

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JUNE 2022.

(This publication can be viewed in its entirety on the state court website at:

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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of Applications, Protests to Final Revised Abandonment List, and certain amendments filed and/or ordered published during June 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. 2022CW3040; WATER RESOURCE DEVELOPMENT COMPANY; Previous Case Nos: W-399; 81CW141; 85CW80; 89CW44; 96CW11; 02CW107; 09CW75; 16CW3006; AND NORMAN ENFIELD, DECEASED; MARY M. TRUJILLO AND WALETA SIOUX FISHER, HEIRS AND SUCCESSORS IN INTEREST TO THE ESTATE OF NORMAN ENFIELD; WIDFIELD WATER AND SANITATION DISTRICT; AND WATER RESOURCE DEVELOPMENT COMPANY; Previous Case Nos: W-514; 81CW93; 85CW53; 89CW31; 95CW227; 02CW69; 09CW60; 16CW3009, c/o Lucas Hale, Manager, 8495 Fountain Blvd, Colorado Springs, CO 80925 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Sarah A. Klahn, Daniel J. Condren, Somach Simmons & Dunn, P.C., 1155 Canyon Blvd, Suite 110, Boulder, Colorado 80302, Telephone: 303-449-2834)

Application to Make Water Rights Absolute or for a Finding of Reasonable Diligence, and for Alternate Points of Diversion

EL PASO COUNTY

2. Background & Remarks. Water Resource Development Company ("WRDC") is the successor in interest of Widefield Homes Water Company. Widefield Homes appropriated or acquired the water rights that are the subject of this diligence application ("Subject Water Rights"), and WRDC either owns or is an agent for the owners of the Subject Water Rights. The Subject Water Rights as described in Section III below are used by the Widefield Water and Sanitation District ("Widefield" or "the District") under a Master Water Lease. Under the Master Water Lease, Widefield is obligated to maintain the Subject Water Rights, including any necessary filings and litigation in Water Court. The Subject Water Rights are part of Widefield's integrated municipal water system which diverts, treats, stores, and delivers water to its municipal customers and extra-territorial water users. Widefield's extra-territorial customers include water users that may be within the District's defined service area, consistent with contractual commitments, and/or agency relationships. See **Exhibit 1** attached to the application for a map of the Widefield service area ("Widefield Service Area"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court or obtained by contacting counsel of record.) Operation of the Subject Water Rights is limited by the terms of the Widefield Aquifer Stipulation entered in Case No. W-116. In this application, Widefield seeks to make one of the Subject Water Rights, W-4, absolute and to make

absolute in part W-3, a second of the Subject Water Rights; a finding of reasonable diligence on all remaining conditional amounts associated with the Subject Water Rights (including any of amounts associated with the absolute claims that the Court might reject); and to obtain alternate points of diversion for a subset of the Subject Water Rights. The Subject Water Rights were originally decreed in two separate water court matters: Case No. W-514, June 26, 1973 and Case No. W-399, August 15, 1977 (All prior decrees and case numbers awarding reasonable diligence to W-514 water rights: Case No. W-514(77) (December 14, 1978, amended April 6, 1979); Case No. 81CW93 (March 8, 1983); Case No. 85CW53 (October 21, 1985); Case No. 89CW31 (November 9, 1989); Case No. 95CW227 (May 15, 1996); Case No. 02CW69 (March 20, 2003); Case No. 09CW60 (February 17, 2010); Case No. 16CW3009 (June 20, 2016)) (All prior decrees and case numbers awarding reasonable diligence to W-399 water rights: Case No. 81CW141 (June 28, 1985); Case No. 85CW80 (September 24, 1986); Case No. 89CW44 (January 8, 1990); Case No. 96CW11 (July 1, 1996); 02CW107 (May 5, 2003); 09CW75 (January 10, 2010); and Case No. 16CW3006 (June 17, 2016)). As reflected in the caption in this matter and historically Widefield has sought diligence findings on the Subject Water Rights in separate diligence cases. However, for purposes of judicial economy the diligence and absolute claims associated with the Subject Water Rights are combined in this application as are the requests for alternate points of diversion. A Motion For Leave to Combine all of the above-described claims under one caption was filed on June 10, 2022 and the Court subsequently entered an Order authorizing the combining of these claims and the filing of this application.

3. Structures.

3.1 W-399. Decreed source of water: Underground water from the alluvium of Fountain Creek, a tributary of the Arkansas River. Decreed use: Municipal.

3.1.1 Name of Structure (and Water Right): Widefield Well No. 3 (W-3).

3.1.1.1 Appropriation date: August 26, 1963.

3.1.1.2 Depth: 73 feet.

3.1.1.3 Amounts: A total of 9.691 cfs. 3.756 cfs have been decreed as absolute and 5.935 cfs remains conditional.

3.1.1.4 Legal description of structure: Located in the NE ¼ of the NW ¼ of Section 24, Township 15 South, Range 66 West of the 6th P.M., approximately 30 feet North of the South line of said NE ¼ of the NW ¼ and approximately 500 feet West of the center line of said Section 24, in El Paso County, Colorado.

3.1.1.5 UTM: 13S 0523390E, 4287269N.

3.1.1.6 Permit No.: 2065-F; WDID: 1005524.

3.1.2 Name of Structure (and Water Right): Widefield Well No. 4 (W-4).

3.1.2.1 Appropriation date: March 24, 1964.

3.1.2.2 Depth: 71 feet.

3.1.2.3 Amounts: A total of 4.511 cfs. 3.34 cfs decreed absolute and 1.171 cfs remains conditional.

3.1.2.4 Legal description of structure: Located in the NE ¼ of the NW ¼ of Section 24, Township 15 South, Range 66 West of the 6th P.M. approximately 795 feet West of the center line of said Section 24 and approximately 690 feet South of the North line of Section 24, in El Paso County, Colorado.

3.1.2.5 UTM: 13S 0523312E, 4287455N.

3.1.2.6 Permit No.: 5304-F; WDID: 1005525.

3.1.3 Name of Structure (and Water Right): Widefield Well No. 13 (W-13).

3.1.3.1 Appropriation date: March 24, 1964.

3.1.3.2 Depth: 71 feet.

3.1.3.3 Amounts: A total of 0.44 cfs. 0.22 cfs decreed absolute and 0.22 cfs remains conditional.

3.1.3.4 Legal description of structure: Located in the NE ¼ of the SW ¼ of Section 19, Township 15 South, Range 65 West of the 6th P.M. at a point approximately 2240 feet North of the South section line and 2215 feet East of the West section line of said Section 19, in El Paso County, Colorado.

3.1.3.5 UTM: 13S 0525107E, 4286713N.

3.1.3.6 Permit No.: 19418-R-R; WDID: 1005534.

3.2 W-514. Decreed source of water: Underground water

from the alluvium of Fountain Creek, a tributary of the Arkansas River. Decreed use: Municipal. 3.2.1 Name of Structure (and Water Right): Enfield Well No. 1 (E-1). 3.2.1.1 Appropriation date: June 30, 1946. 3.2.1.2 Depth: 46 feet. 3.2.1.3 Amount: 0.557 cfs conditional. 3.2.1.4 Legal description of structure: Located in the SW ¼ of the SE ¼ of Section 24, Township 15 South, Range 66 West of the 6th P.M., approximately 550 feet from the South line and approximately 1700 feet from the East line of Section 24 in El Paso County, Colorado. 3.2.1.5 UTMs: NAD 83 13S 0523862E, 4286304N. 3.2.1.6 Permit No.: 19912-R, WDID: 1005539. 3.2.2 Name of Structure (and Water Right): Enfield Well No. 1 (Enlargement) (E-1 Enlargement). 3.2.2.1 Appropriation date: March 21, 1972. 3.2.2.2 Depth: 46 feet. 3.2.2.3 Amount: 2.28 cfs conditional. 3.2.2.4 Legal description of structure: Located in the SW ¼ of the SE ¼ of Section 24, Township 15 South, Range 66 West of the 6th P.M., approximately 550 feet from the South line and approximately 1700 feet from the East line of Section 24, in El Paso County, Colorado. 3.2.3 Name of Structure (and Water Right): Enfield Well No. 3 (E-3). 3.2.3.1 Appropriation Date: September 2, 1964. 3.2.3.2 Depth: 45 feet. 3.2.3.3 Amount: 0.044 cfs (20 gpm) conditional. 3.2.3.4 Legal description of structure: Located in the SW ¼ of the SE ¼ of Section 24, Township 15 South, Range 66 West of the 6th P.M., approximately 1000 feet from the South line and approximately 2050 feet from the East line of Section 24, in El Paso County, Colorado. 3.2.3.5 UTMs: NAD 83 13S 0523706E, 4286350N. 3.2.3.6 Permit No.: 21430-A, WDID: 1005541. 3.2.4 Name of Structure (and Water Right): Enfield Well No. 3 (Enlargement) (E-3 Enlargement). 3.2.4.1 Appropriation Date: March 21, 1972. 3.2.4.2 Depth: 45 feet. 3.2.4.3 Amount: 1.67 cfs. (750 gpm) conditional. 3.2.4.4 Legal description of structure: Located in the SW ¼ of the SE ¼ of Section 24, Township 15 South, Range 66 West of the 6th P.M., approximately 1000 feet from the South line and approximately 2050 feet from the East line of Section 24, in El Paso County, Colorado. **4. Request to Make Absolute an Additional 2.03 cfs for Water Right W-3 and to Make Absolute the Remaining Conditional Amounts Associated with Water Right W-4.** 4.1 Since July 11, 1984, the date of entry of Widefield's augmentation plan decree, Case No. 81CW229, Widefield has operated the Subject Water Rights listed below consistent with the terms of the augmentation plan decree at the flow rates listed below and put that water to use for municipal purposes. Widefield maintains accounting records that demonstrate its compliance with the terms of the augmentation plan decree, including the replacement of depletions. On the basis of these operations under 81CW229, Widefield seeks to make the following amounts absolute for W-3 and W-4. 4.1.1. Water right W-3: 2.03 cfs on June 25, 2021, for a total of 5.786 cfs absolute, with 3.0905 conditional. 4.1.2 Water right W-4: 1.171 cfs on April 25, 2022, for a total of 4.551 absolute, with no remaining portion conditional. **5. Request for Finding of Diligence.** The remaining conditional portions of the Subject Water Rights have been diligently maintained, and Widefield can and will perfect these water rights for beneficial uses pursuant to the standards set forth in C.R.S. §§37-92-301(4) and 37-92-305(9)(b) and associated caselaw. Widefield requests that the Court continue the portions of water rights W-3, W-13, E-1, E-1 Enlargement, E-3, E-3 Enlargement that are conditional; and, in the event the request to make portions of water rights W-3 and W-4 absolute is denied, that the entirety of the conditional portions of W-3 and W-4 also be continued. As detailed below Widefield and WRDC have spent approximately \$30,000,000 on planning, design, treatment works, site acquisitions, legal and construction efforts related to water rights

protection and water system facility maintenance and improvements to meet anticipated demands from residential and commercial growth within Widefield's Service Area. All of the Subject Water Rights are part of Widefield's integrated municipal water supply system. Accordingly, diligence on part of the system serves as reasonable diligence on the entire system. Activities and expenditures that demonstrate diligent development of the Subject Water Rights include but are not limited to:

5.1 During the diligence period WWSD added 2,859 water taps. 5.2 In 2021, the District entered into a new service agreement for an undeveloped parcel within the District's service area known as Singer's Ranch. 5.3 Activities related to improvements in water treatment and distribution facilities:

5.3.1 WWSD has expended approximately \$2.5 million (along with an additional \$12.3 million expended by the United States Air Force) to develop and construct redundant treatment systems to remove per-and polyfluoroalkyl substances (PFAS) from contaminated ground water supplies in the Widefield Aquifer. These improvements included a pipe system that manifolded most of the District's wells impacted by PFAS. As a result of these expenditures, WWSD currently has sufficient treatment capacity to treat its water rights contaminated with PFAS that are diverted from its wells in the Widefield Aquifer. 5.3.2 In 2021, the District designed and constructed two major generators for power redundancy. The project costs totaled approximately \$1,031,600. 5.3.3 In 2021, the District also completed the final phase of the lower west to east 24-inch water transmission main. This final phase of the lower 24-inch water transmission main is an integral part of the District's water transmission infrastructure. Approximate cost of this project was \$887,771. 5.3.4 In 2021, the District permanently acquired 45 percent interest in the Venetucci well water treatment infrastructure at a cost of approximately \$653,295.35. The ground water rights associated with the Venetucci wells were acquired by Widefield during the prior diligence period. 5.3.5 In 2019, the District constructed a 12-inch water transmission line to serve the north area of the District. This transmission line serves the War Veterans Pikes Peak National Cemetery. Project costs totaled approximately \$1,796,305. 5.3.6 In 2017 the District constructed Phase 3 and Phase 4 of the lower west to east 24-inch water transmission main. Project costs totaled approximately \$992,900. 5.3.7 Finally, in 2021, the District designed upgrades to Booster Pump Station #2 and began the Upper West to East Water Transmission Main at a cost of approximately \$296,000. 5.4 The District rehabilitated several ground water diversion structures:

5.4.1 In 2018, the District rehabilitated Well C-2 for total project costs of approximately \$175,743. 5.4.2 In 2020, the District rehabilitated Well W-1 for total costs of approximately \$118,200. 5.4.3 In 2017, the District rehabilitated Well JHW2 for total costs of approximately \$214,949.67. 5.5 In 2019, the District completed approximately \$6.3 million dollars in upgrades to its water reclamation facility which treats the District's effluent, including amounts that may be used in future recharge operations. 5.6 Beginning in 2022, the District is in the process of acquiring several easements for the Upper West to East water transmission main, and has engaged staff and consultants to complete a design-build project to serve the new main. 5.7 Water planning projects:

5.7.1 In August of 2019, the District updated its Water Resources Report. Additionally, the District obtained a water distribution model as part of the completion of the Master Water Plan. Additionally, the District completed an engineering study regarding utilization of existing water rights. The District spent approximately \$100,000 in the various studies aforementioned. 5.7.2 Widefield engaged consultants to develop a new Master Water

Plan in May of 2021 at a cost of approximately \$383,600. 5.8 WWSD changed 241 FMIC shares in Case No. 17CW3072 from irrigation to municipal and augmentation uses. Once incorporated into an augmentation plan, these changed FMIC shares are among the augmentation supplies that will be used to operate the Subject Water Rights out of priority. Total legal and engineering costs related to this change case were approximately \$50,000. 5.9 To defend and protect its existing water rights, WWSD filed statements of opposition in numerous Division 2 Water Court cases between July 1, 2016 and June 30, 2022. Total cost of oppositions in Water Court, including both legal and engineering costs was approximately \$3.4 million. 5.10 WWSD completed Phase 1A engineering and design efforts to implement recharge under WWSD's Widefield Aquifer Recharge water right ("WARA") decreed in Case No. 02CW39 at a cost of approximately \$100,000. When implemented, WARA will further reinforce the capacity of the WWSD system to operate the Subject Water Rights consistent with its exchange decree entered in Case No. 86CW1Q16 and augmentation plan decreed in 81CW229. 5.10.1 During the diligence period the District purchased two properties for future expansion of WARA and possible treatment facilities. Total cost approximately \$263,000 along with a \$225,000 land donation from WRDC. 5.10.2 Additionally, during the diligence period WWSD consultants began efforts to file of an application for an Environmental Protection Agency permit for a Class 5 injection well permit, which is required to operate the WARA. **6. Request for Changes of Points of Diversion.** Applicants seek alternate points of diversion for the water right associated with: water right W-13 to also authorize diversion at the Widefield Well No. 7 structure; water right E-1 (and E-1 Enlargement) to also authorize diversion of these rights at the Enfield Well No. 2 structure; and E-3 (and E-3 Enlargement) to also authorize diversion of these rights at the Enfield Well No. 2 structure. The terms and conditions specified in paragraph VI.B. below ensure the requested changes will not result in injury or expansion. 6.1 Description of changes. 6.1.1 Water right to be changed: W-13. 6.1.1.1 Decree information: As described in paragraph III.A.3. above. 6.1.1.2 Amount to be changed: 0.22 cfs, conditional for municipal use, with an annual volumetric limit of 66 acre-feet/year. 6.1.1.3 Historical use information: N/A; conditional water right. 6.1.1.4 Legal description of alternate point of diversion: Widefield Well No. 7 structure (WDID 1005528), located in the NE1/4 of SE/14 of Section 24, Township 15 South, Range 66 West. 6.1.1.5 UTM (Zone 13): Easting 523935.0, Northing 4286602.0 6.1.1.6 Names and addresses of landowners upon which the alternate diversion point is located: Widefield Water and Sanitation District, 8495 Fontaine Blvd., Colorado Springs, Colorado 80925. 6.1.2 Water right to be changed: E-1. 6.1.2.1 Decree information: As described in paragraph III.B.1. above. 6.1.2.2 Amount to be changed: 0.557 cfs total (absolute for domestic and irrigation uses; conditional for municipal use), with an annual volumetric limit of 23 acre-feet/year. 6.1.2.3 Historical use information: N/A; water right will not be operated under decreed priority date, and the terms and conditions specified in paragraph VI.B. below ensure no injury nor expansion will occur. 6.1.2.4 Description of alternate point of diversion: Enfield Well No. 2 structure (WDID 1005540), located in the SE1/4 of the SE1/4 of Section 24, Township 15 South, Range 66 West. 6.1.2.5 UTM (Zone 13): Easting 523958.0, Northing 4286219.0. 6.1.2.6 Names and addresses of landowners upon which the alternate diversion point is located: Widefield Water and Sanitation District, 8495 Fontaine Blvd., Colorado Springs, Colorado 80925. 6.1.3 Water right to be changed: E- 1 Enlargement. 6.1.3.1 Decree information: As described in paragraphs

III.B.2. above. 6.1.3.2 Amount to be changed: 2.28 cfs, conditional for municipal use. 6.1.3.3 Historical use information: N/A; conditional water right. 6.1.3.4 Legal description of alternate point of diversion: Enfield Well No. 2 structure described in paragraph VI.A.2.d. above. 6.1.3.5 Names and addresses of landowners upon which the alternate diversion point is located: Widefield Water and Sanitation District, 8495 Fontaine Blvd., Colorado Springs, Colorado 80925. 6.1.4 Water right to be changed: E-3. 6.1.4.1 Decree information: As described in paragraph III.B.3. above. 6.1.4.2 Amount to be changed: 20 gpm (0.044 cfs), conditional for municipal use, with an annual volumetric of 0.560 acre-feet/year. 6.1.4.3 Historical use information: N/A, conditional water right. 6.1.4.4 Legal description of alternate point of diversion: Enfield Well No. 2 structure described in paragraph VI.A.2.d. above. 6.1.4.5 Names and addresses of landowners upon which alternate diversion point is located: Widefield Water and Sanitation District, 8495 Fontaine Blvd., Colorado Springs, Colorado 80925. 6.1.5 Water right to be changed: E-3 Enlargement. 6.1.5.1 Decree information: As described in paragraph III.B.4. above. 6.1.5.2 Amount to be changed: 750 gpm (1.67 cfs), conditional for municipal use. 6.1.5.3 Historical use information: N/A, conditional water right. 6.1.5.4 Legal description of alternate point of diversion: Enfield Well No. 2 structure described in paragraph VI.A.2.d. above. 6.1.5.5 Names and addresses of landowners upon which the alternate diversion point is located: Widefield Water and Sanitation District, 8495 Fontaine Blvd., Colorado Springs, Colorado 80925. 6.2 Terms and Conditions Applicable to Change. 6.2.1 All diversions associated with the above-named water rights at the proposed alternate points of diversion will be augmented under Widefield's augmentation plan decreed in Case No. 81CW229. 6.2.2 Diversions from the alternate points of diversion will be limited volumetrically to the original decreed limitations associated with each water right (see above) and also limited by applicable terms in the Restatement of Stipulations Regarding the Widefield Aquifer Management Plan, Case No. W-116, May 26, 2009. WHEREFORE, Applicants respectfully request that the Water Court enter a decree finding that Applicants have made the amounts specified above absolute, or in the alternative exercised reasonable diligence; exercised reasonable diligence on all of the remaining conditional portions of the Subject Water Rights and continuing the conditional portions of the Subject Water Rights in full force and effect for the period of time allowed by law; and approving the alternate points of diversion sought for the specified subset of the Subject Water Rights identified in section 6 above.

