March 17, 1969	50 gpm
P.W. #2	SE1/4 NE1/4 16-20-66	Aug. 10, 1969	500 gpm
P.W. #3	SW1/4 NE1/4 11-20-66	Aug. 14, 1969	83 gpm
P.W. #4	SE1/4 NW1/4 9-20-66	May 30, 1962	45 gpm
P.W. #5	SW1/4 SE1/4 12-20-66	Aug. 17, 1969	15 gpm
P.W. #6	NE1/4 NW1/4 22-20-66	Aug. 20, 1969	500 gpm
P.W. #7	NE1/4 NE1/4 7-20-66	Aug. 20, 1969	175 gpm
P.W. #8	NW1/4 NW1/4 8-20-65	Sept. 10, 1969	55 gpm
P.W. #11	Ctr. of NW1/4 3-20-66	April 12, 1971	500 gpm
P.W. #12	NW1/4 NE1/4 1-20-66	April 15, 1970	65 gpm
P.W. #14	NW1/4 NW1/4 2-20-66	Aug. 4, 1970	500 gpm
P.W. #15	SE1/4 NW1/4 17-19-65	May 4, 1972	200 gpm
P.W. #16	NE1/4 NW1/4 2-20-66	April 26, 1972	100 gpm
P.W. #17	NW1/4 NW1/4 21-19-65	June 19, 1972	80 gpm
G.C. #1	NE1/4 NW1/4 11-20-66	March 27, 1972	150 gpm
T. #1	NW1/4 NW1/4 24-20-66	June 10, 1971	180 gpm
T. #3	NE1/4 NE1/4 24-20-66	March 1, 1976	105 gpm

The remaining provisions of the said Decree, which is recorded at Book 2264, pages 790 through 807, records of Pueblo County, are incorporated by reference. This water is non-

tributary to the Arkansas River and may be used and re-used to extinction subject to C.R.S. 37-82-106. **c. Case 80CW171.** Non-tributary underground water adjudicated in Case No. 80CW171 by Decree of the District Court for Water Division No. 2 dated August 13, 1985, for Pueblo West Well No. 18, located in the SW 1/4 NW 1/4, Section 18, T. 19 S., R. 65 W. of the 6th P.M. in Pueblo County, withdrawing water from the Dakota and Lytle Sandstone formations, in an amount of 40 gpm or 0.09 c.f.s., with a limitation to 650 acre feet in any ten consecutive years. The construction date is November 15, 1976, and the decreed uses are the same as recited in subparagraph (b) hereinabove. The remaining provisions of the said Decree, which is recorded at Book 2253 pages 308 through 312, records of Pueblo County, are incorporated by reference. This water is non-tributary to the Arkansas River and may be used and re-used to extinction pursuant to C.R.S. 37-82-106. **d. Successive Use Waters.** Return flows from the re-use of waters described in paragraphs 5(a) through 5(c) hereof, will be successively reused to extinction. **e. Other Sources.** Water from such additional or replacement wells as are constructed by Pueblo West pursuant to the provisions of the Decrees for the water rights identified in foregoing subparagraphs (b) and (c), or pursuant to applicable rules, regulations or permits, to recover the amount of groundwater to which Pueblo West is entitled. **5. Description of Exchange and Re-Use Plan, With Appropriation Date.** **a. Date of original decree:** September 21, 1993, Case 85CW134(A), District Court, Water Division No. 2, State of Colorado, as recorded December 28, 1993 at reception number 1029671, Book 2703, page 68, records of Pueblo County. **b. Previous diligence determinations** regarding the water rights confirmed in case 85CW134(A) were approved by this Court on June 23, 2000 in Case 99CW118, October 10, 2006 in Case 06CW53, February 9, 2013 in Case 12CW110 and December 28, 2019 in Case 19CW3013. **c. Priority Date:** December 1, 1978 **d. Use:** All uses for which the waters to be exchanged and reused are decreed, including the uses decreed in said Case 85CW134(A). **e. Location of exchange reaches** and amounts of exchange decreed: **(1) For return flows delivered** to the Arkansas River below Pueblo Reservoir on an instantaneous basis, the rate of flow for exchange to the upstream reservoir and diversion structures described in paragraph 4 shall be a maximum of 6.0 cfs on an average daily basis. This exchange reach is from the above described Waste Water Treatment Plant, downstream on Dry Creek and its tributaries to the Arkansas River confluence, which confluence is located in the NE/4NW/4 Section 35, Township 20 South, Range 65 West of the 6th P.M. in Pueblo County, thence upstream on the Arkansas River to the Pueblo Reservoir described in foregoing paragraph 3(a) or to the Trifurcation Point described in foregoing paragraph 3(b). **(2) For return flows delivered** to the Arkansas River upstream of the dam forming Pueblo Reservoir (described above), either by pipeline from the existing wastewater treatment plant or from such additional wastewater treatment plants as may be added to this plan pursuant to paragraph 8(e)(ii) hereof, Pueblo West may immediately divert at the Pueblo West Trifurcation Point at the rate those return flows accrue to the stream as determined under the Decree in 85CW134(A). **6. Claim to make absolute in part:** **a. Date water exchanged:** August 12, 2021 Amount: 1.92 cfs **b. Supporting evidence showing that applicant exchanged** such water and applied it to beneficial uses: a report by Pueblo West's water resources engineers with a summary of the water system records is attached as Exhibit B. **c. The water was applied to beneficial use** in the service area of Pueblo West. This service area is shown on map

attached as Exhibit C. **7. Names and addresses of owners 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. **a. Pueblo Reservoir and the Pueblo West Trifurcation Point** are on land owned the U.S. Department of Interior, Bureau of Reclamation, (“Reclamation”), Eastern Colorado Area Office, 11056 West County Rd. 18-E, Loveland, Colorado 80537-9711. **b. The Pueblo West Wastewater Treatment Plant** is on land owned by Pueblo West.

