

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING DECEMBER 2022 AND INVITATION TO JOIN STATE ENGINEER'S SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST AND/OR THE STATE ENGINEER'S PRODUCED NONTRIBUTARY GROUND WATER NOTIFICATION LIST. (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 December 2022, 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. 2021CW3008; ANGELVIEW LLC, 5585 Hwy 82, Twin Lakes, CO 81251

(Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Steven J. Bushong, Gunnar J. Paulsen, Bushong & Holleman P.C., 1525 Spruce Street, Suite 200, Boulder, CO 80302, (303) 431-9141, sbushong@BH-Lawyers.com)

Amended Application for Water Storage Rights, Groundwater Recharge Rights, Appropriative Rights of Substitution and Exchange, and Approval of Plan for Augmentation.

LAKE COUNTY

2. Introduction to Original Application and Amendment. Applicant's original Application for Water Storage Right, Appropriative Rights of Exchange, and Approval of Plan for Augmentation was filed in this matter on February 23, 2021, and supplemented by Applicant on March 1, 2021 (together, the "Original Application"). The Original Application sought adjudication of three water storage rights for ponds filled by diversions from Bartlett Gulch, conditional appropriative rights of substitution and exchange, and a plan for augmentation. The three ponds are AngelView Lake, AngelView Pond, and Angel View Feeder Pond (collectively, the "Ponds"). The Ponds are located on Applicant's property located in the SE ¼ of Section 18, Township 11 South, Range 80 West of the 6th P.M., in Lake County, Colorado ("AngelView Property"). A map depicting the AngelView Property and Ponds 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.) While the subject case was pending a dispute arose regarding the proper pathways of Bartlett Gulch and that dispute was bifurcated and set for trial among the interested parties in this case. The Bartlett Gulch issues were ultimately resolved by a compromise Settlement Agreement dated November 3, 2022, among the Applicant, the State Engineer and Division Engineer for Water Division 2 ("Engineers") and David Smith and Mai-Lan Huynh ("Smith-Huynh") ("Settlement Agreement"). The Applicant is filing this Amended Application per the terms of the Settlement Agreement to claim a new point of diversion for the Ponds, a point of administration for the East Fork of Bartlett Gulch, and to include certain wetland consumption in its augmentation plan. Applicant also includes in its Amended Application an enlargement for AngelView Lake based on the as-built conditions, flow through and refill rights for the Ponds, modified exchange reaches, and various clarifying changes to the Original Application. **3.**

Relation Back. An application by Smith-Huynh was filed on December 30, 2020, and amended on January 12, 2021 (Case No. 20CW3086), which includes claims that involve the same source of water derived from effectively the same point of diversion as the Original Application. Accordingly, and pursuant to C.R.S. § 37-92-306.1, Applicant requested in its Original Application that the adjudication relate back to December 30, 2020, and the water rights claimed therein be senior to the rights claimed in case No. 20CW3086, given that Applicant filed its Original Application within sixty (60) days of the Smith-Huynh application and filed a timely statement of opposition to the Smith-Huynh application. The Amended Application does not modify the relation back of the claimed appropriative rights in the Original Application. **FIRST CLAIM FOR RELIEF.**

Adjudication of Water Storage Rights. 4. **Name of Structure: AngelView Lake.** 4.1. **Legal Description:** W ½ of the SE ¼ of Section 18, Township 11 South, Range 80 West of the 6th P.M., in Lake County, Colorado. UTM coordinates for the centroid of the lake are Easting: 381052.67, Northing: 4327532.39, Zone 13. Located using aerial photography, USGS topographic maps and surveys. AngelView Lake is located on a tributary to Lake Creek via Twin Lakes, 4.2. **Source:** Bartlett Gulch, a tributary to Lake Creek via Twin Lakes Reservoir, a tributary of the Arkansas River; and an unnamed tributary of Lake Creek via Twin Lakes Reservoir, a tributary to the Arkansas River, 4.3. **Name and Capacity of Ditch or Ditches Used to Deliver Water to AngelView Lake:** 4.3.1. **Name of Ditch:** AngelView Ditch, 4.3.1.1. **Legal Description:** The point of diversion is on the East Fork of Bartlett Gulch at approximately UTM coordinates - Easting: 380842.71, Northing: 4327595.05, Zone 13. Located using aerial photography and USGS topographic maps. PLSS: NE ¼ of the SW ¼ of Section 18, Township 11 South, Range 80 West of the 6th P.M., in Lake County, Colorado, 4.3.1.2. **AngelView Ditch rate of diversion:** 6 cfs, 4.3.2. **Name of Ditch:** AngelView Pipeline, 4.3.2.1. **Legal Description:** The point of diversion is on the East Fork of Bartlett Gulch at approximately UTM coordinates - Easting: 380765.15, Northing: 4327705.45, Zone 13. Located using aerial photography and USGS topographic maps. PLSS: NE ¼ of the SW ¼ of Section 18, Township 11 South, Range 80 West of the 6th P.M., in Lake County, Colorado, 4.3.2.2. **AngelView Pipeline Rate of Diversion:** 6 cfs, 4.3.3. **Name of Ditch:** AngelView Pump Station. 4.3.3.1. **Legal Description:** The point of diversion is on the West Fork of Bartlett Gulch at approximately UTM coordinates - Easting: 380905.78, Northing: 4327168.28, Zone 13. Located using aerial photography and USGS topographic maps. PLSS: SW ¼ of the SE ¼ of Section 18, Township 11 South, Range 80 West of the 6th P.M., in Lake County, Colorado, 4.3.3.2. **AngelView Pump Station Rate of Diversion:** 1 cfs, 4.4. **Date of Appropriation:** December 31, 1978, 4.5. **How Appropriation Initiated:** Construction of the lake, 4.6. **Date Water Applied to Beneficial Use:** May 26, 1985, 4.7. **Amount Claimed:** 5.0 acre-feet, absolute, 4.8. **Use:** Recreational, piscatorial, and aesthetic (including a waterfall created by diversions pursuant to the structures in paragraph 4.3 and/or with a pump to use AngelView Lake water for the waterfall), 4.9. **Surface area of high-water line:** 1.2 acres, 4.9.1. **Vertical Height of Dam:** 8 ft, 4.9.2. **Length of Dam:** 170 ft, 4.10. **Total Capacity of AngelView Lake in Acre-feet:** 5.2 acre-feet, 4.11. **Name and Address of Owner of Land on which Structure for Water Right is Located:** Applicant for all structures except a portion of AngelView Ditch and AngelView Pipeline located on Smith-Huynh property, 4.12. **Remarks.** Applicant asserts this appropriation is subject to a 2020 priority based on the Original Application. 5. **Name of Structure: AngelView Lake (Enlargement).** 5.1. **Legal**

Description and Source: Same as for AngelView Lake. See Paragraphs 4.1 and 4.2, above, 5.2. Name and Capacity of Ditch or Ditches Used to Deliver Water to AngelView Lake (Enlargement): The AngelView Ditch, AngelView Pipeline and AngelView Pump Station described in Paragraphs 4.3.1 through 4.3.3 above will be used at the same diversion rates set forth in said paragraphs for filling and flow through, 5.3. Date of Appropriation: May 26, 2020, 5.4. How Appropriation Initiated: Construction of dam modifications, 5.5. Date Water Applied to Beneficial Use: N.A., 5.6. Amount Claimed: 0.2 acre-feet, absolute, with right to continuous refills of the 5.2 acre-feet AngelView Lake capacity, not to exceed 9.3 acre-feet of refills, plus the right to flow through water, which water will flow through all three Ponds including the replacement of evaporation and any seepage in all three Ponds, 5.7. Use: Recreational, piscatorial, and aesthetic (including a waterfall created by diversions pursuant to the structures in paragraph 4.4 and/or with a pump to use AngelView Lake (Enlargement) water for the waterfall), 5.8. Name and Address of Owner of Land on which Structure for Water Right is Located: Applicant, 5.9. Remarks: Applicant asserts this appropriation is subject to a 2022 priority based on the Amended Application. **6. Name of Structure: AngelView Pond**. 6.1. Legal Description: N ½ of the SE ¼ of Section 18, Township 11 South, Range 80 West of the 6th P.M., in Lake County, Colorado. UTM coordinates for the centroid of the pond are Easting: 381294.42, Northing: 4327659.30, Zone 13. Located using aerial photography, USGS topographic maps and surveys, 6.2. Source: Bartlett Gulch, a tributary to Lake Creek via Twin Lakes Reservoir, a tributary of the Arkansas River; and an unnamed tributary of Lake Creek via Twin Lakes Reservoir, a tributary to the Arkansas River, 6.3. Name and Capacity of Ditch or Ditches Used to Deliver Water to AngelView Pond: The AngelView Ditch, AngelView Pipeline and AngelView Pump Station described in Paragraphs 4.3.1 through 4.3.3 above will be used at the same diversion rates set forth in said Paragraphs for filling and also for flow through pursuant to Paragraph 5.6., 6.4. Date of Appropriation: December 31, 1978, 6.5. How Appropriation Initiated: Construction of the pond, 6.6. Date Water Applied to Beneficial Use: May 26, 1985, 6.7. Amount Claimed: 1.5 acre-feet, absolute, 6.8. Use: Recreational, piscatorial, and aesthetic, 6.9. Surface Area of High-Water Line: 0.4 acres, 6.9.1. Vertical Height of Dam: 10 ft., 6.9.2. Length of Dam: 60 ft., 6.10. Total Capacity of AngelView Pond in Acre-Feet: 1.5 acre-feet, 6.11. Name and Address of Owner of Land on which Structure for Water Right is Located: Applicant, 6.12. Remarks. Applicant asserts this appropriation for AngelView Pond is subject to a 2020 priority based on the Original Application, except that additional flow through water is the subject of a 2022 priority under the AngelView Lake (Enlargement) water right claimed above. **7. Name of Structure: AngelView Feeder Pond**. 7.1. Legal Description: N ½ of the SE ¼ of Section 18, Township 11 South, Range 80 West of the 6th P.M., in Lake County, Colorado. UTM coordinates for the centroid of the pond are Easting: 381303.39, Northing: 4327628.44, Zone 13. Located using aerial photography and USGS topographic maps and surveys, 7.2. Source: Bartlett Gulch, a tributary to Lake Creek via Twin Lakes Reservoir, a tributary of the Arkansas River; and an unnamed tributary of Lake Creek via Twin Lakes Reservoir, a tributary to the Arkansas River, 7.3. Name and Capacity of Ditch or Ditches Used to Deliver Water to AngelView Feeder Pond: The AngelView Ditch, AngelView Pipeline and AngelView Pump Station described in Paragraphs 4.3.1 through 4.3.3 above will be used at the same diversion rates set forth in said Paragraphs for filling and also for flow through pursuant to Paragraph 5.6., 7.4. Date of Appropriation: September 22, 2020, 7.5. How

Appropriation Initiated: Construction of the Pond, 7.6. Date Water Applied to Beneficial Use: NA, 7.7. Amount Claimed: 0.05 acre-feet, conditional, 7.8. Use: Recreational, piscatorial, and aesthetic, 7.9. Surface Area of High-Water Line: 0.015 acres, 7.9.1. Vertical Height of Dam: 3 ft., 7.9.2. Length of Dam: 15 ft., 7.10. Total Capacity of AngelView Feeder Pond in Acre-feet: 0.05 acre-feet, 7.11. Name and Address of Owner of Land on which Structure for Water Right is Located: Applicant, 7.12. Remarks. Applicant asserts this appropriation for AngelView Feeder Pond is subject to a 2020 priority based on the Original Application, except that additional flow through water is the subject of a 2022 priority under the AngelView Lake (Enlargement) water right claimed above.