CASE NO. 2022CW3041; The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2.

CASE NO. 22CW3042; Previous Case No: 2003W19 – CENTER OF COLORADO WATER CONSERVANCY DISTRICT c/o Daniel J. Drucker, Operations Manager, P.O. Box 1747 Fairplay, CO 80440-1747 (“The Center District”) AND UPPER SOUTH PLATTE WATER CONSERVANCY DISTRICT c/o David B. Wissel, President P.O. Box 612 Fairplay, CO 80440 (“The Upper South Platte District”) (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: **Attorneys for The Center District**: David M. Shohet, #36675 Ryan W. Farr, #39394 Monson, Cummins Shohet & Farr, LLC 13511 Northgate Estates Drive, Suite 250 Colorado Springs, CO 80921, Phone Number: (719) 471-1212, and **Attorneys for the Upper South Platte**

District: Madoline Wallace-Gross and Anthony J. Basile, Lyons Gaddis, P.C., P.O. Box 978, Longmont, CO 80502-0978, (303)776-9900

Second Amended Application for Finding of Reasonable Diligence

PARK AND FREMONT COUNTIES

2. **Summary of Second Amended Application:** Applicants seek a finding of reasonable diligence on their conditional appropriative rights of exchanges. A general location map depicting these exchanges 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.) The First Amended Application corrected the Court’s address in the caption. This Second Amended Application adds a legal description for Twin Lakes Reservoir and additional legal description information for the exchange termini, as requested by the Court. 3. **Original Decree for Conditional Appropriative Rights of Exchange in this Application:** Case No. 03CW019, District Court, Water Division No. 2, entered June 29, 2016 (“Decree”). 4. **Request for Findings of Reasonable Diligence for Conditional Appropriative Rights of Exchange.** 4.1. *Exchange reaches and maximum exchange rates:*

Stream	Upper Terminus	Lower Terminus	Rate (conditional)
Currant Creek	SE ¼, SE ¼, Section 12, T14S, R74W, 6th PM UTM Zone 13 Easting = 446924 Northing = 4299390	Confluence Tallahassee Creek at lat 38 29 44N long 105 24 16W SE ¼, NE ¼, Section 11, T18S, R72W, 6th PM. UTM Zone 13 Easting = 464732 Northing = 4260877	2.0 cfs
Tallahassee Creek	Confluence Currant Creek at lat 38 29 44N long 105 24 16W SE ¼, NE ¼, Section 11, T18S, R72W, 6th PM. UTM Zone 13 Easting = 464732 Northing = 4260877	Confluence Arkansas River at lat 38 29 16N long 105 22 48W SW ¼, SW ¼, Section 7, T18S, R71W, 6th PM. UTM Zone 13 Easting = 466860 Northing = 4260005	2.0 cfs
Badger Creek	NW ¼, NW ¼ Section 27, T14S, R76W, 6th PM UTM Zone 13 Easting = 422816 Northing = 4295906	Confluence Arkansas River SE ¼, SE ¼, Section 28, T49N, R10E, NMPM UTM Zone 13 Easting = 424844 Northing = 4257783	3.0 cfs

4.2. *Operation:* Water associated with Applicants’ shares of Twin Lakes Reservoir and Storage Company (“Twin Lakes”) is released from Twin Lakes Reservoir to the Arkansas River and then exchanged up Currant, Tallahassee and/or Badger Creeks to the points of depletion or to a location where Applicants can divert the water for storage or trucking to storage. The dam above the Twin Lakes Reservoir outlet is located in the SE1/4, NW1/4 Section 23, Township 11 South, Range 80 West, 6th PM at the following UTM Coordinates (Zone 13): Easting = 387249, Northing = 4326318. Water may be exchanged to any identified or subsequently identified locations as long as the exchange locations are between the upper and lower termini for each exchange as identified herein. 4.3. *Appropriation Date:* December 4, 2002. 4.4. *Amount claimed absolute:* Applicants are not claiming any portion absolute. 4.5. *Uses:* Substitution and exchange. 4.6. *Sources of Exchange Water:* Shares of Twin Lakes Reservoir and Canal Company. 5. **Provide a detailed outline of what has been done toward completion or for completion of the appropriations and application of water to a beneficial use as conditionally**

decreed, including expenditures: During the relevant diligence period, from June 2016 to June 2022, Applicants independently and through the water authority created to manage their operations, Headwater Authority of the South Platte (“HASP”), completed the following work during the diligence period at a cost in excess of \$173,300. The conditional appropriative rights of exchange approved in the Decree are component parts of Applicants’ integrated water supply system, which consists of storage water rights, plans for augmentation, appropriative rights of exchange, and surface water rights. Pursuant to C.R.S. § 37-92-301(4)(B), work on one component of the integrated system shall be considered in finding that reasonable diligence has been shown for all components of the integrated system. 5.1. Applicants purchased Lot 6, Soda Springs Ranch Subdivision in Park County (“Truitt Parcel”), which is adjacent to Currant Creek, in May of 2017 for approximately \$125,000. 5.2. Applicants entered into an Intergovernmental Agreement with HASP to lease the Truitt Parcel for the construction, operation, maintenance, and replacement of an augmentation facility, in October of 2017. 5.3. HASP engaged TZA Water Engineers to design and engineer plans for an augmentation facility, including the storage, flow measurement vault, and discharge line to Currant Creek, on the Truitt Parcel for approximately \$18,300. 5.4. HASP engaged ERO to create and submit a 1041 permit application to install the augmentation facility on the Truitt Parcel for approximately \$21,900. 5.5. Applicants prosecuted an Application for Conditional Surface Water Right in Case No. 15CW3146, District Court, Water Division No. 1 for County Road 59 pump station and State Highway 9 pump station, which was decreed on March 24, 2018, for use in Division 2 in the Decree. 5.6. Applicants entered into an Option Agreement with Jenn and Keith Walsh for the purchase of a 10,000-gallon water storage tank for possible use as the augmentation facility in October of 2017 for \$100. 5.7. HASP hired CW Divers to inspect the Walsh’s 10,000-gallon water storage tank in December of 2017 for approximately \$700. 5.8. HASP leased its shares of Twin Lakes, which are the augmentation source in the Decree, to Stephen and Kathy Bright to augment a pond in September 2017. 5.9. HASP held community meetings in Guffey to educate HASP’s customers about HASP’s augmentation opportunities and about the Division No. 2 pond enforcement. 5.10. HASP unsuccessfully negotiated an Intergovernmental Agreement with Southern Park County Fire Protection District (“SPCFPD”) and Park County in 2017 and 2018, whereby SPCFPD would purchase augmentation water from HASP under the Decree. 5.11. HASP reviewed an application to augment ponds on Badger Creek in June of 2019, but could not accept the customer. 5.12. HASP reviewed a request to augment a pond on Currant Creek in June of 2019, but could not accept the customer. 5.13. Applicants filed a statement of opposition in Division No. 2 to Case No. 21CW3081 to protect Applicants’ water rights, including the exchanges that are the subject of this case, from a water right claiming relation-back the original adjudication. 5.14. Applicants annually renewed their general liability and property insurance policy for the Truitt Parcel underwritten through American Alternative Insurance Corporation at a premium of approximately \$1,665. 5.15. Applicants paid annual assessments to Twin Lakes associated with their water rights at a cost of approximately \$600. 6. **Landowner Notice.** Twin Lakes Reservoir is located on land owned by the U.S. Department of Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road, 18E, Loveland, CO 80537-9711. WHEREFORE, Applicants respectfully request the Court enter a decree finding that Applicants have been

reasonably diligent in perfecting the conditional water rights and continue the conditional water rights for another 6-year period.

CASE NO. 2022CW3043; The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2.

CASE NO. 2022CW3044; The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2.

CASE NO. 2022CW3045; The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2.

CASE NO. 2022CW3046; Previous Case Nos. 76CW4542, 84CW183 – CUCHARAS SANITATION & WATER DISTRICT, c/o Shaylee Andreatta, Business Administrator, 16925 State Highway 12, Cuchara, CO 81055-9775 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Stuart B. Corbridge, Esq. and Kunal A. Parikh, Esq., Vranesh and Raisch, LLP, 5303 Spine Road, Suite 202, Boulder, CO 80301, Telephone: (303) 443-6151)

Application for Findings of Reasonable Diligence

HUERFANO AND LAS ANIMAS COUNTIES

2. Name of Structures. A. Cucharas Pass Collection, Conveyance and Storage System (a.k.a. White Creek Reservoir) B. Britton Reservoir No. 1 3. Description of Conditional Water Rights. A. White Creek Reservoir (i) Prior Decrees. (a) Original Decree: 1) Date of Entry: March 13, 1979 2) Case No.: W-4542 3) Court: District Court, Water Division 2, State of Colorado (b) Diligence Decrees: The conditional water rights for White Creek Reservoir were continued in full force and effect by diligence decrees entered in Case Nos. 83CW27, 87CW16, 93CW44, 99CW174, 07CW9, and 13CW3055. (ii) Legal Description: The points of diversion for White Creek Reservoir are located within a collection, conveyance, and storage system that includes White Creek and certain tributaries of Huajatoyah Creek (a/k/a Guajatoyah Creek), as follows:

<u>Diversion Point</u>	<u>Legal Description</u>
A	NE1/4 SW1/4 of Section 35
B	NE1/4 NW1/4 of Section 35
C	NE1/4 SW1/4 of Section 26
D	SW1/4 SE1/4 of Section 24

All in Township 31 South, Range 69 West, 6th P.M., in Huerfano and Las Animas Counties. (iii) Sources: Aspen Creek, Beaver Creek, Ogden Creek, and an unnamed stream (all tributaries of Huajatoyah Creek, which is a tributary of the Purgatoire River in Las Animas County), and White Creek (a tributary of the Cucharas River in Huerfano County). (iv) Appropriation Date: January 22, 1975 (v) Amounts: (a) West Side Canal: 75 cfs, conditional (Aspen Creek: 30 cfs; Beaver Creek: 25 cfs; and Ogden Creek: 20 cfs) (b) East Side Collection Canal: 30 cfs, conditional (c) Cucharas Pass Reservoir: 7,000 acre-feet, conditional (vi) Uses: Municipal, industrial, irrigation, recreation, and piscatorial. B. Britton Reservoir No. 1 (i) Prior Decrees. (a) Original Decree: 1) Date of Entry: July 23, 1987 2) Case No.: 84CW183 3) Court: District Court, Water Division No. 2, State of Colorado (b) Diligence Decrees: The conditional water rights for Britton Reservoir No. 1

were continued in full force and effect by the diligence decrees entered in Case Nos. 93CW44, 99CW174, 07CW9, and 13CW3055. (ii) Legal Description: SW1/4 NE1/4 of Section 22, Township 31 South, Range 69 West, 6th P.M., Huerfano County, approximately 1,608 feet west and 2,730 feet south of the northeast corner of Section 22. (iii) Source: South Fork of the Cucharas River (iv) Appropriation Date: August 15, 1983 (v) Amount: 40 acre-feet, conditional (vi) Uses: Domestic, municipal, irrigation, recreation (including snowmaking), augmentation, exchange, industrial, commercial, and piscatorial. C. A map/aerial photo showing the general location of White Creek Reservoir and Britton Reservoir No. 1 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).

4. Amount Claimed Absolute. The District does not seek to make any amount of the water rights decreed to either White Creek Reservoir or Britton Reservoir No. 1 absolute by this application. 5. Outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the previous diligence period. The District provides water delivery and water treatment services to an area in the general vicinity of Cuchara, Colorado, which area is adjacent to the Cucharas River and several of its tributaries. Both White Creek Reservoir and Britton Reservoir No. 1 are components in Cucharas' integrated supply system, not only for the diversion and storage of the water storage rights decreed to those structures, but also as structures used in the District's other water system operations. Those operations also include direct flow diversions decreed for a variety of uses, including delivery within the District's municipal system and use in the District's plan for augmentation, other water storage rights, including the Deadman Creek Feeder, the South Fork Feeder, Britton Reservoir No. 2, and Britton Reservoir No. 3, appropriative rights of exchange, and the plan for augmentation. Britton Reservoir No. 1 is an existing structure, and both White Creek Reservoir and Britton Reservoir No. 1 are included as structures to be augmented pursuant to the District's augmentation plan decreed in Case No. 85CW136. In addition, both White Creek Reservoir and Britton Reservoir No. 1 are identified as exchange-to structures for appropriative rights of exchange decreed to the District in Case Nos. 82CW215, 85CW136, and 97CW166. Finally, both White Creek Reservoir and Britton Reservoir No. 1 are identified as exchange-to structures for the appropriative rights of exchange decreed in Case No. 17CW3075. The District's work on one component of its water system can be considered with respect to all components of the system. During the subject diligence period from November 30, 2013, through the date of filing the application in this case, the District made diversions under its various water rights when the rights were in priority, and has otherwise managed its water supply system and operations so as to best utilize its water rights, both absolute and conditional, to supply its customer base and water demand. Activities during the diligence period included, but were not limited to, the diversion of water into the Britton Reservoirs pursuant to the appropriative rights of exchange decreed in Case No. 17CW3075. The District also evaluated opportunities to deliver water into the Britton Reservoirs pursuant to the District's Ballejos Ditch exchange decreed in Case No. 82CW215 and its plan for augmentation, in a manner consistent with other District water operations. The District was also involved with technical studies related to both the White Creek Reservoir and Britton Reservoir No. 1 storage locations. The following activities and expenditures during the subject diligence period are relevant to Cucharas' integrated

water supply system and the development of the White Creek Reservoir and Britton Reservoir No. 1 conditional water rights. The activities and costs identified in this application are not all inclusive, and the District reserves the right to provide evidence of other work done and costs incurred during the subject diligence period during the proceedings for this application. A. The District continued to develop its integrated water supply system, working to complete its appropriations and place the conditional water rights to beneficial use. B. Work during the subject diligence period included general maintenance work related to Britton Reservoir Nos. 1, 2, and 3, including the completion of work projects related to the delivery pipelines for Britton Reservoir Nos. 2 and 3 and renovation of Britton Reservoir No. 1. The District also engaged in general planning and field trips concerning additional updates to and maintenance of the Britton Reservoirs and their related diversion and delivery structures. C. The District did work and incurred costs related to its integrated water supply system and the development of the White Creek Reservoir and Britton Reservoir No. 1 water rights as follows: (i) Updates to the main water plant control system during the period from 2017-2019. This work included changes to both the hardware and software in use at the plant, at a cost of approximately \$100,000.00. (ii) Updates to the District's water delivery pipelines, commencing in 2017 and ongoing. This work includes installation of new water system mains and other piping, upgrades to the system water meters, and general repairs of the water delivery system, at an expected total cost of approximately \$1,600,000.00. (iii) Initiation of and pre-work planning for maintenance on the District's primary 100,000 gallon water storage tank, commencing in August 2019 and ongoing, at an expected total cost of approximately \$40,000.00. (iv) Maintenance and updates on the pressure regulators in the District's water delivery system during the period from October to December 2019, at a cost of approximately \$15,000.00. (v) The District filed a diligence application to continue the conditional water rights for the Deadman Creek Feeder, the South Fork Feeder, Britton Reservoir No. 2, and Britton Reservoir No. 3 in Case No. 20CW3025. A decree was entered on November 12, 2020. Operation of Britton Reservoir No. 2, and Britton Reservoir No. 3 is tied, in part, to operations related to Britton Reservoir No. 1. The District incurred legal fees and other costs related to the filing and prosecution of this diligence application. (vi) The District filed a diligence application to continue the conditional water right for the Cucharas Coler Exchange in Case No. 20CW3037, decreed on September 22, 2021. White Creek Reservoir and Britton Reservoir No. 1 are identified as exchange-to locations for the Cucharas Coler Exchange. The District incurred legal fees and other costs related to the filing of this diligence application. (vii) The District initiated a project to upgrade the District's water diversion structures, water treatment plant, and related facilities on Baker Creek, including but not limited to contracting with its design engineering firm to develop initial plans related to the project. D. From 2015 onward, the District has been an active participant in the Cucharas Basin Collaborative Storage Study project. This participation has included collaboration with other project participants on the development of the technical studies related to the project, with associated costs during the subject diligence period of approximately \$17,000.00. The technical studies included evaluation of potential dam considerations for White Creek Reservoir and possible changes for the Britton Reservoirs. The District also participated as a co-applicant in the water court application filed in Case No. 17CW3075 for new water storage rights and appropriative rights of exchange to implement the findings of the Cucharas Basin

