

DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO
TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS FILED IN
WATER DIVISION 3.

Pursuant to C.R.S. 37-92-302(3), you are notified that the following is a resume in Water Division 3, containing notice of applications and certain amendments filed in the office of the Water Clerk during the month of September 2022 for each county affected.

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.

2022CW39: Goehl Ranges, Inc., 4020 Ridge Drive Pueblo, CO 81008, miltontrujillo@aol.com, 719-252-7149. Application for Change of Water Right in Rio Grande County. Name of Structure: Well No. 8, Case No. W-747, Permit No. 12910-F, WDID 2009577 (Well No. 8). Date of original decree: January 4, 1974, Case No: W-747 Court: Water Division No. 3. Legal description of structure: Well No. 8 is located by decree at 2610 feet from the North section line and 2625 feet from the East section line in the SW1/4 NE1/4 Section 12, Township 40 North, Range 8 East, NMPM, Rio Grande County. Decreed source of water: Confined aquifer. Appropriation Date: May 2, 1968. Total amount decreed to structure: Conditional: N/A Absolute: 1,500 gpm being 3.34 cfs. Decreed use or uses: Irrigation. Amount of water that applicant intends to change: 50 gpm, being 0.111 cfs, Absolute Transfer to an existing confined aquifer well, well permit number 56318, that is located in the SW1/4 NW1/4 Section 16, T40N, R8E, NMPM. The suggested name for this well is Well No. 8-R. Well no. 8-R is located approximately 2180 feet from the north section line and 150 from the west section line. Detailed description of change: Applicant seeks to transfer 50 gpm (0.111 cfs) from Well No. 8 to an existing confined aquifer well, well permit number 56318 for commercial potato storage and facility washing. The potato storage facility holds 55,000 cwt potatoes for typically 10 months per year along with the necessary washing of the facility. Estimated annual consumptive use is: $0.55 \times 0.67 \text{ af/yr} \times 10 \text{ mos} / 12 \text{ mos} = 0.31 \text{ acrefeet per year}$ for humidification plus 0.19 af/year for washing at the facility for a total of 0.50 acrefoot of annual withdrawal and consumptive use. The cleaning estimate is based upon 21 hours of washing at 50 gpm. In order to offset the consumptive use for commercial purposes, Applicant will permanently dry-up the sprinkler corners of the existing center pivot sprinkler from groundwater use on the NE1/4 Section 12, T40N, R8E, NMPM. This is the field that Well No. 8 irrigated in conjunction with San Luis Valley Irrigation District shares and Well Nos. 1, 2, and 4 of Case No. W-747 and the irrigation well with Permit No. 42811-F. The corners were irrigated with Well Nos. 1, 2, and 4 since the inception of Well Nos. 1 and 2 in 1951. Well No. 8 was drilled in 1968 as an additional irrigation supply. A linear irrigation system was used on the E1/2 Section 12, T40N, R8E, NMPM until 1993 when a center pivot irrigation system was installed. This reduced the irrigated area on the NE1/4 Section 12, T40N, R8E, NMPM to approximately 130 acres. Applicant will limit future commercial use to not more than 0.5 acre-feet of consumptive use. All water used for commercial purposes will be metered in accordance with the Division 3 Well Measurement Rules. Applicants will limit the use of groundwater use on the NE1/4 Section 12, T40N, R8E,

NMPM to no more than 130 acres with groundwater in the future. The surface water rights will continue to be applied to the whole quarter-section for irrigation or recharge purposes. Change in or added point of diversion: Existing well permit no. 56318 in the SW1/4 NW1/4 Section 16, T40N, R8E, NMPM GPS location at 402055 mE, 4174575 mN. Name and address of owners: Goehl Ranches, Inc. 4020 Ridge Drive Pueblo, CO 81008.

22CW3009, Name, Address and Telephone Number of Applicant-Petitioner. Ernest Myers and Virginia Myers, 3501 CR 53, Center, Colorado 81125; (719) 754-2139;

ernie@mvproduce.com (hereinafter "Applicant"). Please send all future correspondence to Ryan M. Donovan or David L. Strait, Lawrence Custer Grasmick Jones & Donovan, LLP, 5745 Ronald Reagan Blvd., Suite 101, Johnstown, CO 80534. VERIFIED AMENDED APPLICATION FOR CHANGE OF WATER RIGHT AND PETITION FOR

CORRECTION OF DECREE 2. Remarks: This Verified Amended Application for Change of Water Right and Petition for Correction of Decree ("Amended Application and Petition") seeks to correct an erroneously described place of use for a water right associated with the Well described in Paragraph 3 herein. A decree was entered in Case No. W-1791 ("1791 Decree"), attached hereto as **Exhibit 1**, for the water right from the confined aquifer associated with the Well. The place of use of such water right was not described in the 1791 Decree, but the 1791 Decree referenced Registration No. 10193 for the Well ("Well Registration Form"), which described the place of use. The Well Registration Form, attached hereto as **Exhibit 2**, erroneously designated the location and the place of use as the NW 1/4 of Section 12, Township 43 North, Range 7 East, N.M.P.M., Saguache County, Colorado (the "NW Quarter"). It is evident that the original registrant of the Well erroneously and inadvertently described both the location of the Well and the legal description of the place of use on the Well Registration Form when such Form was originally completed. The Well is and has always been located in the SW 1/4 of Section 12, Township 43 North, Range 7 East, N.M.P.M., Saguache County, Colorado (the "SW Quarter"), the property owned by Applicant, and has historically and continues to be used for irrigation in the SW Quarter. The physical location of the Well is not in question, and the original registrant clearly stated that the Well was used for irrigation of the parcel in which it is located. 3. Water Rights Sought to be Changed: Well No. 2, Permit No. 10193-R, WDID 2605524. (the "Well"). 3.1. *Prior Decree:* The 1791 Decree was entered on May 29, 1975 approving water rights for the Well. Nothing in this Application seeks to amend the 1791 Decree besides a clerical correction for the inclusion of the irrigated parcel description not initially contained in the 1791 Decree. 3.2. *Appropriation Date:* September 5, 1953. 3.3. *Diversion Rate:* 1,060 gpm, 2.36 cfs, 4.72 acre-feet per twenty-four hours. 3.4. *Source:* Confined Aquifer. 3.5. *Decreed Use:* Irrigation. 3.6. *Location:* NW 1/4 of the SW 1/4 of Section 12, Township 43 North, Range 7 West of the N.M.P.M., Saguache County, Colorado. 4. Augmentation. The Well is located within the Saguache Response Area and is presently included in the Rio Grande Water Conservation District - Subdistrict 5's 2022-2023 Annual Replacement Plan. 5. Proposed Change. Applicant seeks a decree approving a clerical correction in the 1791 Decree, and relief from the erroneously described irrigated parcel as described on the Well Registration Form,

being the NW 1/4 of Section 12, Township 43 North, Range 7 East of the N.M.P.M., to the actual irrigated parcel, that being in the SW 1/4 of Section 12, Township 43 North, Range 7 East of the N.M.P.M., Saguache County, Colorado. The corrections requested herein by Applicant are clerical in nature and related to a scrivener's error. Nothing herein is intended to amend, nor shall it amend, any substantive finding of fact or conclusion of law related to the Well and water right decreed by the 1791 Decree. 5.1. First Claim for Relief: To the extent necessary to effectuate the proposed change requested herein, Applicant seeks a change of water right pursuant to C.R.S. § 37-92-302 *et seq.* 5.2. Second Claim for Relief: Petition for Correction of Erroneously Described Place of Use and Declaratory Judgment Pursuant to C.R.S. § 13-51-101 *et seq.* and C.R.C.P. 57.

