

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING AUGUST 2023. (This publication can be viewed in its entirety on the state court website at: www.courts.state.co.us).

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during August 2023, 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. 2022CW3091; WILLIAM (ROY) MARSHALL, DEBORAH SUE MCKNIGHT, 17598 CR 386, Buena Vista, CO 81211; DARELL RAY HAMILTON, COREY MATHEW TUCKER, BRIDGETT ASHELY TUCKER, ZACHARY RYAN TUCKER, DEREK SCOTT TUCKER, 13240 CR 353, Buena Vista, CO 81211; TODD AND BELINDA TIPTON, 25410 HWY 24, Buena Vista, CO 81211; LINDA K. REINHOLD REV. TRUST, c/o Kathy Reinhold, 35315 US HWY 24, Buena Vista, CO 81211 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602, (970) 945-6546)

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

CHAFFEE COUNTY

Applicants filed their Application for Simple Change in Surface Point of Diversion Pursuant to § 37-92-305(3.5), C.R.S. ("Application") in this case on 12/29/2022. On 07/19/2023, the Court granted leave for the Applicants to amend their Application to correct the decreed locations of the Bartholomew Ditch, Ditch No. 99 water right, and its Alternate Points of Diversion ("POD") Nos. 1, 2, and 3 ("Subject Water Rights"), as first decreed in CA-5792, to their as-built locations, and to claim a simple change in POD for 2.0 c.f.s. of the Bartholomew Ditch, Ditch No. 99 water right, as changed in CA-5792, to the Subject Water Rights' new decreed locations. **Summary of Amended Application:** Applicants seek to correct the decreed locations of the Subject Water Rights to their as-built locations and request a simple change in point of diversion for the 2.0 c.f.s. of the Bartholomew Ditch, Ditch No. 99 water right that was changed in CA-5792 to the Subject Water Rights' new decreed locations. **Decreed water right for which change is sought:** Bartholomew Ditch, Ditch No. 99 (WDID No. 1100724). **Decree Information:** Original Decree: CA-1127 entered 06/19/1890. Subsequent Decrees: CA-5792 entered 05/28/1968; Case No. 7540 entered 05/27/1982; 20CW3039 entered 04/08/2021. **Decreed Location:** The headgate is located on Frenchman Creek at a point 325 ft. W. of where said creek crosses the line running N. and S. between the NE1/4 and the NW1/4 of the SW1/4 of Sec. 10, T. 13 S., R. 79 W of the 6th P.M., in Chaffee Cty, CO. **Source:** Frenchman Creek, tributary to Arkansas River. **Dates of Appropriation:** Priority No. 115: 06/13/1882. Priority No. 136: 09/24/1883. **Amt:** 4.0 c.f.s. (1.0 c.f.s. Priority No. 115; 3.0 c.f.s. Priority No. 136). **Decreed Use:** Irr. **Amt. to be changed:** 2.0 c.f.s. **Remarks:** Pursuant to the decree in CA-5972, 2.0 c.f.s. of the Bartholomew Ditch, Ditch No. 99 was changed

