

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING OCTOBER 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 October 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. 2020CW3013; PUEBLO EAST PHASE III, LLC, 839 Mackenzie Avenue, Canon City, CO 81212 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Mark D. Detsky, Atty. Reg. No. 35276. Matthew C. Nadel, Atty. Reg. No. 57642. Dietze and Davis, P.C., 2060 Broadway, Suite 400, Boulder, CO 80302, Email: mdetsky@dietzedavis.com; mnadel@dietzedavis.com, Phone: (303) 447-1375)
Second Amended Application For Approval Of Plan For Augmentation

PUEBLO COUNTY

Background. This second amended application concerns lands, wells, and water storage rights that were formerly part of the plan of augmentation decreed in Case No. 16CW3094. The Applicant, Pueblo East Phase III, LLC ("PEPIII"), purchased property described below from the applicant in Case No. 16CW3094 as set forth in that certain deed dated November 26, 2018 and recorded in the real property records of Pueblo County at Reception No. 2123672. Applicant owns 403.4 acres located in portions of Sections 35 and 36, Township 20 South, and Sections 1 and 2, Township 21 South, Range 63 West of the 6th P.M., which is 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.) As a result of the purchase by PEPIII, two wells and the "North Reservoir" (here renamed as "PEPIII Reservoir") were removed from Case No. 16CW3094 during its pendency. The instant application was required by the Division of Water Resources (DWR) to develop a plan for augmentation for those wells and reservoir. In addition, the Applicant is adding a third well to irrigate a third crop circle as shown in **Exhibit A**. The PEPIII Wells are part of an interconnected irrigation system serving the property. The PEPIII Wells will also be used to truck water for industrial uses associated with gravel mining operations on parcels that it owns or has the legal right to use within Pueblo County, including for dust suppression and sand and gravel washing. This Application does not seek to confirm new water rights or establish new priority dates for the PEPIII Wells. Each of the PEPIII Wells shall be permitted consistent with the terms and conditions of this plan for augmentation upon entry of a Decree in this matter. Applicant does not claim pre-compact diversions regardless of the original priority dates of any of the PEPIII Wells described below, and all diversions and uses of water from the PEPIII Wells following entry of this Decree shall be pursuant to the augmentation plan decreed herein, without regard to the decreed priority dates for the augmented structures. Concurrently, a companion application to this plan for augmentation is being filed to