PARTIES, JURISDICTION AND VENUE 5.2.1. Applicant incorporates by reference, as if fully restated herein, all allegations and statements contained in Paragraph Nos. 1 through 5.1 above and all numbered and unnumbered subparts thereof. 5.2.2. Applicant is the owner of the Well No. 2, Permit No. 10193-R, WDID 2605524 (the "Well"), and water rights decreed in Case No. W-1791 (the "1791 Decree") and seeks a declaratory judgment correcting the 1791 Decree from the erroneously described irrigated parcel described on the Well Registration Form (and not identified in the 1791 Decree), being in the NW 1/4 of Section 12, Township 43 North, Range 7 East, N.M.P.M., Saguache County, ("NW Quarter") Colorado to the actual irrigated parcel, being in the SW 1/4 of Section 12, Township 43 North, Range 7 East of the N.M.P.M. Saguache County, Colorado ("SW Quarter"). Section 12, Township 43 North, Range 7 East of the N.M.P.M. Saguache County, Colorado is referred to herein as "Section 12." 5.2.3. Applicant is the owner of the SW Quarter. 5.2.4. Service of this Amended Application and Petition is made by resume notice and publication. 5.2.5. This Amended Application and Petition concerns a water matter in Water Division No. 3, this Court has subject matter jurisdiction over this Amended Application and Petition and venue is proper in this Court. Colo. Art. VI, § 9; C.R.S. § 37-92-203. **FACTUAL BACKGROUND AND ALLEGATIONS** 5.2.6. Applicant is the present owner of the SW Quarter, the Well and water rights associated therewith and acquired title to the same by Warranty Deed dated January 11, 2012 and recorded January 24, 2012 at Reception No. 370961, and Bargain and Sale Deed dated January 11, 2012 and recorded January 24, 2012 at Reception No. 370962 of the records of Saguache County, Colorado. See Exhibit Nos. 11 and 12 to App. Res. to Smry. Conslt. (Filing ID 2FA2F8F998C9E). 5.2.7. The Well, which is located in the SW Quarter, was registered by William D. Schmittel, Applicant's predecessor in interest, on March 17, 1960. 5.2.8. The Well Registration Form submitted by William D. Schmittel for the Well erroneously described the Well as being located in the NW 1/4 of the NW 1/4 of Section 12 and used for irrigation in the NW 1/4 of Section 12. Notably, Mr. Schmittel originally described the location of the Well and the place of use as being in the same quarter section on the Well Registration Form. The Well Registration Form is attached hereto as Exhibit 2. 5.2.9. During the pendency of his ownership of the SW Quarter, William D. Schmittel's interest therein was encumbered by a mortgage held by the Federal Land Bank Association of Monte Vista. See Exhibit No. 6 to App. Res. to Smry. Conslt. (Filing ID 2FA2F8F998C9E). 5.2.10. The location of the Well was subsequently corrected on the Well

Registration Form to the NW 1/4 of the SW 1/4 of Section 12, in response to a request to the State Engineer by the Federal Land Bank Association of Monte Vista. See Exhibit No. 2 to App. Res. to Smry. Conslt. (Filing ID 2FA2F8F998C9E). However, the erroneously described place of use as indicated by the Well Registration Form was not simultaneously corrected. 5.2.11. Thereafter, William D. Schmittel conveyed his interest in the SW Quarter and the Well to Agricultural Systems Development, Inc. by Warranty Deed dated May 4, 1965 and recorded May 5, 1965 at Reception No. 186428 of the records of Saguache County, Colorado (the “ASD Deed”). See Exhibit No. 5 to App. Res. to Smry. Conslt. (Filing ID 2FA2F8F998C9E). 5.2.12 While owner of the SW Quarter and the Well, Agricultural Systems Development, Inc. prosecuted Case No. W-1791 for the adjudication and decree of a water right for the Well. See Exhibit Nos. 7 and 8 to App. Res. to Smry. Conslt. (Filing ID 2FA2F8F998C9E). 5.2.13. The 1791 Decree provides for irrigation use of the Well but does not specify a parcel to be irrigated. However, the Well Registration Form and ASD Deed were filed with the application in Case No. W-1791, indicating the intent that the SW Quarter was the land irrigated pursuant to the 1791 Decree because, as demonstrated by the ASD Deed, Agricultural Systems Development, Inc. was not the owner of the NW Quarter at the time the 1791 Decree was prosecuted and did not thereafter succeed to ownership of the same. 5.2.14. The Well has historically been used to irrigate the SW Quarter, while the erroneously described location and place of use of the Well in the NW Quarter has not historically been irrigated. See Exhibit No. 31 to App. Tnd. Add. Evid. (Filing ID 1178D94427225). 5.2.15. The Well, and corresponding water right decreed by the 1791 Decree, was lawfully appropriated for irrigation use in the SW Quarter. 5.2.16. In 2021, Applicants applied for a substitute water supply plan requesting approval of a recharge plan, whereby surface water delivered to a recharge pit is withdrawn at the Well and used for irrigation in the SW Quarter (the “6250 SWSP”). 5.2.17. The Division Engineer for Water Division 3 (“Division Engineer”) took issue with Applicant’s 6250 SWSP, taking the position that pursuant the 1791 Decree, which references Well Registration Form, the Well is to be used for the irrigation of the NW Quarter, and not the SW Quarter. 5.2.18. In an effort to correct the erroneously described place of use for the Well, Applicants filed the original Application in this matter on April 5, 2022, requesting a Change of Water Right pursuant to C.R.S. § 37-92-302 *et seq.* 5.2.19. In response to Applicant’s original Application, the Division Engineer requested Applicant provide a Historical Consumptive Use analysis quantifying the consumptive use of the subject water right on what the Division Engineer interpreted to be its decreed place of use, the NW Quarter. 5.2.20. Consistent with Applicant’s claim that the place of use described on the Well Registration Form is erroneous, the Well has not been used for the irrigation of the NW Quarter. Applicant further believes that a Historical Consumptive Use analysis is unnecessary in order to effectuate the correction requested herein. 5.2.21. Applicant is injured by being deprived the right to lawfully utilize the Well for the irrigation of the SW Quarter, all other lawful uses of the water right associated therewith, and the ambiguity caused by the erroneously described place of use on the Well Registration Form. 5.2.22. By this Amended Application and Petition, Applicant seeks an order of the Court declaring that the description of the irrigated parcel on the