SECOND CLAIM FOR RELIEF. Adjudication of Surface Water Right. 8. Name of Structure. Bartlett Gulch Splitter. 8.1. Legal Description: SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 18, Township 11 South, Range 80 West of the 6th P.M., in Lake County, Colorado. UTM coordinates - Easting: 380132.25, Northing: 4328156.77, Zone 13. Located using aerial photography and USGS topographic maps and GPS surveys, 8.2. Source: Bartlett Gulch, tributary to Lake Creek via Twin Lakes Reservoir, tributary to the Arkansas River, 8.3. Date of Appropriation: November 3, 2022, 8.4. How Appropriation Initiated: Filing Settlement Agreement with Water Court, 8.5. Date Water Applied to Beneficial Use: Water has historically been split into the East Fork of Bartlett Gulch (“East Fork”) and West Fork of Bartlett Gulch (“West Fork”) at about the location of the proposed Bartlett Gulch Splitter, 8.6. Amount Claimed: 6.0 cfs, absolute, 8.7. Use: Recharge of groundwater from the East Fork to Lake Creek via Twin Lakes; irrigation of wetlands on AngelView Property; re-diversion and use pursuant to the storage water rights described for the Ponds; and use by Smith-Huynh consistent with pending Case No. 20CW3086. More specifically, the Bartlett Gulch Splitter will be a point of administration for delivery of Bartlett Gulch water into the East Fork and West Fork. See Paragraph 8.9, below. Water in the East Fork is or will be diverted by Applicant for recreational, piscatorial, and aesthetic uses in the Ponds as described in paragraphs 4 – 7, above and diverted by Smith-Huynh for piscatorial, wildlife habitat, recreation, and aesthetic uses claimed for the conditional storage right currently pending in Case No. 20CW3086. Water in the East Fork will also provide irrigation water for certain wetlands on AngelView Property through groundwater recharge and surface diversions, and recharge to Lake Creek via Twin Lakes, 8.8. Name and Address of Owner of Land on which Structure for Water Right is Located: United States Forest Service, 8.9. Remarks. The Bartlett Gulch Splitter is at a location where Bartlett Gulch splits into the East Fork and the West Fork. Although water has historically flowed in both directions at this location, there was a dispute with the Engineers over the extent to which the East Fork is a natural channel. That issue was not fully resolved by the Settlement Agreement. Instead, the Bartlett Gulch Splitter will be constructed and administered so that the Lake County augmentation releases to Bartlett Gulch pursuant to Case No. 98CW173, minus transit losses, will be delivered to the West Fork, and up to the next 6.0 cfs will be delivered to the East Fork. Flows greater than said amounts will be delivered into the West Fork except as the Division Engineer may determine to be necessary or desirable to avoid flooding along the West Fork from time to time without injury to vested water rights. The East Fork supplies water to the AngelView Ditch and AngelView Pipeline (See Paragraphs 4.3.1 and 4.3.2) and to the Caden & Elysa’s Pond described in Smith-Huynh’s pending Case No. 20CW3086. Per the Settlement Agreement, use of the East Fork will be administered as follows: (A) losses

on the East Fork will be considered simultaneous recharge to Lake Creek via Twin Lakes; (B) potential increased consumption of water by wetlands on AngelView Property resulting from groundwater recharge and diversions from the East Fork shall be calculated as equal to 1.5 acres of wetlands and covered under the Augmentation Plan described below; (C) Caden & Elysa's Pond that is the subject of Case No. 20CW3086 must be augmented when out-of-priority in accordance with the terms and conditions of that decree; and (D) water losses associated with other beaver ponds on the Smith-Huynh property may be addressed if they occur pursuant to the terms of the Settlement Agreement. **THIRD CLAIM FOR RELIEF. Approval of Plan for Augmentation.** **9.** Applicant seeks a decree approving a plan for augmentation to augment and replace evaporation losses and out-of-priority diversions to storage in the Ponds that are otherwise not legally exempt from priority administration and to augment certain consumption of water by wetlands. Approval of the plan for augmentation will allow Applicant to continue diverting water and keep its Ponds full at times when curtailment or release would otherwise be required. **10. Structures to be Augmented:** **10.1. Ponds.** See Paragraphs 4-7, above, **10.2. Wetlands.** AngelView has wetlands on its property that naturally consume water and for which no replacement is required. Evidence indicates that one or possibly more wetlands on AngelView Property may obtain part of their water supply from the recharge of groundwater and diversions from the East Fork. As a matter of compromise in the Settlement Agreement, Applicant agreed to augment 1.5 acres of wetlands to address the potential for increased wetland consumption on AngelView Property. A map of the structures to be augmented is included with the application as **Exhibit B. 11. Sources of Water to be Used for Augmentation (Pueblo Water):** The water rights or sources of water that will be used for augmentation in this augmentation plan include sources that will be delivered to Applicant by the Board of Water Works of Pueblo, Colorado ("Pueblo Water"). Applicant currently has a long-term contract with Pueblo Water for 12 acre-feet of fully consumable water a year for a 20-year period commencing April 1, 2021 and terminating March 31, 2041 ("Pueblo Water Contract"), as may be renewed in the future. Pueblo Water Contract sources include: **11.1. Fully consumable water owned or controlled by Pueblo Water.** All water to be used in this augmentation plan provided by Pueblo Water must be decreed or otherwise legally available for augmentation purposes. The Pueblo Water Contract is for up to 12 acre-feet per year of transmountain or other fully consumable water. The source of such water is unspecified in the lease but may include Pueblo Water's water stored in Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, from direct flow transmountain water or from any other reservoir or place from which Pueblo Water may deliver water, the sources of which are at the option of Pueblo Water, as long as they are legally available for augmentation purposes, but such sources do not include Fryingpan-Arkansas Project Water. Water deliveries may include, without limitation, water stored in Twin Lakes Reservoir (located in all or portions of Sec. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in T.11S., R.81W., 6th P.M., in Lake County), Turquoise Reservoir (located on Lake Fork Creek in Sec. 7, 8, 17, 18, 19, and 20, T.9S., R.80W., 6th P.M. and Sec. 10, 11, 12, 13, 14, and 15, T.9S., R.81W., 6th P.M., in Lake County), Clear Creek Reservoir (located in Sec. 7 and 8, T.12S., R.79W, and Sec. 12, T.12S., R.80W., 6th P.M. in Chaffee County, and reusable return flows. The sources of such water may include, but are not limited to, the water rights decreed in Case Nos. 84CW177, District Court, Water Div. No. 2; 84CW177(B), District Court, Water Div.

No. 2; 90CW340, District Court, Water Div. No. 5; W-1901, District Court, Water Div. No. 5; 95CW321, District Court, Water Div. No. 5; 90CW55, District Court, Water Div. No. 2; and 04CW130, District Court, Water Div. No. 2. At the option of Pueblo Water, such sources may be changed from time to time to suit the operational convenience of Pueblo Water. **12. Other Sources of Water Available for Augmentation.** Although AngelView has an adequate augmentation supply under the Pueblo Water Contract, it requests the ability to add additional sources of augmentation water to the augmentation plan in the future. See C.R.S. § 37-92-305(8)(c). Adding additional augmentation water will be limited to water previously approved by the Water Court to be used for such purposes. Prior to the additional water being approved, applicants will notice the Division Engineer and all other Objectors. A reasonable timeframe will be given for any objections prior to approval of any new source of augmentation water. **13. Statement of Plan for Augmentation.** This plan for augmentation is intended to allow for replacement of all out-of-priority evaporative losses from the Ponds and any out-of-priority filling of the Ponds, while allowing for continuous diversions for flow through water and to keep the Ponds full. Excess diversions will be returned to Twin Lakes via overflow outlet structures on the Ponds. Evaporation losses from AngelView Lake will be calculated as an on-channel reservoir pursuant to C.R.S. § 37-84-117(5), and the evaporation losses from the other Ponds and the connecting ditch will be calculated as off-channel. In addition, per the compromise Settlement Agreement, Applicant has agreed to dedicate adequate augmentation water to replace evaporation and evapotranspiration associated with 1.5 acres of wetlands on AngelView Property. Applicant's plan for augmentation will replace all of the aforementioned out-of-priority depletions as necessary to meet the lawful requirements of senior diverters at the time and location and to the extent that seniors would be deprived of their lawful entitlement. The operation of Applicant's plan for augmentation will not injuriously affect the owners of or persons entitled to use water under vested water rights or decreed conditional water rights. The total combined evaporative losses from the Ponds (and connecting ditch) to be replaced are estimated to be approximately 4.1 acre-feet a year and the total wetland consumptive losses augmented by this plan are estimated to be approximately 4.9 acre-feet per year. To the extent Applicant has inadequate augmentation water in any year, it shall lower the water level in one or more Ponds as needed to offset the out-of-priority evaporation that is not replaced. To the extent Applicant has more augmentation water than needed to keep the Ponds full and to replace wetland consumption in any year, Applicant will allow Smith-Huynh to use that water for augmentation in Case No. 20CW3086. **FOURTH CLAIM FOR RELIEF. Conditional Appropriative Rights of Substitution and Exchange.** **14.** Applicant seeks conditional appropriative rights of substitution and exchange by which fully consumable water will be made available in Twin Lakes at the lower terminus/exchange from locations, and Applicant will claim credit for this water at the upstream terminus/exchange locations on the East Fork and West Fork, all as described in more detail below. **15. Name of Exchanges.** 15.1. AngelView Ditch Exchange, 15.2. AngelView Pipeline Exchange, 15.3. AngelView Pump Station Exchange. **16. Location of Exchanges:** The location of the upstream and downstream extent of the exchanges are depicted in **Exhibit A** hereto and are described as follows: 16.1. AngelView Ditch Exchange: The exchange-from point is the approximate confluence of the East Fork and Twin Lakes Reservoir, which is located in the NE1/4 of the NE1/4 of Section 19, Township 11 South, Range 80 West of the 6th

P.M., in Lake County, Colorado. UTM coordinates - Easting: 381295.69, Northing: 4326845.50, Zone 13. Located using aerial photography and USGS topographic maps. The exchange will then extend up the East Fork to the AngelView Ditch described in Paragraph 4.3.1, above, 16.2. AngelView Pipeline Exchange: The exchange-from point is the approximate confluence of the East Fork and Twin Lakes Reservoir described in Paragraph 16.1, above. The exchange will then extend up the East Fork to the AngelView Pipeline described in Paragraph 4.3.2, above, 16.3. AngelView Pump Station Exchange: The exchange-from point is the approximate confluence of the West Fork and Twin Lakes Reservoir, which is located in the NE1/4 of the NE1/4 of Section 19, Township 11 South, Range 80 West of the 6th P.M., in Lake County, Colorado. UTM coordinates - Easting: 381422.96, Northing: 4327008.79, Zone 13. Located using aerial photography and USGS topographic maps. The exchange will then extend up the West Fork to the AngelView Pump Station described in Paragraph 4.3.3, above. **17. Appropriation Date**: September 15, 2020 for the AngelView Ditch Exchange; February 23, 2021 for the AngelView Pipeline Exchange and AngelView Pump Station Exchange. **18. How Appropriation Was Initiated**: Filing of Substitute Water Supply Plan request with the Office of the State Engineer on September 15, 2020 and providing notification to all parties who have subscribed to the Substitute Water Supply Plan Notification List for Water Division No.2. February 23, 2021 is the date of the Original Application, which included the same exchange reaches or structures. **19. Water Used for Replacement**: The water rights or sources of water that may be used for replacement include: 19.1. Pueblo Water. Sources made available by Pueblo Water at Twin Lakes Reservoir as described in Paragraph 11, above, including water made available pursuant to the Pueblo Water Contract, 19.2. Other Sources of Augmentation Water. Other sources of augmentation water as may be made available in Twin lakes Reservoir pursuant to Paragraph 12, above. **20. Amount of Exchange**. 6 cfs conditional for AngelView Ditch Exchange and AngelView Pipeline Exchange, and 1 cfs conditional for AngelView Pump Station Exchange. **21. Remarks**. Applicant asserts these appropriative rights of exchange are subject to a 2020 priority based on the Original Application. WHEREFORE, Applicant prays for a decree adjudicating and granting approval of (1) the water storage rights described in the First Claim for Relief, subject to the claimed relation-back to 2020 as described above; (2) the rights to the diversion point described in the Second Claim for Relief; (3) the augmentation plan described in the Third Claim for Relief; (4) the conditional appropriative rights of substitution and exchange described in the Fourth Claim for Relief, subject to the claimed relation-back to 2020; and (5) such further relief as the court deems just and proper pursuant to this Amended Application.

CASE NO. 2022CW4; KYLE DUNN, 20034 E. 59th Place, Aurora, CO 80019, 303-905-3171

Amended Application for Conditional Water Rights (Surface)

PUEBLO COUNTY

2. Name of Structure: K T Dunn Power Station, Type: Hydropower. **3. Location of Structure, Legal Description**: Pueblo County, Lot 400 Eagle Ranch, SE 1/4, NE ¼, Section 3, Township 23 South, Range 66 West, Principal Meridian S. **3B. Point of diversion, UTM Coordinates**: Easting: 521131.609, Northing: 4214311.004 Zone 13, Subdivision: Eagle Ranch, Lot: 400. Source of UTM's: Located from aerial map. Accuracy of location displayed on GPS Device: N/A. See general location map attached to the

application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). **4. Source:** Saint Charles River. **5A. Date of Appropriation:** December 12, 2022. **5B. How appropriation was initiated:** By filing this application. **5C. Date water applied to beneficial use:** N/A. **6. Amount claimed in cubic feet per second:** Conditional 20 (cfs). **7. List All Uses or Proposed Uses:** Nonconsumptive use via diversion for hydropower electricity generation. **7A. If irrigation:** N/A **7B. If non-irrigation, describe fully:** A hydropower electrical generator will be installed for domestic use (lighting, heating, cooling, etc.). The point-of-use will be within 400 feet of the point-of-diversion legally described in section 3B of this application. The point-of-return will discharge all diverted water as return-flows back into the St. Charles River within 400 feet of the point-of-diversion legally described in section 3B of this application. **8. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants. **9. Remarks or any other pertinent information:** a. Applicant intends to make a nonconsumptive use of water on the St. Charles River to generate electricity; b. Applicant does not intend to use or modify the St. Charles Flood Ditch or the St. Charles Flood Ditch headgate; c. Applicant does not intend to use or modify the BF Patterson Ditch; d. Applicant does not intend to modify the headgate for the BF Patterson Ditch and any structures or components installed by Applicant will not come in contact with the headgate for the BF Patterson Ditch; e. Applicant intends to install a hydrokinetic turbine on the St. Charles River downstream from the headgate for the BF Patterson Ditch; f. Applicant intends to run wiring from the turbine to a shed or other structure located on Applicant's property; g. A portion of the BF Patterson Ditch is located on Applicant's property; however, Applicant does not intend to install any structures or components within the BF Patterson Ditch; h. The headgate for the BF Patterson Ditch is located on Applicant's property, however, any structures or components installed by Applicant will not come in contact with the headgate for the BF Patterson Ditch; i. The St. Charles Flood Ditch is not located on Applicant's property; j. Applicant does not intend to divert water from the BF Patterson Ditch or the St. Charles Flood Ditch.