adjudicate a 2020 priority conditional water storage right for the PEPIII Reservoir, in Case No. 20CW3012. 3. Prior Depletions Replaced in Case No. 16CW3094. The decree in Case No. 16CW3094 includes a term and condition that the two existing wells subject to the instant plan for augmentation will have their depletions prior to approval of this application or an interim Substitute Water Supply Plan (SWSP) replaced in time, location, and amount by the plan for augmentation decreed in that case. As a result, this application is limited to augmenting, on a going forward basis, the lagged wellhead depletions from the two existing wells and a proposed new well described in Paragraph 4(B), below, both during and post pumping, in time, location, and amount. Further, this plan for augmentation is intended to replace depletions related to a proposed lined reservoir, called the "PEPIII Reservoir", to be constructed based on gravel mining operations on the Applicant's property, either after mining has ceased or in smaller cells constructed in phases. Depletions related to the reservoir will be replaced as necessary to prevent injury to vested absolute or decreed conditional water rights. 4. Structure(s) to be Augmented. The location of each structure to be augmented is shown on a USGS topographic map on a legible 8 ½ x 11 inch copy of the applicable portion of the map, attached to this application as **Exhibit A**. A. Existing Pueblo East Phase III Wells: The following wells are decreed and permitted irrigation wells located on the Applicant's property. 1. PEPIII Well No.1: a. Permit and Decree information: Well Permit Number 11367-R, WDID 1405136 (a/k/a Phelps Well No. 1), originally decreed in Case No. W-244 (1972), District Court, Water Division 2; b. Location: SE/4 NW/4, Section 35, T20S, R63W, 6th PM, Pueblo County; UTM coordinates (NAD83 datum, Zone 13) 551104.0 Easting, 4235867.0 Northing; c. Uses: Irrigation, domestic, commercial, industrial, fire protection, stock watering, and fill of PEPIII Reservoir. d. Priority Date: January 1948; e. Amount: 2.33 cfs or 1050 gpm, but not to exceed more than 1,600 acre feet (AF) in combination with the other wells included herein in any calendar year; f. Source: alluvial groundwater tributary to the Arkansas River. 2. PEPIII Well No. 2: a. Permit and Decree information: Well Permit Number 5234-F, WDID 1405139, originally decreed in Case No. W-743 (1971), District Court, Water Division 2; b. Location: NE/4 SE/4, Section 35, T20S, R63W, 6th PM, Pueblo County; UTM coordinates (NAD83 datum, Zone 13) 551821.0 Easting, 4235284.0 Northing; c. Uses: Irrigation, domestic, commercial, industrial, fire protection, stock watering, and fill of PEPIII Reservoir; d. Priority Date: March 5, 1964; e. Amount: 3.34 cfs or 1500 gpm, but not to exceed more than 1,600 AF in combination with the other wells included herein in any calendar year; f. Source: alluvial groundwater tributary to the Arkansas River. B. PEPIII Well No. 3: 1. Permit and Decree Information: N/A; 2. Location: NW/4 NW/4, Section 1, T21S, R63W, 6th PM, Pueblo County; UTM coordinates (NAD83 datum, Zone 13) 552228.0 Easting, 4234736.0 Northing. 3. Uses: irrigation, domestic, commercial, industrial, fire protection, stock watering, and fill of PEPIII Reservoir; 4. Appropriation date: March 31, 2020. 5. Amount: 3.34 cfs or 1500 gpm, but not to exceed more than 1,600 AF in combination with the other wells included herein in any calendar year, CONDITIONAL; 6. Source: alluvial groundwater tributary to the Arkansas River. C. PEPIII Reservoir. This reservoir is the subject of the application in pending Case No. 20CW3012, Water Division No. 2 and may consist of one single or multiple cells. The PEPIII Reservoir is a conditional water storage right located in Sections 35 and 36, Township 20 South, Range 63 West; Section 2, Township 21 South, Range 63 West, all in the 6th P.M., as depicted in the attached **Exhibit B**. The PEPIII

Reservoir will have a maximum storage capacity of 6,400 acre feet, and maximum surface acreage of 230 acres. Water stored in PEP III Reservoir may be used for augmentation, commercial, domestic, fire protection, industrial (including gravel mining), irrigation, recreational, piscatorial, and stock watering.

5. Water Rights to Be Used for Augmentation: A. Arkansas Groundwater and Reservoir Association Sources: Any and all water, water rights, and water supplies owned, leased or otherwise available to AGRA for provision of augmentation supplies to its members and leases, pursuant to the Applicant's shareholder membership in AGRA.

i. AGRA owns water rights and leases water rights, including temporary fully consumable supplies that are available to AGRA, from time to time, including leases from the Pueblo Board of Water Works, Triview Metropolitan District, and Colorado Springs Utilities.

ii. AGRA owns consumptive use credits from AGRA's Excelsior Ditch water rights changed in Case No. 04CW62, which credits may be delivered through AGRA's augmentation facilities or recharge ponds, as they now exist or may exist in the future. AGRA's credits may also be stored in Pueblo Reservoir prior to release pursuant to the decree in Case No. 03CW119. AGRA's augmentation station returns water to the Arkansas River at the following location: SW ¼ Section 34, Township 20 South, Range 63 West of the 6th P.M. The recharge ponds are located at the following location: NE ¼ Section 6, Township 21 South, Range 63 West of the 6th P.M. AGRA owns 1,782 and Stonewall Water, LLC owns 1,541 of the 3,333 shares in the Excelsior Irrigating Company. AGRA may lease shares owned by Triview or stored in the Stonewall Springs Reservoir Complex ("SSRC"), a series of lined gravel pit reservoirs to be constructed in Section 31, T20S, R62W; Section 6, T21S, R62W; Sections 35 and 36, T20S, R63W; and Section 2, T21S, R63W, all in the 6th P.M. The SSRC water storage rights will be released to the Arkansas River at the locations identified in paragraphs 8(A)(i) through 8(A)(iii) of the decree entered in Case No. 16CW3093.