as follows: One-half (0.5) c.f.s. decreed to the said Bartholomew Ditch under Priority No. 115 to be diverted through Alternate or Supplemental Point of: Diversion No. One (1) (WDID No. 1100905): a point 300 ft. Easterly from the W. line of the NW1/4 SE1/4 of Sec. 10, T. 13 S., R. 79 W. of the 6th P.M., Chaffee Cty, CO, and Alternate or supplemental point of: Diversion No. Two (2) (WDID No. 1100906): a point 849 ft. Westerly from the E. line of NE1/4 SW1/4 of Sec. 11, T. 13 S., R. 79 W. of the 6th P.M., Chaffee Cty., CO, or at Alternate or supplemental point of: Diversion No. Three (3) (WDID No. 1100907): a point 645 ft. Westerly from the E. line of the NE1/4 SW1/4 of Sec. 11, T. 13 S., R. 79 W. of the 6th P.M., Chaffee Cty., CO, all of said water rights being in Dist. No. 11, and that said Applicants desire to continue to divert Alternatively and Supplementally and not concurrently such water right at its present point of diversion. 1.5 c.f.s. under Priority No. 136 to Diversion Point Nos. 2 and 3, above. Proposed Simple Change: Applicants seek to correct the decreed locations for the Bartholomew Ditch, Ditch No. 99 (WDID No. 1100724), and its Alternate POD Nos. 1 (WDID No. 1100905), 2 (WDID No. 1100906), and 3 (WDID No. 1100907) as set forth in the CA-5792 decree to the actual physical locations of the structures. Applicants also request approval of a change in the point of diversion for the Bartholomew Ditch, Ditch No. 99 (WDID No. 1100724) in the remaining amt. of 2.0 c.f.s. (0.5 c.f.s. under Priority No. 115 and 1.5 c.f.s. under Priority No. 136), from the decreed location described in paragraph 5.2, to the new locations as described above, pursuant to the standards and procedures for a simple change in a surface point of diversion under C.R.S. 37-92-305(3.5) (the "Simple Change Standards"). Applicants represent and affirm that this requested change can be considered under the Simple Change Standards because: The Bartholomew Ditch, Ditch No. 99 is a surface right diverting from Frenchman Creek; The only relief requested in this Application is to correct the decreed locations of the Bartholomew Ditch, Ditch No. 99 water right and its Alternate POD Nos. 1, 2, and 3 to their as-built locations, and to change the decreed locations for the Bartholomew Ditch, Ditch No. 99 water right and its Alternate POD 1, 2, and 3 from the locations described in CA-5972, to the corrected locations described above; Per the Court's Minute Order dated 06/26/2023, there are no intervening surface diversion points or inflows, as defined in the Simple Change Standards, between the decreed location of the Bartholomew Ditch, Ditch No. 99 and the proposed corrected locations described above. Applicants shall limit diversions under the Bartholomew Ditch, Ditch No. 99 water right to 4.0 c.f.s. (1.0 c.f.s. Priority No. 115; 3.0 c.f.s. Priority No. 136) (its decreed amt.) or the amt. that is physically and legally available in priority at the original decreed location, whichever is less, to ensure the simple change requested herein will not result in a diversion of a greater flow rate or amt. of water than is decreed to the Bartholomew Ditch, Ditch No. 99 and is legally and physically at the decreed point of diversion. Cumulative simultaneous diversions at the original and changed POD will be limited to the amt. physically and legally available at the original decreed point of diversion in terms of flow rate, volumes, and timing of diversions. Applicants recognize that the CWCB holds an existing instream flow water right on Frenchman Creek described in 79CW113 for 2.5 c.f.s. year-round, which was decreed prior to the filing of this water court case; and the change in point of diversion requested herein will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional right. Corrected POD of Subject Water Rights' As-Built Locations: Applicants request the Court confirm and correct the following actual physical locations for the Subject Water Rights

as specified in the Supplemental Summary of Consultation Report dated 06/16/2023. Bartholomew Ditch, Ditch No. 99 (WDID 1100724): In the NE1/4 SE1/4, Sec. 10, T. 13 S., R.79W. of the 6th P.M. (Chaffee Cty. UTM NAD83 coordinates: Easting – 395640, Northing – 4309878, Zone 13). Bartholomew Ditch Alternate Point of Diversion No. 1 (WDID 1100905): In the NE1/4 SW1/4, Sec. 11, T. 13 S., R. 79 W. of the 6th P.M. (Chaffee Cty. UTM NAD83 coordinates: Easting – 396394, Northing – 4300993, Zone 13). Bartholomew Ditch Alternate Point of Diversion No. 2 (WDID 1100906): In the NE1/4 SW1/4, Sec. 11, T. 13 S. R. 79 W. of the 6th P.M. (Chaffee Cty. UTM NAD83 coordinates: Easting – 396492, Northing – 4309996, Zone 13). Bartholomew Ditch Alternate Point of Diversion No. 3 (WDID 1100907): In the NE1/4 SW1/4, Sec. 11, T. 13 S., R. 79 W. of the 6th P.M., (Chaffee Cty. UTM NAD83 coordinates: Easting – 396496, Northing – 4310057, Zone 13). **Owner of lands upon which modification to Existing Structure is or will be Constructed:** Applicants. WHEREFORE, Applicants request the Court enter a decree correcting the decreed locations of the Bartholomew Ditch, Ditch No. 99, and its Alternate POD Nos. 1, 2, and 3 to their as-built locations, and confirming the simple change in the surface point of diversion for the Bartholomew Ditch, Ditch No. 99 to its Alternate POD as described herein, and such other relief it determines is appropriate.