Well Registration Form as being the NW Quarter is the result of a clerical error, that such clerical error should be corrected by finding and ordering that the lawful place of use of the Well is in the SW Quarter, and in all other respects affirming the rights decreed to the Well in the 1791 Decree. 5.2.23. Accordingly, Applicant hereby submits this Amended Application and Petition in order to correct the erroneously described place of use for the Well as indicated by the Well Registration Form, and to remedy the clerical error of omitting the lawfully irrigated lands (the SW Quarter) from the 1791 Decree. **DECLARATORY JUDGMENT PURSUANT TO C.R.S. § 13-51-101, ET SEQ. AND C.R.C.P. 57** 5.2.24. Applicant incorporates by reference, as if fully restated herein, all allegations of Paragraph Nos. 1 through 5.2.23 above and all numbered and unnumbered subparts thereof. 5.2.25. An actual, real, and immediate case or controversy exists in regard to the erroneously described place of use indicated on the Well Registration Form between Applicant, the Division Engineer, and/or opposers in this matter. 5.2.26. “Actions to determine the legal right to use water are matters within the exclusive jurisdiction of the water courts.” *Archuleta v. Gomez*, 140 P.3d 281, 284 (Colo. App. 2006). 5.2.27. Applicant seeks a declaratory judgment establishing its legal right to use the Well for irrigation of the SW Quarter and this court may properly adjudicate this water matter. C.R.S. § 37-92-203. 5.2.28. Applicant does not seek a substantive change to the 1791 Decree and the Court has the authority to correct a clerical error in the 1791 Decree, that being the failure to correctly identify the irrigated lands on the Well Registration Form, which was referenced in the 1791 Decree and a matter of record in Case No. W-1791. C.R.S. § 37-92-304(10); see also, *Telluride Company v. Division Engineer In And For Water Division No. 4*, 575 P.2d 1297, 1297-1298 (Colo. 1978). 5.2.29. The correction of clerical errors in a decree is governed by C.R.S. § 37-92-304(10) which provides in relevant part that “Clerical mistakes in said judgment and decree may be corrected by the water judge on his own initiative or on the petition of any person.” The ability of the water court to correct clerical errors includes “not only errors made by the clerk in entering the judgment, but also those *mistakes apparent on the face of the record, whether made by the court or counsel during the progress of the case, which cannot reasonably be attributed to the exercise of judicial consideration or discretion.*” (*Emphasis added*) See *Town of De Beque v. Enewold*, 606 P.2d 48, 54 (Colo. 1980) citing *Bessemer Irrigating Company v. West Pueblo Ditch and Reservoir Company*, 65 Colo. 258, 259 (Colo. 1918). This rule allowing for the water court to correct clerical errors in a decree allows for the water court “to speak the truth and show the judgment of the court which was actually pronounced.” *Id.* 5.2.30. What constitutes a clerical error in a decree is not to be construed narrowly. If a petitioner establishes a prima facie showing of a clerical error in a decree, it is the duty of the water court to admit and consider all pertinent evidence to establish the intent of the original decree, and evidence outside of the record of the decree may and should be considered. See *Meyring Lovestock Co. v. Wamsley Cattle Co.*, 687 P.2d 955, 959 (Colo. 1984) *Bessemer Irrigating Company v. West Pueblo Ditch and Reservoir Company*, 65 Colo. 258 at 261-262. 5.2.31. By this Amended Application and Petition, Applicant does not seek the correction of any substantive error in the 1791 Decree, that is, the error at issue here is “not an error in the express judgment pronounced

by the court in the exercise of judicial discretion.” See *Bessemer Irrigating Company v. West Pueblo Ditch and Reservoir Company*, 65 Colo. 258 at 261. 5.2.32. The incorrect description of the irrigated lands on the Well Registration Form, which was perpetuated by the 1791 Decree’s reference to the same, is a clerical mistake apparent on the face of the record before the Court in Case No. W-1791 and cannot reasonably be attributable to judicial consideration or discretion. 5.2.33. The court may correct the clerical error contained in the 1791 Decree so as to properly identify the irrigated lands as the SW Quarter so that the 1791 Decree may “speak the truth and show the judgment of the court which was actually pronounced.” *Town of De Beque v. Enewold*, 606 P.2d 48 at 54. 5.2.34. Pursuant to C.R.C.P. 57(a) and (e), this Court has broad authority to declare Applicants rights, status, and other legal relations in regard to the 1791 Decree and use of the Well, as well as to terminate the controversy and remove the uncertainty described herein. 5.2.35. Any person interested under a deed, will, written contact or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a contract may have determined any question of construction or validity arising under the instrument or contract and obtain a declaration of rights, status, or legal relations thereunder. C.R.C.P. 57(b). 5.2.36. This Court has the power to declare the rights, status, and other legal relations of Applicant in regard to the lawfully permitted and decreed place of use of the subject water rights pursuant to the Well Registration and the 1791 Decree. C.R.C.P. 57(a). 5.2.37. In accordance with C.R.C.P. 57(j), all parties who have or claim any interest which would be affected by the declaration sought herein are party to this action or have received sufficient notice thereof by publication of this Amended Application and Petition in the resume and as otherwise required by C.R.S. § 37-92-302(3). 5.2.38. Applicant, as the owner of the Well and water right decreed in the 1791 Decree owns a sufficient interest therein to obtain a declaration of rights in relation thereto. 5.2.39. The Well and water right decreed thereto by the 1791 Decree has never been used for the irrigation of the NW Quarter. 5.2.40. The purported use of the Well and water right decreed by the 1791 Decree in the NW Quarter as erroneously indicated by the Well Registration Form damages Applicant’s ability to use the water from the Well for irrigation of the SW Quarter as lawfully appropriated. 5.2.41. Applicant is injured by the erroneously described place of use of the Well on the Well Registration Form, and the lack of identification of irrigated lands for the associated water right adjudicated by the 1791 Decree. 5.2.42. The Well, and corresponding water right decreed by the 1791 Decree, was lawfully appropriated for irrigation use in the SW Quarter. 5.2.43. Applicant is entitled to have its rights as to the lawful use of water from the Well and pursuant to the 1791 Decree declared, adjudicated, and corrected. C.R.S. § 13-51-105; C.R.S. § 13-51-106; C.R.C.P. 57(a)-(b); C.R.S. § 37-92-304(10); see also, *Telluride Company v. Division Engineer In And For Water Division No. 4*, 575 P.2d 1297, 1297-1298 (Colo. 1978). 5.2.44. The granting of Applicants relief requested herein will not result in injury to any holders of decreed conditional or vested senior water rights. 5.2.45 Applicant respectfully requests this Court enter an order, judgment, and decree that correctly and completely adjudicates all of the rights, legal status, relations and obligations of all parties to this action with respect to Applicant’s lawful irrigation use of the Well and water right adjudicated by the 1791 Decree as

appropriated to the SW Quarter, awarding and confirming Applicant's use of and rights to the same and declaring the place of use described on the Well Registration Form erroneous, invalid, and not in accordance with the lawful appropriation of the subject water right, and granting all such other relief in law or equity to which Applicant may be entitled and as the Court deems appropriate or necessary. 5.3. Third Claim for Relief: Action Concerning Real Estate Pursuant to C.R.C.P. 105. **ACTION CONCERNING REAL ESTATE C.R.C.P. 105**