Collaborative Storage Study project. As noted, both White Creek Reservoir and Britton Reservoir No. 1 are included as exchange-to structures for the appropriative rights of exchange decreed in Case No. 17CW3075, and the District has participated in post-decree exchange operations pursuant to the 17CW3075 exchanges. The District has incurred additional legal and engineering fees and other costs in conjunction with Case No. 17CW3075. E. In order to protect its various water rights and water operations, including White Creek Reservoir and Britton Reservoir No. 1, the District filed statements of opposition in the following water court cases in Water Division 2 during the diligence period and/or was an opposer: 97CW108(C), 14CW3045, 15CW3048, 16CW3046, 17CW3049, 17CW3063, 19CW3070, 21CW3012, 21CW3019, and 21CW3084. The District has incurred legal and engineering fees and other costs in conjunction with its participation in these cases. In addition, along with the diligence applications filed by the District in Case Nos. 20CW3025 and 20CW3037, the District was also the applicant in Case No. 16CW3022 in Water Division 2, and incurred legal and engineering fees and other costs related to that case. F. District staff also worked on other items during the subject diligence period necessary for the development and diversion of the White Creek Reservoir and Britton Reservoir No. 1 water rights. This work included, but was not limited to, continued research and other endeavors related to the development of the White Creek Reservoir project, and evaluation of options for making the water storage rights absolute in accordance with procedures prescribed by law pursuant to the District's decreed plan for augmentation and appropriative rights of exchange, as described in Colorado Division of Water Resources *Written Instruction 2020-01*. The District also continued to monitor its overall water supply system to evaluate the best process and timelines for developing its water system and water rights resources to meet current and future committed demands. G. The White Creek Reservoir and Britton Reservoir No. 1 conditional water rights are junior water rights on the Cucharas, Huerfano, and Arkansas River systems, and opportunities to divert water in-priority for beneficial use during the subject diligence period have been extremely limited. The District is a relatively small sanitation and water district, and the development of its integrated water supply system can only advance in stages. This development is tied to the best use of its water resources, based on current water demands and future water service commitments. The District will divert water and use it for the decreed beneficial purposes in the future when White Creek Reservoir and Britton Reservoir No. 1 are either in priority, or pursuant to the District's decreed plan for augmentation and appropriative rights of exchange, and maintains its intent to complete the structures and appropriations of the conditional water rights described in Paragraph 3. 6. 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. A. Cucharas Sanitation & Water District, 16925 State Highway 12, La Veta, CO 81055-9775 B. Crossvine Properties, 3565 State Hwy 69, Wichita Falls, TX 76310 C. United States Department of Agriculture, U.S. Forest Service, Rocky Mountain Region, c/o Current Water Rights Coordinator, Current Regional Hydrologist, 1617 Cole Blvd., Lakewood, CO 80401 D. San Carlos Ranger District, c/o District Ranger, 3028 E. Main St., Canon City, CO 81212 E. William P. Goemmer, P.O. Box 185, La Veta, CO 81055 F. Kennedy Properties, LLC and Riceland Properties, LLC, P.O. Box 259, Mer Rouge, LA 71261 G.

William Watson, 22222 Tolhill Ln., Weston, CO 81091-9547 WHEREFORE, the District requests that the Court enter a decree finding that the District has exercised reasonable diligence in completing the appropriations and placing the conditional water rights described in this application to beneficial use, and ordering that the conditional water rights remain in full force and effect for another diligence period.

CASE NO. 2022CW3047; Previous Case No. 14CW3058 – WOODMOOR WATER AND SANITATION DISTRICT NO. 1, P.O. Box 1407, Monument, Colorado 80132.

(Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: P. Fritz. Holleman and Bradley N. Kershaw, Bushong & Holleman PC, 1525 Spruce Street, Suite 200, Boulder, Colorado 80302, 303-431-9141)

Application for Finding of Reasonable Diligence

EL PASO COUNTY

2. Name of exchange: Woodmoor Combined Exchange. **3. Description of conditional water right from previous decree:** A. Original Decree: Case No. 2014CW3058, entered by the District Court, Water Division No. 2 on June 15, 2016. B. Legal Description of Points of Diversion and Points of Substitution and Exchange: i. Points of Diversion (exchange-to points): a. Monument Creek Diversion Point: On Monument Creek at a point in the SW1/4 of the SE1/4, Section 22, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado, located approximately 800 feet north of the south section line and 1900 feet west of the east section line of said Section 22. b. Augusta Sump (Permit No. 47155-F): On Dirty Woman Creek in the NW1/4 of the NE1/4 of Section 13, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 2000 feet from the east section line and 1300 feet from the north section line of said Section 13. ii. Points of Introduction of Substitution and Exchange Supply (exchange-from points): a. Indoor use return flows from the sources described below in paragraph 3.C delivered on Monument Creek at the location of the outfall of the Tri-Lakes Wastewater Treatment Facility in the NW1/4 of the NE1/4 of Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado, approximately 400 feet from the north section line and 1760 feet from the east section line of said Section 27. b. Outdoor use return flows from the sources described below in paragraph 3.C delivered on Monument Creek at its confluence with Teachout Creek in the NE1/4 of the SW1/4 of Section 26, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado, approximately 1820 feet from the south section line and 1380 feet from the west section line of said Section 26. iii. Remark: A map showing the approximate location of the substitution and exchange reach on Monument Creek and Dirty Woman Creek is attached to the subject application as **Appendix 1**. (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) C. Water and Water Rights to be Used for Substitution and Exchange Supply: i. Fully consumable indoor use and outdoor use return flows from use of Woodmoor's Chilcott Ditch, Liston and Love Ditch, Lock Ditch, Lock Ditch No. 2 and Callahan Reservoir water rights that were changed to include municipal and other uses in Case No. 2012CW1, District Court, Water Division 2, by decree entered on February 7, 2014. ii. Fully consumable indoor use and outdoor use return flows from use of Woodmoor's not nontributary and nontributary Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifer groundwater decreed in Case No. 02CW25, District Court, Water

Division 1, and in Water Division 2 Consolidated Case Nos. 07CW104 (Water Division 2) and 08CW263 (Water Division 1). iii. Fully consumable outdoor use return flows resulting from use of Woodmoor's tributary, not nontributary and nontributary Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifer groundwater decreed in Case Nos. W-2647, W-4544, 80CW169, 81CW230 and 81CW231, all District Court, Water Division 2. iv. Indoor use and outdoor use return flows from use of the water rights described in paragraph 3.C.i are quantified using the methodology decreed in paragraph 8.5 of the decree in Case No. 2012CW1. Indoor use return flows from use of the water rights described in paragraph 3.C.ii are quantified using the methodology described in paragraph 18 of the decree dated June 14, 1990 in Woodmoor's Consolidated Case Nos. 1987CW67 and 1988CW100 (Division 2) and Case No. 1988CW218 (Division 1). Outdoor use return flows from the use of the water rights described in paragraphs 3.C.ii and 3.C.iii are quantified using the methodology decreed in paragraph 8 of the decree in Woodmoor's Case No. 2010CW28, District Court, Water Division 2, dated May 20, 2013. D. Source: The sources of the water to be diverted by exchange are Monument Creek and Dirty Woman Creek, a tributary of Monument Creek. The sources of the water and water rights, the indoor use and outdoor use return flows from which are to be used for the substitution and exchange supply, are described above. E. Appropriation Date: December 4, 2014. F. Amount: 2.34 cfs (1,050.5 gpm), conditional, including 2.31 cfs (1,037.0 gpm) from the exchange-from point described in paragraph 3.B.ii.a above and 0.03 cfs (13.5 gpm) from the exchange-from point described in paragraph 3.B.ii.b. above. G. Use: All municipal uses, including without limitation domestic, agricultural, industrial, commercial, irrigation, stock watering, fire protection, recreation, fish and wildlife preservation and propagation, recharge of Denver Basin aquifers, exchange purposes, replacement of historical return flows, replacement of depletions resulting from the use of water from other sources, relinquishment pursuant to §37-90-137(9)(b), C.R.S., and all augmentation purposes. The water diverted by substitution and exchange will be fully consumable and will be used, reused, successively used and completely disposed of for the above-described purposes, either directly or after storage, including but not limited to in Lake Woodmoor. 4. **Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures**: The subject exchange is one of the components of Woodmoor's integrated water supply system. During the diligence period, Woodmoor has added more than 343 new water taps to its water system and has expended more than \$8,486,522 for other improvements to its water supply, treatment and water distribution system. During the diligence period, Woodmoor has expended approximately \$4,781,558 for design and/or construction of new facilities or modification of existing facilities necessary to divert, treat and place water to beneficial use under the subject exchange. Woodmoor's efforts toward development of the subject conditional water right include, but are not limited to, the activates described below. This list is not intended to be comprehensive and may be supplemented by additional evidence: A. Woodmoor has upgraded its Central Water Treatment Plant ("CWTP") to incorporate surface water treatment capabilities as Woodmoor continues to rely more heavily on surface water supplies. In addition, Woodmoor has constructed new infrastructure including a new Lake Woodmoor pump station, pipeline, and lake aeration system so that it may deliver stored surface water supplies to the CWTP for subsequent beneficial use and subsequent reuse, including

under the subject water right. Woodmoor's expenditures related to these efforts and upgrades are included in the costs summarized above. B. Woodmoor incurred significant legal and engineering fees and costs associated with participating as an objector in various Water Court cases during the diligence period to protect its water rights, including the subject water right, from injury due to claims of other water users. C. Woodmoor continues to rely upon the subject water right and has no intention to abandon same. **5. Name(s) and address(es) of owner(s) of land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored:** No new diversion or storage structures will be constructed or modified for use in the subject exchange. The land on which water is or will be stored is owned by Woodmoor. WHEREFORE, Woodmoor requests the Court to enter a decree finding and determining that (1) Woodmoor has exercised reasonable diligence in the development of the subject conditional water right; and (2) continuing the subject conditional water right in full force and effect for an additional six-year diligence period.

CASE NO. 2022CW3048; The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2.

CASE NO. 2022CW3049; The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2.

CASE NO. 2022CW3050; The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2.

CASE NO. 2022CW3051; The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2.

CASE NO. 2022CW3052; The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2.

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

CASE NO. 2022CW3053, Water Div 2 and CASE NO. 2022CW3087 Water Division 1; PAWEL POSORSKI, 6385 Vessey Road, Colorado Springs, CO 80908, ("Applicant")

(Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David M. Shohet, #36675, Emilie B. Polley, #51296, W. James Tilton, #50213, MONSON, CUMMINS, SHOHET & FARR, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212)

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

EL PASO COUNTY

II. Summary of Application. Applicants seeks to utilize and construct up to two (2) non-exempt wells to the not-nontributary Dawson aquifer to provide water service to an equivalent number of single-family lots, based on an anticipated subdivision of Applicant's approximately 6-acre parcel. Applicant therefore seeks to quantify the Denver Basin groundwater underlying the Applicant's Property, and approval of a plan for augmentation

for the use thereof. III. Application for Underground Water Rights. A. Legal Description of Wells. 1. Property Description. All wells will be located on Applicant's approximately 6-acre property ("Applicant's Property") anticipated to be subdivided into two single-family residential lots. Applicant's Property is depicted on **Exhibit A** map attached to the application, (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) located in the NW¼ of Section 6, Township 12 South, Range 65 West of the 6th P.M., and more particularly described as 6225 Vessey Rd., Colorado Springs, CO 80908, El Paso County, Colorado. 2. Existing Well. There is an existing domestic well with Division of Water Resources Permit No. 87817 ("Posorski Well No. 1), permit attached as **Exhibit B**. It is drilled to a total depth of 300 feet to the Dawson aquifer, and located 1420 feet from the North Section Line, and 2240 feet from the West Section Line. Upon approval of this plan for augmentation, this well will be re-permitted. 3. Proposed Wells. Applicant proposes that one additional well (one well per lot) will be located on the Applicant's Property at a specific location not yet determined ("Posorski Well No. 2") to be constructed to the Dawson aquifer, for a total of two wells on Applicant's Property. B. Water Source. 1. Not-Nontributary. The ground water to be withdrawn from the Dawson and Denver aquifers underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson and Denver aquifers will require the replacement of actual stream depletions. 2. Nontributary. The groundwater that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's Property is nontributary. C. Estimated Rates of Withdrawal and Ground Water Available. 1. Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available. Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code §8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

AQUIFER	NET SAND (Feet)	Total Appropriation (Acre Feet)	Annual Avg. Withdrawal 100 Years (Acre Feet)	Annual Avg. Withdrawal 300 Years (Acre Feet)
Dawson (NNT)	402.1	484	4.84	1.61
Denver (NNT)	503.4	515	5.15	1.72
Arapahoe (NT)	232.9	238	2.38	0.79
Laramie Fox Hills (NT)	187.3	169	1.69	0.56

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. D. Requested Uses. The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of

domestic, irrigation, stock water, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct wells or use water from the not-nontributary Dawson and Denver aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c.5). E. Well Fields. Applicant requests that he be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. F. Averaging of Withdrawals. Applicant requests that he be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. G. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are and will be located as well as the underlying groundwater is owned by the Applicant. IV. APPLICATION FOR PLAN FOR AUGMENTATION. A. Structures to be Augmented. The structures to be augmented are the Posorski Wells Nos. 1 and 2, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson aquifer of the Denver Basin underlying the Applicant's Property as requested and described herein. B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Dawson aquifer from the Posorski Wells Nos. 1 and 2, together with water rights from the nontributary Arapahoe and Laramie-Fox Hills aquifers for any injurious post pumping depletions. C. Statement of Plan for Augmentation. Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by two wells proposed herein for two residential lots. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: 1. Uses. i. Household Use Only: 0.26 acre-feet annually within single family dwellings on two lots, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for each lot will therefore be 0.026 acre-feet per lot, with return flows of 0.234 acre-feet per lot, or a total of 0.468 acre-feet per year. ii. Landscape Irrigation: 0.05 acre feet annually per 1,000 square feet (2.18 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre-feet. iii. Horses (or equivalent livestock): 0.011 acre-feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. 2. The Posorski Wells Nos. 1 and 2 will each pump a maximum of 0.70 acre-feet of water per year per residence, for a maximum total of 1.41 acre-feet being withdrawn from the

Dawson aquifer per year. Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.26 acre-feet of water per year per residence with the additional 0.44 acre-feet per year available for irrigation of lawn and garden and the watering of horses or equivalent livestock on each residential lot.

3. Depletions. Maximum stream depletions over the 300-year pumping period for the Dawson aquifer amounts to approximately 22.8% of pumping. Maximum annual depletions for total residential pumping from the wells are therefore 0.32 acre-feet in year 300. Should Applicants' pumping be less than the 1.41 total, as described herein, resulting depletions and required replacements will be correspondingly reduced.

4. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of the two residential wells. Depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.26 acre-feet per residence per year, 0.468 acre-feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be adequately augmented.

5. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Posorski Wells Nos. 1 and 2, Applicant will reserve up to the entirety of the nontributary Arapahoe and Laramie Fox Hills aquifers, as necessary, to replace any injurious post pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Arapahoe and Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a new well permit for the Posorski Wells Nos. 1 and 2 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. V. Remarks. A. This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. It is Applicant's intent to consolidate the instant matter filed in both Water Divisions 1 and 2 in Water Division 1 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient. B. Applicant requests a finding that he has complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). C. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. C. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to

actual local aquifer characteristics from adequate information obtained from well drilling or test holes. D. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. E. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required to demonstrate compliance under this plan of augmentation. F. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. G. Applicant will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), and such notice will be sent within 14 days of the filing of this application.

CASE NO. 2022CW9; Publication in the Resume for this bifurcated protest to the abandonment list is deferred pending ruling on the Order to Show Cause why the protest should not be dismissed.

CASE NO. 2022CW10; CONCERNING A PROTEST TO FINAL REVISED ABANDONMENT LIST CASE NUMBER: 2021CW3078 – OPPOSER: MILAM FAMILY R&R TRUST, Acting by and through its Trustees, c/o BOKF RPS, PO Box 24128, Oklahoma City, OK 73124-9981 (Please address all pleadings and inquiries regarding this matter to Opposer's attorney: John R. Henderson, Law Offices of John R. Henderson, PC, 308 East Simpson St Suite 103, Lafayette, CO 80026, (720) 971-7063; Attorneys for Applicant: State Engineer and Division 2 Engineer: Paul Bennington, William Davidson, Chris Stork, 1300 Broadway, 7th Floor, Denver CO 80203, (720) 508-6309)

Protest to Final Abandonment List

CHAFFEE COUNTY

2. Describe the portion of the decennial abandonment list with respect to which the appearance is being made: A. Name of Structure: Harvard Ditch Second Enlargement, B. Date of Original Decree: July 9, 1969. Case No: 5141. Court: District Court Chaffee County. C. Decreed Legal Description of Structure: At a point on the South bank of Cottonwood Creek, whence the Southeast Corner of Section 22, Township 14 South, Range 79 West of the Sixth Principal Meridian, bears South 89 Degrees 2 Minutes East, 8593.3 Feet. See general location map attached to the protest. (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) D. Source of water: Cottonwood Creek, a tributary of the Arkansas River. E. Decreed use or uses: Domestic and Irrigation. F. Appropriation Date: December 8, 1952. Decreed Amount: 2 cubic feet per second (2.0 cfs) G. Amount and use or uses listed as having been abandoned: 1.5 cfs out of 2.0 cfs for all users: Any amount or use listed as abandoned is hereby protested. H. Former District Number and Page Number where listed on Abandonment List: Former District No. 11, Division 2 Final Abandonment List Page 10 of 24; Admin Number 1100657. **3. State factual and legal basis for this Protest:** a. There is or was no intent to abandon the water right; b. There has been no action taken indicating or supporting an intent to abandon the water right; c. This is a junior right in a ditch with senior decrees; facilities, diversion point and measuring device

or devices are in place ready to receive the junior water when in priority; d. The fact that a priority will only infrequently entitled to divert when strictly administered, absent other direct indicia of an intent to abandon, is not cause for listing the right as abandoned; e. The water right has not been abandoned. **4. Remarks:** Protester seeks a finding of non-abandonment and removal from the abandonment list or such other relief as the water court deems proper and necessary. **YOU ARE HEREBY NOTIFIED THAT YOU HAVE** until AUGUST 31, 2022 to file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 2 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List.