CASE NO. 2023CW3039; SECURITY WATER & SANITATION DISTRICTS, c/o Roy E. Heald, Manager, 231 Security Boulevard, Colorado Springs, CO 80911, Name of Co-Applicant: FOUNTAIN MUTUAL IRRIGATION COMPANY, PO Box 75292, Colorado Springs, CO 80970-5292 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: David M. Shohet, Sedona E. Chavez, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Dr., Suite 250, Colorado Springs, CO 80921, 719-471-1212)

Application for Change of Water Rights and Plan for Augmentation
EL PASO COUNTY

II. Background and Summary of Application. Security Water District has decreed plans for augmentation in Case Nos. W-4212, 90CW28, 01CW149, 06CW117, 07CW51, 09CW92, and 12CW99, District Court, Water Division 2 (“Existing Augmentation Plans”), which are used to replace depletions to Fountain Creek resulting from Security’s municipal well field diversions from the Widefield Aquifer in El Paso County. The Widefield Aquifer is tributary to Fountain Creek, where the ancient channel joins the present Fountain Creek and its alluvium approximately two miles downstream of Security’s well field. The municipal users within the Widefield Aquifer have entered into a Widefield Aquifer Management Agreement, which was approved by the Court in Case No. W-116 (“Original Stipulation”) and has been incorporated into the applicable decrees and plans for augmentation of the participants. The Original Stipulation allocates the annual aquifer yield among those parties based on the historical use of the parties’ wells within various production zones (“reaches”) of the aquifer. The parties to the Original Stipulation have entered into a Restatement of Stipulations Concerning the Management of the Widefield Aquifer (“Widefield Aquifer Stipulation”) that was substituted for the Original Stipulation by an Order of the Court in Case No. W-116, dated May 21, 2009. Security Water District seeks to quantify the historical consumptive use yield of 86 unchanged FMIC shares (“FMIC Shares”) and to change the FMIC Shares to all municipal uses, including without limitation, storage and augmentation, and the right to use, reuse,

and successively use to extinction the historical consumptive use yield after replacement of historical return flows for use under the Existing Augmentation Plans as well as for the plan for augmentation requested in this Application. Security Water District further seeks approval of a permanent plan of augmentation to replace out of priority depletions associated with two ponds located on the sewer treatment plant operated by Security Sanitation District. The replacement water dedicated to the plan for augmentation includes FMIC shares, including the shares sought to be changed in this Application, along with fully consumable sewer return flows. **III. Change of Water Rights.** 1. Name of structure: Fountain Mutual Ditch (WDID: 1000736). 2. Legal Description: The FMIC Shares were historically diverted from Fountain Creek, tributary to the Arkansas River, at the FMIC headgate located in the SW1/4 of Section 20, Township 14 South, Range 66 West, 6th P.M., depicted on **EXHIBIT A** attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) FMIC's water rights were originally decreed for irrigation purposes. 3. Description of Water Rights: FMIC water rights are decreed as follows:

FMIC Direct Flow Rights

Fountain Creek

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

FMIC Storage Right

<u>Reservoir</u>	<u>Priority Date</u>	<u>Decree Date</u>	<u>Total Decree (AF)</u>
Fountain Valley No. 2 (Big Johnson)	3/18/1903	6/2/1919	10,000

4. Decreed source of water: Fountain Creek, tributary to the Arkansas River. 5. Decreed use or uses: FMIC's water rights were originally decreed for irrigation purposes. Portions of FMIC's water rights have been decreed in numerous other changes of water rights and plans of augmentation in Water Court, Division 2, including: Case Nos. W-4396, 81CW229, 85CW110, 86CW031, 90CW28, 90CW7, 95CW3, 99CW146, 00CW152, 01CW146, 01CW149, 01CW153, 02CW112, 03CW81, 04CW55, 04CW118, 05CW33, 06CW66, 07CW51, 09CW6, 09CW92, 09CW105, 09CW115, 10CW43, 12CW99, 15CW3002, 16CW3080, 17CW3023, 17CW3036, 17CW3072, 19CW3082, and 20CW3053 ("Previous Change Cases"). 6. Proposed Changes: Security Water District seeks to change the type of use of the FMIC Shares to include, in addition to irrigation use, all municipal uses including, without limitation, domestic, agricultural, industrial, commercial, power generation, fire protection, recreation, fish and wildlife preservation, recharge of the Widefield aquifer, replacement, exchange, augmentation, sale, trade or