5.3.1. Applicant incorporates by reference, as if fully restated herein, all allegations of Paragraph Nos. 1 through 5.2 above and all numbered and unnumbered subparts thereof. 5.3.2. An actual, real, and immediate case or controversy exists in regard to the erroneously described place of use indicated on the Well Registration Form between Applicant and the Division Engineer. 5.3.3. "Actions to determine the legal right to use water are matters within the exclusive jurisdiction of the water courts." *Archuleta v. Gomez*, 140 P.3d 281, 284 (Colo. App. 2006). 5.3.4. Applicant's claim for the adjudication of rights concerning real property concerns Applicant's right to use water upon the land on which a lawful appropriation was made and this court has jurisdiction over this claim as a water matter. C.R.S. § 37-92-203. 5.3.5. Applicant does not seek a substantive change to the 1791 Decree and the Court has the authority to correct a clerical error in the 1791 Decree, that being the failure to identify the irrigated lands in the 1791 Decree. C.R.S. § 37-92-304(10); see also, *Telluride Company v. Division Engineer In And For Water Division No. 4*, 575 P.2d 1297, 1297-1298 (Colo. 1978). 5.3.6. All parties who have or claim any interest which would be affected by the adjudication of rights to real property sought herein are party to this action or have received sufficient notice thereof by publication of this Amended Application and Petition in the resume and as otherwise required by C.R.S. § 37-92-302(3). 5.3.7. Pursuant to C.R.C.P. 105(a), an action may be brought for the purpose of obtaining a complete adjudication of the rights of all parties thereto, with respect to any real property. 5.3.8. A water right is a real property right that may be conveyed as real estate. C.R.S. 38-30-102; *Dallas Creek Water Co. v. Huey*, 933 P.2d 27, 31 (Colo. 1997). 5.3.9. Applicant, as successor in interest to William D. Schmittle and Agricultural Systems Development, Inc., their successors and assigns, is the current owner of all right, title, and interest in and to the SW Quarter and water right decreed by the 1791 Decree. 5.3.10. The Well and associated water rights decreed by the 1791 Decree have historically been used for the irrigation of the SW Quarter. 5.3.11. The Well and water right decreed thereto by the 1791 Decree has never been used for the irrigation of the NW Quarter. 5.3.12. The Well Registration Form erroneously indicates the NW Quarter as the lands historically irrigated by the Well and water rights decreed by the 1791 Decree. 5.3.13. The Well, and corresponding water right decreed by the 1791 Decree, was lawfully appropriated for irrigation use in the SW Quarter. 5.3.1.4. Applicant is injured by the denial of his full use and enjoyment of the Well and water right decreed by the 1791 Decree in its lawfully appropriated place of use in the SW Quarter due to the erroneously described place of use of the Well on the Well Registration Form, and the lack of identification of irrigated lands for the associated water right adjudicated by the 1791 Decree. 5.3.1.5. Applicant is entitled to have its real property rights and ownership interest in the Well and water right decreed by the 1791 Decree and lawful use of

the same in the SW Quarter adjudicated and corrected. C.R.C.P. 105(a); C.R.S. § 37-92-304(10); see also, *Telluride Company v. Division Engineer In And For Water Division No. 4*, 575 P.2d 1297, 1297-1298 (Colo. 1978). 5.3.1.6. A lawful appropriation of water from the Well was made for the irrigation of the SW Quarter and decreed by the 1791 Decree. This water right is a real property interest owned by Applicant. An adjudication of Applicant's rights and interest in and to real property and regarding the lawful appropriation of water from the Well for irrigation use in the SW Quarter supports Applicants Second Claim For Relief made herein. 5.3.1.7. The granting of Applicants relief requested herein will not result in injury to any holders of decreed conditional or vested senior water rights. 5.3.1.8. Applicant respectfully requests this Court enter an order, judgment, and decree that correctly and completely adjudicates all of the rights, legal status, relations and obligations of all parties to this action with respect to Applicant's lawful irrigation use of the Well and water right adjudicated by the 1791 Decree as appropriated to the SW Quarter, awarding and confirming Applicant's use of and rights to the same and declaring the place of use described on the Well Registration Form erroneous, invalid, and not in accordance with the lawful appropriation of the subject water right, and granting all such other relief in law or equity to which Applicant may be entitled and as the Court deems appropriate or necessary. **PRAYER FOR REIEF 5.4.** WHEREFORE, Applicant prays that this Court: 5.4.1. Adjudicate all of the rights, legal status, relations, and obligations of all parties to this action with respect to the lawful irrigation use of the Well and associated water right decreed by the 1791 Decree in and to the SW Quarter. 5.4.2. Issue a decree awarding and confirming Applicants lawful irrigation use of the Well and associated water right decreed by the 1791 Decree in and to the SW Quarter and amending the 1791 Decree to identify the lands irrigated by the Well to be the SW Quarter. 5.4.3. Declare the description of the NW Quarter as the land irrigated by the Well on the Well Registration Form erroneous and a scrivener's error. 5.4.4. Grant all such other relief in law or equity to which Applicant mat be entitled and as the Court deems appropriate or necessary. 6. Name and Address of Owners of Structures: 6.1. Applicant owns the Well, the land upon which the Well is situated, and the actual irrigated parcel in the SW Quarter. 6.2. John M. Baxter & Catherine A. Baxter, 46570 County Road T, Saguache, CO 81149, and P.O. Box 405, Saguache, CO 81149 owns the NW Quarter. This application consists of 12 pages and 2 exhibits.

22CW3038 (16CW3000, 09CW20, 02CW45, 95CW40) **Concerning the Joint Application for Water Rights of the State of Colorado, Department of Natural Resources, Division of Parks and Wildlife and Parks and Wildlife Commission, and the Rio Grande Water Conservation District, Application for Finding of Diligence IN ALAMOSA COUNTY, COLORADO.**

(Please address all correspondence and inquiries regarding this matter to Elizabeth M. Joyce, 720-508-6761, Office of the Attorney General, 1300 Broadway, 7th Floor, Denver, CO 80203 and Matthew Montgomery and Peter Ampe, 303-296-8100, Hill & Robbins, P.C., 3401 Quebec Street, Suite 3400, Denver, CO 80207) **1. Name, mailing address, and telephone number of Applicant:** Rio Grande Water Conservation District ("District"), c/o Cleave Simpson, General Manager, 8805 Independence Way, Alamosa, Colorado 81101, Telephone: 719-589-6301; Colorado Division of Parks and Wildlife ("CPW"), Attn: Ed Perkins, Water Rights Program

Administrator, 6060 North Broadway, Denver, Colorado 80216, 303-297-1192; ed.perkins@state.co.us

2. Name of Structure: San Luis Lake. **3. Describe conditional water right, as to each structure, giving the following from the Referee's Ruling and Judgment and Decree:**

A. Date of Original Decree: September 25, 1996, as amended by Order dated January 17, 1997; **Case Nos.:** 95CW40, 02CW45, 09CW20, 16CW3000; **Court:** District Court, Water Division 3, State of Colorado. **B. Location:** A natural lake located in portions of Sections 25, 26, 35, and 36, T. 40 N., R. 11 E., of the N.M.P.M. within Alamosa County. The northwest corner of Section 19, T. 40 N., R. 12 E., bears N 44°56'55" E, a distance of 10,261.42 feet from the inlet of said lake and N 30°44'18" E, a distance of 15,764.45 feet from the outlet. **C. Source:** Tributary inflows into San Luis Lake from Medano Creek, Sand Creek, Big Spring Creek, Little Spring Creek and San Luis Creek and its tributaries, including Saguache Creek and La Garita Creek. **D. Appropriation Date:** November 1, 1994. **E. Amount:** 1. Native water: a. 4,045 acre-feet, of which 2,410 acre-feet is absolute (1,205 acre-feet each to the District and CPW) and 1,635 acre-feet conditional (Case No. 95CW40). b. 8,645 acre-feet for the Division of Parks and Wildlife, absolute (Case No. W-3962). 2. Closed Basin Project Water: Storage Right held by the District (Case No. 87CW14) for 6,902.3 acre-feet conditional and 5,752.7 acre-feet absolute. **F. Use:** The storage right for San Luis Lake will be used to assist the District and CPW in operating various features of the Closed Basin Project which in turn will provide an additional source of water to benefit the lands within the District by exchange. The use of the water is for all uses specified in Case No. W-3038, being the decree for the Closed Basin Project, including irrigation, domestic, industrial, recreation, fish culture, and wildlife uses by exchange and sale, replacement of evaporation and seepage losses and for all uses specified in Case No. W-3962, being CPW's initial decree for San Luis Lake. At times when sufficient water exists, CPW will also apply the water that is the subject of this decree to beneficial use for the enhancement of wildlife benefits associated with fish culture, wildlife and recreation uses, and augmentation for lands in the San Luis Valley. In addition, water can be diverted from the San Luis Lake for delivery to beneficial uses in other areas of the San Luis Valley either for direct application or by exchange.