CASE NO. 2022CW3084; Case dismissed due to failure to file a timely application for finding of reasonable diligence. This case is being listed in the resume to account for the case number in consecutive order.

CASE NO. 2022CW3085; DOWSON TRUST NUMBER TWO, Dean Dowson, Trustee, 1250 South Milwaukee Street, Denver, CO 80210 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Matthew L. Merrill, Merrill Law LLC, 6631 Mariposa Court, Denver, Colorado 80221, (303) 947-4453; matthew@merrillwaterlaw.com)

Application for Simple Change in Surface Point of Diversion for Weber Ditch No. 1
CHAFFEE COUNTY

2. Decreed water right for which change is sought: A. Name of structure: Weber Ditch No. 1. B. Original decree: In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District Number 11, Civil Action No.

1127, Chaffee County District Court (4th Judicial District), June 19, 1890. Subsequent to the original decree, the Colorado Division of Water Resources assigned WDID 1100703 to this structure. C. Original and most recent decreed point of diversion location: “North bank of [Three Mile] Creek, on Henry Weber’s Ranch in Sec. 20, Tp. 51 N., R. 8.E., N.M.P.M., Chaffee County, Colorado.” See **Exhibit A** attached to the Application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) D. Decreed source of water: Three Mile Creek, tributary to the Arkansas River. E. Appropriation date: December 31, 1873. F. Total amount decreed to structure: 0.4 cubic feet per second (cfs), absolute. G. Decreed use: Irrigation. H. Amount of water right that Applicant intends to change: 0.4 cfs. **3. Proposed change in Weber Ditch No. 1 surface point of diversion.** A. Description of change: Upon information and belief, the original point of diversion for the Weber Ditch No. 1 was located near the eastern section line of Section 20, based on review of topography and aerial imagery. Applicant seeks to change the point of diversion for the Weber Ditch No. 1 water right to an existing diversion where County Road 260 crosses Three Mile Creek, described in paragraph 3.B below. See Exhibit A. The new point of diversion is downstream from the original point of diversion. There are no intervening surface diversion points and no inflows from tributary surface streams located between the originally decreed location and the new point of diversion. The relocation of the Weber Ditch No. 1 point of diversion does not physically interfere with the complete use or enjoyment of any other absolute or decreed conditional water right. The new point of diversion does not injuriously affect the owner of or persons entitled to use water under a vested water right or decreed conditional water right. Diversions of the Weber Ditch No. 1 at the new diversion point will not exceed the decreed flow rate in paragraph 2.F above. B. Location of the new surface point of diversion: 1. UTM location in Zone 13S: UTMx 404842, UTMy 4279254. 2. PLSS Location: In the NW¼ SW¼, Section 21, Township 51 North, Range 8 East, New Mexico Principal Meridian in Chaffee County, Colorado. **4. Remarks**: Applicant seeks a decree changing the point of diversion to the location described in paragraph 3.B pursuant to C.R.S. § 37-92-305(3.5). Applicant does not seek any other changes to the Weber Ditch No. 1 water right. **5. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion structure, or modification to any existing diversion structure is or will be constructed**: Upon information and belief, Chaffee County owns the land in paragraph 3.B where the Weber Ditch No. 1 will be diverted, which is part of the County Road 260 right of way. Applicant will use an existing diversion structure and culvert below County Road 260, which does not require enlargement. Applicant intends to modify the existing diversion infrastructure to include a headgate and flume acceptable to the Division Engineer. The flume will be located on property owned by the Applicant. Chaffee County’s address is: Chaffee County c/o R. Christiansen, Director of General Administration, 104 Crestone Avenue, Salida, CO 81201.

CASE NO. 2022CW3086; Previous Case No. 18CW3055 – UNITED STATES OF AMERICA c/o U.S.D.A. Forest Service, Regional Hydrologist, 1617 Cole Boulevard, Building 17, Lakewood, CO 80401 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Todd Kim and Eve McDonald, U.S. Department of

Justice ENRD, 999 18th Street, Suite 370, Denver, CO 80202 (303) 844-1381, evelyn.mcdonald@usdoj.gov)

Application to Make Conditional Appropriative Right of Exchange Absolute

PUEBLO AND CUSTER COUNTIES

2. Background. In Case No. 18CW3055, the Water Court issued a decree, dated May 27, 2020, granting and approving (1) a plan for augmentation, and (2) a conditional appropriative right of exchange for “Lake Isabel”, described in more detail below. The decreed source of water for augmentation and exchange is water leased from Pueblo Board of Water Works (“PWBB”). Through this application, Applicant seeks to make absolute the appropriative right of exchange for Lake Isabel. **2.1. PBWW Lease:** Applicant has negotiated a thirty-year lease with Pueblo Board of Water Works (“PBWW”). PBWW agrees to deliver transmountain water or other water that is considered totally consumable or suitable for augmentation and replacement purposes under Colorado law, including but not limited to reusable return flows from transmountain water or other fully-consumable water suitable for augmentation and replacement purposes under Colorado Law when the Applicant’s water rights would otherwise be out of priority. The water may be released from any of PBWW’s sources, including but not limited to water stored at Pueblo Reservoir (located on the Arkansas River in all or portions of Sec. 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36, T.20S., R 66W, 6th P.M., Sec. 1, 2, 3, 4, 5, 9, 10 and 11, T.21S., R.66W., of the 6th P.M., and Sec. 5, 8, 9, 13, 14, 15, 16, 22, 23 and 25, T.20S, R.67W. of the 6th P.M. in Pueblo County), Clear Creek Reservoir (located in Sec. 7 and 8, T.12S., R.79W, and Sec. 12, T.12S., R.80W., 6th P.M. in Chaffee County), Turquoise Reservoir (located on Lake Fork Creek in Sec. 7, 8, 17, 18, 19 and 20, T.9S., R.80W., 6th P.M. and Sec. 10, 11, 12, 13, 14 and 15, T.9S., R.81W., 6th P.M. in Lake County), Twin Lakes Reservoir (located in all or portions of Sec. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in T.11S., R.81W., 6th P.M. in Lake County) and reusable return flows; from direct flow transmountain water rights or from any other reservoir or place from which PBWW may deliver water, the sources of which are at the option of PBWW, as long as they are legally available for augmentation purposes, but such sources do not include Fryingpan-Arkansas Project Water. The sources of such water may include, but are not limited to, the water rights decreed in Case Nos. 84CW177, District Court, Water Div. No. 2; 84CW177(B), District Court, Water Div. No. 2; 90CW340, District Court, Water Div. No. 5; W-1901, District Court, Water Div. No. 5; 95CW321, District Court, Water Div. No. 5; 90CW55, District Court, Water Div. No. 2; 04CW130, District Court, Water Div. No. 2; and water rights decreed in Case No. 17CW3050, District Court, Water Div. No. 2. **3. Description of Storage Water Right:** Lake Isabel. **3.1. Water Right Decreed to Lake Isabel:** The Lake Isabel water right was decreed in Case No. 82CW66, District Court, Colorado Water Division 2. The water right is decreed in the amount of 1,036.9 acre-feet, absolute, with an appropriation date of September 28, 1935, from St. Charles River for recreation, fisheries, flood control, and fire suppression. **3.2. Legal Description of Structure:** The dam for Lake Isabel (WDID 1503830) is located at a point whence the southwest corner of Section 6, Township 24 South, Range 68 West, bears south 2 degrees 19 minutes east a distance of 1,066.47 feet, SE ¼ SE ¼ Section 1, Township 24 South, Range 69 West, 6th P.M. 100 feet from east section line, 700 feet from south section line. UTM 495619 E, 4204136 N (NAD 83). The surface area at the high water line is approximately 35.7 acres. **4. Description of**

Conditional Right of Exchange: Lake Isabel St. Charles River Exchange. 4.1. Date of Original Decree. The original decree was entered May 27, 2020 in Case No. 18CW3055, described as follows. 4.2. Downstream Terminus: Confluence of the Saint Charles River and the Arkansas River, located in Section 32, T 20 S, R 63 W, 6th P.M. WDID 152800, UTM 546995 E, 4235274 N (NAD 83). 4.3. Upstream Terminus: Lake Isabel, (DWID 1503830, UTM 495619 E, 4204136 N (NAD 83) 4.4. Date of Appropriation: September 28, 2018. 4.5. Amount: The rate of exchange is the physical storable inflow to Lake Isabel. 25 c.f.s. is the maximum flow rate allowed under the PBWW lease. 4.6. This exchange will be operated to refill Lake Isabel using PBWW lease deliveries during times when water is physically available for storage at Lake Isabel and the Lake Isabel water right is out of priority. 4.7. The source of water to be exchanged to Lake Isabel: any of PBWW's sources, including but not limited to water stored at Pueblo Reservoir, Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir and reusable return flows; from direct flow transmountain water rights or from any other reservoir or place from which PBWW may deliver water, the sources of which are at the option of PBWW, as long as they are legally available for augmentation purposes, but such sources do not include Fryingpan-Arkansas Project Water. (See Paragraph 2.1 for more details). 4.8. The water exchanged into Lake Isabel shall retain the character of the substitute supplies provided by PBWW. As such the water stored by exchange shall be considered reusable and available for augmentation uses by the Forest Service as decreed herein and limited by the decrees for the exchanged water. 4.8.1. Exchange Terms and Conditions 4.8.1.1. The exchange shall be operated on a daily basis. 4.8.1.2. The exchange may be operated only at times when a live stream exists between the exchange-from point(s) and the exchange-to point(s) involved. 4.8.1.3. The amount of water diverted at the exchange-to point(s) shall not be greater than the amount of water introduced at the exchange-from point(s). 4.8.1.4. The rate of exchange to the exchange-to point shall be limited to the physical storable inflow to Lake Isabel. 4.8.1.5. Except as provided in Paragraph 9.6 of the 18CW3055 decree, as repeated in Paragraph 5.4 below, the exchange may be operated only when all other water rights, including other appropriative rights of exchange, located between the exchange-from point and the exchange-to point that are senior (based on appropriation date) are satisfied to the extent of their calls, are out of priority, or are otherwise satisfied pursuant to this decree and the agreements described herein. Water rights and exchanges shall not be deemed to be out of priority if they would be able to divert but for the Applicant's diversion under the subject exchange. 4.8.1.6. The Applicant shall notify and obtain approval from State water administration officials prior to commencing operation of the exchange. 4.8.1.7. PBWW will not deliver, and Applicant will not use, Fryingpan-Arkansas Project water as a source of augmentation water available under the lease. 4.8.1.8. As part of its deliveries from PBWW under the lease, the Applicant may receive non-Project water that has been stored previously by PBWW in Pueblo Reservoir. PBWW's storage of non-Project water in Pueblo Reservoir is subject to the terms of its Contract No. 00XX6C0049 with the U.S. Bureau of Reclamation ("Reclamation"), any extension or amendment of that contract, any new contract with Reclamation, or any space lawfully contracted for in any Pueblo Reservoir Enlargement. PBWW will not deliver under the lease, and the Applicant may not use, non-Project water stored in Pueblo Reservoir by PBWW pursuant to Contract No. 00XX6C0049 for other than municipal and industrial purposes or for use outside of