¹FMIC's interest in Priority No. 4 is 5.38 cfs. The amount of 1.73 cfs was changed by Security Water District in Case No. 90CW28. In addition to the 5.38 cfs, FMIC claims the right to divert any of the remaining 2.73 cfs decreed to this priority, which is not used by the other owner.

lease to others, and storage for all of the foregoing uses. Security Water District's uses include utilizing the FMIC Shares under the Existing Augmentation Plans. Security Water District seeks the right to use the FMIC Shares directly, and to reuse and successively use to extinction the FMIC Shares (including but not limited to sewerred and non-sewerred return flows) after initial use of the FMC Shares. Security Water District seeks to change the place of use of the FMIC Shares to include Security Water District's service area as it now exists and as it may exist in the future, including any extraterritorial areas served by agreement or other contract, and for replacement of well depletions and recharge of the Widefield Aquifer. Such uses may also include leasing or trading the FMIC Shares for replacement purposes to other entities. 7. Operation of Changed Water Rights. Security Water District seeks to continue to divert the FMIC Shares at the headgate of the FMIC Ditch with measurement and administration through one or more augmentation stations on the FMIC ditch system, including, without limitation, the Spring Creek Augmentation Station, located in the NE 1/4 of Section 29, Township 14, South, Range 66 West, 6th P.M., and the McRae Augmentation Station, located in the SW1/4 SE1/4 of Section 18, Township 15 South, Range 65 West of the 6th P.M. Security Water District may also use augmentation stations other than the Spring Creek and MacRae augmentation stations. Such augmentation stations may be used in substitution or in combination with one another. 8. Historical Use of Fountain Mutual Ditch Water Rights and the FMIC Shares: This Court has determined that each FMIC share has historically yielded, on average, the equivalent of 0.7 acre-foot of net replacement or consumptive use water each year, which number represents a portion of the farm headgate delivery. The consumptive use credit allowed to FMIC water rights is a percentage of the FMIC actual delivery to its shareholders computed on the basis of the following table:

FMIC REPLACEMENT/CONSUMPTIVE USE CREDIT

Month	Replacement/Consumptive Use Credit as a percentage of farm headgate delivery	Return Flow as a percentage of farm headgate delivery
January	47	53
February	58	42
March	70	30
April	70	30
May	70	30
June	70	30
July	72	28
August	72	28
September	74	26
October	66	34

November	40	60
December	49	51

The historical consumptive use of FMIC shares was determined in Case No. 95CW3, and was affirmed by the Colorado Supreme Court, which findings are binding as a matter of res judicata. *Williams v. Midway Ranches Property Owners Association, Inc.*, 938 P.2d 515 (Colo. 1997). This same historical consumptive use determination was affirmed in the Previous Change Cases. There have been no material changed circumstances since the entry of decrees in Previous Change Cases to modify these historical consumptive use determinations. Security requests that the Court finds that each of the FMIC Shares has historically yielded on the average the equivalent of 0.7 acre foot of net replacement or consumptive use water each year, representing a portion of farm headgate delivery. For the FMIC Shares, this represents an average consumptive use of 60.2 annual acre feet which may be used for the changed uses. The total amount of consumptive use pursuant to the FMIC water rights varies from year to year based on the amount of water available for diversion under those rights. Therefore, the actual consumptive use available from such shares shall be based on actual in-priority deliveries applied to the above monthly replacement credit schedule. Historical consumptive use will be limited to a maximum of one acre foot per share per year, and to an average of 0.7 acre foot per year over a 20 year running average. 9. Dry-up. The Fountain Mutual system is a water short system, and the withdrawal of water deliveries under the Fountain Mutual Ditch to lands under the FMIC system results in naturally reduced irrigation and the dry up of property. No dry up covenant for Fountain Mutual lands is therefore required for the Subject Shares. *Williams v. Midway Ranches Property Owners Association, Inc.*, 938 P.2d 515 (Colo. 1997); and Previous Change Cases. Until so used for augmentation, the FMIC Shares may continue to be used through the Fountain Mutual Ditch in accordance with the terms of its decrees. Once shares have been dedicated for Security Water District's uses, the FMIC shares will not be used for other purposes absent a new water court application. 10. Return Flows. Return flows from the historical use of the FMIC Shares have accrued to Fountain Creek and will be replaced by Security Water District consistent with the terms of the Previous Change Cases. The sources of water for replacement of historical return flows will be the historical return flow portion of the FMIC Shares. Historical return flows will be replaced only to calling water rights senior to the date of the filing of this Application. 11. Storage. Security Water District's pro rata share of water attributable to its FMIC shares may be placed into storage in FMIC's 10,000 acre feet of decreed storage in Big Johnson Reservoir (Fountain Valley Reservoir No. 2) the dam of which is located in Sections 8, 17, and 18, Township 15 South, Range 65 West, 6th P.M., together with any excess consumptive use credits. Such storage and use shall be in accordance with FMIC rules and regulations. The water so stored in Big Johnson Reservoir is to be used for Security Water District's changed uses and may be delivered to the Spring Creek augmentation station or any other up ditch augmentation station by means of an intraditch exchange or released down ditch of Big Johnson Reservoir to the McRae augmentation station or any downstream augmentation station. 12. Existing Augmentation Plans. Security Water District seeks to use the Consumptive Use Credits of the FMIC Shares, together with Security Water District's other legally available augmentation supplies, to augment those structures augmented under the Existing