4. Provide a 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:

A. During the diligence period, the San Luis Lake has been operated as a feature of the Closed Basin Project. Project water was stored in the Lake and withdrawn from the Lake as required to meet Project obligations. Operation of the San Luis Lake occurred in cooperation and coordination with CPW and the U.S. Bureau of Reclamation, and CPW and the District meet at least twice annually to review operations as part of the Closed Basin Operating Committee. Because of the ongoing drought, insufficient water was available for diversion to make additional amounts of the water rights herein absolute. **B.** During the diligence period, the District has coordinated efforts with the U.S. Bureau of Reclamation and CPW utilizing a joint operating plan for the Lake that was developed by these agencies. Additional efforts include improvements to the campground at San Luis Lake as well as to manage streamflow for the benefit of the wetlands around the lake. **C.** During the diligence period, the District has spent in excess of \$50,000.00 on administrative, engineering, and legal expenses associated with activities related to the Lake and its storage facilities. **D.** During the diligence period, CPW conducted annual management actions including activities such as enforcement, weed management and water management. CPW continued to maintain all associated infrastructure. CPW staff performed monthly water court resume review to ensure this water right would not be injured. CPW also entered into multi-year management agreements

to allow use of San Luis Lakes and this water right for fish, wildlife and augmentation uses consistent with the beneficial uses allowed under this decree. E. During the diligence period, CPW and the District have pursued agreements for protection of this water right against injurious stream depletions in the District's Annual Replacement Plan for Subdistrict 1. F. The Lake and its appurtenant facilities have been constructed and additional storage therein is dependent upon hydrologic conditions beyond the Applicants' control. In consideration of the foregoing activities directed to the diligent operation of the San Luis Lake as a feature of the Closed Basin Water Salvage Project and for other beneficial uses, the Applicants respectfully request that the Court enter a judgment and decree finding that the Applicants have exercised reasonable diligence in the development of the conditional water right for San Luis Lake. Applicants request a continued finding of diligence as to the 1,635 acre-feet remaining conditional (2,410 acre-feet previously decreed as absolute). (5 pages)

CASE NO. 2022CW3039; APPLICATION FOR FINDING OF REASONABLE DILIGENCE

Alamosa and Saguache Counties. Name, mailing address, and telephone number of Applicant: Rio Grande Water Conservation District, c/o General Manager, 8805 Independence Way, Alamosa, Colorado 81101, Telephone: 719-589-6301 c/o David W. Robbins, Peter J. Ampe, Matthew A. Montgomery, Hill & Robbins, P.C., 3401 Quebec St., Suite 3400, Denver, CO 802107. 2. Name of Structure: The Closed Basin Water Salvage Project ("Closed Basin Project"), as defined in the decree in Case No. W-3038. 3. Describe conditional water right, as to each structure, giving the following from the Referee's Ruling and Judgment and Decree: A. Date of Original Decree: April 21, 1980. Case No.: W-3038 (84CW28, 88CW16, 94CW59, 02CW4 and 08CW1). Court: Water Referee, Water Division 3, State of Colorado. B. Location: The headgate of the East Side Conveyance Channel was to be located at a point approximately 800 feet westerly of the East 1/4 Corner of Section 7, Township 39 North, Range 12 East, N.M.P.M., in Alamosa County; the proposed headgate of the Main Conveyance Channel is located at a point whence the West 1/4 Corner of Section 11, Township 42 North, Range 9 East, N.M.P.M., bears South a distance of 800 feet in Saguache County. The East Side Conveyance Channel has been eliminated as a Project feature. The wells are located, or to be located, in Tract A and Tract B in Alamosa and Saguache Counties, described as follows: Tract A: Secs. 1, 2, 11, 12, E 1/2 E 1/2 Sec. 10, T. 37 N., R. 11 E., N.M.P.M., Alamosa County. Secs. 4, 5, 6, 7, 8, 9, W 1/2 W 1/2 Sec. 3, T. 37 N., R. 12 E., N.M.P.M., Alamosa County. Secs. 1, 2, 3, 4, 8, 9, 10, 11, 14, 15, 16, 17, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, E 1/2 Sec. 5, NW 1/4 Sec. 12, NE 1/4 and S 1/2 Sec. 18, W 1/2 Sec. 23, and NE 1/4 and W 1/2 Sec. 34, T. 38 N., R. 12 E., N.M.P.M., Alamosa County. Secs. 25 and 36, E 1/2 and SW 1/4 Sec. 24, and E 1/2 Sec. 35, T. 38 N., R. 11 E., N.M.P.M., Alamosa County. Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, SW 1/4 Sec. 12, and E 1/2 Sec. 19, T. 39 N., R. 12 E., N.M.P.M., Alamosa County. SW 1/4 SW 1/4 Sec. 19, W 1/2 Sec. 30, and NW 1/4 NW 1/4 Sec. 31, T. 39 N., R. 13 E., N.M.P.M., Alamosa County. E 1/2 Sec. 1, and E 1/2 NE 1/4 Sec. 12, T. 39 N., R. 11 E., N.M.P.M., Alamosa County. Secs. 28, 29, 30, 31, 32, 33, 34, and W 1/2 Sec. 35, T. 40 N., R. 12 E., N.M.P.M., Alamosa County. Tract B: Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 36, NE 1/4 Sec. 32, T. 40 N., R. 11 E., N.M.P.M., Alamosa County. Secs. 1, 2, 12, NE 1/4 Sec. 11, and

NE 1/4 NW 1/4 and E 1/2 Sec. 13, T. 40 N., R. 10 E., N.M.P.M., Alamosa County. Secs. 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 35, 36, E 1/2 E 1/2 Sec. 9, NE 1/4 NW 1/4 and E 1/2 Sec. 34, T. 41 N., R. 10 E., N.M.P.M., Saguache County. Secs. 17, 18, 19, 20, 28, 29, 30, 31, 32, 33, 34, W 1/2 Sec. 21 and SW 1/4 Sec. 27, T. 41 N., R. 11 E., N.M.P.M., Saguache County. Secs. 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, 36, SW 1/4 SW 1/4 Sec. 2, S 1/2 Sec. 3, SW 1/4 Sec. 12, NE 1/4 NE 1/4 Sec. 31, N 1/2 and SE 1/4 Sec. 32, T. 42 N., R. 10 E., N.M.P.M., Saguache County. Secs. 1, 2, 11, 12, 13, 14, 23, 24, N 1/2 and SE 1/4 Sec. 25, N 1/2 N 1/2 Sec. 26, T. 42 N., R. 9 E., N.M.P.M., Saguache County. S 1/2 and NW 1/4 Sec. 31, and S 1/2 Sec. 32, T. 43 N., R. 10 E., N.M.P.M., Saguache County. Secs. 35, 36 and SW 1/4 SW 1/4 Sec. 25, S 1/2 Sec. 26, T. 43, R. 9 E., N.M.P.M., Saguache County. The southwest portion of the Luis Maria Baca Grant No. 4, Saguache County, Colorado described as follows: Beginning at the southwest corner of said Luis Maria Baca Grant No. 4; thence east along the south line of said Grant four miles; thence northwesterly seven miles to a point on the west line of said Grant; thence south along the west line of said Grant five and three-quarters miles, more or less to said southwest corner of said Grant. C. Source: Salvage, seepage, drainage, and groundwater of the unconfined aquifer in the Closed Basin. D. Appropriation Date: July 31, 1963. E. Amount: 277 cfs (85,000 AF annually), of which 142 cfs (43,520 AF annually) has been made absolute, and 135 cfs (41,480 AF annually) remains conditional. F. Use: Irrigation, domestic, industrial, recreational, fish culture, and wildlife uses by exchange and sale, regulation and maintenance of minimum stream flows, and to provide supplemental water to meet Colorado's obligation under the Rio Grande Compact and accomplish maximum utilization of Colorado's share of Rio Grande waters under the Compact. G. Depth (if well): See Exhibit A, attached. 4. Provide a 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: A. During the diligence period, the Applicant has assisted the United States Bureau of Reclamation in the successful redrilling and replacement of twenty-six (26) Closed Basin Project salvage wells. Numerous salvage wells have suffered a reduction in yield as a result of well casing slots and surrounding gravel pack becoming partially plugged with fine particles, chemical encrustation and/or biological plugging. To maintain or increase well productivity it is necessary to rehabilitate wells or replace pumps that have been excessively worn or corroded. Wells may also need to be re-drilled. This continuing well rehabilitation and redrilling program together with innovative well maintenance are being conducted in an effort to improve the water production capacity of Closed Basin Project. A tabulation of the wells replaced during this diligence period is attached as Exhibit B. A map of the well replacements since 2015 is attached as Exhibit D. A tabulation of the wells rehabilitated since 2015 is attached as Exhibit E. B. During the diligence period, the Applicant has reviewed monitoring well data for the wells constructed during the prior diligence periods, in order to estimate influence of salvage well pumping on groundwater levels both inside and outside of the project boundary. In addition, the U.S. Bureau of Reclamation has measured water levels for the Closed Basin Project's salvage wells. A tabulation of the wells completed during prior diligence periods, including the location of the wells, the date the water was applied to beneficial use, and the amount of water claimed from each well, is attached as Exhibit A. C. During the diligence period, the Applicant has assisted with the development and continuous