CASE NO. 2022CW11; CONCERNING A PROTEST TO FINAL REVISED ABANDONMENT LIST CASE NUMBER: 2021CW3078 – OPPOSER: RIVER VALLEY GROUP, LLC, c/o Steve Massey, 1800 S. Sheridan Blvd., #307, Denver, CO 80232

(Please address all pleadings and inquiries regarding this matter to Opposer’s attorneys: Peter Nichols, Megan Gutwein, Berf Hill Greenleaf Ruscitti LLP, 1712 Pearl Street, Boulder, Colorado 80302, (303) 402-1600; Attorneys for Applicant: State Engineer and Division 2 Engineer: Paul Bennington, William Davidson, Chris Stork, 1300 Broadway, 7th Floor, Denver CO 80203, (720) 508-6309)

Protest to Final Abandonment List

HUERFANO COUNTY

2. Description of Water Right. A. Name of structure: Perino Ditch. B. Date of original decree: The Perino Ditch water right was decreed on October 15, 1901 in the District Court for Huerfano County. There are no subsequent decrees. C. Legal description of structure: The decree does not describe the location of this structure. However, the headgate is located at latitude 37.828342, longitude -105.114224 in the NW1/4 of the SE1/4 of Sec. 33, T. 25.0 S., R. 69.0 W., 6th PM, in Huerfano County, Colorado. See **Exhibit A** attached to the protest 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 use: Irrigation. E. Source of water: Turkey Creek. F. Appropriation Date: June 1, 1901. G. Amount: 0.6 cfs, absolute. H. Amount and use listed as abandoned: 0.6 cfs, all uses. I. District number and page number where listed on Abandonment List: Water District No. 79, page 13 of the 2021 Final Revised Abandonment List. **3. Factual and Legal Basis for Protest:** A. No nonuse - Water unavailable: As shown in **Exhibit B**, water was unavailable for diversion by the Perino Ditch over the last ten years, so there was no nonuse of available water. In fact, water has not been available for diversion by the Perino Ditch since at least 1996 per Division of Water Resources diversion record comments. From 1996 through 2012, the DWR comments simply state “water not available.” In 2013 and 2014, DWR also included the comment “structure not usable” in addition to “water not available.” From 2015 through 2020, the DWR comments changed to “water available, but not taken” in addition to “structure not usable.” The description “water available, but not taken” is factually inaccurate. This is demonstrated by the fact that there were water rights senior to the Perino Ditch both upstream and downstream on Turkey Creek during those same years that did not have water available to divert. Note that the Perino Ditch is Priority No. 195A and is located at stream mile 8.25. YLE Ditch, Priority No. 185, stream mile 4.87: All diversion record comments from 1996 through 2020 state that water was not available.

2013 also notes that the headgate was blocked, and 2014 notes that water was taken out of priority in June 2014. See **Exhibit C**. Baca Ditch, Priority No. 84, Stream Mile 10.58: All diversion record comments from 2000 through 2020 state that water was not available. 2005 and 2013 also note that some water was taken out of priority. See **Exhibit D**. Abandonment requires both the intent to abandon a water right along with nonuse of available water under the subject right. See, e.g. *Farmers Reservoir & Irr. Co. v. Fulton Irrigating Ditch Co.*, 120 P.2d 196, 199 (1941) (“where by clear and convincing evidence it is shown that for an unreasonable time *available* water has not been used, an intention to abandon may be inferred in the absence of proof of some fact or condition excusing such nonuse”) (emphasis added). This comports with the very definition of abandonment of a water right: “the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or part of the water *available* thereunder.” C.R.S. § 37-92-103(2) (emphasis added). In sum, no water has been available for the Perino Ditch to divert in priority for many years, and thus the water right has not been abandoned as a consequence of nonuse. B. No intent to abandon: Protestant purchased the Perino Ditch water right in November 2015 and has no intent to abandon it. In fact, since 2015, Protestant has engaged in activities to maintain the ditch, despite the fact that water seems to rarely be available to divert under this right, and is currently working on replacing the headgate. WHEREFORE, Protestant prays this Court: a) Remove the Perino Ditch from the 2020 Abandonment List; and b) Grant such other and further relief as the Court deems proper. **YOU ARE HEREBY NOTIFIED THAT YOU HAVE** until AUGUST 31, 2022 to file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 2 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List.

CASE NO. 2022CW12; CONCERNING A PROTEST TO FINAL REVISED ABANDONMENT LIST CASE NUMBER: 2021CW3078 – OPPOSER: GREAT PLAINS IRRIGATION COMPANY, LLC c/o Zachary Schmidt, Director of Operations P.O. Box 271029 Louisville, Colorado 80027-9998 (Please address all pleadings and inquiries regarding this matter to Opposer’s attorney: David F. Bower, Esq. Johnson & Repucci LLP 850 W. South Boulder Road, Suite 100, Louisville, Colorado 80027, (303) 442-1900; Attorneys for Applicant: State Engineer and Division 2 Engineer: Paul Bennington, William Davidson, Chris Stork, 1300 Broadway, 7th Floor, Denver CO 80203, (720) 508-6309)
Protest to Final Abandonment List

PUEBLO COUNTY

2. Description of Subject Water Right. (a) Name of Structure. Welton Pipeline [WDID 1400736]. (b) Original and all Relevant Subsequent Decrees. The Welton Pipeline was decreed in the Matter of the Adjudication of Priorities of Right to the Use of Water in Water District No. 16, dated October 6, 1923. (c) Decreed Point of Diversion. On the west bank of the Huerfano River, at a point from whence the Southeast corner of Section 30, Township 22 South, Range 62 West, 6th P.M., bears South 8°30' West 3789 feet. (d) CDSS Location. SW1/4 NW1/4 of Section 29, Township 22 South, Range 62 West of the 6th P.M. (Zone 13, NAD83, Easting 555287.3m, Northing 4217648.8m.) (e) Source. Huerfano River. (f) Decreed Use. Irrigation. (g) Appropriation Date. April 25, 1910. (h) Decreed Amount. 10 cfs. (i) Amount and Uses Listed as Abandoned. 10 cfs, for all decreed uses. (j) Page Number on Abandonment List. The subject right is listed on page

18 of 19 on the Division Engineer's Final Revised Abandonment List for Water Division 2. **3. Factual and Legal Basis for Protest.** The factual and legal basis for the protest is generally set forth in the Statement of Objection to Decennial Abandonment List attached to the protest as **Exhibit A.** (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) As described in more detail in the Statement of Objection, GPIC does not believe that the water right was abandoned during the subject abandonment period. **4. Remarks.** Under Colorado water law, abandonment of a water right requires a concurrence of nonuse and intent to abandon. However, intent is the very essence of abandonment. Nonuse for a period of time may serve as evidence of abandonment; however, nonuse alone will not establish abandonment where the owner of the water right introduces sufficient evidence to show that during the period of nonuse, there never was any intention to permanently discontinue the use of the water. See *Beaver Park Water, Inc. v. Victor*, 649 P.2d 300 (Colo. 1982); *City and County of Denver v. Snake River Water District*, 788 P.2d 772, 776 (Colo. 1990). The evidence presented in the Statement of Objection shows that the Welton Land and Water Company, and GPIC as its largest shareholder, did not intend to abandon the Welton Pipeline over the last ten years, as the parties continued to make efforts to comply with the Division Engineer's orders regarding the structure. Moreover, GPIC's recent acquisition of a controlling interest in the Welton system, and the Welton Land and Water Company's other efforts to protect its water rights over the last decade, is evidence that there was no intent to abandon the Welton Pipeline right. **YOU ARE HEREBY NOTIFIED THAT YOU HAVE** until AUGUST 31, 2022 to file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 2 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List.

CASE NO. 2022CW13; CONCERNING A PROTEST TO FINAL REVISED ABANDONMENT LIST CASE NUMBER: 2021CW3078 – OPPOSER: R. JAY JOLLY RANCH, LLC, 31111 County Road 23, Hugo, Colorado 80820 (Please address all pleadings and inquiries regarding this matter to Opposer's attorneys: Bushong & Holleman PC, Steven J. Bushong, Cassidy L. Woodard, 1525 Spruce Street, Suite 200, Boulder, CO 80302, (303) 431-9141; Attorneys for Applicant: State Engineer and Division 2 Engineer: Paul Bennington, William Davidson, Chris Stork, 1300 Broadway, 7th Floor, Denver CO 80203, (720) 508-6309)
Protest to Final Abandonment List
LINCOLN COUNTY, COLORADO.

2. Overview: Protestant hereby submits its formal protest to the inclusion of the Laddie Ditch on the 2020 Revised Abandonment List. Laddie Ditch is in Water District 67, Division No. 2, State of Colorado, and is listed on Page 9 of the Final Revised Abandonment List in its full decreed amount of 12.8 cubic feet per second ("cfs") for all decreed uses. 3. Description of Water Right: The Laddie Ditch was decreed in Case No. W-2825 in the District Court in and for Water Division No. 2, State of Colorado (the "Water Court"), on December 22, 1976 (the "W-2825 Decree") to divert 12.8 cfs absolute for direct irrigation and flood irrigation from Middle Rush Creek. The lands to be irrigated are described as "320 acres on both sides of Middle Rush Creek for a distance of from fifty feet to one half mile laterally" in Sections 33, 34, and 35, Township 12 South, Range 56 West of the 6th P.M. and in Section 2 of Township 13 South, Range 56 West of the 6th P.M., all in Lincoln

County, Colorado. The point of diversion was originally decreed as in the SW1/4 of the SW1/4 of Section 35, Township 12 South, Range 56 West of the 6th P.M., in Lincoln County, Colorado, on the Easterly bank of Middle Rush Creek. The priority date of the Laddie Ditch is August 31, 1886, provided, however, that it be administered as being junior to all priorities awarded in cases filed prior to 1972 and otherwise junior as provided in C.R.S. § 37-92-306. The W-2825 Decree specified that the priorities awarded therein, including the Laddie Ditch, and the lands served thereunder are located approximately 120 miles from the Arkansas River. As such, the “water from all sources decreed in Case No. 2825 should not be treated or administered as a part of the Arkansas River supply.” Amendment to Ruling of the Referee, ¶¶ 8–9. The administration number of the Laddie Ditch is 44559.13392, and the WDID is 6700717. 4. Legal Standard and Basis for Protest: Abandonment of valuable property rights are not favored under Colorado water law. *Williams v. Midway Ranches Prop. Owners Ass’n, Inc.*, 938 P.2d 515, 527 (Colo. 1997). The Supreme Court of Colorado has long held that abandonment of a water right requires the concurrence of two elements: “a sustained period of non-use and an intent to abandon.” *E. Twin Lakes Ditches & Water Works Inc. v. Bd. of Cnty. Comm’rs of Lake Cnty.*, 76 P.3d 918, 921 (Colo. 2003). However, “[i]ntent is the critical element in determining abandonment.” *City & Cnty. of Denver v. Snake River Water Dist.*, 788 P.2d 772, 776 (Colo. 1990) (emphasis added). Abandonment of a water right means “the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or part of the water available thereunder.” C.R.S. § 37-92-103(2) (emphasis added). Colorado law provides that “failure for a period of ten years or more to apply to a beneficial use the water available under a water right when needed by the person entitled to use same shall create a rebuttable presumption of abandonment of a water right with respect to the amount of such available water which has not been so used” C.R.S. § 37-92-402(11) (emphasis added); see also C.R.S. § 37-92-103(2) (defining abandonment of a water right as the intent to permanently discontinue “the use of all or part of the water available thereunder”) (emphasis added); C.R.S. § 37-92-401(1)(c) (directing the division engineer to be guided by the criteria set out in C.R.S. § 37-92-402(11)). However, “the owner of the water right can rebut the presumption of abandonment by introducing evidence sufficient to excuse the non-use or demonstrate an intent not to abandon.” *E. Twin Lakes*, 76 P.3d at 921; see *Haystack Ranch, LLC v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000). “[T]he owner must establish some fact or condition that excuses the nonuse or shows the owner’s intent not to abandon the water right.” *Haystack Ranch*, 997 P.2d at 552. “Abandonment is a question of fact depending on the particular circumstances of each case.” *Haystack Ranch*, 997 P.2d at 552. In determining whether an owner intended to abandon his water right, Colorado Courts have looked to factors such as: (1) repair and maintenance of structures; (2) attempts to put the water to beneficial use; (3) active diversions and prior non-appearance of the water right on abandonment list; (4) efforts to sell the water right or a conveyance of the water right; (5) filing documents to protect, change, or preserve the right; (6) leasing the water right; and (7) economic or legal obstacles to exercising the water right. *E. Twin Lake*, 76 P.3d at 922 (Colo. 2003). These factors are not exclusive. “While none of these factors is necessarily conclusive, their cumulative weight, as assessed by the water court may be enough to rebut a presumption of abandonment. On the other hand, if these factors are insufficient or nonexistent, only then is the failure to put the water to a

beneficial use enough by itself to sustain a finding of abandonment.” *Id.* 5. Factual Basis for Protest. The following facts demonstrate a clear lack of intent to abandon the Laddie Ditch: 5.1. The Laddie Ditch is located on and associated with the Jolly Ranch, which has been owned and operated by the Jolly family since 1940. It began as a sheep operation, but today it runs a commercial cow-calf herd consisting of, on average, 525 pairs, 125 replacement heifers, and 30 bulls. Jolly Ranch owns 14,000 deeded acres of ranchland and holds leasing rights to an additional 6,000 acres of state trust lands nearby. Every water right located on Jolly Ranch is essential to ensuring a consistent and reliable source of water for irrigation and other ranch operations, 5.2. Jolly Ranch has invested heavily in succession planning to ensure that the ranch, including the land, water rights, and other interests, would successfully pass to the next generation of the family, Douglas Cody Jolly, and to ensure that its succession plan is updated regularly to reflect changes in federal policy. In furtherance of its goal, in 2018, Jolly Ranch expended considerable expense on legal fees to conduct extensive updated estate planning. As part of this estate planning, R. Jay Jolly Ranch, LLC, was created as a Colorado limited liability company to hold the ranch’s real property rights, including water rights, 5.3. On September 19, 2018, R. Jay Jolly, a/k/a Robert Jay Jolly, and Diana Lynne Jolly conveyed via a Bargain and Sale Deed (Water Rights) any and all water rights associated with its lands to R. Jay Jolly Ranch, LLC, including all water rights decreed in the W-2825 Decree, such as the Laddie Ditch. See Lincoln County Clerk and Recorder, Reception No. 350720 (recorded Oct. 9, 2018). This Bargain and Sale Deed (Water Rights), attached to the protest as **Exhibit A**, provides clear and convincing evidence of an intent not to abandon any of the water rights associated with Jolly Ranch, including the Laddie Ditch, which was conveyed therein. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 5.4. To prepare the Bargain and Sale Deed (Water Rights), Jolly Ranch underwent a comprehensive water rights identification and review process to be sure it properly conveyed all of its water rights. This work included research into the historical water documents associated with the ranch that was used to help prepare the Bargain and Sale Deed (Water Rights), 5.5. An account of ranch operations on Jolly Ranch can be found in the Affidavit of Douglas Cody Jolly, attached as **Exhibit B**. Mr. Jolly is the grandson of the founder of Jolly Ranch and has had personal knowledge of the Jolly Ranch and its water rights, including the Laddie Ditch, for the entirety of his life, 5.6. As discussed above in section 4, any lack of diversions resulting from a lack of water availability is not evidence of an intent to abandon. See C.R.S. §§ 37-92-103(2), § 37-92-402(11). The Affidavit describes in detail how any lack of diversions from the Laddie Ditch can be attributed to a lack of physical water availability in Middle Rush Creek. The historical ditch infrastructure requires adequate flows to operate and reduced flows in the Creek have compromised the ability of the Laddie Ditch to divert water. If and when higher flows are available, the Laddie Ditch would divert such flows. It is not known whether the reduced flows experienced in recent history are a result of drought, well pumping, or some combination of the two. As explained in the Affidavit, Mr. Jolly wholly intends to construct improvements to the diversion works to better divert the reduced flows that are regularly available in Middle Rush Creek, 5.7. Further, pursuant to C.R.S. § 37-92-402(11), any lack of use only “create[s] a rebuttable presumption of abandonment of a water right with respect to the amount of such available water which has not been so used.” Since, as stated in the Affidavit, the problems encountered with diversion of the

Laddie Ditch is the result of Middle Rush Creek only flowing at a rate of about 1.65 cfs during the irrigation season during more recent years when diversions have been limited, the most that can be abandoned as a result of the diminished diversions (if any should be abandoned) is about 1.65 cfs of the 12.8 cfs water right, 5.8. The Affidavit also describes in detail the extensive hay production program on Jolly Ranch, which cuts hay every year on the meadows that the Laddie Ditch is intended to serve. Although flows in Middle Rush Creek are reduced, Mr. Jolly believes that if he can improve the infrastructure to divert the reduced flow, that will benefit his hay production. Further, because the hay meadows provide an important source of income and livestock feed, Jolly Ranch would not intend to abandon any water rights appurtenant to the hay meadows that could be used for irrigation to increase hay production, 5.9. The Affidavit further describes the seasonal role the meadows play in grazing livestock on the Jolly Ranch, 5.10. In conclusion, at no point in time has Jolly Ranch ever intended to abandon the water right associated with the Laddie Ditch. The actions of the Jolly Ranch and the Jolly family are consistent with that lack of intent to abandon. Specifically, in 2018, Jolly Ranch and the Jolly family undertook extensive estate and succession planning to ensure a smooth transfer of the ranch from one generation to the next including specifically a conveyance of the Laddie Ditch water rights by Bargain and Sale Deed (Water Rights) from the Jolly family to R. Jay Jolly Ranch, LLC. Additionally, lack of physical water supply in Middle Rush Creek has been an obstacle to utilizing the historical Laddie Ditch infrastructure, but planned improvements to the ditch infrastructure are intended to better utilize the low flow. Further, it would be legally inappropriate to abandon the entire water right when only a very small amount has been available to divert during the irrigation season in recent times. The importance of irrigation water for the Jolly Ranch is also clear in Mr. Jolly's Affidavit. All these factors provide strong evidence of a lack of intent to abandon the Laddie Ditch water right. WHEREFORE, Jolly Ranch respectfully requests that the Court enter an Order that (a) removes the Laddie Ditch water right entirely from the Division No. 2 Revised Abandonment List; or (b) alternatively limits the abandonment of the Laddie Ditch water right to the 1.65 cfs that has been available but difficult to divert, while finding the remaining 11.15 cfs unabandoned. **YOU ARE HEREBY NOTIFIED THAT YOU HAVE** until AUGUST 31, 2022 to file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 2 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List.