Augmentation Plans. **IV. Plan for Augmentation** 1. **Structures to be Augmented.** A. **Name of Structures:** Security WWTP Ponds 1 & 2. B. **Legal Description:** i. Security WWTP Pond 1 (WDID: 1003376): NE ¼ of the NE ¼ of Section 23, Township 15 South, Range 66 West, of the 6th P.M. (UTM coordinates (NAD 83, Zone 13) Easting = 522660, Northing = 4287474). ii. Security WWTP Pond 2 (WDID: 1003375): NW ¼ of the NW ¼ of Section 24, Township 15 South, Range 66 West, of the 6th P.M. (UTM coordinates (NAD 83, Zone 13) Easting = 522770, Northing = 4287505). C. **Surface Area:** i. Security WWTP Pond 1: 2.39 acres. ii. Security WWTP Pond 2: 2.48 acres. D. **Source of Water:** Water tributary to Fountain Creek, tributary to the Arkansas River. 14. **Water Rights to be Used for Augmentation.** A. Fountain Mutual Shares. 723 FMIC Shares owned by Security Water District. 637 of these shares have already been changed in Case Nos. 90CW28, 01CW149, 07CW51 and 12CW299, District Court, Water Division 2. The remaining 86 FMIC shares are the FMIC Shares to be changed in this Application. The FMIC water rights are described above. B. Fully Consumable Sewered Return Flows. Security Sanitation District operates a wastewater treatment facility for disposal of water used for in-building purposes collected by a central wastewater collection system. The wastewater treatment facility discharges to Fountain Creek in the NW ¼ of the NW ¼ of Section 24, Township 15 South, Range 66 West, of the 6th P.M. (UTM coordinates (NAD 83, Zone 13) Easting = 522832, Northing = 4287419). Security Water District diverts and delivers fully consumable water to its customers. This water is primarily delivered through the Fountain Valley Conduit and the Southern Delivery System. A portion of the wastewater treated by Security Sanitation District is, therefore, fully consumable treated wastewater delivered to Fountain Creek. Fully consumable return flows include the following water delivered to Security: i. Fryingpan-Arkansas Project water. Security is within the boundaries of the Southeastern Colorado Water Conservancy District (“Southeastern District”) and is therefore entitled to receive an annual allocation of water from the Fryingpan-Arkansas project (“Project Water”). After its first use, Security claims the right to use, reuse, and successively use to extinction the Project Water for augmentation hereunder. The project water rights are described as follows: 1. West Slope Decrees: The Fryingpan-Arkansas project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County. The principal water rights were adjudicated by the decrees in Civil Action No. 4613 (District Court, Garfield county) dated June 20, 1958, and August 3, 1959; and were modified by the Decree in Case No. W-829-76 (District Court, Water Division 5) dated November 27, 1979; and were supplemented by the Decree in Case No. 83CW352 (District Court, Water division No. 5) dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travels under the Continental Divide through Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, and applied to beneficial use within Southeastern’s District boundaries. Because the water is imported from another river basin, it is fully consumable in Water Division 2. 2. East Slope Decrees: The Fryingpan-Arkansas Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141 (District Court, Chaffee County) dated July 9, 1969; and Civil Action No. B-42135 (District Court, Pueblo County) dated June 25, 1962; and were modified and supplemented by the Decree in