a. AGRA by agreement uses water rights from Fremont Paving and Redi-Mix Inc. ("Fremont"), the upstream parent company of PEP III, owner of the Plum Creek Pipeline Ditch. The Plum Creek Pipe Line Ditch water rights are the subject of the decrees entered in Civil Action No. 4471, District Court, Fremont County, on September 1, 1923 and in Case No. 14CW3049, District Court for Water Division No. 2, on October 2, 2017 (the "Plum Creek Rights"). In the decree entered in Civil Action No. 4471, the court approved the change of the point of diversion for the Plum Creek Rights (*i.e.*, portions of the water rights previously decreed to the Crosswhite Ditch and Plum Creek Ditch, and all of the water right decreed to the Stub (aka Hillier) Ditch) to the Plum Creek Pipe Line Ditch. In the decree entered in Case No. 14CW3049, the Plum Creek Rights were changed to include augmentation and replacement of out-of-priority depletions 1) from a well on Fremont's property near Canon City, Colorado, known as the MacKenzie Pit Well, pursuant to the augmentation plan decreed therein; and 2) caused by any structures for which the AGUA (n/k/a AGRA), provides replacement of depletions within its approved SWSPs, replacement plans, and augmentation plans. The 14CW3049 decree authorized such changed uses directly or following release from AGRA's storage account in Pueblo Reservoir. That decree also quantified the historical use of the Plum Creek Rights and limited the maximum consumptive use credit therefrom (*i.e.*, net depletion during the irrigation season minus non-irrigation season return flows) to no more than 81.5 acre-feet in any single year, and no more than a total of 579.3 acre-feet over any consecutive ten-year period. AGRA has used the consumptive use credits available from the Plum Creek

Rights which exceed those needed to augment out-of-priority depletions associated with the MacKenzie Pit Well by agreement with Fremont. Upon PEPIII filing evidence in this case that all MacKenzie Pit Well pumping facilities for operational water uses have been permanently disconnected, and/or that the pit/well has been filled in, then such corresponding additional consumptive use credits from the Plum Creek Rights shall be considered to be available for augmentation and replacement use pursuant to this decree. Paragraph 12 of the 14CW3049 decree states “AGUA shall be responsible for obtaining administrative or Water Court approval for its end uses of such Excess Credits.” To comply with this condition, this application requests that the Water Court in this Decree approve additional end uses for AGRA, defined as augmentation and replacement of out-of-priority depletions attributable to the PEPIII Wells and PEPIII Reservoir pursuant to the augmentation plan approved herein. AGRA has consented to PEPIII making this end use request, provided that any storage by AGRA of water available under the Plum Creek Rights in Pueblo Reservoir for direct use by PEPIII shall require AGRA’s further written consent on terms acceptable to AGRA in its discretion. No further change of water rights is requested or necessary over and above the changes decreed in Case No. 14CW3049.

B. PEPIII Reservoir (Pending Case No. 20CW3012) Applicant has applied for junior conditional water storage rights for augmentation uses in the PEPIII Reservoir, a storage facility being developed on land owned by the Applicant as shown in **Exhibit B**.

C. Additional Augmentation Supply. Applicant may in the future also use as substitute supplies for the plan for augmentation and exchanges claimed herein any sources of water not described in this application that Applicant then owns or controls, provided that they are decreed for augmentation use and can be made legally and physically available at the replacement points decreed herein by direct flow, by substitution, or by exchange. Procedures to allow use of these additional sources of substitute supply shall be included in the decree that provide for notice, appropriate evidence, opportunities for comment and objection.

6. Statement of plan for augmentation. Applicant’s plan for augmentation will replace out-of-priority depletions caused by the combined pumping of the PEPIII Wells and depletions caused by the PEPIII Reservoir with out-of-priority storage of precipitation and other out-of-priority inflows into the Reservoir. Applicant will replace all out-of-priority depletions at or above the location of the calling water right. Applicant will utilize augmentation supplies available to it as a shareholder in AGRA, including Plum Creek Rights, and any additional leases it enters into with AGRA, water decreed for augmentation to be stored in PEPIII Reservoir pursuant to pending Case 20CW3012, purchased or contracted/leased augmentation water available to Applicant and lawfully added to this application by a notice, comment, and objection process to be set forth in the decree in this matter as a term and condition. No changes of water rights or appropriative rights of exchange are requested for this plan for augmentation.