Southeastern Colorado Water Conservation District boundaries, unless otherwise authorized by the Secretary of the Interior or his duly authorized representative for other purposes or places of use. 4.8.1.9. At times when the exchange is operating to refill Lake Isabel, the Applicant will ensure that a minimum of 1 c.f.s. of streamflow, as measured at the outlet of Lake Isabel, is passed without storage. Applicant shall maintain a measuring device and record of flows passed without storage to the satisfaction of the Division Engineer. 4.8.1.10. The Applicant will only operate the exchange (1) to store water in Lake Isabel to replace evaporative losses; (2) to replace water released to satisfy downstream obligations; or (3) to replace water required to be released for purposes of maintenance or repair of Lake Isabel. Water stored pursuant to this exchange shall be limited to uses in Lake Isabel or pursuant to this plan for augmentation. **5. Description of Plan for Augmentation: 5.1. General Description of the Plan for Augmentation:** As decreed in Case No. 18CW3055 Lake Isabel is operated to maintain a full reservoir to the extent possible. Evaporative losses or refilling of capacity created by replacement of evaporative losses are the only potentially out-of-priority depletions associated with the reservoir. The maximum out-of-priority storage resulting from the net evaporative depletions that must be replaced at Lake Isabel is estimated to be approximately 50.40 acre-feet per year. The Applicant has leased a total of 58 acre-feet per year from PBWW to replace the out-of-priority evaporative losses, including transit losses that may be assessed on the release of the replacement supplies. PBWW supplies will be used to replace depletions to any senior water right downstream of Lake Isabel capable of receiving PBWW lease water. Where necessary, the Applicant will release water from Lake Isabel to downstream senior calling water rights from Lake Isabel equal to the amount of evaporative losses. Evaporative depletions will be replaced to downstream senior calling water rights by PBWW lease deliveries and releases from Lake Isabel. Releases from Lake Isabel may be refilled from water stored in priority or by exchange of PBWW lease water. **5.2. Measuring devices:** Lake Isabel has been equipped with measurement devices as required by the Division Engineer. The Applicant accounts for storage in Lake Isabel and operation of the plan for augmentation on a daily basis. **5.3. Delivery of Replacement Water:** Replacement water described in paragraph 5.1 is released to supply replacement to senior water rights capable of receiving PBWW water. Such releases are reduced to account for transit losses assessed by the Division Engineer. For those senior calling water rights not capable of receiving PBWW water, the replacement supplies may be released from Lake Isabel, to the extent of fully consumable water stored in Lake Isabel by exchange, or Lake Isabel inflows will be passed without storage. **5.4.** Pursuant to Colorado Statute, the Colorado Water Conservation Board's instream flow ("ISF") water right decreed in Case No. W-4435 (76) on the St. Charles River, is "[s]ubject to the present uses or exchanges of water being made by other water users pursuant to appropriation or practices in existence on the date of such appropriation, whether or not previously confirmed by court order or decree." C.R.S. §37-92-102(3)(b) (2018). Although the storage right was not decreed until Case. No. 82CW66, Lake Isabel existed and was operated to maintain a full reservoir by storing in-priority or exchanged water at the time of the appropriation of the ISF water right in 1976. Therefore, the ISF water right is subject to the filling and refilling of the reservoir as needed to replace evaporative losses, whether by exchange or in-priority diversion. If stored water is released from this reservoir for augmentation of any uses other than evaporation from

this reservoir, the ISF water right is not subject to refilling the reservoir after such release. The subordination of the ISF water right to Applicant's diversions decreed herein pursuant to section 37-92-102(3)(b) C.R.S. shall not result in general subordination of the ISF water right to any other water rights junior to such ISF water right. **5.5. Terms and Conditions to Prevent Injury**

5.5.1. Reeves and Betsy Brown (3R Ranch) Agreement: Under an agreement with Reeves and Betsy Brown, the Forest Service will attempt to keep Lake Isabel full annually through Labor Day. Retention of these inflows may cause injury to the downstream senior water rights including the Browns' Dotson Ditch rights. When the Brown's Dotson Ditch is calling for water under their senior water rights the Forest Service will (1) record and monitor the administrative call, (2) keep an accounting of the volume of evaporative depletions during the administrative call, (3) provide notice by September 10th of each year, or upon request from the Browns, the amount of evaporative depletions that have occurred during times of an unsatisfied administrative call from the Browns' water rights, and (4) release water from Lake Isabel equal to the volume of water owed to the Browns to replace those depletions starting after September 10th of each year. Water released from Lake Isabel will occur at the rate and time requested by the Browns. Such releases from Lake Isabel shall not exceed 15 c.f.s. and shall be completed each year by October 15th. At any time during the irrigation season, if the diversions at the Dotson Ditch are less than 3 c.f.s. during times of an administrative call from the Dotson Ditch and the ditch is diverting the entire flow in the St. Charles River, the Browns may request that any accumulated and current daily out-of-priority evaporation depletions be released from Lake Isabel. Such releases shall be deducted from any end-of-year releases. Following completion of releases owed to the Browns, the Forest Service will maintain the level of Lake Isabel until such time as Lake Isabel can be refilled.

5.5.2. Agreement with EVRAZ, North America (EVRAZ): Pursuant to an agreement entered into between the Forest Service and EVRAZ, during times that the water rights diverted at the St. Charles Flood Ditch are the calling water rights on the St. Charles River, the Forest Service will keep Lake Isabel as full as possible and maintain an accounting of all the evaporative depletions occurring at Lake Isabel. Replacement water to account for these depletions will be delivered to EVRAZ from PBWW sources on the Arkansas River through the Minnequa Canal. The delivered volume to the Minnequa Canal will be equal to the amount of evaporative depletions that occurred at Lake Isabel with EVRAZ's water rights were the calling rights on the St. Charles River, less transit losses that would have occurred on the St. Charles River. An additional 16 percent will be added to the amount to account for transit losses through the Minnequa Canal. At a minimum, the amount of water due to EVRAZ from the Forest Service shall be made available to EVRAZ annually. Any water owed to EVRAZ due to the evaporative losses from Lake Isabel and not requested for delivery from PBWW by November 1st of each year shall be forfeited.

5.5.3. St. Charles Mesa Water District ("District"): During times that the Zoeller Ditch is the calling water right on the St. Charles River, the Forest Service will keep an accounting of all the evaporative depletions occurring at Lake Isabel that are impacting the Zoeller Ditch senior water rights owned by the District. The volume owed to the District shall be equal to the evaporative depletions less transit losses that would have occurred on the St. Charles River between Lake Isabel and the Zoeller Ditch headgate. Replacement water to account for these depletions will be delivered from PBWW sources on the Arkansas River to the District at locations agreed upon between the District and PBWW. At a

minimum, the amount of water due to the District from the Forest Service shall be made available to the District annually. Any Zoeller Ditch depletion water owed to the District by the Forest Service and not requested for delivery from PBWW by November 1st of each year shall be forfeited. **5.5.4.** At times when there is a call senior to the Lake Isabel water storage right, and evaporative depletions cannot be augmented by PBWW lease water as provided herein, or exchanged pursuant to the appropriative right of exchange decreed herein, inflows to Lake Isabel may not be stored. **6. Evidence in Support of Claims to Make Conditional Appropriative Right of Exchange Absolute. 6.1.** The Forest Service operated its appropriative right of exchange to replace evaporative losses in Lake Isabel in 2020 and 2022 following the terms outlined in its augmentation plan in Case No. 18CW3055. PBWW releases were made at the same rate as inflow to Lake Isabel when the storage right was out-of-priority, providing replacement water in time, location, and amount to prevent injury to vested water rights. **6.2.** Measuring devices including (1) a telemetry gage that measures the lake level and corresponding volume, and (2) a flume below the outlet, measuring the volume of water released when the valve is opened, are used to monitor releases from Lake Isabel. **6.3.** The Forest Service tracked the call on the St. Charles River and communicated regularly with the Water Commissioner for Water Division 2, Districts 14 & 15 to ensure release were made as required under the conditional decree. **6.4.** The Forest Service in collaboration with the Colorado Division of Water Resources created an accounting spreadsheet which includes the daily administrative call, daily volume of out-of-priority depletions, amount of augmentation required, location and source of the augmentation supplies, reservoir storage, surface area and volume, evaporative losses to be augmented, stored native flows, water stored by exchange, releases of augmentation water previously stored by exchange, and delivery location of the PBWW water being provided as an augmentation source. The spreadsheet is uploaded monthly into the Colorado DNR Portal. As an example, the October 2022 spreadsheet is attached to the application as **Exhibit 1.** (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **6.5.** The Forest Service secured a long-term lease of augmentation water from PBWW and successfully worked with PBWW to make releases as described in the terms of the augmentation plan decreed in Case No. 18CW3055. **6.6.** The Forest Service obtained approval from the Division 2 Engineer's Office prior to commencing operation of the exchange, as required in Paragraph 10.7.6 of the 18CW3055 decree. **6.7.** The Forest Service ensured a minimum of 1 c.f.s. of streamflow, measured at the outlet of Lake Isabel, was passed without storage when the exchange was operating to refill Lake Isabel. **6.8.** The Appropriative Right of Exchange has been perfected through operation as conditionally decreed in Case No. 18CW3055. **7. Name(s) and address(es) of owner(s) or reputed owner(s) 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 or delivered to:** Lake Isabel is located on land owned and managed by the Applicant.

CASE NO. 2022CW3087; PETE LIEN & SONS, INC. c/o Danielle Wiebers P.O. Box 1961 Fort Collins, Colorado 80522 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Stephen C. Larson, Cameron C. Frazier,

Johnson & Repucci LLP, 850 W. South Boulder Rd., Ste 100 Louisville, CO 80027, (303) 442-1900, sclarson@j-rlaw.com, ccfrazier@j-rlaw.com)

Application for Approval of Plan for Augmentation

PUEBLO COUNTY

2. **Overview.** The St. Barbara Batch Plant is located on approximately 304 acres in portions of Section 1, Township 21 South, Range 63 West, 6th P.M., and portions of the W1/2 of Section 6, Township 21 South, Range 62 West, 6th P.M., just west of the unincorporated town of Avondale, in Pueblo County, Colorado (the “Property”). See Exhibit A attached to the application for a general location map of the property and the two subject wells. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Applicant is seeking a plan for augmentation to operate two wells on the Property for dust control, industrial, commercial, and other miscellaneous uses associated with quarry operations.

3. **Name and Description of Structures to be Augmented.** The St. Barbara Quarry Well No. 1 (“Well SBQ-1”) and the St. Barbara Quarry Well No. 2 (“Well SBQ-2”) are owned by Applicant and are located as follows:

a. The St. Barbara Quarry Well No. 1. Well SBQ-1 is located in the SW1/4 of the SE1/4 of Section 36, Township 20 South, Range 63 West, 6th P.M., approximately 2,270 feet from the west section line and 55 feet from the south section line of Section 36. UTM coordinates: Easting: 553026.5, Northing: 4234786.9, Zone 13. Well SBQ-1 currently operates under Permit No. 12918-R-R.

b. St. Barbara Quarry Well No. 2. Well SBQ-1 is located in the SW1/4 of the SE1/4 of Section 36, Township 20 South, Range 63 West, 6th P.M., approximately 1,780 feet from the east section line and 90 feet from the south section line of Section 36. UTM coordinates: Easting: 553026.5, Northing: 4234786.9, Zone 13. Well SBQ-2 currently operates under Permit No. 12919-R-R.

c. Well Permits. Well SBQ-1, Permit No. 12918-R-R and Well SBQ-2, Permit No. 12919-R-R are currently permitted as irrigation wells. Prior to operation of the subject augmentation plan, both wells will be re-permitted for the uses described herein.

d. Groundwater Rights. Groundwater rights for Well SBQ-1 and Well SBQ-2 are not being claimed herein.

e. Additional Wells. Additional wells may be completed on the Property in the future and added to this plan for augmentation should Well SBQ-1 and Well SBQ-2 not have sufficient production to satisfy the St. Barbara Batch Plant water demands.