CASE NO. 2022CW14; CONCERNING A PROTEST TO FINAL REVISED ABANDONMENT LIST CASE NUMBER: 2021CW3078 – OPPOSER: WENDY H. GEARY AND WILLIAM S. GEARY, (“Gearys”). 5701 County Road 129, Westcliffe, Colorado 81252 (Please address all pleadings and inquiries regarding this matter to Opposer's attorney: Ryan W. Farr, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, (719) 471-1212; Attorneys for Applicant: State Engineer and Division 2 Engineer: Paul Bennington, William Davidson, Chris Stork, 1300 Broadway, 7th Floor, Denver CO 80203, (720) 508-6309)
Amended Protest to Revised Abandonment List

CUSTER COUNTY

3. Description of Water Right. a. Name of Structure: The Range Ditch (WDID: 1300719).
b. Original Decree Information. i. Date of Original Decree. March 12, 1896. ii. Case No.

03/12/1896. iii. Court. Fremont County District Court. c. Decreed Location and Legal Description. Northeast 1/4 of the Southeast 1/4 of Section 13, Township 23 South, Range 73 West of the 6th P.M. d. Source of Water. South Branch of Macey Creek, tributary to Macey Creek, tributary to Grape Creek, tributary to the Arkansas River. e. Decreed Use. Irrigation of 40 acres. f. Appropriation Date and Amount. August 10, 1888, for 0.93 cfs, (Priority No. 459. g. Amount Listed for Abandonment. Entire decreed amount. H. District Number and Page Number for Abandonment List. District 13, Page 14. 4. State Factual and Legal Basis for Protest. The Gearys own and have utilized the Range Ditch described above for irrigation for the entirety of their ownership of the property and ditch since December of 1986. a. Summary of Legal Standard for Abandonment. The abandonment of a water right means the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or part of the water available thereunder. C.R.S. § 37-92-103(2). Accordingly, intent is the critical element in determining the abandonment of water rights. City and County of Denver v. Middle Park Water Conservancy Dist., 925 P.2d 283, 286 (Colo. 1996). Stated another way, The element of intent is the touchstone of the abandonment analysis. East Twin Lakes Ditches and Water Works v. Board of County Commissioners for Lake County, 76 P.3d 918, 921 (Colo. 2003). Evidence of intent not to abandon may include statements of owners, efforts to utilize the water right, actual use of the water right, and efforts to market the water right for sale thereby evidencing its perceived value. Id. b. The Gearys and their predecessors have diverted the Range Ditch and have applied such diversions for actual beneficial use. Since the Gearys purchased the property and water right in 1986, they have consistently used the ditch to irrigate 40 acres of their property located in the SW 1/4 of Township 23 South, Range 72 West of the 6th P.M. Over the last ten years, the Geary have utilized water from the Range Ditch for irrigation of hay, even in the dry years of 2013, 2018, and 2020. The Gearys have maintained hay production records for all of their hay fields, including the hay field irrigated by the Range Ditch. Additionally, the Gearys have consistently leased their Range Ditch irrigated lands on an annual basis for cattle grazing after the hay has been harvested. In 1990-1991 the Gearys installed eighteen metal turnouts along the ditch to better rotate the water for irrigation. A couple of culverts have been installed to better travel across the ditch with haying equipment. Additionally, the Gearys continually maintain the ditch and related infrastructure. All of this installation and maintenance is conducted in order to best utilize the Range Ditch. The Range Ditch has been an important water source for the Gearys for the last 35 years. The Gearys have constantly used and maintained the Range Ditch throughout their ownership of their property and the ditch. At no point was there ever an intent to abandon the Range Ditch water right. Quite the contrary, the Gearys have done all they can to maximum the utilization of the ditch. A report concerning the Range Ditch and its use is attached to the protest as **Exhibit A**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **YOU ARE HEREBY NOTIFIED THAT YOU HAVE** until AUGUST 31, 2022 to file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 2 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List.

CASE NO. 2022CW15; CONCERNING A PROTEST TO FINAL REVISED ABANDONMENT LIST CASE NUMBER: 2021CW3078 – OPPOSER: MAXWELL and

FRANCES MACCOLLUM, 22835 County Road 282, Nathrop, CO 81236 (Please address all pleadings and inquiries regarding this matter to Opposer's attorney: Squire Patton Boggs (US) LLP, Alexander Arensberg, Esq. 717 17th Street, Suite 1825, Denver, CO 80202, (303) 894-6172; Attorneys for Applicant: State Engineer and Division 2 Engineer: Paul Bennington, William Davidson, Chris Stork, 1300 Broadway, 7th Floor, Denver CO 80203, (720) 508-6309)

Protest to Final Abandonment List.

CHAFFEE COUNTY

2. Description of Water Right: A. Name of Structure: Alpine Ditch (1100988) B. Date of Original Decree: March 14, 1941, Case No: 5141, Court: District Court in and for the County of Chaffee and State of Colorado, C. Decreed Legal Description: At a point on the west bank of Deer Creek, whence the Southwest Corner, Section 25, Township 15 South, Range 80 West of the Sixth Principal Meridian, bears South 68°31' 19" West, 318.8 feet. Corner No. 4, Alpine Placer Survey No. 418 bears North 21°55'48" East, 1248.3 feet. See general location map attached to the protest. (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) D. Source of Water: Chalk Creek at Stream Mile 15.28, E. Decreed Use: Fish Culture, F. Appropriation Date: March 14, 1941, Decreed Amount: CFS G. Amount and uses listed as having been abandoned: 20.1500 – all decreed uses, H. District Number and Page Number for Abandonment List: Page 2 of 19 of Final Revised Abandonment List. Admin. No. 33950.33310.WDID No. 1100988. **3. State Factual and Legal Basis for Protest:** Maxwell and Frances MacCollum have used the water right in question within the past 10 years. The water right was used continually until July 15, 2019; on that date, a slow-moving, isolated storm resulted in an avalanche washout of the Alpine Ditch. After this event, Maxwell and Frances MacCollum did not receive any water from Alpine Ditch. Their intention is to put Alpine Ditch back in use. **4. Remarks:** None. **YOU ARE HEREBY NOTIFIED THAT YOU HAVE** until AUGUST 31, 2022 to file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 2 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List.

CASE NO. 2022CW16; CONCERNING A PROTEST TO FINAL REVISED ABANDONMENT LIST CASE NUMBER: 2021CW3078 – OPPOSER: TOWN OF PONCHA SPRINGS, c/o Brian Berger, Town Administrator, P.O. Box 190, Poncha Springs, CO 81242 (Please address all pleadings and inquiries regarding this matter to Opposer's attorneys: David M. Shohet, #36675, Emilie B. Polley, #51296, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Dr., Suite 250, Colorado Springs, CO 80921, Phone Number: (719) 471-1212; Attorneys for Applicant: State Engineer and Division 2 Engineer: Paul Bennington, William Davidson, Chris Stork, 1300 Broadway, 7th Floor, Denver CO 80203, (720) 508-6309)

Protest to Final Abandonment List.

CHAFFEE COUNTY

II. Description of Water Right. A. Name of Structure: Poncha Springs Acequia (WDID 1100572). 1. Decreed Location and Legal Description: The north bank of South Arkansas River, 355 feet nearly due N.E. of the center of Section 9, Township 49 North, Range 8 East of the N.M.P.M., Chaffee County, Colorado. 2. Date and Case No. of Original Decree(s): June 19, 1890, in Case No. CA 1127 by the District Court in the original

adjudication of the Fourth Judicial District of the State of Colorado, Sitting in and for the County of Chaffee, State of Colorado In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11, and July 9, 1969, by the District Court of Chaffee County, State of Colorado, In the Matter of Adjudication of Priorities of the Rights to the Use of Water for Irrigation and Non-Irrigation Uses in Water District 11, Case No. CA 5141. 3. Source: The South Arkansas River, a tributary to the Arkansas River. 4. Appropriation Dates: March 23, 1881 (“Senior Acequia Water Right”), and April 30, 1968 (“Junior Acequia Water Right”). 5. Decreed Rate and Use: 11.64 c.f.s., for irrigation. B. Amount Listed of Having Been Abandoned: 1. Senior Acequia Water Right: 0.43 c.f.s. 2. Junior Acequia Water Right: The entirety, being 5.82 c.f.s. C. District Number and Page Number Where Listed on Abandonment List: 1. District 11; Page 13 of 19. D. Comments: The Town does not protest the abandonment of the Junior Acequia Water Right. The Town protests that portion of the Senior Acequia Water Right on the abandonment list. **III. Factual and Legal Basis for Protest.** The Town of Poncha Springs (the “Town”) is a Colorado statutory town. It holds numerous water rights for the benefit of its residents and service area, including the entirety of the Poncha Springs Acequia water right, decreed for a total of 11.64 c.f.s. Of the total 11.64 c.f.s., 0.43 c.f.s. of the Senior Acequia Water Right and 5.82 c.f.s. of the Junior Acequia water right have been included on the Final Abandonment List published in Case No. 21CW3078. The Town protests the inclusion of the 0.43 c.f.s. of the Senior Acequia water right on the abandonment list, and in support of its protest, the Town provides the following: **A. Summary of the legal standard for the abandonment of a water right in Colorado.** The abandonment of a water right means the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or part of the water available thereunder. C.R.S. § 37-92-103(2). Accordingly, intent is the critical element in determining the abandonment of water rights. *City and Cnty. of Denver v. Middle Park Water Conservancy Dist.*, 925 P.2d 283, 286 (Colo. 1996). While a prolonged period of non-use may give rise to a rebuttable presumption of abandonment, such presumption is insufficient in and of itself to prove abandonment. *East Twin Lakes Ditches and Water Works v. Bd. of Cnty. Comm’rs for Lake Cnty.*, 76 P.3d 918, 921 (Colo. 2003). Rather, the element of intent is the touchstone of the abandonment analysis. *Id.* Evidence of intent not to abandon may include statements of owners, efforts to utilize the water right, actual use of the water right, and efforts to market the water right for sale thereby evidencing its perceived value. *Id.* **B. The Town has never expressed any intent to abandon the Senior Acequia Water Right.** The Town has never expressed any intent to abandon the Senior Acequia Water Right. The Poncha Springs Acequia water right consists of a series of channels flowing west to east through the Town for irrigation uses by those within the Town’s service area and on historically irrigated lands. The majority, if not all, of the historically irrigated lands, have either been annexed or are in the process of being annexed into the Town. Accordingly, the historically irrigated lands under the Poncha Springs Acequia water right have either been fully developed or will be developed. All actions taken by the Town and its predecessors in title indicate the continued intent to utilize the Senior Acequia Water Right. Such actions include, without limitation, the following: 1. The Town approved Annexation Agreements for those lands which were historically irrigated by the Poncha Springs Acequia water right. Included in the annexation agreements is the conveyance

of all water rights associated with and used on the annexed property to the Town, and specifically details the necessary conveyance of the Senior Acequia Water Right to the Town. The Town has been expressly deeded its ownership to the Senior Acequia Water Right over several annexations and has been planning for numerous years on how to best utilize the Senior Acequia Water Right. 2. The Town has made significant expenditures on professional consultants, including engineers and attorneys, to assist the Town with the diversion and record-title ownership of its entire water rights, including the Poncha Springs Acequia water right. Such ongoing and continual consultation provides clear evidence of the Town's intent to utilize its full entitlement of vested water rights, including the Senior Acequia Water Right. 3. The Town has participated in Water Court proceedings protecting its interest in its water rights, specifically including the Poncha Springs Acequia water right. The Town has also recently filed a Water Court application concerning the Senior Acequia Water Right. Such protection and litigation of the Senior Acequia Water Right constitute prima facie evidence of the non-abandonment of the Senior Acequia Water Right. 4. The Town has diverted the Senior Acequia Water Right and maintained the majority of the main canal and laterals for the diversion of the entirety of the Senior Acequia Water Right. Such work includes the installation of a new headgate and measuring flume at the direction of the water commissioner, which new structures could specifically divert and measure the entirety of the Senior Acequia Water Right. The Town is prepared to present evidence and testimony of current and past Poncha Springs Acequia users and administrators demonstrating the Senior Acequia Water Right's inclusion and reliance in the development and planning of the Town. Evidence that the Town can and will produce at any hearing in this matter includes all of the non-privileged correspondence with consultants and the Division and State Engineer, all correspondence, discovery and pleadings and their attachments associated with all court cases the Town has been involved with, all engineering reports, diversion records, development agreements, Town expenditures on maintenance and administration of the Poncha Springs Acequia water right, and other historical documents regarding the Town and diversion of the Poncha Springs Acequia water right. **IV. Remarks.** None. **YOU ARE HEREBY NOTIFIED THAT YOU HAVE** until AUGUST 31, 2022 to file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 2 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List.

CASE NO. 2022CW17; CONCERNING A PROTEST TO FINAL REVISED ABANDONMENT LIST CASE NUMBER: 2021CW3078 – OPPOSER: BOARD OF COMMISSIONERS OF CHAFFEE COUNTY, P.O. Box 699, Salida, CO 81201 (Please address all pleadings and inquiries regarding this matter to Opposer's attorneys: David M. Shohet, #36675, Emilie B. Polley, #51296, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Dr., Suite 250, Colorado Springs, CO 80921, Phone Number: (719) 471-1212; Attorneys for Applicant: State Engineer and Division 2 Engineer: Paul Bennington, William Davidson, Chris Stork, 1300 Broadway, 7th Floor, Denver CO 80203, (720) 508-6309)

Protest to Final Abandonment List

CHAFFEE COUNTY

II. Description of Water Right. A. Name of Structure: Town of St. Elmo Ditch (WDID 1100878). 1. Decreed Location and Legal Description: The point of diversion is located

on the left bank of the North Fork Chalk Creek and Chalk Creek, in the SW ¼ NW ¼ of Section 33, Township 15 South, Range 80 West of the 6th P.M., Chaffee County, Colorado. A map showing the decreed location of the headgate is attached to the protest as **Exhibit A**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 2. Date and Case No. of Original Decree: February 8, 1911, District Court, Chaffee County, Case No. CA2200. 3. Source: North Fork of Chalk Creek, tributary to the Arkansas River. 4. Appropriation Date: July 1, 1892. 5. Decreed Rate and Use: 7.97 c.f.s., for municipal, fire, domestic, and power uses. B. Amount Listed of Having Been Abandoned: 7.97 c.f.s. C. Former District Number and Page Number Where Listed on Abandonment List: District 11; Page 17 of 19. **III. Factual and Legal Basis for Protest.** The Board of County Commissioners of Chaffee County (“Chaffee County”) obtained the Town of St. Elmo Ditch (“St. Elmo Ditch”) water right when St. Elmo was abandoned as a townsite in 1974. At the time of the townsite abandonment, various property rights, including the St. Elmo Ditch, decreed for 7.97 c.f.s., transferred to Chaffee County under the Findings of Fact and Determination of Abandonment dated December 18, 1974, and pursuant to C.R.S. § 31-3-202 governing town abandonments. Chaffee County hereby protests the inclusion of the St. Elmo Ditch on the Final Abandonment list published in Case No. 21CW3078, and in support of its protest, Chaffee County provides the following: **A. Summary of the legal standard for the abandonment of a water right in Colorado.** The abandonment of a water right means the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or part of the water available thereunder. C.R.S. § 37-92-103(2). Accordingly, intent is the critical element in determining the abandonment of water rights. *City and Cnty. of Denver v. Middle Park Water Conservancy Dist.*, 925 P.2d 283, 286 (Colo. 1996). While a prolonged period of non-use may give rise to a rebuttable presumption of abandonment, such presumption is insufficient in and of itself to prove abandonment. *East Twin Lakes Ditches and Water Works v. Bd. of Cnty. Comm’rs for Lake Cnty.*, 76 P.3d 918, 921 (Colo. 2003). Rather, the element of intent is the touchstone of the abandonment analysis. *Id.* Evidence of intent not to abandon may include statements of owners, efforts to utilize the water right, actual use of the water right, and efforts to market the water right for sale thereby evidencing its perceived value. *Id.* **B. Chaffee County has never expressed any intent to abandon the St. Elmo Ditch.** Though the Town of St. Elmo itself was abandoned, Chaffee County has never expressed any intent to abandon the St. Elmo Ditch. The St. Elmo Ditch was used throughout the historical town, and despite being called a ghost town, the St. Elmo Ditch is still currently used for firefighting uses. The St. Elmo Ditch currently consists of a wooden dam in the North Fork of Chalk Creek, which diverts water into the historical wooden pipeline. Water is then carried approximately a quarter of a mile into St. Elmo by the wooden pipeline. Though currently in need of repair, several hydrants attached to the pipeline can be utilized for firefighting purposes within the town. A portion of the historic pipeline has decayed; however, the system is still able to divert water through the town prior to returning back to Chalk Creek during high water times. The St. Elmo historic townsite is within a national historic district and the historic water line in a fairly remote location and currently operates to protect the area from fire. St. Elmo has endured several fires, including a fire that destroyed the St. Elmo Town Hall with various records of the St. Elmo Ditch and town system. As part of the actual diversion of the St. Elmo Ditch for

firefighting uses, pipeline intakes for the St. Elmo are maintained and cleaned annually by volunteers. It is estimated that volunteers spend a minimum of 50 hours a year operating and maintaining the St. Elmo Ditch, including cleaning and repair of the dam, which was carried out by high water, on North Fork Chalk Creek. This work is ongoing. Chaffee County is prepared to present evidence and testimony on actions taken by the County and volunteers associated with the St. Elmo Ditch and of its intent to use the ditch for firefighting purposes. Evidence that Chaffee County can and will produce at any hearing in this matter includes, without limitation, all non-privileged correspondence with consultants and the Division and State Engineer, records, newspaper articles, and other historical documents regarding the St. Elmo Ditch. **IV. Remarks.** None. **YOU ARE HEREBY NOTIFIED THAT YOU HAVE** until AUGUST 31, 2022 to file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 2 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List.