improvement of the Rio Grande Decision Support System (RGDSS). The principal engineers involved in the hydrologic modeling for the Applicant were Davis Engineering Service, Inc. and Principia Mathematica, Inc. The RGDSS project is ongoing and includes in the model reported Closed Basin Project pumping. RGDSS model simulations will help determine the compliance of the Closed Basin Project with statutory limitations regarding changes in groundwater levels outside of project boundaries. D. During the diligence period, the Applicant provided maintenance personnel for the Closed Basin Project; provided legal services to protect the Project decree; coordinated mitigation activities with the U.S. Fish and Wildlife Service, the United States Bureau of Land Management, and the Colorado Division of Wildlife; and has contributed additional funds to assist in the operation and maintenance of San Luis Lake State Park, a Project feature. E. The Applicant has spent in excess of \$63,000 on administrative and engineering expenses, as well as substantial legal expenses and equipment and supplies for the activities described above. The U.S. Bureau of Reclamation has spent approximately \$1,695,000 on labor, equipment, and supplies for salvage well redrilling and replacement. F. The maximum instantaneous measurement was 31.2 cfs and it occurred on December 7th, 2017. The maximum annual acre-feet produced was 12,334 acre-feet which occurred in 2019. 5. Describe any claim to make absolute a portion of the conditional water right: The Applicant makes no further claim during this diligence period to make absolute a portion of the remaining conditional water right totaling 41,480 acre-feet described in paragraph 3.D. Numerous salvage wells have suffered a reduction in yield as a result of biofouling of the gravel pack and well screen. A continuing program of salvage well redrilling and replacement of salvage wells (as described in paragraph 4.A) has been conducted in an effort to improve production from the project. The water withdrawn from all wells has been used in accordance with the conditional and absolute decree described in paragraph 3, as evidenced by well permits and statements of beneficial use which have been filed in the Office of the State Engineer. The U.S. Bureau of Reclamation has maintained water accounting records on annual Closed Basin Project salvage well production, attached as Exhibit C. In consideration of the foregoing activities directed toward the diligent construction and completion of the Closed Basin Water Salvage Project, the Applicant respectfully requests that the Court enter a judgment and decree finding that the Applicant has exercised reasonable diligence in the development of the conditional water right for the Closed Basin Water Salvage Project.

22CW3040 (Prior Cases No. 90CW42, 01CW21, 09CW02, 16CW3001) APPLICATION FOR FINDING OF REASONABLE DILIGENCE AND TO MAKE CONDITIONAL APPROPRIATIVE RIGHTS OF EXCHANGE ABSOLUTE IN PART OF THE SANTA MARIA RESERVOIR COMPANY AND THE SAN LUIS VALLEY IRRIGATION DISTRICT IN THE RIO GRANDE RIVER AND ITS TRIBUTARIES IN HINSDALE AND MINERAL COUNTIES.

1. Names, addresses, and telephone numbers of Applicants: Santa Maria Reservoir Company, P.O. Box 288, Monte Vista, Colorado 81144, Phone: (719) 852-3556; and San Luis Valley Irrigation District, P.O. Box 637, Center, Colorado 81125, Phone: (719) 754-2254. Please send

all correspondence and pleadings to Mason H. Brown, Katrina B. Fiscella, Carlson, Hammond & Paddock, L.L.C., 1900 N. Grant Street, Suite 1200, Denver, Colorado 80203; Phone: (303) 861-9000; mbrown@chp-law.com, kfiscella@chp-law.com and Tod J. Smith, Law Office of Tod J. Smith, 5777 Central Ave., Suite 228, Boulder, Colorado 80301; Phone: (303) 956-1106; tod@tjs-law.com. 2. Names of structures: A. Rio Grande Reservoir; B. Santa Maria Reservoir; and C. Continental Reservoir. 3. Description of conditional water rights: A. Date of original decree: November 29, 1995, Case No. 90CW42, District Court, Water Division No. 3. B. All subsequent decrees awarding findings of diligence: Diligence decrees were entered in Case No. 01CW21 on November 12, 2002, Case No. 09CW02 on December 20, 2009, and Case No. 16CW3001 on September 25, 2016. C. Legal description of structures: i. Rio Grande Reservoir: Located in Sections 5, 6, 7, 8, 9, 10, 13, 14, 15, and 16, Township 40 North, Range 4 West, and Sections 31 and 32 of Township 41 North, Range 4 West of the N.M.P.M. The approximate location of the outlet works is in the NE1/4 SE1/4 of Section 14, Township 40 North, Range 4 West, N.M.P.M., in Hinsdale County, Colorado, at a point whence the NE corner of said Section 14 bears North 3° 15' East a distance of 3,616 feet. A map showing the location of Rio Grande Reservoir is attached as Exhibit 1. ii. Santa Maria Reservoir: Located in Sections 16, 21, 22, and 27 of Township 41 North, Range 2 West of the N.M.P.M., with its outlet works located in the SW1/4 of Section 16, Township 41 North, Range 2 West, N.M.P.M., Mineral County, Colorado, at a point whence the SW corner of said Section 16 bears approximately South 79° West a distance of 800 feet. The inlet ditch to Santa Maria Reservoir from North Clear Creek diverts from North Clear Creek about 5,398.1 feet from the SE1/4 of Section 1, Township 41 North, Range 3 West, N.M.P.M., Hinsdale County, Colorado. A map showing the location of Santa Maria Reservoir is attached as Exhibit 2. iii. Continental Reservoir: Located in Sections 20, 21, 29, and 30, of Township 42 North, Range 3 West of the N.M.P.M., Hinsdale County, Colorado, with its outlet works located in the SW1/4 of Section 21, Township 42 North, Range 3 West, of the N.M.P.M. Hinsdale County, Colorado, at a point whence the SW corner of said Section 21 bears approximately South 48° West a distance of 1,500 feet. A map showing the location of Continental Reservoir is attached as Exhibit 3. D. The sources of water for the conditional appropriative rights of exchange are: i. From Rio Grande Reservoir: Rio Grande and its tributaries. ii. From Santa Maria Reservoir: North Fork of Clear Creek, including its tributaries Big Spring Creek, Bennett Creek, and Boulder Creek. iii. From Continental Reservoir: North Fork of Clear Creek and its tributaries. E. Appropriation dates and amounts: i. Exchange into Santa Maria Reservoir from Rio Grande Reservoir: a. Appropriation date: August 1968. b. Amount previously decreed absolute: 12,980 acre feet annually. c. Amount remaining conditional: 30,845 acre-feet annually. d. Rate previously decreed absolute: 350 c.f.s. e. Rate remaining conditional: 0 c.f.s. ii. Exchange into Santa Maria Reservoir from Continental Reservoir: a. Appropriation date: July 1964. b. Amount previously decreed absolute: 10,643.9 acre feet annually. c. Amount remaining conditional: 12,035.1 acre-feet annually. d. Rate previously decreed absolute: 250 c.f.s. e. Rate remaining conditional: 0 c.f.s. iii. Exchange into Continental Reservoir from Santa Maria Reservoir: a. Appropriation date: July 1981. b. Amount previously decreed absolute: 2,721.99 acre feet annually. c. Amount remaining conditional: 19,957.01 acre feet annually. d. Rate previously decreed absolute: 300 c.f.s. e. Rate remaining conditional: 0 c.f.s. iv. Exchange into Continental Reservoir from Rio Grande Reservoir: a.