Case No. 80CW6 (District Court, Water Division 2), dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed for reuse and exchange for beneficial use within Southeastern’s District boundaries. Under these decrees, Turquoise Reservoir and Twin Lakes Reservoir may store native water or imported water, directly or by exchange with each other or with Pueblo Reservoir. The Southeastern District allocates Project Water annually based on its principles, policies, rules and regulations. Any and all use of Project Water therefrom will be pursuant to and subject to the above-referenced decrees for the Fryingpan-Arkansas Project, and to all lawful rules, regulations, policies, and contract obligations of the Southeastern District. Any decree entered in this case will not give Security any rights to use Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocations of Project Water therefrom, but will not alter the existing rights, including allocation rights, held by Security. ii. Hayden Ranch Water Rights. Security Water District is the owner of three ditches associated with four water rights, the Hayden Ditch, Hayden Ditch No. 2, Hayden Ditch No. 3, and Hoagg Ditch (collectively, the “Hayden Ranch Water Rights”). Security Water District changed the uses of these water rights for municipal uses and augmentation use in Case No. 16CW3055, District Court, Water Division 2. the Hayden Ranch Water Rights are described as follows: 1. Original Decree Date. Decree dated February 3, 1894 in Case No. 02/03/1894, 11th Judicial District, Fremont County District Court, *In the Matter of the Adjudication of Water Rights in Water District No. 12*. 2. Decreed Points of Diversion. a. Hayden Ditch (*WDID 1200697*). The Hayden Ditch’s decreed point of diversion is the west side of Hayden Creek in the NW1/4 of the SW1/4 of Section 33, Township 48 North, Range 11 East of the N.M.P.M., Fremont County, Colorado, UTM 433598.3 E, 4246831.6 N. b. Hayden Ditch No. 2 (*WDID 1200698*). The Hayden Ditch No. 2 does not have a point of diversion described in the original decree; however, the historical point of diversion since the entry of the decree has been on the west side of Hayden Creek in the SW1/4 of the SW1/4 of Section 33, Township 48 North, Range 11 East of the N.M.P.M., Fremont County, Colorado, UTM 433307.0 E, 4246254.0 N. c. *Hayden Ditch No. 3* (*WDID 1200699*). The Hayden Ditch No. 3’s decreed point of diversion is the east side of Hayden Creek in the NW1/4 of the SW1/4 of Section 33, Township 48 North, Range 11 East of the N.M.P.M., Fremont County, Colorado, UTM 433580.3 E, 4246694.3 N. d. *Hoagg Ditch* (*WDID 1200708*). The Hoagg Ditch’s originally decreed point of diversion was the west side of Hayden Creek in the SW1/4 of the SE1/4 of Section 5, Township 47 North, Range 11 East of the N.M.P.M., Fremont County, Colorado. However, the location of the Hoagg Ditch point of diversion was moved soon after entry of the original decree to the same point of diversion as the Hayden Ditch No. 2 described above. This move was confirmed by Decree entered on October 10, 2014 in Case No. 14CW3023, District Court, Water Division 2. 3. Source. The source of water for the Hayden Ranch Water Rights is Hayden Creek, tributary to the Arkansas River. 4. Appropriation Dates/Amounts. The appropriation dates and decreed amounts for the Hayden Ranch Water Rights are as follows (“Subject Water Rights”):

Water Right Name	Adjudication Date	Appropriation Date	Local Priority No.	Full Water Right (cfs)	Decreed Acreage
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Hayden Ditch	February 3, 1894	May 10, 1870	1	1.60	40
Hoagg Ditch	February 3, 1894	February 28, 1873	4	1.60	40
Hayden Ditch No. 2	February 3, 1894	April 1, 1873	5	2.60	65
Hayden Ditch No. 3	February 3, 1894	May 31, 1873	6	1.05	40

15. Additional Augmentation Supplies. Security Water District may also seek a term and condition in any final decree requesting the Water Court to retain perpetual jurisdiction over the plan for augmentation for the sole purpose of adding new or additional sources of augmentation to this requested plan for augmentation. 16. Statement of Plan for Augmentation. Security Water District seeks a plan to replace all of out of priority depletions associated with the Security WWTP Ponds. Using a total maximum surface area of 4.87 acres, annual evaporation from both Security WWTP Ponds totals 18.67 acre-feet per year. This annual amount consists of 9.16 acre-feet per year for Pond No. 1 and 9.51 acre-feet per year for Pond No. 2. Evaporation was determined using criteria recommended in the General Administration Guidelines for Reservoirs, issued by the State Engineer's Office (State Engineer's Guidelines). As specified in these guidelines, the average annual evaporation rate from a free water surface was obtained from NOAA Technical Report NWS 33 and was determined to be 46 inches. This annual amount was distributed on a monthly basis, as shown in the following table, using the monthly percentages specified in the State Engineer's Guidelines.