CASE NO. 2022CW18; CONCERNING A PROTEST TO FINAL REVISED ABANDONMENT LIST CASE NUMBER: 2021CW3078 – OPPOSER: LAWRENCE FAMILY RANCH CORPORATION, (“LFRC”), PO Box 1292, Westcliffe, CO 81252

(Please address all pleadings and inquiries regarding this matter to Opposer’s attorneys: Ryan W. Farr, William J. Tilton, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, (719) 471-1212; Attorneys for Applicant: State Engineer and Division 2 Engineer: Paul Bennington, William Davidson, Chris Stork, 1300 Broadway, 7th Floor, Denver CO 80203, (720) 508-6309)
Protest to Final Abandonment List

CUSTER COUNTY

3. Description of Water Rights. a. Fellows Ditch. i. **Name of Structure:** The Fellows Ditch (WDID: 1301011). ii. Original Decree Information. 1. Date of Original Decree. February 3, 1894. 2. Case No. 02/03/1894. 3. Court. Fremont County District Court. iii. Decreed Location and Legal Description. Northwest 1/4 of the Northeast 1/4 of Section 27, Township 46 North, Range 12 East of the N.M.P.M. iv. Source of Water. South Brush Creek, tributary to Brush Creek, tributary to Texas Creek, tributary to the Arkansas River. v. Decreed Use. Irrigation of 10 acres. vi. Appropriation Date and Amount. July 3, 1880, for 1.0 cfs (Priority No. 64). vii. Amount Listed for Abandonment. Entire decreed amount. viii. District Number and Page Number for Abandonment List. District 13, Page 7 of 19. b. Middle Ditch S Brush. i. **Name of Structure:** The Middle Ditch S Brush (WDID: 1301010). ii. Original Decree Information. 1. Date of Original Decree. February 3, 1894. 2. Case No. 02/03/1894. 3. Court. Fremont County District Court. iii. Decreed Location and Legal Description. Southwest 1/4 of the Southeast 1/4 of Section 22, Township 46 North, Range 12 East of the N.M.P.M. iv. Source of Water. South Brush Creek, tributary to Brush Creek, tributary to Texas Creek, tributary to the Arkansas River. v. Decreed Use. Irrigation of 14 acres. vi. Appropriation Date and Amount. May 15, 1881, for 1.0 cfs (Priority No. 71). vii. Amount Listed for Abandonment. Entire decreed amount. viii. District Number and Page Number for Abandonment List. District 13, Page 11 of 19. c. McClurkin Ditch No. 2. i. **Name of Structure:** The McClurkin Ditch No. 2 (WDID: 1301012). ii. Original Decree Information. 1. Date of Original Decree. February 3, 1894. 2. Case No. 02/03/1894. 3. Court. Fremont County District Court. iii. Decreed Location and Legal Description. Northwest 1/4 of the Northeast 1/4 of Section 27, Township 46 North, Range

12 East of the N.M.P.M. iv. Source of Water. South Brush Creek, tributary to Brush Creek, tributary to Texas Creek, tributary to the Arkansas River. v. Decreed Use. Irrigation of 40 acres. vi. Appropriation Date and Amount. July 30, 1880, for 1.05 cfs (Priority No. 65). vii. Amount Listed for Abandonment. Entire decreed amount. viii. District Number and Page Number for Abandonment List. District 13, Page 10 of 19. 4. State Factual and Legal Basis for Protest. The LFRC's activities clearly indicate no intention to abandon the above-described water rights. a. *Summary of legal standard for abandonment*. The abandonment of a water right means the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or part of the water available thereunder. C.R.S. § 37-92-103(2). Accordingly, intent is the critical element in determining the abandonment of water rights. City and County of Denver v. Middle Park Water Conservancy Dist., 925 P.2d 283, 286 (Colo. 1996). Stated another way, The element of intent is the touchstone of the abandonment analysis. East Twin Lakes Ditches and Water Works v. Board of County Commissioners for Lake County, 76 P.3d 918, 921 (Colo. 2003). Evidence of intent not to abandon may include statements of owners, efforts to utilize the water right, actual use of the water right, and efforts to market the water right for sale thereby evidencing its perceived value. *Id.* b. *Over the course of the last ten years, the actions on the part of the LFRC and Jane Lawrence clearly establish an intent to continue, maintain, and use the above-described water rights*. The LFRC property and Jane Lawrence's personal property (McClurkin Ditch No. 2) have historically been used to grow trees and hay. As described in more detail below, during the last ten years the LFRC and Jane Lawrence have maintained and improved the above ditches and have diverted water for irrigation. At this point, additional history is relevant as concerns the property and the ditch rights. In the late 1960s and the early 1970s, Robert O. Lawrence completed two critical actions. The first being the subdivision and development of the Brush Creek Estates plats. The second being the terracing and improvement of what is now known as the Lawrence Meadow and Lawrence Meadow Pond. The terracing, removal of large boulders (some the size of small cars), the clearing of vegetation in addition to the construction of the Lawrence Meadow Pond earthen dam demonstrate a significant investment in time and resources to make beneficial use of water. From historical photographs, Robert O. Lawrence and Michael F. Lawrence can be seen irrigating with a water flow in excess of that associated with the Lawrence Meadow Pond Spring that was decreed in Case No. 2011CW92, District Court, Water Division 2. Between 2011 through 2015, the LFRC engaged the law firm of Trout Raley and the engineering firm of Martin and Wood Water Consultants, Inc., specifically to protect and utilize the above water rights. Part of that protection and utilization included investigation into both the actual location of the points of diversion and the decreed places of use of all of the ditches, as well as to formulate and conduct rehabilitation activities on the ditches. Martin and Wood did note in their report that: "It is unclear why [Martin and Wood's] PODs based on decree testimony differ from the Division 2 PODs from decree testimony." During the 2010 to 2020 time period, Michael Lawrence and Stanton McGraw cleaned, maintained, and ran water through the ditches after installing two measurement devices. A third measurement device was still in place with water marks consistent with the Fellows Ditch's decreed amount and leading to its designated location of use. The Fellows Ditch was found by Martin and Wood Water Consultants to be consistent with the historical descriptions. Following the rehabilitation work, the LFRC performed

maintenance work on the ditches and diverted water for irrigation of cultivated trees in 2015 and 2016. Recently, it has been difficult to divert water because the diversion structures and headgates were removed from the historical location by an unknown and unauthorized party. Current supply chain issues in addition to inflation have caused commodity prices to go up significantly. Higher costs for materials are creating affordability issues for the installation of new infrastructure. However, during the last ten years and continuing through today, LFRC has cleaned the ditches and diverted water at times for irrigation. Though, as noted above, such diversions have been difficult since the diversion structures were removed by an unauthorized party. The LFRC has also been involved in a National Resource Conservation Service project and committed resources to install an irrigation system for the Lawrence Meadow Pond water right and other improvements, which is part of the overall water use by the LFRC that includes the above water rights. LFRC coordinated with an engineer to take measurements in order to create plans for new diversion structures for the above listed water rights. However, the designs and manufacturing of any structures were put on hold until ambiguities were clarified, and the current abandonment situation resolved. At times, neighboring parties have cut vegetation and placed it in the ditches. Additionally, heavy equipment brought in by neighboring parties has caused damage to the ditches (most significantly a large culvert for the McClurkin Ditch No. 2). Substantial wind events have further impeded work due to downed large trees that have fallen into and across the ditches. The LFRC has removed some of the debris when time and resources were available and continues to do so to this day. The LFRC has monitored the Division 2 Water Court resumes and has filed statements of opposition in Case Nos. 17CW3006 and 18CW3076 to protect the LFRC water rights. The LFRC filed required disclosures, provided comments on the Applicant's engineering and draft decree, and ultimately stipulated to entry of the decree in Case No. 18CW3076. Since 2011, the LFRC has expended over \$15,000 in legal fees in connection with the work described above to protect its water rights. The LFRC and Jane Lawrence have been involved in protracted litigation in many cases involving the lands on which the subject water rights are used, which are listed below. •El Paso County 2000 DR 3896 (which lasted approx. 16 years with appeals). • Fremont County 2016 CV 30070. •Custer County 2017 CV 30000. • Custer County 2017 CV 30007. • Custer County 2018 CV 30001. • El Paso County 2018 PR 30184 (Probate as litigation, active). • Fremont County 2018 CV 30025 (active, in abeyance). • Fremont County 2020 DR 115 (active). Litigation costs in both time and money have limited the LFRC's ability to make significant improvements for the water rights and other infrastructure, such as roads. In the end, the LFRC did divert and use the above water rights within the last ten years. The LFRC and Jane Lawrence's intent to not abandon any of the water rights is evidenced by the work to restore, clean and repair the ditches, to divert water to beneficial use, and through the expenditures made to protect the water rights from injury that may have been caused by other water right applications. The active litigation described above involving the irrigated properties also requires significant time, resources, and attention. **YOU ARE HEREBY NOTIFIED THAT YOU HAVE** until AUGUST 31, 2022 to file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 2 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List.

CASE NO. 2022CW19; CONCERNING A PROTEST TO FINAL REVISED ABANDONMENT LIST CASE NUMBER: 2021CW3078 – OPPOSER: TWO RIVERS WATER & FARMING CO., Greg Harrington, 129 E. B Street, Pueblo, CO 81003

(Please address all pleadings and inquiries regarding this matter to Opposer's attorneys: Kevin L. Patrick, Esq. and John M. Sittler, Esq., Patrick, Miller & Noto, P.C., 229 Midland Ave, Basalt, CO 81621, (970) 920-1030; Attorneys for Applicant: State Engineer and Division 2 Engineer: Paul Bennington, William Davidson, Chris Stork, 1300 Broadway, 7th Floor, Denver CO 80203, (720) 508-6309)

Protest to Final Abandonment List

HUERFANO COUNTY

Name of structure: Robert Rice Ditch. Admin No: 6269.0000. WDID: 7900592. Original decree: June 12, 1889 (Reed Decree). Legal description: As changed in Case No. 91CW9, the Robert Rice Ditch is located in the SW ¼ of Section 10, T. 26 S., R. 66 W. of the 6th P.M. in Huerfano County, Colorado, being approximately 1700 feet from the west line and 550 feet from the south line of said Section 10. See **Exhibit A** attached to the protest 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.) Source: Huerfano River, tributary to the Arkansas River. Use: Irrigation. Appropriation date: March 1, 1867. Amount: 3.0 c.f.s. Amount and uses listed as having been abandoned: 3.0 c.f.s. for irrigation use. District and page number where listed on Abandonment List: District 79, page 14. Factual and legal basis for the protest: Protestant never had any intent to abandon the Robert Rice Ditch, and in fact expended considerable resources as part of a plan to restore the ditch and place the water to beneficial use. Thus, there can be no abandonment. A full statement of the factual and legal basis is contained in the Protest, on file with the court. **YOU ARE HEREBY NOTIFIED THAT YOU HAVE** until AUGUST 31, 2022 to file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 2 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List.

CASE NO. 2022CW20; CONCERNING A PROTEST TO FINAL REVISED ABANDONMENT LIST CASE NUMBER: 2021CW3078 – OPPOSER: TOWN OF AGUILAR, 101 W. Main, Aguilar, CO 81020

(Please address all pleadings and inquiries regarding this matter to Opposer's attorney: Gerald B. McDaniel PC Attorney at Law, 1280 Painted Rocks Rd. Woodland Park, CO 80863, (719) 260-9304; Attorneys for Applicant: State Engineer and Division 2 Engineer: Paul Bennington, William Davidson, Chris Stork, 1300 Broadway, 7th Floor, Denver CO 80203, (720) 508-6309)

Protest to Final Abandonment List

LAS ANIMAS COUNTY

2. Description of Water Right: A. Name of Structure: Aguilar Final Treatment Pipeline B. Date of Original Decree: October 8, 1976/effective date 12-31-1975, Case No: W-4361, Court: District Ct. Water Div. #2 C. Decreed Legal Description: The Aguilar Wastewater Treatment Plant located in the SW/4 of Sec 23, T 30 S. R 65 W of the 6th P.M. Las Animas County, CO D. Source of Water: Aguilar Wastewater Treatment Plant; the water claimed is not non-tributary water E. Decreed Use: Irrigation; absolute F. Appropriation Date: December 1, 1975, Decreed Amount: .154 c.f.s G. Amount and uses listed as having been abandoned: 100% of .154 c.f.s for irrigation H. District Number and Page Number

for Abandonment List: WD # 1800556; page 2 of 19 **3. State Factual and Legal Basis for Protest**: In decree 88CW69, the water right noted above in W-4361 was made absolute by pumping .154 c.f.s. onto 10 acres located in the SE/4 SW/4, Sec 23, T30S, R65W, 6th P.M. The wastewater treatment system consisted of three (3) lagoons, the first two of which had to be kept full with no pumping from them. The system was designed to serve up to 1200 homes but only about 400 have been developed thus limiting the available water for pumping for irrigation. From 1988 to about 1995 on average about 9 A.F. per year was pumped. From 1995 until about 2014 pumped once every two (2) years; and from 2014 to present, due to drought and evaporative losses pumped about ½ A.F. three (3) times onto 2-4 acres of grazing land. The lack of full development of the projected 1200 residential lots and the past 20 years of relative drought have diminished Protestor's ability to fully utilize the decreed water right. Protestor has never intended to abandon the water right. A meter has never been placed on the pump supplying the pipeline to evidence the amount and time of diversions. **4. Remarks**: According to Marc Piano, recent mayor of the Town of Aguilar, now a council member, whose family made the original deal with Aguilar to irrigate lands adjacent to the Wastewater Treatment Plant primarily in Sec. 23, the water right adjudicated as absolute in 88CW69 (W-4316 original conditional decree) was to be used by the Piano family for irrigation in exchange for construction of Aguilar's wastewater treatment facilities on Piano land. The consumptive use of the water right, although compromised by its junior priority and the 2 decades of drier than normal weather, may well be valuable to Aguilar in the future and must be preserved. With completion of Aguilar's augmentation reservoir proving just under 100 A.F. of augmentation water, future build out of the planned 1,200 residential lots would be more likely thus increasing the amount of wastewater and thereby increasing Aguilar's ability to pump additional water for irrigation from the wastewater treatment facility and more fully utilize its decreed .154 c.f.s. **YOU ARE HEREBY NOTIFIED THAT YOU HAVE** until AUGUST 31, 2022 to file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 2 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List.

CASE NO. 2022CW21; CONCERNING A PROTEST TO FINAL REVISED ABANDONMENT LIST CASE NUMBER: 2021CW3078 – OPPOSER: THE RECEIVERS, INC., Kailoni H. Grothe, PO Box 140037, Lakewood, CO 80214 (Please address all pleadings and inquiries regarding this matter to Opposer's attorneys: Gilbert Y. Marchand, Jr., #19870, Cynthia F. Covell, #10169, Andrea L. Benson, #33176, Alperstein & Covell, P.C., 1391 Speer Boulevard, Suite 730, Denver, CO 80204, phone: (303) 894-8191; fax: (303) 861-0420; Attorneys for Applicant: State Engineer and Division 2 Engineer: Paul Bennington, William Davidson, Chris Stork, 1300 Broadway, 7th Floor, Denver CO 80203, (720) 508-6309)
Protest to Final Abandonment List

CUSTER COUNTY

1.B. Protestant's role: 1.B.(1) Protestant was appointed as the receiver for five parcels of real property in Custer County ("Property") that is the subject of a dispute in El Paso County District Court probate proceeding 2018PR30184. See **Exhibit A** attached to Protest, December 14, 2020 Order Appointing Receiver ("Order"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of

this Court.) The parties to the probate proceeding are: Stanton McGraw and Stacey McGraw Evans individually, and derivatively on behalf of Lawrence Family Ranch Corporation, Petitioners/Plaintiffs vs. Lawrence Family Ranch Corporation, Jane Lawrence Flanders Koshak and Michael Fred Lawrence, Respondents/Defendants. The Property includes the Fellows Ditch water right that is the subject of this Protest. The Order found that the Property “and any of its rents, revenues, income, water rights and profits, are in danger of being materially injured, impaired, reduced in value, or lost, and the appointment of a receiver for the Property is reasonable and necessary for the protection of the assets and the rights of the parties in this case” (emphasis added).

1.B.(2) The Order appointed the receiver “to take possession and control of the Property and the Lawrence Family Ranch Corporation for the purpose of managing, operating, maintaining and protecting the Property . . . until further Order of the Court.” The Order allows the receiver to “[m]anage, operate, maintain, repair and take any action reasonably necessary to protect and preserve the value of the Property” and to “[c]ommence, defend, intervene in, compromise and settle any court, alternative dispute resolution, or administrative proceedings in the name of Receiver to preserve the Property and the Receivership Estate.”