Appropriation date: August 1968. b. Amount previously decreed absolute: 6,795 acre feet annually. c. Amount remaining conditional: 15,884 acre feet annually. d. Rate previously decreed absolute: 2,500 c.f.s. e. Rate remaining conditional: 0 c.f.s. v. Exchange into Rio Grande Reservoir from Santa Maria Reservoir: a. Appropriation date: April 1981. b. Amount previously decreed absolute: 11,521 acre feet annually. c. Amount remaining conditional: 32,304 acre feet annually. d. Rate previously decreed absolute: 300 c.f.s. e. Rate remaining conditional: 0 c.f.s. vi. Exchange into Rio Grande Reservoir from Continental Reservoir: a. Appropriation date: July 1983. b. Amount previously decreed absolute: 3,596 acre feet annually. c. Amount remaining conditional: 19,083 acre feet annually. d. Rate previously decreed absolute: 250 c.f.s. e. Rate remaining conditional: 0 c.f.s. F. Uses: All lawful uses for the water impounded in the reservoirs, including, but not limited to, irrigation and aquifer recharge. 4. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to beneficial use, including expenditures: A. During the diligence period, the Applicants continued to carry out the exchanges that are the subject of this application. The amount of water exchanged, the date of the exchanges, and the reservoirs between which the water was exchanged are shown on Exhibit 4 attached hereto. B. During the diligence period, the Santa Maria Reservoir Company (the "Company") carried out routine maintenance and repair of its facilities used in the exercise of the exchanges that are the subject of this application. In addition, improvements were made to Continental Reservoir, including additional erosion protection and drainage control modifications. Such maintenance, repairs, and improvements were necessary to ensure the Company's ability to carry out the exchanges that are the subject of this application. Expenses associated with such activities were incurred and paid by the Company during the diligence period. C. During the diligence period, the Company successfully completed a change of water rights proceeding involving the water storage rights for Santa Maria Reservoir and Continental Reservoir. This effort required the Company to prosecute its change of water rights application in a trial before the Division No. 3 Water Court and a subsequent appeal to the Colorado Supreme Court. Adjudicating this change of water rights was necessary to ensure the Company's continued ability to use the exchanges that are the subject of this application for the decreed uses, including irrigation and aquifer recharge. Substantial legal and engineering fees associated with these proceedings were incurred and paid by the Company during the diligence period. D. During the diligence period, the San Luis Valley Irrigation District (the "District") spent approximately \$30 million on the rehabilitation of the outlet works on Rio Grande Reservoir, which includes the legal, engineering, and construction costs of the project. Additionally, the District carried out and incurred the costs of its general maintenance and repairs of Rio Grande Reservoir throughout the diligence period. The District also initiated a water rights case to confirm its use of water stored in Rio Grande Reservoir, or stored by exchange pursuant to the decree in Case No. 90CW42, for recharge and subsequent irrigation within the District. E. During the diligence period, the Applicants continued their membership in the Rio Grande Water Users Association, which membership ensures that the Applicants receive credit for the delivery of irrigation of water exchanged under the exchanges that are the subject of this application. They likewise participated in other water rights cases intended to protect their water rights and rights of exchange. They paid assessments to the Rio Grande Water Users Association for this purpose and those funds were used to defray legal and engineering costs

associated with the water rights proceedings. F. During the diligence period, the Applicants consulted with the State Engineer and the Division Engineer on river administration and compact administration in order to ensure maximum diversions under the subject conditional rights of exchange consistent with annual agreements concerning the Rio Grande's separate compact deliveries, and took other actions in furtherance of perfection of the subject conditional rights of exchange.

5. Claim to make absolute in part: A. Exchange into Santa Maria Reservoir from Continental Reservoir: In 2019 the Santa Maria Reservoir Company exchanged 15,251.01 acre-feet from Continental Reservoir to Santa Maria Reservoir, thereby increasing the absolute exchange from the previously decreed amount of 10,643.9 acre-feet to 15,251.01 acre-feet. B. Exchange into Continental Reservoir from Santa Maria Reservoir: In 2019 the Santa Maria Reservoir Company exchanged 7,284.15 acre-feet from Santa Maria Reservoir to Continental Reservoir, thereby increasing the absolute exchange from the previous decreed amount of 2,721.99 acre-feet to 7,284.15 acre-feet. C. Exchange into Continental Reservoir from Rio Grande Reservoir: In 2018 the Applicants exchanged 10,274.28 acre-feet from Rio Grande Reservoir to Continental Reservoir, thereby increasing the absolute exchange from the previous decreed amount of 6,795 acre-feet to 10,274.28 acre-feet. D. Exchange into Rio Grande Reservoir from Continental Reservoir: In 2018 the Applicants exchanged 8,781.63 acre-feet from Continental Reservoir to Rio Grande Reservoir, thereby increasing the absolute exchange from the previous decreed amount of 3,596 acre-feet to 8,781.63 acre-feet. WHEREFORE, the Applicants respectfully request this Court enter an Order finding that the Applicants have exercised reasonable diligence in developing and implementing the conditional appropriative rights of exchange originally decreed in Case No. 90CW42 on November 29, 1995, and have demonstrated their continuing intent to put these conditional water rights to beneficial use and are entitled to a continuation of these conditional water rights pursuant to § 37-92-301(4), C.R.S. The Applicants further request that the Court enter an order making (a) the exchange into Santa Maria Reservoir from Continental Reservoir absolute in the amount of 15,251.01 acre-feet, with 7,427.99 acre-feet remaining conditional; (b) the exchange into Continental Reservoir from Santa Maria Reservoir absolute in the amount of 7,284.15 acre-feet, with 15,394.85 acre-feet remaining conditional; (c) the exchange into Continental Reservoir from Rio Grande Reservoir absolute in the amount of 10,274.28 acre-feet, with 12,404.72 acre-feet remaining conditional; and (d) the exchange into Rio Grande Reservoir from Continental Reservoir absolute in the amount of 8,781.63 acre-feet, with 13,897.37 acre-feet remaining conditional.