4. **Water Rights to be Used for Augmentation.** Depletions from Well SBQ-1, Well SBQ-2 and any other additional wells drilled to satisfy the St. Barbara Batch Plant water demands will be replaced using augmentation water provided by the Pueblo Board of Water Works (“PBWW”), pursuant to a Water Lease Agreement (“Water Lease”) between Applicant and PBWW. The Water Lease period begins on April 1, 2023; ends on March 31, 2033; and may be renewed for an additional 10-year period, until March 31, 2043. The Water Lease provides Applicant with up to 56 acre-feet per year of water decreed or otherwise legally approved for augmentation use. The water from the Water Lease will be delivered from any PBWW source that is located upstream of the calling water right that is senior to the date of this application, including but limited to the following locations and sources; but not including Fryingpan-Arkansas Project Water. Twin Lakes Reservoir (located in all or portions of Sec. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in T.11S., R.81W., 6th P.M., in Lake County). Turquoise Reservoir (located on Lake Fork Creek in Sec. 7, 8, 17, 18, 19, and 20, T.9S., R.80W., 6th P.M. and Sec. 10, 11, 12, 13, 14, and 15, T.9S., R.81W., 6th P.M., in Lake County). Clear Creek Reservoir (located in Sec. 7 and 8,

T.12S., R.79W, and Sec. 12, T.12S., R.80W., 6th P.M. in Chaffee County, and reusable return flows. The sources of such water may include, but are not limited to, the water rights decreed in Case Nos. 84CW177, District Court, Water Div. No. 2; 84CW177(B), District Court, Water Div. No. 2; 90CW340, District Court, Water Div. No. 5; W-1901, District Court, Water Div. No. 5; 95CW321, District Court, Water Div. No. 5; 90CW55, District Court, Water Div. No. 2; and 04CW130, District Court, Water Div. No. 2. Applicant also reserves the right to use additional or alternative sources of replacement water in this plan for augmentation pursuant to C.R.S. § 37-92-305(8)(c). 5. **Complete Statement of Plan for Augmentation.** Applicant anticipates pumping a combined total of approximately 6.44 acre-feet per year from Well SBQ-1, Well SBQ-2 and any additional wells completed on the Property for dust control, industrial, commercial, and other miscellaneous uses associated with quarry operations. Based on a stream depletion analysis performed using the Glover stream analytical model, the maximum predicted stream depletions for Well SBQ-1 and Well SBQ-2 are expected to be 6.5 acre-feet per year, and to vary between 0.47 and 0.63 acre-feet per month, accruing to Arkansas River. Beginning with the first month of pumping and continuing until all post-pumping depletions are fully replaced, Applicant will deliver between 0.47 and 0.63 acre-feet per month of replacement water to the stream system above the calling water right that is senior to the date of this application, or such other amount per month which shall by decree be required to offset all depletions under this plan, utilizing the augmentation sources identified in paragraph 4 above. 6. **Measuring and Accounting.** Applicant will install measuring devices and implement such accounting practices as may reasonably be required by the State or Division Engineers to ensure that depletions are fully replaced in time, place, and amount under this plan. Applicant will submit accounting information to the Division Engineer on an annual basis, or such other intervals as may be required by the State or Division Engineers. WHEREFORE, Applicant respectfully requests that this Court: find that there will be no injury to any owner of, or person entitled to use, water under a vested water right or a conditionally decreed water right as a result of Applicant's requested plan for augmentation; and that the Court approve the plan for augmentation.

CASE NO. 2022CW3088; DARELL GEROUX AND TWILA GEROUX, 1100 CR 160, Westcliffe, CO 81252 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David M. Shohet, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, CO 80921, (719) 471-1212, dms@cowaterlaw.com)

Application for Surface Water Rights and Storage Rights

CUSTER COUNTY

A. Name of Structure: Geroux Springs. B. Legal Description of Point of Diversion: An area of springs located in the NE ¼ of the SE ¼ of Section 19, and the NW ¼ of the SW ¼, and the SW ¼ of the SW ¼ of Section 20, all in Township 22 South, Range 72 West of the 6th P.M. The area of the springs is shown on **Exhibit A** map attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) C. Source: Spring water tributary to Grape Creek, tributary to the Arkansas River. D. Date of Initiation of Appropriation: May 15, 1969. E. Amount Claimed: 15 g.p.m., conditional. F. Use or Proposed Uses: All of the springs will be used for stock watering for the entirety of the Applicants' property. The

Applicants' property consists of approximately 264 acres, located in the SE ¼, NW ¼ of the NE ¼, and the E ½ of the NE ¼ of Section 19, and the West ½ of Section 20, all in Township 22 South, Range 72 West of the 6th P.M., and are Custer County Parcel Nos. 0010014250, 0010173854 & 0010173801. A map of the Applicants' property is attached as **Exhibit B**, and the Applicants' deeds with legal descriptions of the Applicants' property is attached as **Exhibit C**. **V. REMARKS**. A. Water will be diverted year-round for direct stock watering purposes or to be stored in earthen or manmade stock tanks on the Applicants' property.

CASE NO. 2022CW3089; Previous Case No. CA0418 - CLINT STATES AND TONI STATES, 9159 County Highway 196, Lamar, CO 81053. (Please address all pleadings and inquiries regarding this matter to Applicants' attorneys: Sara M. Dunn & Andrea J. Hall, Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602; 970-945-6546)

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

PROWERS COUNTY

2. Summary of Application: Applicants request a change in point of diversion pursuant to §37-92-305(3.5) for the B. R. Hatchett Ditch in accordance with the Stipulation with the Division Engineer in 21CW3078, Dist. Ct. Water Div. 2. Said Stipulation 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.) **3. Decreed water right for which change is sought.** 3.1 **Name of Structure:** **B. R. Hatchett Seep Ditch**. 3.2 **Date of Original Decree:** 04/21/1959 CA 0418, Dist. Ct., Bent Cty., CO. 3.3 **Decreed Location:** The headgate of said ditch is located at a point in the seepage area, tributary to Saylor Draw in Powers Cty., CO, whence the NW corner of Sec. 21, T. 22 S., R. 40 W. of the 6th P.M., bears N. 25°30', a distance of 2,240 ft. as attached to the application as **Exhibit B**. 3.4 **Decreed Source:** Seepage area tributary to Saylor Draw, tributary of the Arkansas River. 3.5 **Date of Approp.:** 11/01/1948. 3.6 **Decreed Amt.:** 3.0 c.f.s, absolute. 3.7 **Uses:** Dom. and Irr. of sixty acres of land. 3.8 **Amt. of Water Right Applicant Intends to Change:** 3.0 c.f.s., absolute. **4. Proposed Change in a Surface Point of Diversion:** Applicant requests to change the point of diversion for the B. R. Hatchett Seep Ditch, Priority No. 125, to a point located in the SW1/4 of the SW1/4, Sec. 21, T. 22 S., R. 46 W. of the 6th P.M., UTM Zone 13, Easting 711202.3, Northing 4221395.1, as attached to the application as **Exhibit C**. Applicant represents and affirms that this requested change can be considered under the Simple Change Standards pursuant to § 37-92-305(3.5) as follows: 4.1 The B. R. Hatchett Seep Ditch is a surface water right; 4.2 The physical change in point of diversion has already been accomplished; 4.3 The only relief requested in this application is to change the decree location for the B. R. Hatchett Seep Ditch; Applicants are not requesting a change in the types of uses or place of use for the B. R. Hatchett Seep Ditch; 4.4 There are no intervening surface diversion points or inflow, as defined in § 37-92-305(3.5), C.R.S., between the new point of diversion and the original decreed point of diversion; 4.5 Applicants shall limit diversions under the B. R. Hatchett Seep Ditch to 3.0 c.f.s. (its decreed amt.) or the amt. that is physically and legally available in priority at the original decreed location, whichever is less, to ensure the simple change requested herein will not result in a diversion of a greater flow rate or amt. of water than

is decreed to the B. R. Hatchett Seep Ditch and is legally or physically available at the original decreed diversion point from which the change is being made; and 4.6 The change will not injuriously affect the owner of, or persons entitled to use water under a vested water right or a decreed conditional water right. See Affidavit of Clint States attached to the application as **Exhibit D. 5. Owner of the land upon which the existing structure is located:** Applicants. WHEREFORE, the Applicants requests this Ct. enter a decree confirming the requested simple change of alternate points of diversion for B. R. Hatchett Seep Ditch and such other relief as the Ct. determines is appropriate.

CASE NO. 2022CW3090; Previous Cases Nos. 09CW136 and 16CW3034 – ESBENSHADE PARTNERSHIP, LP, c/o Terry Esbenshade, 619 East 28th Division Highway, Lititz, PA 17543 (Please address all pleadings and inquiries regarding this matter to Applicants' attorneys: MONSON, CUMMINS, SHOHET & FARR, LLC, Chris D. Cummins, #35154, W. James Tilton, #50213, 13511 Northgate Estates Dr., STE. 250, Colorado Springs, CO 80921, (719) 471-1212)

Application for Finding of Reasonable Diligence

FREMONT COUNTY

II. Applicant/Name of structures: Applicant, Esbenshade Partnership, LP, a Pennsylvania limited partnership ("Applicant"), is the successor in interest to WHP Crossroads, LLC, a Colorado limited liability company, who was likewise a successor in interests to Crossroads Land & Cattle, Inc., a Colorado corporation, as concerns the Crossroads Arena near the intersection of Colorado Highway 115 and U.S. Highway 50 in Fremont County, Colorado and water rights associated therewith. Crossroads Land & Cattle, Inc. was approved for a plan for augmentation, including conditional underground water rights, in Case No. 09CW136. Said conditional underground water rights are for the "Crossroads Well", a structure completed into the Dakota/Cheyenne aquifer in the SE¼ NW¼ of Section 7, Township 19 South, Range 68 West of the 6th P.M., as more particularly described herein. Said Crossroad Well was decreed for a total of 25 gallons per minute, with 15 gpm of such appropriation being made absolute in Case No. 09CW136, and 10 gpm remaining conditional. Subsequent findings in the decree finding reasonable diligence in Case No. 16CW3034, in which WHP Crossroads, LLC was the applicant, found that Applicant's predecessor would develop the adjudicated water rights and place them to beneficial use in a reasonable period of time, and the 10 gpm of conditional water rights were to remain conditional. Applicant hereby seeks a second finding of reasonable diligence for said conditional portion of the Crossroads Well ground water right adjudicated in Case No. 09CW136 as more particularly described as follows: A. Date of original decree: June 17, 2010, Case No. 09CW136, District Court, Water Division 2. Diligence decreed December 27, 2016, Case No. 16CW3034. B. Conditional Water Storage Right. Applicant seeks a finding of reasonable diligence for all of the following conditional water storage right: 1. Name of Water Right: Crossroads Well (WDID 1205068) 2. Legal Description: The legal description of the Crossroads Well, located on Applicant's property, is as follows: In the SE¼ NW¼ of Section 7, Township 19 South, Range 68 West of the of the 6th P.M., 1,980 feet from the west section line and 2,000 feet from the north section line of said Section 7. UTM coordinates: Easting 496093.1, and Northing 4251560.5, NAD 83, Zone 13. 3. Source: The source for the Crossroads Well is the Dakota/Cheyenne aquifer, with the well being constructed to a depth of 658 feet.

Pursuant to the Court's Decree in 16CW3034, paragraph11(c)(iii), this source is a correction from earlier records and orders issued in 09CW0136 in which the Arkansas River was named as the source of water for the Crossroads Well. Records for the Crossroads Well, Well Permit No. 74574-F, also indicate the well is to the Dakota/Cheyenne aquifer. 4. Appropriation: The appropriation date for the Crossroads Well is December 21, 2009. 5. Amount of Water: Applicant seeks a finding of reasonable diligence for the 10 gallons per minute decreed conditional to the Crossroads Well in Case No. 09CW136 and for which diligence findings were previously granted in Case No. 16CW3034 (the Crossroads well is decreed for a total appropriation of 25 gpm, with 15 gpm previously decreed absolute). 6. Uses: Commercial purposes (including commercial sanitary and drinking water, use in a restaurant/bar, and veterinary clinic uses), stock watering, domestic, and fire protection purposes. 7. Remarks: The Crossroads Well is permitted by the Colorado Division of Water Resources under Well Permit No. 74574-F. **III. Outline of what has been done toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures**: A. Description of Water Rights: The Applicant seeks a finding of reasonable diligence for the above described conditional component of the ground water right in the Crossroads Well, as previously conditionally adjudicated in Case No. 09CW136. B. Statement of Diligence: Applicant, and its predecessor in title, have expended extensive time and resources since the decree in 09CW136 in the development and marketing of the Crossroads Arena, for which the conditional water rights are decreed. Part of Applicant's diligence in pursuing and maintaining this conditional ground water right during the diligence period, therefore, includes these related activities to complete and fully utilize the Crossroads Arena, as necessary to place such conditional component of the Crossroads Well water right to beneficial use. Applicant conservatively estimates that it, and its predecessor in title, have expended in excess of \$14,084.63 since the decree in Case No. 16CW3034 in completion of related construction and marketing activities associated with the Crossroads Arena, not including value paid by Applicant for purchase of the Crossroads Arena and the subject water rights, for which good consideration was exchanged. Diligence efforts and expenditures include Applicant's purchase of the subject property and water rights; expenditures on water service improvements in commercial kitchen area; expenditures for excavation and other dirt work on site including surrounding the Crossroads Well; repairs and maintenance to the Crossroads Well; and, additional design, marketing, legal and engineering consulting fees. Based on the expenditures described herein, and ongoing efforts related to the use of the conditional component of the Crossroads Well water structure through expanded and full use of the Crossroads Arena facility, the Applicant has established that it can and will complete the development of the adjudicated conditional water right component of the Crossroads Well and place it to beneficial use within a reasonable period of time. **IV. Names of the owners of land on which structure is or will be located upon which water is or will be stored or upon which water is or will be placed to beneficial use**: All lands upon which water will be pumped or produced, and beneficially used, are currently owned by Applicant.