1.B.(3) Consistent with the receiver’s responsibility to reduce the risk of material injury, impairment, reduction in value, or loss of the Property and to protect the assets and the rights of the parties in the case, Protestant is filing this Protest to protect the Fellows Ditch water right by seeking its removal from the Division 2 abandonment list.

1.B.(4) Upon information and belief, the Lawrence Family Ranch Corporation (hereinafter, “LFRC”) is filing its own protest to the listing of the Fellows Ditch water right on the abandonment list. Protestant believes that LFRC has good evidence supporting the removal of the Fellows Ditch water right from the abandonment list and may be in a better position to more actively pursue the protest in water court. Therefore, Protestant intends to file a pleading in support of LFRC’s protest, to allow LFRC to take the lead in pursuing the protest, and to monitor the course of LFRC’s protest. To the extent that LFRC does so take the lead, this protest will somewhat take a back seat. However, if for any reason LFRC ends up not filing a protest or discontinues it before a successful conclusion, or if any other circumstances arise in which Protestant believes its duties as receiver in 2018PR30184 require Protestant to take the lead in pursuing the protest, Protestant will then reinvigorate this protest and prosecute it as necessary to preserve the Fellows Ditch water right. Protestant will handle this protest and its participation in LFRC’s protest in such a manner as to make the most efficient use of the Court’s and the parties’ resources.

2. Describe the water right:

2.A. Name of Structure: Fellows Ditch.

2.B. Date of Original decree: February 3, 1894.

2.C. Decreed Legal Description of Structure Location: According to the decree, “the head of said ditch is located on the S. E. bank of the South branch of Brush Creek at a point WHENCE THE N. 1/4 corner of Sec. 27, Tp. 46 N. R. 12 East, bears N. 71 degrees and 12 minutes West, 499 feet.”

2.D. Source of water: South branch of Brush Creek.

2.E. Decreed use or uses: Irrigation.

2.F. Appropriation Date: July 30, 1880.

2.G. Decreed amount: 1.0 cubic foot of water per second of time (“cfs”).

2.H. Amount and use or uses listed as having been abandoned: 1.0 cfs; all decreed uses.

2.I. Former District Number and Page Number where listed on Abandonment List: The decree refers to Water District No. 12. The subject water right is listed on page 8 of 24 on the Abandonment List.

3. State factual and legal basis for this Protest:

3.A. Mr. Stanton McGraw installed a new flume for the

Fellows Ditch in 2010 and diverted water through the ditch in 2010, 2011, and 2012. The diverted water was used to irrigate Christmas trees and alfalfa/timothy grass in the pasture. On file with the application in the Court is a picture of the weir that was installed.

3.B. Mr. Stanton McGraw has knowledge and can testify regarding maintenance and use of the Fellows Ditch in 2010, 2011, and 2012. However, due to decisions made by others related to the LFRC land on which the Fellows Ditch is used, Mr. McGraw did not have access to the land and does not have direct personal knowledge regarding use of the Fellows Ditch after 2012.

3.C. Upon information and belief, during 2013-2015, LFRC engaged the law firm of Trout Raley and the water resources consulting firm of Martin and Wood Water Consultants, Inc. to investigate the actual location, and the decreed location and place of use of the Fellows Ditch, as well as rehabilitation of the Fellows Ditch. Following this work, LFRC performed maintenance work on the ditch and diverted water for irrigation of cultivated trees in 2015 and 2016. However, it was difficult to divert water because the diversion structure and headgate were removed from the historical location by an unauthorized party. LFRC engaged an engineer to take measurements and create plans for a new diversion structure.

3.D. Upon information and belief, at times, neighboring parties have cut vegetation and placed it in the ditch. Heavy equipment brought in by neighboring parties has also caused damage to the ditch. LFRC has removed some of this debris where time and resources were available.

3.E. LFRC has monitored the Division 2 water court resume and filed statements of opposition in Case Nos. 17CW3006 and 18CW3076 to protect the LFRC water rights. LFRC filed required disclosures, provided comments on the Applicant's engineering and draft decree, and ultimately stipulated to entry of the decree in Case No. 18CW3076.

3.F. Upon information and belief, LFRC expended substantial sums on legal and engineering fees in connection with the work described above.

3.G. During the subject abandonment period, Stanton McGraw, Stacey McGraw Evans, LFRC, Jane Lawrence Flanders Koshak, and Michael Fred Lawrence have been involved in litigation in 2018PR30184, and upon information and belief LFRC has also been involved in other litigation during the subject abandonment period. The litigation has created adverse circumstances for use of the water right.

3.H. The actual use of the Fellows Ditch water right during the subject abandonment period, as described in preceding paragraphs 3.A. through 3.C., rebuts any presumption of abandonment (see § C.R.S. 37-92-402(11)) on which the State may be attempting to rely in its listing of the Fellows Ditch water right on the abandonment list. To the extent the State is relying on C.R.S. § 37-92-402(11), the Court should reject the State's position and take the Fellows Ditch water right off the abandonment list.

3.I. Aside from concluding that the State has failed to meet the statutory abandonment presumption, the Court should also note that "[t]he presumption of abandonment . . . is insufficient in and of itself to prove abandonment." *E. Twin Lakes Ditches & Water Works, Inc. v. Bd. of Cty. Comm'rs of Lake Cty.*, 76 P.3d 918, 921 (Colo. 2003). "Rather, the element of intent remains the touchstone of the abandonment analysis, and the owner of the water right can rebut the presumption of abandonment by introducing evidence sufficient to excuse the non-use or demonstrate an intent not to abandon." *E. Twin Lakes Ditches*, 76 P.3d at 921. "Significantly, although failure to put the water to beneficial use may give rise to the presumption of abandonment in the first instance, it is not the standard by which the second element, intent to abandon, has been measured." *Id.*

3.J. "[I]n determining whether or not an owner intended to abandon his water right, Colorado courts have looked

at such factors as . . . repair and maintenance of diversion structures, . . . attempts to put the water to beneficial use, . . . filing documents to protect, change, or preserve the right, . . . and . . . economic or legal obstacles to exercising the water right.” *Id.* at 922. 3.K. As stated above in paragraphs 3.A. through 3.D., Mr. Stanton McGraw and LFRC have actively repaired and maintained the ditch and its structures, and have used or attempted to use it when feasible. Such repair, maintenance, and use or attempted use is sufficient to prove that there has been no intent to abandon any portion of the Fellows Ditch water right. Additionally, LFRC’s filing of statements of opposition in water court (see paragraph 3.E.) to protect its water rights from injury is clear evidence that there was no intent to abandon the subject water right. Regarding non-use of the water right during the subject abandonment period, the evidence shows that the above-described litigation, as well as the unauthorized actions of others in damaging the diversion structures and ditch (see paragraphs 3.C. and 3.D.) have created adverse circumstances justifying non-use of the water right. WHEREFORE, for the foregoing reasons, Protestant requests the Court to remove the Fellows Ditch water right from the abandonment list and to grant such other relief as may be appropriate in the circumstances. **YOU ARE HEREBY NOTIFIED THAT YOU HAVE** until AUGUST 31, 2022 to file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 2 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List.

CASE NO. 2022CW22; CONCERNING A PROTEST TO FINAL REVISED ABANDONMENT LIST CASE NUMBER: 2021CW3078 – OPPOSER: FAMILY RANCH HOLDINGS, LLC and MARKSHEFFEL WOODMEN INVESTMENTS LLC; c/o Randle W. Case II, 119 N. Wahsatch Avenue, Colorado Springs CO 80903 (Please address all pleadings and inquiries regarding this matter to Opposer’s attorneys: Stephen H. Leonhardt and April D. Hendricks; Burns, Figa & Will, P.C.; 6400 S. Fiddlers Green Circle, Suite 1000, Greenwood Village, CO 80111; (303) 796-2626; Attorneys for Applicant: State Engineer and Division 2 Engineer: Paul Bennington, William Davidson, Chris Stork, 1300 Broadway, 7th Floor, Denver CO 80203, (720) 508-6309)

Protest to Final Abandonment List

HUERFANO COUNTY

II. Describe the Water Rights: All of the following water rights are depicted on the map attached to the Protest to Revised Abandonment List as **Exhibit A**, (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) and are described in more detail as follows: **A. Clark Flood Ditch No. 1.** 1. Original Decree: October 3, 1921, Case No. CA 1414, Huerfano County District Court. 2. Decreed Legal Description of Structure Location: The headgate of the ditch is located at a point on the North bank of Apache Creek, from whence the West quarter corner of Section 29, Township 25 South, Range 66 West, bears south 14 degrees, West 458 feet, in Huerfano County, Colorado. 3. Source of Water: Apache Creek. 4. Decreed use: irrigation. 5. Appropriation Date: May 1, 1906 (Priority No. 356). 6. Decreed Amount: 17.5 cfs. 7. Amount and use or uses listed as having been abandoned: irrigation, 17.5 cfs. 8. Former District Number and Page Number where listed on Abandonment List: District 16, p. 4. **B. Clark Flood Ditch No. 2.** 1. Original Decree: October 3, 1921, Case No. CA 1414, Huerfano County District Court. 2. Decreed Legal Description of Structure Location: The headgate of the ditch is located at a point on the South bank of Hill Arroya,

from whence the Southwest corner of Section 19, Township 25 South, Range 66 West, bears south 57 degrees, West 2574 feet, in Huerfano County, Colorado. 3. Source of Water: Hill Arroya. 4. Decreed use: irrigation. 5. Appropriation Date: September 1, 1906 (Priority No. 362). 6. Decreed Amount: 32.5 cfs. 7. Amount and use or uses listed as having been abandoned: irrigation, 32.5 cfs. 8. Former District Number and Page Number where listed on Abandonment List: District 16, p. 4. **C. Clark Reservoir Arroya Flood Ditch No. 2.** 1. Original Decree: October 3, 1921, Case No. CA 1414, Huerfano County District Court. 2. Decreed Legal Description of Structure Location: The headgate of the ditch is located at a point on the east bank of Hill Arroya, from whence the Southwest corner of Section 20, Township 25 South, Range 66 West, bears south 28 degrees, West 2050 feet, in Huerfano County, Colorado. 3. Source of water: Hill Arroya. 4. Decreed use or uses: irrigation. 5. Appropriation Date: October 28, 1909 (Priority No. 404). 6. Decreed Amount: 1.5 cfs. 7. Amount and use or uses listed as having been abandoned: irrigation, 1.5 cfs. 8. Former District Number and Page Number where listed on Abandonment List: District 16, p. 4. **D. Clark Reservoir No. 2.** 1. Original Decree: October 3, 1921, Case No. CA 1414, Huerfano County District Court; 2. Decreed Legal Description of Structure Location: Section 20, Township 25 South, Range 66 West; 3. Source of water: Hill Arroya; 4. Decreed use: irrigation; 5. Appropriation Date: June 10, 1907 (Priority 373); 6. Decreed Amount: 593.348 acre-feet; 7. Amount and use or uses listed as having been abandoned: irrigation, 593.348 acre-feet; 8. Former District Number and Page Number where listed on Abandonment List: District 16, p. 4. **III. Factual and Legal Basis for this Protest:** A. Legal Standards for Abandonment. Water rights are considered valuable property rights, and abandonment of those rights are strongly disfavored under Colorado law. *Wolfe v. Jim Hutton Educational Foundation*, 344 P.3d 855, 861 (Colo. 2015); *Williams v. Midway Ranches*, 938 P.2d 515,527 (Colo. 1997). C.R.S. 37-92-402(11) outlines the standards for abandonment, stating that “failure for a period of ten years or more to apply to a beneficial use the water available under a water right when needed by the person entitled to use same shall create a rebuttable presumption of abandonment of a water right with respect to the amount of such available water which has not been so used” The State bears the burden of proving the presumption that the water rights at issue have been abandoned. To meet this burden, the State must demonstrate: that water was legally and physically available under a water right at a given time; the legally and physically available water was needed at the time at which it was available; and that the available and needed water was not applied to beneficial use at that time. Under Colorado law, abandonment of a water right requires a concurrence of nonuse and intent to abandon. See *City & Cnty. of Denver v. Snake River Water Dist.*, 788 P.2d 772, 776 (Colo. 1990). The water right owners’ intent is the “touchstone” consideration in an abandonment proceeding. *E. Twin Lakes v. Bd. of Cnty. Comm’rs of Lake Cnty.*, 76 P. 3d 918, 921 (Colo. 2003). Nonuse for a period of time may serve as evidence of abandonment; however, nonuse alone will not establish abandonment where the owner of the water right introduces sufficient evidence to show that during the period of nonuse, there never was any intention to permanently discontinue the use of the water. See *Beaver Park Water, Inc. v. Victor*, 649 P.2d 300 (Colo. 1982); *Snake River Water District*, 788 P.2d at 776. Though failure to apply water to beneficial use for a ten-year period creates a rebuttable presumption of abandonment, that presumption is rebutted when the owner “establish[es] some fact or condition that

excuses the nonuse or shows the owner's intent not to abandon the water right." *Haystack Ranch, LLC v. Fazzio*, 997 P.2d at 552. Abandonment is a question of fact, depending on the particular circumstances of each case. *Id.* "A successful rebuttal requires objective and credible evidence, not merely subjective statements of intent by the water rights owner." *E. Twin Lakes*, 76 P. 3d at 921-22. Colorado Courts have identified various factors to determine whether a water right holder intended to abandon his water right, including: (1) repair and maintenance of diversion structures; (2) attempts to put the water to beneficial use; (3) active diversion records and non-appearance of the water right on the State Engineer's abandonment list; (4) diligent efforts to sell the water right; (5) filing documents to protect, change, or preserve the right; (6) leasing the water right; and (7) economic or legal obstacles to exercising the water right. See *Wolfe*, 344 P. 3d at 859; *E. Twin Lakes*, 76 P. 3d at 922. The Supreme Court has explained that while none of these factors is necessarily conclusive, their cumulative weight may be enough to rebut a presumption of abandonment. *Id.* B. Factual Basis for Protest. The water rights described in Section II of this protest are associated with the historical Shaffer Ranch in Huerfano County, Colorado. Prior to 2020, these water rights have never previously been listed on the State Engineer's abandonment lists. The Protestants purchased this property and its water rights in 2007. Throughout the past ten years, the land and water rights listed above have leased to Tom Sikes, pursuant to the parties' grazing lease. The parties' current grazing lease is effective through December 15, 2023. The Protestants intend that, when water is both physically and legally available for diversion under these water rights, that the water will be used for field irrigation, to grow grasses for livestock grazing. In at least four of the past ten years, DWR's records indicate that no water was available under the Clark Reservoir No. 2 storage right. Similarly, in at least two of the past ten years, DWR's records that no water was available for diversion under the Clark Flood Ditch No. 1 or the Clark Flood Ditch No. 2 water right. During the past ten years, the Protestants and their tenant, Mr. Sikes, have observed significant amounts of water in the Clark Flood Ditch No. 1, Clark Flood Ditch No. 2, Clark Reservoir Arroyo No. 2, and Clark Reservoir during times of heavy rains. However, the owners of this water right were informed by DWR not to divert water under these water rights when water has been physically available during the irrigation season, due to downstream senior calls. The Protestants, therefore, believe that a senior downstream call has been in effect during times of physical availability, thus preventing their legal ability to divert water under this water right. Moreover, the Protestants believe that physical availability of water has been diminished due to upstream out-of-priority diversions that are augmented, if at all, only to the Huerfano River and not to the source streams for Protestants' senior water rights. They expect that the current Water Commissioner will be taking the appropriate steps to ensure that such out-of-priority diversion do not adversely impact their water rights. Where water is legally and physically unavailable for diversion, DWR cannot support its conclusion that the Protestants intended to abandon the water rights in question. To the contrary, nonuse of water under such conditions is clearly excusable. See *Haystack Ranch*, 997 P.2d at 552 (where non-use of the water right is clearly excusable, the presumption of intent to abandon has been rebutted). To that end, during the past ten years, the Protestants have not invested significant funds into upgrading and maintaining the diversion or storage structures associated with these water rights, because it was never clear that water was legally available for diversion during the limited times that water was physically available

to these water rights. However, the Protestants have engaged in further discussions with DWR regarding these water rights, times of legal availability, and actions that can be taken to improve the diversion structures such that water can be diverted when water is both legally and physically available. To the extent that water may not be legally available for diversion under this water right, the Protestants will consider seeking the Water Court's approval of an augmentation plan to replace depletions to the stream system when water is physically available for out-of-priority diversion. **YOU ARE HEREBY NOTIFIED THAT YOU HAVE** until AUGUST 31, 2022 to file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 2 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List.