22CW3041 (79CW91, 94CW13, 01CW14, 08CW25, 15CW3021). Application for Finding of Reasonable Diligence in Alamosa, Conejos, Rio Grande, and Saguache Counties. I. Name, mailing address, email address, and telephone number of applicant: Rio Grande Water Users Association ("RGWUA"), Greg Higel, President; P.O. Box 288, Monte Vista, Colorado 81144. All correspondence and pleadings should be sent to Mason H. Brown and Sarah B. Wiedemann, Carlson, Hammond & Paddock, LLC, 1900 Grant Street, Suite 1200, Denver, Colorado 80203; Phone Number: (303) 861-9000; Fax Number: (303) 861-9026; mbrown@chp-law.com, swiedemann@chp-law.com. II. Name of structures. The Winter Recharge Water Right that is the subject of this application can be diverted at one or more of the following structures: Rio Grande Canal, Farmers Union Canal, Monte Vista Canal, Prairie Ditch, Empire Canal, San Luis Valley

Canal, Centennial Ditch, and Excelsior Ditch (collectively “Recharge Ditches”). III. Description of the conditional water right: A. Date of Original Decree: June 9, 1988, Case No. 79CW91, District Court, Water Division No. 3. B. Subsequent decrees awarding findings of diligence: Case No. 94CW13, entered June 1, 1995; Case No. 01CW14, entered December 30, 2002; Case No. 08CW25, entered July 6, 2009; Case No. 15CW3021, entered September 5, 2016. All of the forgoing decrees were entered by the Water Court for Water Division No. 3. C. Legal descriptions: (1) Rio Grande Canal: A point in the NW1/4 of Section 30, Township 40 North, Range 6 East of the N.M.P.M., S 17° 50’ E 1,110 feet from the NW corner of said NW1/4 of Section 30. (2) Monte Vista Canal: A point near the center of the NE1/4 NW1/4 SW1/4 of Section 6, Township 39 North, Range 7 East of the N.M.P.M. (3) Farmers Union Canal: A point S 82° 30’ W 48.12 chains from the E1/4 corner of Section 36, Township 40 North, Range 6 East of the N.M.P.M. (4) Empire Canal: A point in the SE1/4 NW1/4 of Section 33, Township 39 North, Range 8 East of the N.M.P.M. (5) Prairie Ditch: A point on the North bank of the Rio Grande from whence the N1/4 corner of Section 8, Township 39 North, Range 7 East of the N.M.P.M. bears N 38° 45’ E 880 feet. (6) Centennial Ditch: A point 1,080 feet North of the SW corner NE1/4 NW1/4 NW1/4 of Section 2, Township 38 North, Range 8 East of the N.M.P.M., N 44° 30’ E 1,450 feet. (7) San Luis Valley Canal: Headgate located on the East bank of the Rio Grande in the NW1/4 SW1/4 of Section 35 in T39N, R8E of the N.M.P.M. (8) Excelsior Ditch: Headgate located on the North bank of the Rio Grande in the SW1/4 NE1/4 of Section 6, T38N, R9E of the N.M.P.M. D. Source of water: Rio Grande. E. Appropriation Date: November 1, 1959. F. Amount: 509 c.f.s. absolute; 3,294.04 c.f.s. conditional. G. Use: Decreed for maintaining and replenishing the supply of water for irrigation through the use of surface diversions to recharge of underground aquifers, the storage of water in underground aquifers, and the subsequent extraction of the stored water by means of wells and its use for irrigation purposes. Diversions under the water right may occur only during November and December of any year. Any such diversions are subject to lawful administration for purposes of satisfying the obligation of the State of Colorado under the Rio Grande Compact. H. Other: Attached as Exhibit A are maps showing the points of diversion and general service areas for each of the Recharge Ditches. The maps are based on the information contained in the Rio Grande Decision Support System (RGDSS) shapefiles for each ditch. The actual area served by each ditch may slightly vary from the area shown on the attached maps. IV. Provide a 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: A. The years 2016 through 2021 represented a continued period of drought in Water Division No. 3. Given the drought conditions and the Rio Grande’s separate compact delivery schedule, the Division Engineer did not allow recharge diversions in 2021. During the diligence period, Applicant diverted and recharged water pursuant to the Winter Recharge water right. B. The maximum rates of diversion by the Recharge Ditches during the Diligence Period were: Rio Grande Canal – 158.4 cfs. Monte Vista Canal – 45.2 cfs. Farmers Union Canal – 127.3 cfs. Empire Canal – 69.2 cfs. Prairie Ditch – 52.3 cfs. Centennial Ditch – 18.3 cfs. San Luis Valley Canal – 47.3 cfs. Excelsior Ditch – 65.3 cfs. C. The combined daily maximum peak diversion rates were 325.1 cfs in 2016, 292.9 cfs in 2017, 297.6 cfs in 2018, 309.2 cfs in 2019, and 313.3 cfs in 2020. D. Due to the drought conditions, the water legally and physically available for diversion from the Rio Grande was

insufficient to enable Applicant to make absolute any greater portion of the conditional water right than has previously been decreed absolute. E. During the Diligence Period, owners of the Recharge Ditches expended substantial sums of money on system operation, maintenance and repair that, in part, enabled their diversions pursuant to this water right. F. During the Diligence Period, the RGWUA has acted to preserve and protect its water rights and the water rights of its members by filing statements of opposition to water rights applications and participating in numerous other judicial proceedings in Water Division 3, including the trial in Case No. 15CW3024 concerning the protests to the 2015 groundwater regulations of the State Engineer. The RGWUA has also undertaken engineering studies of water rights administration, continued their work with the Division of Water Resources on the RGDSS groundwater model, and worked to ensure the continued operation of groundwater management subdistricts responsible for replacement injurious stream depletions to the Rio Grande. G. During the Diligence Period the Applicant consulted with the State Engineer and the Division Engineer on river administration and compact administration to ensure maximum diversions under this conditional water right consistent with the Rio Grande's separate compact delivery schedule. H. The work performed, sums of money spent, and actions taken by Applicant during the Diligence Period demonstrate the Applicant's continuing intent to develop the conditional right originally decreed in Case No. 79CW91. Applicant has shown that it can and will divert, store, or otherwise capture, possess, or control and beneficially use the conditional water right, and that the conditional water right can and will be completed and exercised with diligence and within a reasonable time. V. Names(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: Not Applicable. VI. Remarks or any other pertinent information: The RGWUA requests that the Court find that it has exercised reasonable diligence in developing and implementing the conditional water right originally decreed in Case No. 79CW91 and that it is entitled to a decree continuing the conditional rights in good standing and fixing a date when the next application for a finding of reasonable diligence is required pursuant to 37-92-301(4), C.R.S.

You are notified that you have until the last day of November 2022, to file with the Water Clerk a verified statement of opposition setting forth facts as to why a certain application should not be granted or why it should be granted only in part or on certain conditions or a protest to the requested correction. A copy of such a statement of opposition or protest must also be served upon the Applicant or the Applicant's attorney and an affidavit or certificate of such service must be filed with the Water Clerk. The filing fee for the Statement of Opposition is \$192.00. Forms may be obtained from the Water Clerk's Office or our website at www.courts.state.co.us. Jennifer Pacheco, Water Clerk, Water Division 3, 8955 Independence Way, Alamosa, CO 81101.