CASE NO. 2022CW3091; WILLIAM (ROY) MARSHALL, DEBORAH SUE MCKNIGHT, DARRELL RAY HAMILTON, COREY MATHEW TUCKER, BRIDGETT ASHELY

TUCKER, ZACHARY RYAN TUCKER, DEREK SCOTT TUCKER, TODD AND BELINDA TIPTON, LINDA K. REINHOLD REV. TRUST (Please address all pleadings

and inquiries regarding this matter to Applicants' attorneys: Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602, (970) 945-6546)

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

CHAFFEE COUNTY

Decreed water right for which change is sought: **Bartholomew Ditch, Ditch No. 99** (WDID No. 1100724). Case No. CA-1127 entered 6/19/1890; CA-5792 entered 5/28/1968; Case No. 7540 entered 5/27/1982; Case No. 20CW3039 entered 4/8/2021.

Decreed Location: The headgate is located on the N. bank of Frenchman's Creek at a point 325 ft. W. of where said creek crosses the line running N. and S. between the NE1/4 and the NW1/4 of the SW1/4 of Sec. 10, T. 13 S., R. 79 W. of the 6th P.M., in Chaffee Cty., CO. Source: Frenchman's Creek, tributary to Arkansas River. Dates of Approp.: Priority No. 115: 6/13/1882. Priority No. 136: 9/24/1883. Amt.: 4.0 c.f.s. (1 c.f.s. Priority No. 115; 3.0 c.f.s. Priority No. 136). Decreed Use: Irr. Amt. to be changed: 2.0 c.f.s.

Remarks: Pursuant to the decree in Case No. CA-5972, 2 c.f.s. of the Bartholomew Ditch was changed as follows: One-half (0.5) c.f.s. decreed to the said Bartholomew Ditch under Priority No. 115 to be diverted through Alternate or supplemental point of:

Diversion No. One (1) (WDID No. 1100905): a point on the S. bank of Frenchman Creek 300 ft. Easterly from the W. line of the NW1/4 of the SE1/4 of Sec. 10, T. 13 S., R. 79 W. of the 6th P.M., Chaffee Cty., CO, and Alternate or supplemental point of: **Diversion No.**

Two (2) (WDID No. 1100906): a point on the S. bank of Frenchman Creek 849 ft. Westerly from the E. line of the NE1/4 of the SW1/4 of Sec. 11, T. 13 S., R. 79 W. of the 6th P.M., Chaffee Cty., CO, or at Alternate or supplemental point of: **Diversion No. Three (3)**

(WDID No. 1100907): a point on the S. bank of Frenchman Creek 645 ft. Westerly from the E. line of the NE1/4 of the SW1/4 of Sec. 11, T. 13 S., R. 79 W. of the 6th P.M., Chaffee Cty., CO, all of said water rights being in Dist. No. 11, and that said Applicants desire to continue to divert Alternatively and Supplementally and not concurrently such water right at its present point of diversion. 1.5 c.f.s. under Priority No. 136 to Diversion Point Nos. 2 and 3, above. Proposed Simple Change: Applicants seek approval of a change in the point of diversion for the Bartholomew Ditch, Ditch No. 99 (WDID No. 1100724) in the remaining amount of 2.0 c.f.s. (0.5 c.f.s. under Priority No. 115 and 1.5 c.f.s. under Priority No. 136), from the decreed location, to the three described above, pursuant to the standards and procedures for a simple change in a surface point of diversion under C.R.S.

37-92-305(3.5) (the "Simple Change Standards"). Applicant represents and affirms that this requested change can be considered under the Simple Change Standards because: The Bartholomew Ditch, Ditch No. 99 is a surface right diverting from Frenchman Creek; The only relief requested in this Application is to change the decreed location for the Bartholomew Ditch, Ditch No. 99 from the decreed location to the three new locations described, and depicted on **Exhibit A** attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) There are no intervening surface diversion points or inflows, as defined in the Simple Change Standards, between the decreed location of the Bartholomew Ditch, Ditch No. 99 above and the proposed locations described above; Applicants shall limit diversions under the Bartholomew Ditch, Ditch No. 99 water right to 4.0 c.f.s. (1.0 c.f.s.

Priority No. 115; 3.0 c.f.s. Priority No. 136) (its decreed amount) or the amt. that is physically and legally available in priority at the original decreed location, whichever is less, to ensure the simple change requested herein will not result in a diversion of a greater flow rate or amt. of water than is decreed to the Bartholomew Ditch, Ditch No. 99 and is legally and physically at the decreed point of diversion; and The change in point of diversion requested herein will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional right. Owner of lands upon which modification to Existing Structure is or will be Constructed: Applicants.

CASE NO. 2022CW3092; RANDALL O'LEARY AND ANDREA O'LEARY ("Applicants"), 555 Middle Creek Parkway, Colorado Springs, CO 80921 (Please address all pleadings and inquiries regarding this matter to Applicants' attorneys: Ryan W Farr, #39394, W. James Tilton, #50213, MONSON, CUMMINS, SHOHET & FARR, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and For Approval of Plan for Augmentation

EL PASO COUNTY

II. Summary of Application. Applicants are seeking 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 Denver aquifer wells to serve a twenty-lot subdivision of the Applicants' Property. **III. Application for Underground Water Rights.** A. Property Information. 1. Property Description. Applicants own an approximately 213-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 Section 33 and the SW1/4 of Section 34, Township 11 South, Range 67 West of the 6th P.M., El Paso County, specifically described on Exhibit B attached to the application. 2. Existing Well. There is one existing well on the Applicants' Property for domestic use permitted under Colorado Division of Water Resources Permit No. 119564 ("O'Leary Well"). It is drilled to a depth of 545 feet to the Denver aquifer, and located 1,020 feet from the south section line and 2,320 feet from the east section line in the SW1/4 of the SE1/4 of Section 33, Township 11 South, Range 67 West of the 6th P.M. This well will be re-permitted to operate pursuant to the herein requested augmentation plan. 3. Proposed Well. Applicants propose the construction of nineteen additional wells to the Denver aquifer to supply water to the individual lots in addition to the O'Leary Well. B. Water Source. 1. Not-Nontributary. The groundwater to be withdrawn from the Dawson and Denver aquifers underlying Applicants' Property is not-nontributary. Additionally, the Arapahoe aquifer underlying the portion of the Applicants' Property located in Section 34, Township 11 South, Range 67 West of the 6th P.M. ("NNT Arapahoe"). Pursuant to § 37-90-137(9)(c.5), C.R.S., the augmentation requirements for wells in the Dawson and Denver aquifers require the replacement of actual stream depletions. The requirement for wells in the NNT Arapahoe aquifer requires replacement of four percent of the amount of water withdrawn on an annual basis. 2. Nontributary. The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicants' Property is nontributary. Additionally, the groundwater in the Arapahoe aquifer underlying the Applicants' Property in Section

33, Township 11 South, Range 67 West of the 6th P.M. is nontributary (“NT Arapahoe”).

C. Estimated Rates of Withdrawal and Ground Water Available. 1. Estimated Rates of Withdrawal. Pumping from the wells will not exceed 200 g.p.m. per well. 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 the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code § 8.4.7(C)(1) which is more stringent than the State of Colorado’s 100-year life requirement pursuant to § 37-90-137(4), C.R.S. 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)	54	89	8.9	n/a
Denver (NNT)	238	8,630	86.3	28.77
Arapahoe (NNT)	338	7,550	75.5	n/a
Arapahoe (NT)	329	4,560	45.6	n/a
Laramie-Fox Hills (NT)	182	5,810	58.1	n/a

Decreed amounts may vary from the above to conform with the State’s Determination of Facts. Pursuant to § 37-92-305(11), C.R.S., 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. Applicants request the right to use the ground water for beneficial uses upon the Applicants’ Property consisting of domestic within a single-family dwelling and guest house, structure and equipment washing, hot tub, 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 § 37-90-137(9)(b), C.R.S., 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 NNT 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 § 37-90-137(9)(c.5), C.R.S. 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 and waive any 600-foot spacing requirements. 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 structures to be augmented are an existing Denver aquifer well constructed on the Applicants' Property and nineteen additional Denver aquifer wells to be constructed to serve the other nineteen lots, along with any replacement or additional wells as needed that are constructed to the Denver aquifer underlying the Applicants' Property ("O'Leary Wells"). B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Denver aquifer wells, together with water rights from the nontributary Laramie-Fox Hills 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 Denver aquifer. 1. Uses. Pumping from the Denver aquifer will be a maximum of 17.08 acre-feet of water per year combined for twenty wells, with each well pumping a maximum of 0.854 acre-feet per year. Such uses shall be for domestic within a single-family dwelling and guest house, structure and equipment washing, hot tub, 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 300-year pumping period for the Denver aquifer amounts to approximately 29.6% of pumping. Maximum annual depletions are therefore 5.06 acre-feet in year 300. Should annual pumping be less than the 17.08 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 non-evaporative septic systems. The annual consumptive use for a non-evaporative septic system is 10% per year. Therefore, at an in-house use rate of 0.30 acre-feet per year from a single-family dwelling and guest house, replacement amounts to 5.40 acre-feet to the stream system annually. Thus, during pumping, stream depletion replacement requirements will be met. 4. Augmentation for Post Pumping Depletions. For the replacement of post-pumping depletions which may be associated with the use of the O'Leary Wells, Applicants will reserve 4,255 acre-feet of the Laramie-Fox Hills aquifer, accounting for during-pumping replacement credit. The amount of nontributary Laramie-Fox Hills aquifer groundwater reserved may be reduced as may be determined through this Court's retained jurisdiction as described in any decree. If the Court, by order, reduces the Applicants' obligation to account for and replace such post-pumping depletions for any reason, it may also reduce the amount of Laramie-Fox Hills aquifer groundwater reserved for such purposes, as described herein. 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. Pursuant to § 37-90-137(9)(b), C.R.S., no more than 98% of water withdrawn annually from a nontributary aquifer shall be consumed. **V. Remarks.** A. Applicants request a finding that they have complied with § 37-90-137(4), C.R.S., and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to § 37-90-137(9)(c.5), C.R.S. B. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. C. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. D. The 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. 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. F. Applicants will comply with any lienholder notice provisions set forth in §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), C.R.S., and such notice will be sent within 14 days of the filing of this application.

CASE NO. 2022CW3093; 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 Applicants' attorney: Law of the Rockies Kendall K. Burgemeister, Atty. Reg. #41593 525 North Main Street Gunnison, CO 81230, 970-641-1903, kburgemeister@lawoftherockies.com)

Application for Approval of Plan for Augmentation, Conditional Appropriative Right of Exchange, and Conditional Water Storage Right
CUSTER COUNTY

Summary of Application. UAWCD previously obtained approval of a plan for augmentation (the "Plan") in Case No. 18CW3076. The final Decree in Case No. 18CW3076 provides that additional sources of Augmentation Water and structures for the storage and release of Augmentation Water may be added to the Plan by separate water court decree. In this Application, UAWCD seeks (1) to add the Wenke Pond, as described below, as a structure used for storage and release of Augmentation Water in the Plan; (2) a conditional appropriative right of exchange and water storage right to store water in Wenke Pond; (3) to add water stored pursuant to the water storage right as a source of Augmentation Water in the Plan; and (4) to revise the "Area I" boundary to include those portions of the Grape Creek drainage originally designated as "Area II" in the 18CW3076