CASE NO. 2022CW23; CONCERNING A PROTEST TO FINAL REVISED ABANDONMENT LIST CASE NUMBER: 2021CW3078 – OPPOSER: THE RECEIVERS, INC., Kailoni H. Grothe, P.O. Box 140037, Lakewood, CO 80214 (Please address all pleadings and inquiries regarding this matter to Opposer's attorneys: Gilbert Y. Marchand, Jr., #19870, Cynthia F. Covell, #10169, Andrea L. Benson, #33176, Alperstein & Covell, P.C., 1391 Speer Boulevard, Suite 730, Denver, CO 80204, phone: (303) 894-8191; Attorneys for Applicant: State Engineer and Division 2 Engineer: Paul Bennington, William Davidson, Chris Stork, 1300 Broadway, 7th Floor, Denver CO 80203, (720) 508-6309)

Protest to Final Abandonment List

CUSTER COUNTY

1.B. Protestant's role: 1.B.(1) Protestant was appointed as the receiver for five parcels of real property in Custer County ("Property") that is the subject of a dispute in El Paso County District Court probate proceeding 2018PR30184. See **Exhibit A** attached to protest, December 14, 2020 Order Appointing Receiver ("Order"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The parties to the probate proceeding are: Stanton McGraw and Stacey McGraw Evans individually, and derivatively on behalf of Lawrence Family Ranch Corporation, Petitioners/Plaintiffs vs. Lawrence Family Ranch Corporation, Jane Lawrence Flanders Koshak and Michael Fred Lawrence, Respondents/Defendants. The Property includes the McClurkin No. 2 Ditch water right that is the subject of this Protest. The Order found that the Property "and any of its rents, revenues, income, water rights and profits, are in danger of being materially injured, impaired, reduced in value, or lost, and the appointment of a receiver for the Property is reasonable and necessary for the protection of the assets and the rights of the parties in this case" (emphasis added). 1.B.(2) The Order appointed the receiver "to take possession and control of the Property and the Lawrence Family Ranch Corporation for the purpose of managing, operating, maintaining and protecting the Property . . . until further Order of the Court." The Order allows the receiver to "[m]anage, operate, maintain, repair and take any action reasonably necessary to protect and preserve the value of the Property" and to "[c]ommence, defend, intervene in, compromise and settle any court, alternative dispute resolution, or administrative proceedings in the name of Receiver to preserve the Property and the Receivership Estate." 1.B.(3) Consistent with the receiver's responsibility to reduce the risk of material injury, impairment, reduction in value, or loss of the Property and to protect the assets and the rights of the parties in the case, Protestant is filing this Protest to

protect the McClurkin No. 2 Ditch water right by seeking its removal from the Division 2 abandonment list. 1.B.(4) Upon information and belief, the Lawrence Family Ranch Corporation (hereinafter, "LFRC") is filing its own protest to the listing of the McClurkin No. 2 Ditch water right on the abandonment list. Protestant believes that LFRC has good evidence supporting the removal of the McClurkin No. 2 Ditch water right from the abandonment list and may be in a better position to more actively pursue the protest in water court. Therefore, Protestant intends to file a pleading in support of LFRC's protest, to allow LFRC to take the lead in pursuing the protest, and to monitor the course of LFRC's protest. To the extent that LFRC does so take the lead, this protest will somewhat take a back seat. However, if for any reason LFRC ends up not filing a protest or discontinues it before a successful conclusion, or if any other circumstances arise in which Protestant believes its duties as receiver in 2018PR30184 require Protestant to take the lead in pursuing the protest, Protestant will then reinvigorate this protest and prosecute it as necessary to preserve the McClurkin No. 2 Ditch water right. Protestant will handle this protest and its participation in LFRC's protest in such a manner as to make the most efficient use of the Court's and the parties' resources.

2. Describe the water right: 2.A. Name of Structure: McClurkin Ditch No. 2. 2.B. Date of Original decree: February 3, 1894. 2.C. Decreed Legal Description of Structure Location: According to the decree, "the head of said ditch is situated on the South East bank of South Brush Creek." Per the Colorado DWR database, the UTM coordinates (NAD83) are 444756.0 Easting and 4229750.0 Northing, and the approximate location is in the north half of the north half of Section 27, Township 46 North, Range 12 East, 6th P.M., near the centerline between the northeast quarter of the northwest quarter and the northwest quarter of the northeast quarter of said Section 27. 2.D. Source of water: South Brush Creek. 2.E. Decreed use or uses: Irrigation. 2.F. Appropriation Date: July 30, 1880. 2.G. Decreed amount: 1.05 cubic feet of water per second of time ("cfs"). 2.H. Amount and use or uses listed as having been abandoned: 1.05 cfs; all decreed uses. 2.I. Former District Number and Page Number where listed on Abandonment List: The decree refers to Water District No. 12. The subject water right is listed on page 14 of 24 on the Abandonment List.

3. State factual and legal basis for this Protest: 3.A. Mr. Stanton McGraw installed a new flume for the McClurkin No. 2 Ditch in 2010 and diverted water through the ditch in 2010, 2011, and 2012. The diverted water was used to irrigate Christmas trees and alfalfa/timothy grass in the pasture. On file with the application in the Court are pictures of the weir that was installed. 3.B. Mr. Stanton McGraw has knowledge and can testify regarding maintenance and use of the McClurkin No. 2 Ditch in 2010, 2011, and 2012. However, due to decisions made by others related to the LFRC land on which the McClurkin No. 2 Ditch is used, Mr. McGraw did not have access to the land and does not have direct personal knowledge regarding use of the McClurkin No. 2 Ditch after 2012. 3.C. Upon information and belief, during 2013-2015, LFRC engaged the law firm of Trout Raley and the water resources consulting firm of Martin and Wood Water Consultants, Inc. to investigate the actual location, and the decreed location and place of use of the McClurkin No. 2 Ditch, as well as rehabilitation of the McClurkin No. 2 Ditch. Following this work, LFRC performed maintenance work on the ditch and diverted water for irrigation of cultivated trees in 2015 and 2016. However, it was difficult to divert water because the diversion structure and headgate were removed from the historical location by an unauthorized party. LFRC engaged an engineer to take measurements and create plans

for a new diversion structure. 3.D. Upon information and belief, at times, neighboring parties have cut vegetation and placed it in the ditch. Heavy equipment brought in by neighboring parties has also caused damage to the ditch. LFRC has removed some of this debris where time and resources were available. 3.E. LFRC has monitored the Division 2 water court resume and filed statements of opposition in Case Nos. 17CW3006 and 18CW3076 to protect the LFRC water rights. LFRC filed required disclosures, provided comments on the Applicant's engineering and draft decree, and ultimately stipulated to entry of the decree in Case No. 18CW3076. 3.F. Upon information and belief, LFRC expended substantial sums on legal and engineering fees in connection with the work described above. 3.G. During the subject abandonment period, Stanton McGraw, Stacey McGraw Evans, LFRC, Jane Lawrence Flanders Koshak, and Michael Fred Lawrence have been involved in litigation in 2018PR30184, and upon information and belief LFRC has also been involved in other litigation during the subject abandonment period. The litigation has created adverse circumstances for use of the water right. 3.H. The actual use of the McClurkin No. 2 Ditch water right during the subject abandonment period, as described in preceding paragraphs 3.A. through 3.C., rebuts any presumption of abandonment (see § C.R.S. 37-92-402(11)) on which the State may be attempting to rely in its listing of the McClurkin No. 2 Ditch water right on the abandonment list. To the extent the State is relying on C.R.S. § 37-92-402(11), the Court should reject the State's position and take the McClurkin No. 2 Ditch water right off the abandonment list. 3.I. Aside from concluding that the State has failed to meet the statutory abandonment presumption, the Court should also note that "[t]he presumption of abandonment . . . is insufficient in and of itself to prove abandonment." *E. Twin Lakes Ditches & Water Works, Inc. v. Bd. of Cty. Comm'rs of Lake Cty.*, 76 P.3d 918, 921 (Colo. 2003). "Rather, the element of intent remains the touchstone of the abandonment analysis, and the owner of the water right can rebut the presumption of abandonment by introducing evidence sufficient to excuse the non-use or demonstrate an intent not to abandon." *E. Twin Lakes Ditches*, 76 P.3d at 921. "Significantly, although failure to put the water to beneficial use may give rise to the presumption of abandonment in the first instance, it is not the standard by which the second element, intent to abandon, has been measured." *Id.* 3.J. "[I]n determining whether or not an owner intended to abandon his water right, Colorado courts have looked at such factors as . . . repair and maintenance of diversion structures, . . . attempts to put the water to beneficial use, . . . filing documents to protect, change, or preserve the right, . . . and . . . economic or legal obstacles to exercising the water right." *Id.* at 922. 3.K. As stated above in paragraphs 3.A. through 3.D., Mr. Stanton McGraw and LFRC have actively repaired and maintained the ditch and its structures, and have used or attempted to use it when feasible. Such repair, maintenance, and use or attempted use is sufficient to prove that there has been no intent to abandon any portion of the McClurkin No. 2 Ditch water right. Additionally, LFRC's filing of statements of opposition in water court (see paragraph 3.E.) to protect its water rights from injury is clear evidence that there was no intent to abandon the subject water right. Regarding non-use of the water right during the subject abandonment period, the evidence shows that the above-described litigation, as well as the unauthorized actions of others in damaging the diversion structures and ditch (see paragraphs 3.C. and 3.D.) have created adverse circumstances justifying non-use of the water right. WHEREFORE, for the foregoing reasons, Protestant requests the Court to remove the McClurkin No. 2 Ditch water right

from the abandonment list and to grant such other relief as may be appropriate in the circumstances. **YOU ARE HEREBY NOTIFIED THAT YOU HAVE** until AUGUST 31, 2022 to file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 2 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List.

CASE NO. 2022CW24; CONCERNING A PROTEST TO FINAL REVISED ABANDONMENT LIST CASE NUMBER: 2021CW3078 – OPPOSER: THE RECEIVERS, INC., Kailoni H. Grothe, P.O. Box 140037, Lakewood, CO 80214 (Please address all pleadings and inquiries regarding this matter to Opposer’s attorneys: Gilbert Y. Marchand, Jr., #19870, Cynthia F. Covell, #10169, Andrea L. Benson, #33176, Alperstein & Covell, P.C., 1391 Speer Boulevard, Suite 730, Denver, CO 80204, phone: (303) 894-8191; Attorneys for Applicant: State Engineer and Division 2 Engineer: Paul Bennington, William Davidson, Chris Stork, 1300 Broadway, 7th Floor, Denver CO 80203, (720) 508-6309)

Protest to Final Abandonment List

CUSTER COUNTY

1.B. Protestant’s role: 1.B.(1) Protestant was appointed as the receiver for five parcels of real property in Custer County (“Property”) that is the subject of a dispute in El Paso County District Court probate proceeding 2018PR30184. See **Exhibit A** attached to protest, December 14, 2020 Order Appointing Receiver (“Order”). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The parties to the probate proceeding are: Stanton McGraw and Stacey McGraw Evans individually, and derivatively on behalf of Lawrence Family Ranch Corporation, Petitioners/Plaintiffs vs. Lawrence Family Ranch Corporation, Jane Lawrence Flanders Koshak and Michael Fred Lawrence, Respondents/Defendants. The Property includes the Middle Ditch water right that is the subject of this Protest. The Order found that the Property “and any of its rents, revenues, income, water rights and profits, are in danger of being materially injured, impaired, reduced in value, or lost, and the appointment of a receiver for the Property is reasonable and necessary for the protection of the assets and the rights of the parties in this case” (emphasis added). 1.B.(2) The Order appointed the receiver “to take possession and control of the Property and the Lawrence Family Ranch Corporation for the purpose of managing, operating, maintaining and protecting the Property . . . until further Order of the Court.” The Order allows the receiver to “[m]anage, operate, maintain, repair and take any action reasonably necessary to protect and preserve the value of the Property” and to “[c]ommence, defend, intervene in, compromise and settle any court, alternative dispute resolution, or administrative proceedings in the name of Receiver to preserve the Property and the Receivership Estate.” 1.B.(3) Consistent with the receiver’s responsibility to reduce the risk of material injury, impairment, reduction in value, or loss of the Property and to protect the assets and the rights of the parties in the case, Protestant is filing this Protest to protect the Middle Ditch water right by seeking its removal from the Division 2 abandonment list. 1.B.(4) Upon information and belief, the Lawrence Family Ranch Corporation (hereinafter, “LFRC”) is filing its own protest to the listing of the Middle Ditch water right on the abandonment list. Protestant believes that LFRC has good evidence supporting the removal of the Middle Ditch water right from the abandonment list and may

be in a better position to more actively pursue the protest in water court. Therefore, Protestant intends to file a pleading in support of LFRC's protest, to allow LFRC to take the lead in pursuing the protest, and to monitor the course of LFRC's protest. To the extent that LFRC does so take the lead, this protest will somewhat take a back seat. However, if for any reason LFRC ends up not filing a protest or discontinues it before a successful conclusion, or if any other circumstances arise in which Protestant believes its duties as receiver in 2018PR30184 require Protestant to take the lead in pursuing the protest, Protestant will then reinvigorate this protest and prosecute it as necessary to preserve the Middle Ditch water right. Protestant will handle this protest and its participation in LFRC's protest in such a manner as to make the most efficient use of the Court's and the parties' resources.

2. Describe the water right: 2.A. Name of Structure: Middle Ditch (also referred to as "Middle Ditch S Brush"). 2.B. Date of Original decree: February 3, 1894. 2.C. Decreed Legal Description of Structure Location: According to the decree, "said ditch takes its water from the South side of South Brush Creek at a point whence the S. 1/4 corner of Sec. 22, Tp. 46 N. R. 12 East bears S. 73 degrees and 44 minutes West, 971 feet." 2.D. Source of water: South side of South Brush Creek. 2.E. Decreed use or uses: Irrigation. 2.F. Appropriation Date: May 15, 1881. 2.G. Decreed amount: 1.0 cubic foot of water per second of time ("cfs"). 2.H. Amount and use or uses listed as having been abandoned: 1.0 cfs; all decreed uses. 2.I. Former District Number and Page Number where listed on Abandonment List: The decree refers to Water District No. 12. The subject water right is listed on page 14 of 24 on the Abandonment List.

3. State factual and legal basis for this Protest: 3.A. Mr. Stanton McGraw installed a new flume for the Middle Ditch in 2010 and diverted water through the ditch in 2010, 2011, and 2012. The diverted water was used to irrigate Christmas trees and alfalfa/timothy grass in the pasture. On file with the application in the Court are pictures of the weir that was installed. 3.B. Mr. Stanton McGraw has knowledge and can testify regarding maintenance and use of the Middle Ditch in 2010, 2011, and 2012. However, due to decisions made by others related to the LFRC land on which the Middle Ditch is used, Mr. McGraw did not have access to the land and does not have direct personal knowledge regarding use of the Middle Ditch after 2012. 3.C. Upon information and belief, during 2013-2015, LFRC engaged the law firm of Trout Raley and the water resources consulting firm of Martin and Wood Water Consultants, Inc. to investigate the actual location, and the decreed location and place of use of the Middle Ditch, as well as rehabilitation of the Middle Ditch. Following this work, LFRC performed maintenance work on the ditch and diverted water for irrigation of cultivated trees in 2015 and 2016. However, it was difficult to divert water because the diversion structure and headgate were removed from the historical location by an unauthorized party. LFRC engaged an engineer to take measurements and create plans for a new diversion structure. 3.D. Upon information and belief, at times, neighboring parties have cut vegetation and placed it in the ditch. Heavy equipment brought in by neighboring parties has also caused damage to the ditch. LFRC has removed some of this debris where time and resources were available. 3.E. LFRC has monitored the Division 2 water court resume and filed statements of opposition in Case Nos. 17CW3006 and 18CW3076 to protect the LFRC water rights. LFRC filed required disclosures, provided comments on the Applicant's engineering and draft decree, and ultimately stipulated to entry of the decree in Case No. 18CW3076. 3.F. Upon information and belief, LFRC expended substantial sums on legal and engineering fees

in connection with the work described above. 3.G. During the subject abandonment period, Stanton McGraw, Stacey McGraw Evans, LFRC, Jane Lawrence Flanders Koshak, and Michael Fred Lawrence have been involved in litigation in 2018PR30184, and upon information and belief LFRC has also been involved in other litigation during the subject abandonment period. The litigation has created adverse circumstances for use of the water right. 3.H. The actual use of the Middle Ditch water right during the subject abandonment period, as described in preceding paragraphs 3.A. through 3.C., rebuts any presumption of abandonment (see § C.R.S. 37-92-402(11)) on which the State may be attempting to rely in its listing of the Middle Ditch water right on the abandonment list. To the extent the State is relying on C.R.S. § 37-92-402(11), the Court should reject the State's position and take the Middle Ditch water right off the abandonment list. 3.I. Aside from concluding that the State has failed to meet the statutory abandonment presumption, the Court should also note that "[t]he presumption of abandonment . . . is insufficient in and of itself to prove abandonment." *E. Twin Lakes Ditches & Water Works, Inc. v. Bd. of Cty. Comm'rs of Lake Cty.*, 76 P.3d 918, 921 (Colo. 2003). "Rather, the element of intent remains the touchstone of the abandonment analysis, and the owner of the water right can rebut the presumption of abandonment by introducing evidence sufficient to excuse the non-use or demonstrate an intent not to abandon." *E. Twin Lakes Ditches*, 76 P.3d at 921. "Significantly, although failure to put the water to beneficial use may give rise to the presumption of abandonment in the first instance, it is not the standard by which the second element, intent to abandon, has been measured." *Id.* 3.J. "[I]n determining whether or not an owner intended to abandon his water right, Colorado courts have looked at such factors as . . . repair and maintenance of diversion structures, . . . attempts to put the water to beneficial use, . . . filing documents to protect, change, or preserve the right, . . . and . . . economic or legal obstacles to exercising the water right." *Id.* at 922. 3.K. As stated above in paragraphs 3.A. through 3.D., Mr. Stanton McGraw and LFRC have actively repaired and maintained the ditch and its structures, and have used or attempted to use it when feasible. Such repair, maintenance, and use or attempted use is sufficient to prove that there has been no intent to abandon any portion of the Middle Ditch water right. Additionally, LFRC's filing of statements of opposition in water court (see paragraph 3.E.) to protect its water rights from injury is clear evidence that there was no intent to abandon the subject water right. Regarding non-use of the water right during the subject abandonment period, the evidence shows that the above-described litigation, as well as the unauthorized actions of others in damaging the diversion structures and ditch (see paragraphs 3.C. and 3.D.) have created adverse circumstances justifying non-use of the water right. WHEREFORE, for the foregoing reasons, Protestant requests the Court to remove the Middle Ditch water right from the abandonment list and to grant such other relief as may be appropriate in the circumstances. **YOU ARE HEREBY NOTIFIED THAT YOU HAVE** until AUGUST 31, 2022 to file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 2 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List.

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 August 2022, (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). YOU ARE HEREBY NOTIFIED that any party who wishes to support or oppose a protest to the final revised abandonment list may file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List, such entry of appearance must be filed by August 31, 2022 (forms available at Clerk's office or at www.courts.state.co.us). A copy of such entry of appearance must also be served upon the Opposer and the applicant's attorney and an affidavit or certificate of such service shall be filed with the Division 2 Water Clerk, as prescribed by Rule 5, CRCP. The foregoing are resumes and the entire application, protest, 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 13th day of July 2022.



Michele Santistevan

Michele M. Santistevan, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
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(Court seal)
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