****Per Order, Resume to be published by Water Division 2****

CASE NO. 2021CW3068, Water Division 2 and CASE NO. 2021CW3195 Water Division 1; LIONS DEN TRUST, C/O: Victor Marx and Eileen Marx, 3395 Voyager Pkwy 130, Colorado Springs, CO 80921 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Ryan W Farr, #39394, Emilie B. Polley, #51296, MONSON, CUMMINS & SHOJET, LLC, 13511 Northgate Estates Dr., Ste. 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 augment up to seven (7) non-exempt wells to the not-nontributary Dawson aquifer to provide water service to an equivalent number of single-family lots, based on an anticipated subdivision of Applicant’s 35.97-acre parcel. Applicant therefore seeks to quantify the Denver Basin groundwater underlying the Applicant’s Property, and approval of a plan for augmentation for the use thereof. **III. Application for Underground Water Rights.** A. Legal Description of Wells.

1. Property Description. All wells will be located on Applicant’s approximately 35.97-acre property (“Applicant’s Property”) anticipated to be subdivided into seven lots of +/-5 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 W½ E½ NW¼ of Section 13, Township 12 South, Range 66 West of the 6th P.M., known as 12120 Casey Ln., Colorado Springs, CO 80908. 2. Existing Well. There is an existing domestic well with Division of Water Resources Permit No. 197034 (“Lions Den Well No. 1), permit attached as **Exhibit B**. It is drilled to a total depth of 360 feet to the Dawson aquifer, and located approximately 1600 feet from the North Section Line and 1650 feet from the West Section Line. The well was completed on October 26. Upon approval of this plan for augmentation, this well will be re-permitted. 3. Proposed Wells. Applicant proposes that up to six wells (one well per lot assuming seven lots) will be located on the Applicant’s Property at specific locations not yet determined (“Lions Den Wells Nos. 2 through 7”), to be constructed to the Dawson aquifer, for a total of seven wells. B. Water Source. 1. Not-Nontributary. The ground water to be withdrawn from the Dawson, Denver, and Arapahoe 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 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 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 each 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 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 C.R.S. §37-90-137(4). Applicants estimate 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)	167	1202.12	12.02	4.01
Denver (NNT – 4%)	443	2713.79	27.14	9.05
Arapahoe (NNT)	253	1547.68	15.48	5.16
Laramie Fox Hills (NT)	188	1018.13	10.18	3.39

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), 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 Applicants request the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, irrigation, stock water, guest house, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicants also request 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. Applicants may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, that Applicants 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 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 upon which the wells are and will be located as well as the underlying groundwater is owned by the Applicant. **IV. APPLICATION FOR PLAN FOR AUGMENTATION.** A. Structures to be Augmented. The structures to be augmented are the Lions Den Wells Nos. 1 through 7, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson aquifer of the Denver Basin underlying the Applicant's Property as requested and described herein. 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 Marx Wells Nos. 1 through 7, 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 up to seven wells proposed herein for up to seven residential lots. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: 1. Uses. i. Household Use Only: 0.26 acre-feet annually within single-family dwellings on up to seven lots, with a maximum of ten percent consumptive use based on nonevaporative septic leach field disposal systems. The annual consumptive use for each lot will therefore be 0.026 acre-feet per well, with return flows of 0.234 acre-feet per lot, or 1.638 acre-feet per year (assuming seven lots). ii. Landscape Irrigation: 0.05 acre-feet annually per 1,000 square feet (2.18 acre-feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre-feet. iii. Horses (or equivalent livestock): 0.011 acre-feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. 2. Each well will pump a maximum of 0.47 acre-feet of water per year per lot for a maximum total of 3.32 acre-feet being withdrawn from the Dawson aquifer per year. Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use inside a single-family dwelling of 0.26 acre-feet per year, with the additional 0.21 acre-feet of water per lot available for irrigation of lawn and garden, guest house use, and the watering of up to two horses or equivalent livestock on each residential lot (assuming seven residential lots). 3. Depletions. Applicant's consultant has determined that maximum stream depletions over the 300-year pumping period for the Dawson aquifer amounts to approximately 27.72% of pumping. Maximum annual depletions for total residential pumping from all wells (assuming seven wells) are therefore 0.92 acre-feet in year 300. Should Applicant's pumping be less than the 3.32 total, 0.47 acre-feet per lot, per year described herein, resulting depletions and required replacements will be correspondingly reduced. 4. 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 the up to seven residential wells. Applicant's consultant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative

septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.26 acre-feet per residence per year (assuming seven lots), total of 1.82 acre-feet, 1.638 acre-feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be more than adequately augmented. Should fewer than seven residential lots be developed, Applicant may pump up to the full amount requested herein, being 3.32 acre-feet, so long as resulting return flows are sufficient to replace depletions from pumping.

5. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Lions Den Wells Nos. 1 through 7, Applicant will reserve up to the entirety of the nontributary Laramie Fox Hills aquifer, accounting for actual stream depletions replaced 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, the Applicant will be entitled to apply for and receive well permits for the Lions Den Wells Nos. 1 through 7 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 it 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 non-tributary 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 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 wells shall be installed and metered as reasonably required by the State 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. 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-

foot 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 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. I. Adams Bank and Trust has a lienholder interest in the Applicant's Property. Pursuant to § 37-92-302(2)(b), C.R.S., Applicants will notify Adams Bank and Trust of the filing of this application by certified or registered mail, return receipt requested, no later than 14 days after the filing of this application. Thereafter, the Applicant will complete and file with the Court a Certificate of Notice as evidence that the required notice was given.

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 December 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 15th day of November 2021.



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



(Court seal)
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