Decree. 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.) UAWCD does not seek to increase the 20 acre-feet per year limit on depletions from Augmented Structures that cannot be immediately curtailed above the DeWeese-Dye Ditch in the Grape Creek drainage. **Application for Approval of Plan for Augmentation Structures to be augmented.** Any “Augmented Structures” enrolled in the plan for augmentation decreed in Case No. 18CW3076. Water rights to be used for augmentation. All water rights approved as Augmentation Water in the Plan now or in the future. The water rights approved as Augmentation Water as of the date of this Application are as follows: Twin Lakes Water. Water available pursuant to shares of Twin Lakes Reservoir and Canal Company owned, leased, or controlled by UAWCD (“Twin Lakes Water”). Colorado River Water Rights: Decrees: Original Decree: Civil Action No. 3082, District Court, Garfield County, August 25, 1936. Relevant Subsequent Decree: Case No. W-1901, District Court, Water Division 5, May 12, 1976. Appropriation Date: August 23, 1930. Points of Diversion: The points of diversion are set forth in the CA-3082 Decree and W-1901 Decree. Source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Division 5, as more fully set forth in the CA-3082 Decree and W-1901 Decree. 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 other limitations set forth in the decrees. Decreed Use: Direct flow and storage for irrigation, domestic, commercial, industrial, municipal, and all other beneficial uses. Independence Pass Transmountain Diversion 1994 Supplement: 95CW321 (Div. 5); 240.75 cfs, with an appropriation date of June 8, 1994, for direct flow and storage for irrigation and municipal use by the parties lawfully entitled thereto. Arkansas River Water Rights: Decrees: Original decree: Civil Action No. 2346, District Court, Chaffee County, July 14, 1913. Relevant subsequent decree: Case No. W-3965, District Court, Water Division 2, April 19, 1974. Appropriation Dates: December 15, 1896, and March 29, 1897. Points of Diversion: As decreed in W-3965, Twin Lakes Reservoir is situated in Sections 15-23, T11S, R80W, 6th PM, in Lake County. 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 that are capable of being served with water by diversion from said Arkansas River. Amount: 54,452 acre-feet (20,645.3 acre-feet under Reservoir Priority No. 3, and 33,806.7 acre-feet under Reservoir Priority No. 4). The native “Arkansas River Water Rights” described above will not be used as a source of Augmentation Water in the 18CW3076 Plan unless and until UAWCD complies with the requirements in the 18CW3076 Decree. Project Water and Project Water Return Flows. Such Fryingpan-Arkansas Project (“Project”) water (“Project Water”), including Project Water return flows, as UAWCD may obtain the right to use from time to time. UAWCD is eligible to receive annual allocations of Project Water, including Project Water return flows, which it may purchase and use after it is allocated to UAWCD by the Southeastern Colorado Water Conservancy District (“Southeastern”), based on Southeastern’s principles, policies, rules, and regulations, as such may be amended. The water rights of the 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 Southeastern'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, with an appropriation date of February 10, 1939, and are expressly decreed for exchange, reuse and successive use to extinction, for beneficial use within Southeastern's District boundaries. Under these decrees, Turquoise Reservoir and Twin Lakes Reservoir may store native water or imported water, directly or by exchange with each other or with Pueblo Reservoir. North Fork Reservoir. Case Number, Date, and Court of Original Decree: 82CW204, May 23, 1983, nunc pro tunc April 14, 1983, District Court, Water Division 2. Case Number, Date, and Court of Subsequent decrees: 87CW23, May 10, 1988; 94CW17, November 22, 1994; 00CW121, September 20, 2006; 12CW97, February 9, 2013; 13CW3030, December 2, 2013; 19CW3014 (pending); all in District Court, Water Division 2. Location: SE¼ of Section 5, Township 50 North, Range 6 East, N.M.P.M., in Chaffee County, Colorado. Source: North Fork, South Arkansas River. Appropriation Date: September 9, 1982. Amount: 595 acre-feet (495 acre-feet absolute, 100 acre-feet conditional). Use: irrigation, municipal, industrial, recreational and augmentation uses. O'Haver Reservoir. Case Number, Date, and Court of Original Decree: 82CW205, June 28, 1985, District Court, Water Division No. 2, Colorado Case Number, Date, and Court of Subsequent Decrees: 88CW75, September 6, 1989, amended July 13, 1990; 95CW207, December 10, 1996; 02CW178, November 25, 2003; 09CW128, March 31, 2011; 13CW3031, November 4, 2013, all in District Court, Water Division 2. Location: Near the center of Section 12, T.48 N. R.7E., N.M.P.M., Chaffee County, Colorado. Source: Gray's Creek by means of O'Haver filler Ditch. Appropriation Date: September 9, 1982. Amount: 193 acre-feet (absolute). Uses: Irrigation, municipal, industrial, augmentation, and recreational. Water Leased from Board of Water Works of Pueblo, Colorado. UAWCD has entered into a lease with the Board of Water Works of Pueblo, Colorado (BWWP), for 202 acre-feet of fully consumable water per year, for a term of 40 years. With respect to the source of the water to be provided the lease provides in pertinent part that BWWP "will deliver water derived from the Board's shares in the Twin Lakes Reservoir and Canal Co. to the extent that such water is available to the Board. If Board does not have sufficient water from the Twin Lakes Reservoir and Canal Co. to satisfy its delivery obligations under this lease, then the Board may deliver water from other sources of fully consumable water available to the Board including, but not limited to, stored water at Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes

Reservoir, Pueblo Reservoir, from direct flow transmountain water or transmountain return flows by exchange.” The leased water will be delivered at confluence of Lake Creek and the Arkansas River, or at Pueblo Reservoir. The Twin Lakes water rights are described above. Other water rights that BWWP owns or has the right to use and that may also be used to deliver water under the lease may include, but are not necessarily limited to: The Ewing Placer Ditch, the Warren E. Wurtz Ditch, the Wurtz Extension Ditch, the Busk-Ivanhoe System, and the Homestake Project, as each such right was changed in one or more of the following cases: 84CW177 (Div. 2); 84CW177(B) (Div. 2); and 90CW340 (Div. 5). The points of diversion of the foregoing water rights are located in the Colorado River drainage basin. Other water rights may include the Clear Creek Reservoir Second Enlargement, 04CW130 (Div. 2), and BWWP’s interest in the West Pueblo Ditch, 90CW55 (Div. 2).

HBL Water Rights. Name of Structure. Alfred Katzenstein Ditch No. 1 (aka A. Katzenstein Ditch No. 1) (Priority Nos. 51 and 207(B)). Date of Prior Decrees, Case Numbers, and Court. Original Decree: Decree of the Fremont County District Court dated March 12, 1896. Relevant subsequent decrees: 95CW10, August 4, 1998 (changed to augmentation use); 00CW42, February 12, 2001 (added alternate point of diversion); 10CW30, March 10, 2013 (change for use in Plan for Augmentation (the “06CW32 Plan”) approved by the decree entered in Case No. 06CW32 (the “06CW32 Decree”) and storage in Pueblo and DeWeese Reservoirs), all in District Court, Water Division 2; 18CW3076 (changed for use as augmentation water in 18CW3076 Plan). Legal Description: The original decreed location of the A. Katzenstein Ditch No. 1 headgate is on the northeast (left) bank of West Taylor Creek (aka Middle Taylor Creek) at a point whence the West quarter corner of Section 20, Township 22 South, Range 73 West of the 6th Principal Meridian bears North 58° 15’ West at a distance of 2,900 feet, such point being in the SE1/4NW1/4 of said Section 20. In Case No. 00CW42, A. Katzenstein Ditch No. 1 was decreed an alternate point of diversion at a point located on the north (left) bank of Middle Taylor Creek in the NE1/4NW1/4 of Section 28, Township 22 South, Range 73 West, 6th P.M., Custer County, Colorado, at a point whence the Northwest corner of said Section 28 bears North 86° 31’ West a distance of 2,058 feet. Decreed Source: Middle Taylor Creek (aka West Taylor Creek). Appropriation Date: March 30, 1873 (Priority 51) and July 1, 1878 (Priority 207(B)). Total Amount Decreed to Structure: 1.86 cfs. Amount Available to UAWCD. UAWCD’s share is calculated pursuant to the 10CW30 Decree. The quantity of consumable water currently considered to be permanently available to UAWCD is 78.3 acre-feet per year on average. Decreed Uses: UAWCD’s interest in the A. Katzenstein Ditch No. 1 water rights are currently decreed for use as source of replacement water for all authorized uses described in the 06CW32 Plan, as the same may be amended from time to time, and as augmentation water in the 18CW3076 Plan. Name of Structure. Conquistador Reservoir No. 1. Date of Prior Decrees, Case Numbers, and Court. Original decree: District Court, Water Division 2, August 1, 1978, Case No. W-4320. Relevant subsequent decrees: 86CW67, January 9, 1987 (change in place of storage); 95CW10, August 4, 1998 (changed to use in HBL augmentation plan); 00CW3, September 27, 2001 (decreed absolute storage right for 134.6 acre-feet, and the remaining conditional 15.4 acre-feet was declared to be abandoned); 10CW30 (change for use in 06CW32 Plan and storage in Pueblo and DeWeese Reservoirs), 18CW3076 (changed for use as augmentation water in 18CW3076 Plan), all in District Court, Water Division 2. Legal Description: SE1/4 of

Section 21, Township 22 South, Range 73 West of the 6th P.M., in Custer County, Colorado. Decreed Source: Middle Taylor Creek at the A. Katzenstein Ditch No. 1 head gate and the A. Katzenstein Ditch No. 1 alternate point of diversion, local surface runoff and groundwater infiltration. Appropriation Date: July 28, 1975 (it may also store water diverted under the A. Katzenstein Ditch No. 1 water rights, with priority dates of March 30, 1873 and July 1, 1878). Total Amount Decreed to Structure: 134.6 acre-feet Decreed Uses: UAWCD's interest in the Conquistador Reservoir No. 1 water right is currently decreed for use as source of replacement water for all authorized uses described in the 06CW32 Plan, as the same may be amended from time to time, and as augmentation water in the 18CW3076 Plan. Friend Ranch Water Rights. Name of structure: Huntzicker Ditch (WDID: 1100600). Legal description of structure as described in most recent decree that adjudicated the location: About one-half mile from the junction of Little Cochetopa Creek with the South Arkansas River in Section 8, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. A more modern description of the actual location of the headgate is a point in the NE1/4SE1/4, Section 7, Township 49 North, Range 8 East, N.M.P.M., at a point 2,500 feet from the south line and 100 feet from the east line of said Section 7. Under the 07CW111 Decree, the Huntzicker Ditch water right is to be administered for the changed uses at the Hensie Ditch No. 1 point of diversion, described below. Division Engineer's Reported UTM Location: 402604E, 4263430N. Decreed source of water: Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. Appropriation Date: December 31, 1870. Total amount decreed to structure: 0.7 cubic feet per second (cfs). Amount of water changed in 07CW111 and 17CW3037: 0.5 cfs. Name of structure: Hensie Ditch No. 1 (WDID: 1100602). Legal description of structure as described in most recent decree that adjudicated the location: About 20 rods below the mouth of Pass Creek in Section 7, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. A more modern description of the actual location of the headgate is in the SW1/4 SE1/4, Section 7, Township 49 North, Range 8 East, N.M.P.M., at a point 90 feet from the south line and 2,280 feet from the east line of said Section 7. Division Engineer's Reported UTM Location: 401930E, 4262660N. Decreed source of water: Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. Appropriation Date: December 31, 1873. Total amount decreed to structure: 0.3 cfs. Amount of water changed in 07CW111 and 17CW3037: 0.3 cfs. Name of structure: Boon Ditch No. 2 (WDID: 1100608). Legal description of structure as described in most recent decree that adjudicated the location: North Bank of Pass Creek, about 200 feet from the junction of Pass Creek with Little Cochetopa Creek, Chaffee County, Colorado. A more modern description of the actual location of the headgate is the NW1/4 NE1/4, Section 18, Township 49 North, Range 8 East, N.M.P.M., at a point 200 feet from the north line and 2,450 feet from the east line of said Section 18. Under the 07CW111 Decree, the Boon Ditch No. 2 water right is to be administered for the changed uses at the Velotta Ditch No. 1 point of diversion, described as a point on the north bank of Pass Creek, whence the East Quarter Corner of Section 13, Township 49 North, Range 7 East, N.M.P.M., bears South 74°45' East, 1760 feet. Division Engineer's Reported UTM Location: 401950E, 4262460N. Decreed source of water: Pass Creek, tributary to Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. Appropriation Date: November 30, 1871. Total amount decreed to structure: 1.4 cfs. Amount of water changed in 07CW111 and 17CW3037: 1.4 cfs. Name

of structure: Hensie Ditch No. 2 (WDID: 1100609). Legal description of structure as described in most recent decree that adjudicated the location: About one-half mile from Pass Creek's junction with Little Cochetopa Creek, in Section 7, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. A more modern description of the actual location of the headgate is the SE1/4 NE1/4, Section 13, Township 49 North, Range 7 East, N.M.P.M., at a point 1,680 feet from the north line of said Section 13, and 90 feet from the east line of said Section 13. Under the 07CW111 Decree, the Hensie Ditch No. 2 water right is to be administered for the changed uses at the Velotta Ditch No. 1 point of diversion, described as a point on the north bank of Pass Creek, whence the East Quarter Corner of Section 13, Township 49 North, Range 7 East, N.M.P.M., bears South 74°45' East, 1760 feet. Division Engineer's Reported UTM Location: 401064E, 4262220N. Decreed source of water: Pass Creek, tributary to Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. Appropriation Date: December 31, 1873. Total amount decreed to structure: 0.2 cfs. Amount of water changed in 07CW111 and 17CW3037: 0.2 cfs. Name of structure: Mundlein Ditch No. 2 (WDID: 1100597). Legal description of structure as described in most recent decree that adjudicated the location: The original decree for the Mundlein Ditch No. 2 Water Right describes the location of its headgate at a point on the East bank of Green Creek, whence the South Quarter Corner of Section 1, Township 49 North, Range 8 [sic] East of the N.M.P.M., bears South 67° 46' East, 3784 feet. The correct Range is 7 East. Division Engineer's Reported UTM Location: 399164E, 4264741N. Decreed source of water: Green Creek, tributary to the South Arkansas River, tributary to the Arkansas River. Appropriation Date: March 1, 1873. Total amount decreed to structure: 1.74 cfs. Amount of water changed in 07CW111 and 17CW3037: 0.58 cfs. Original and all relevant subsequent decrees for all of the above water rights (the "Friend Ranch Water Rights"): Civil Action No. 1127, District Court, Chaffee County (6/19/1890); W-294, District Court, Water Division 2 (October 18, 1978); 07CW111, District Court, Water Division 2 (June 13, 2012); 17CW3037, District Court, Water Division 2 (March 22, 2019). Decreed uses of the Friend Ranch Water Rights: In Case No. 07CW111, the Friend Ranch Water Rights were changed from irrigation use to direct flow and storage for the Town of Poncha Springs's municipal uses in its existing and future service areas including the Friend Ranch, including, without limitation, domestic, commercial, industrial, irrigation, recreational, fire protection, augmentation, exchange and replacement purposes as provided in the 07CW111 Decree. In Case No. 17CW3037, UAWCD changed the Friend Ranch Water Rights to allow their use as a source of augmentation or replacement water in all existing and future plans for augmentation, Rule 14 replacement plan, substitute water supply plans, and other statutorily authorized plans, including but not limited to, such approval as authorized by C.R.S. §§ 37-92-308, 37-92-309, 37-60-115(8), or 37-83-101 et seq., operated by UAWCD to replace out-of-priority depletions from structures located within UAWCD's boundaries, in addition to the existing decreed uses by the Town of Poncha Springs. Statement of Plan. UAWCD desires to amend the 18CW3076 Plan by adding the Wenke Pond as a structure used for storage and release of Augmentation Water in the Plan, by adding water stored pursuant to the requested water storage right for Wenke Pond as a source of Augmentation Water in the Plan, and by revising the Area I boundary to include all of the existing Plan Service Area in the Grape Creek drainage, including all of the portion currently designated as Area II. UAWCD does not seek to alter