Security WWTP Ponds Evaporation Rates

Month	Evaporation (inches)
Jan	1.4
Feb	1.6
Mar	2.5
Apr	4.1
May	5.5
Jun	6.7
Jul	6.9
Aug	6.2
Sep	4.6
Oct	3.2
Nov	1.8
Dec	1.4
Total	46.0

The calculated evaporation rates were not reduced for the consumptive use of water by vegetation that naturally occurred at the site prior to construction of the Security WWTP Ponds, since these ponds are located off-channel. Out of priority depletions from the Security WWTP Ponds impact Fountain Creek in the NE ¼ of the NE ¼ of Section 23, Township 15 South, Range 66 West, of the 6th P.M. **V. Name and Address of Owner of Land Upon Which Structures are Located.** The Fountain Mutual Ditch headgate, Spring Creek and McRae Augmentation Stations, and Big Johnson Reservoir, are located

upon land or easements owned by Co-Applicant, FMIC. Security WWTP Ponds 1 & 2 are located on land owned by Co-Applicant, Security Sanitation District. **VI. Additional Terms and Conditions.** Security Water and Sanitation Districts propose the following additional terms and conditions to prevent injury to other vested water rights by this plan for augmentation and change of water right: A. Monthly accountings shall be made to the Division Engineer demonstrating compliance with this plan. B. Security Water and Sanitation Districts shall install and maintain such water measuring devices as deemed essential by the State Engineer or Division Engineer and the same shall be installed and operated in accordance with the instruction of that office. C. The Division Engineer shall assess appropriate transit losses, if any. D. Security Water District shall measure and account for its entitlement under its FMIC shares through use of the respective augmentation stations. E. Only that amount of water actually available and attributable to Security Water District's FMIC shares will be made available for purposes of this augmentation plan and Security Water District's other and existing plans for augmentation using FMIC shares.

CASE NO. 2023CW3040; MICHAEL JOSEPH BARRY TRUST AND BONNIE KAY BARRY TRUST, 818 SE Rio Circle, Ankeny, IA 50021 (Please address all pleadings

and inquiries regarding this matter to Applicant's attorneys: Ryan W. Farr and Paul J. Raymond of Monson, Cummins, Shoet & Farr, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921, (719) 471-1212)

Application for Conditional Surface Water Right

CHAFFEE COUNTY

The Applicants seek a conditional surface water right for diversion from a spring arising on their property for domestic, irrigation, and fish and wildlife purposes on their approximately 36-acre parcel, with the future goal of seeking a plan of augmentation associated therewith. Name of Structure: Bonnie Spring. Legal Description of Point of Diversion: In the NW1/4 of the NW1/4 of Section 22, Township 50 North, Range 8 East of the N.M.P.M., UTM Zone 13 NAD83, Easting: 406260, Northing: 4270321, as depicted on the **Exhibit A** map attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

Source: Spring and seepage area tributary to the Arkansas River. Appropriation: Date of Initiation of Appropriation: August 30, 2023, the date of filing of this application. Amount Claimed: 100 gallons per minute, conditional. Uses: Diversion for domestic, irrigation, and fish and wildlife uses. Amount of acreage to be irrigated: Up to 25 acres. Legal description of lands to be irrigated: located in the NW1/4 of the NW1/4 and the SW1/4 of the NW1/4 of Section 22, Township 50 North, Range 8 East of the N.M.P.M., specifically shown on the attached **Exhibit A**. Applicants own the land where Bonnie Spring is located. The diversion will also be located on land owned by the Applicants. The Applicants are also the owner of the land where the water will be placed to beneficial use.

THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT AND PROTEST WITHIN THE TIME PROVIDED BY STATUTE, OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of October 2023, (forms available at Clerk's office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$192.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 7th day of September 2023.

Michele Santistevan

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



(Court seal)
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