the Area II portions of the Service Area outside of the Grape Creek drainage, and does not seek any other modification to the 18CW3076 plan except for those expressly set forth herein. Wenke Pond is described in paragraph 7, below. **Application for Conditional Appropriative Right of Exchange** Name of Exchange: UAWCD Wenke Pond Exchange. Date of Appropriation: January 13, 2022. How Appropriation was Initiated: Approval of an agreement, at a public meeting of the UAWCD Board of Directors, with Paul and Hope Wenke to utilize Wenke Pond as a storage structure in the 18CW3076 Plan. Amount Claimed: 0.5 cfs (conditional). Proposed Use: Storage of water in Wenke Pond for subsequent use in UAWCD's 18CW3076 Plan for Augmentation. Lower Termini: DeWeese Reservoir (WDID: 1303613): The southeasterly corner of the dam of said reservoir is North 41°37' East, and is distant 758.7 feet from the Northeast Corner of Section 20, T. 21 S., R. 72 W., 6th P.M., in Custer County (Division Engineer's reported location: UTM Zone 13S 460703E, 4229165N NAD 83); and Confluence of Grape Creek and Taylor Creek, located in the SENW of Section 1, Township 22 South, Range 73 West, 6th PM, UTM Zone 13 456521E, 4224815N, NAD 83. Upper Termini: Wenke Pond, the source of supply of which is the existing Wenke Pond Spring Inlet and the proposed Wenke Pond Grape Creek Inlet, as described below. Sources of Substitute Supply: Any water approved for use as Augmentation Water in the 18CW3076 Plan. **Application for Conditional Water Storage Right** UAWCD requests a conditional water storage right for Wenke Pond, as described above, and as follows: Date of Appropriation: September 4, 1988. How Appropriation was Initiated: Based on aerial imagery, Wenke Pond was constructed to its current size and capacity no later than September 4, 1988. Since at least September 4, 1988, the pond has consistently been filled and refilled via Wenke Pond Spring Inlet, described below. Approval, at a public meeting of the UAWCD Board of Directors on January 13, 2022, of an agreement with Paul and Hope Wenke, pursuant to which the Wenkes authorize UAWCD to utilize Wenke Pond as a storage structure in the 18CW3076 Plan, and to obtain such water rights as may be necessary to protect UAWCD's right to store water in Wenke Pond. Amount Claimed: 12 acre-feet for an initial fill, plus the right to refill to replace losses and releases (conditional). Volume: Approximately 12 acre-feet of total storage, including approximately 11 acre-feet of live storage. Surface Area at High Water Line: 2.2 acres or less. Vertical Height of Dam: Less than 10 acre-feet. Length of Dam: The perimeter of the pond is approximately 1500 feet. Proposed Use: A source of Augmentation Water in the 18CW3076 Plan. Location: In the SENE Section 19, Township 22 South, Range 72 West, 6th PM, UTM Zone 13S 458664E, 4219803N (NAD 83). Sources of Supply: Wenke Pond Grape Creek Inlet: Source: Grape Creek. Point of Diversion: In the SWNE Section 19, Township 22 South, Range 72 West, 6th PM, UTM Zone 13S 458568E, 4219736N (NAD 83). Wenke Pond Spring Inlet: Wenke Pond is located on, and filled by, an unnamed channel that is tributary to and east of Grape Creek. The pond intercepts the channel at approximately UTM Zone 13S 458716E, 4219708N NAD83. The channel is believed to be fed by springs located in the SWSW Section 20 and NWNW Section 29, Township 22 South, Range 72 West, 6th PM. Rate of Fill: 0.5 cfs from each of the two sources of supply described above. Name(s) and address(es) of owner(s) or reputed owner(s) 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. Wenke Pond and the Wenke Pond Grape Creek

Intake are on land owned by Paul C. Wenke and Hope N. Wenke, PO Box 1193, Westcliffe, CO 81252.

CASE NO. 2022CW3094; Previous Case Nos. 09CW120 and 16CW3023 – ELK RANCH, LTD., 6100 Southwest Blvd., Suite 320, Fort Worth, Texas 76109 (Please

address all pleadings and inquiries regarding this matter to Applicants’ attorneys: William D. Wombacher, Esq., Stacy L. Brownhill, Esq., Nazareus Stack & Wombacher LLC, 5299 DTC Blvd., Suite 610, Greenwood Village, Colorado 80111, (720) 647-5661)

Application for Correction for an Established but Erroneously Described Point of Diversion
PARK COUNTY

2. Original Decree. The original decree was entered by the District Court in and for Water Division 2, State of Colorado (“Water Court”), on April 2, 2010, in Case No. 09CW120. An amended decree was entered on April 2, 2012. The first diligence decree was entered on August 2, 2016 in Case No. 16CW3023. A second diligence case is currently pending in Case No. 22CW3054. **3. Description of the Water Right (“Subject Water Right”).** a. Name of Structure. Long Gulch Lake, a/k/a Longs Lake. b. Decreed Legal Description. The decreed location of Long Gulch Lake is in the SW1/4 of the SE1/4 of Section 11, Township 15 South, Range 75 West of the 6th P.M., Park County, Colorado, approximately 2,150 feet from the east section line, and 400 feet from the south section line of said Section 11. c. Source. Long Gulch Lake is supplied by native flows in Long Gulch, tributary to Badger Creek, tributary to the Arkansas River, and flows collected and diverted by Long Gulch Spring No. 3. d. Appropriation Date. October 30, 2009. e. Amount. 0.04 acre-feet per year, absolute. 1.96 acre-feet per year, conditional. f. Uses. Stockwater, wildlife, recreational, wetlands, and fire protection purposes. g. Pond Specifications. Long Gulch Lake will have a maximum surface area of 0.5 acres, and a maximum depth of approximately 6 feet. It is anticipated that the dam will be approximately 150 feet in length, 5 feet high, and 10 feet wide. Long Gulch Lake is located in excess of 7 miles from the nearest live water course, Badger Creek, and its flows generally do not reach the river system to which it is tributary. h. Total Capacity. Long Gulch Lake will have a total capacity of 2.0 acre feet, all of which will be active capacity and none of which will be dead storage. **4. Detailed description of proposed correction to an established but erroneously described point of diversion.** Long Gulch Lake was originally adjudicated in Case No. 09CW120 by Elk Ranch’s predecessors; Alan Grigsby, Grigsby Family Partnership, LRD, and Grigsby Properties, LLC. Elk Ranch acquired Long Gulch Lake and the property on which it resides in 2013. Bob Burton has worked as the ranch manager for the property since approximately 2011, on a full time and contract basis under both Elk Ranch and the Grigsby Family. According to Mr. Burton, the construction of Long Gulch Lake began at its current location by Alan Grigsby prior to the transfer of the property to Elk Ranch. This work by Alan Grigsby is what led to a portion of the water right being made absolute at its current physical location in Case No. 16CW3023. The summary of consultation in Case No. 16CW3023 stated that “[t]he conditional water storage right decreed to Long Gulch Lake for stockwater, wildlife, recreational, wetlands, and fire protection purposes should be determined to be perfected as an absolute water right in the amount of 0.04 acre feet.” No party noted the inconsistency between the as-built location of Long Gulch Lake and the decreed location, nor was Elk Ranch aware of the inconsistency at that time. In reliance on the fact that a

portion of Long Gulch Lake was made absolute in Case No. 16CW3023 at its current location, Elk Ranch subsequently enlarged Long Gulch Lake to a total capacity of 1.26 acre feet and sought to make more of the right absolute in Case No. 22CW3054. Mr. Burton recalls meeting two different water commissioners at the as-built location of Long Gulch Lake to discuss the specifics of the enlargement of the Lake. At no time was there any indication that the physical location of Long Gulch Lake did not reflect the correct decreed location. According to Mr. Burton, since he began working on the property in 2011, the current physical location of Long Gulch Lake had always been considered to be the correct location. It was not until Elk Ranch reviewed the Summary of Consultation in Case No. 22CW3054 that it became aware of a discrepancy. Both the decreed location and the as-built location of Long Gulch Lake are located on property owned by Elk Ranch, and the only intervening water rights are other ponds and springs owned by Elk Ranch. In light of the foregoing, Long Gulch Lake has been at the same physical location since it was constructed by the original appropriator, Alan Grigsby, and made partially absolute in Case No. 16CW3023. The physical location of the Lake is not at the location specified in the original decree in Case No. 09CW120 or the decree in Case No. 16CW3023. At all times that water was diverted into the Lake known as Long Gulch Lake, the parties were intending to divert and beneficially use the water pursuant to the Long Gulch Lake water right originally decreed in Case No. 09CW120 and made partially absolute in Case No. 16CW3023. By this Application, Elk Ranch seeks to correct this established but erroneously described point of diversion.

5. Legal Description of Corrected Location of Long Gulch Lake: The SW1/4 of the SW1/4 of Section 12, Township 15 South, Range 75 West of the 6th P.M., Park County, Colorado, approximately 675 feet from the west section line and 915 feet from the south section line of Section 12. See **Exhibit 1** 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.)

6. Names and Addresses of Owners of Land Upon Which Structures Are or Will Be Located, Upon Which Water Is or Will Be Stored, and Upon Which Water Is or Will Be Placed to Beneficial Use. Applicant. WHEREFORE, Applicant requests that the Court enter a finding correcting an established by erroneously described point of diversion for Long Gulch Lake to the legal description described herein.

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 February 2023, (forms available at Clerk's office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$192.00). The foregoing are resumes and the entire application, amendments,

exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 11th day of January 2023.

Michele Santistevan



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

(Court seal)
Published:

SUBSTITUTE WATER SUPPLY PLAN AND PRODUCED NONTRIBUTARY GROUNDWATER NOTIFICATION LIST

Section 37-92-308(6), C.R.S. directs the State Engineer to establish a notification list for each water division for the purpose of notifying interested parties of requests for the State Engineer's approval of substitute water supply plans ("SWSP") filed in that water division pursuant to section 37-92-308, C.R.S. The SWSP notification list is also used to provide notice of proposed water right loans to the Colorado Water Conservation Board for use as instream flows under section 37-83-105(2)(b)(II), C.R.S., notice of applications for the State Engineer's approval of interruptible water supply agreements under section 37-92-309(3)(a), C.R.S., notice of applications for fallowing-leasing pilot projects under section 37-60-115(8)(e)(II), C.R.S., notice of fire suppression ponds under section 37-80-124(10)(a)(II)(E), C.R.S., and notice of storm water detention and infiltration facilities under section 37-92-602(8)(d), C.R.S.

Pursuant to Rule 17.5(B)(2) of the Rules and Regulations for the Determination of the Nontributary Nature of Ground Water Produced Through Wells in Conjunction with the Mining of Minerals, at 2 CCR 402-17 ("Rules"), the State Engineer is publishing this invitation to persons to be included on the Produced Nontributary Ground Water Notification List. According to Rule 17.5(B)(2) of the Rules, the State Engineer must establish a Produced Nontributary Ground Water Notification List for each water division within the State of Colorado for the purposes of ensuring that water users within each water division receive adequate notice of proceedings held pursuant to the Rules. In order to establish such notification list, the State Engineer is directed, in January of each year, to cause to have published in the water court resume for each water division this invitation

to be included on the Produced Nontributary Ground Water Notification List for the applicable water division.

This notice is an invitation to be included on the SWSP or Produced Nontributary Groundwater notification lists. Sign up for these or other notification lists maintained by the State Engineer at: <https://dwr.colorado.gov/public-information/notification-lists>. Additional information is available on the Division of Water Resources' website at: <https://dwr.colorado.gov/>.