A. Wells: PEPIII Well No. 1 and PEPIII Well No. 2, Applicant’s two existing wells described in Paragraph 4(A), above, have continuously operated since appropriation and will continue to operate during this adjudicatory process. The two existing wells formerly operated under AGRA’s Rule 14 plan, and since 2016, operated under a SWSP approved under C.R.S. §37-92-308. Applicant’s wells operated via an approved SWSP through 2019, and going forward will divert under the authority sought herein. Applicant intends to operate pursuant to annual SWSPs approved under C.R.S. §37-92-308(4). PEPIII Well No. 3 has not yet been constructed, but if constructed may be added to Applicant’s SWSP.

B. Property. Applicant owns approximately 403.4 acres, located in portions of Sections 35 and 36, Township 20 South, Range 63 West of the 6th P.M., and Sections 1 and 2, Township 21 South, Range 63 West of the 6th P.M. as depicted on the attached **Exhibit A**. Applicant also owns or has the legal right to uses certain parcels located in Pueblo County where it conducts or will conduct gravel mining operations. 1. The total maximum potentially irrigated acreage on PEPIII's property is approximately 340 acres of which, approximately 285 acres of land was formerly irrigated by the Excelsior Ditch, and subject to dry-up under the change of water rights for the Excelsior Ditch as described in the Case No. 04CW62 decree. Of the balance of the irrigable lands, eighteen (18) acres are located on the north side of the Excelsior Ditch, above the ditch, and won't be irrigated, and forty-five and 4/10 (45.4) acres is an existing gravel pit on the southwest side of the property. See, **Exhibit A**. 2. Industrial property. In addition to the subject irrigated property that the Applicant intends to eventually mine, the Applicant will use water from the subject structures for industrial uses at gravel mining properties it owns or has the legal right to use on parcels located in Pueblo County. Applicant's industrial uses of water will be for dust suppression, sand and gravel mining, and ancillary industrial or commercial uses. Applicant will truck water pumped from the subject wells to its gravel mining operations, as they exist or may exist in the future within Pueblo County, including the following sites shown on **Exhibit C**: g. M1990112 / State Pit, the mine permit is located in portions of Section 21, NW1/4 of Section 22 and the N1/2 of Section 28, T21S, R63W of the 6th P.M. h. M2016009 / Pueblo County Aggregate Project, the mine permit is located portions of Section 24 and Section 25, T21S, R63W of the 6th P.M. and portions of Section 19 and Section 30, T21S, R62W of the 6th P.M. C. Depletions: The PEPIII Wells will be primarily used for irrigation of fields on the PEPIII Property by varying irrigation methods, including sprinkler, flood/furrow and drip irrigation, as well as for non-irrigation purposes including domestic, commercial, industrial, fire protection and stock watering. The PEPIII Wells may be used to fill the PEPIII Reservoir for its decreed uses, which are the same as those of the PEPIII Wells with the addition of piscatorial and recreational uses. 1. Standard sprinkler irrigation is considered 85% consumptive, LEPA sprinkler irrigation is considered 95% consumptive, and flood/furrow irrigation 65% consumptive. Drip irrigation shall be considered 100% consumptive, as shall domestic, commercial, industrial, fire protection and stock water, excepting indoor domestic and sanitation uses, which shall be considered 10% consumptive provided wastewater is treated through on-site septic leach field systems. Wellhead depletions will be determined by multiplying well use times the consumptive use percentages described above. 2. Stream depletions resulting from pumping of the PEPIII Wells will occur within Reach 1 of the Arkansas River, defined as the reach between the confluence of the Arkansas River and Fountain Creek and the Avondale Gage, and will be determined by applying a monthly unit response function (URF) to Applicant's wellhead depletions. The URF is derived from the H-I Model groundwater response function for the Excelsior Ditch user group, as shown in the following table:

Month	1	2	3	4	5	6	7	8	9	10	11	12
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Fraction of Stream Depletion from Pumping in Month 1	0.03	0.08	0.11	0.11	0.10	0.08	0.07	0.06	0.05	0.05	0.04	0.03
Month	13	14	15	16	17	18	19	20	21	22	23	24.
Fraction of Stream Depletion from Pumping in Month 1	0.03	0.03	0.02	0.02	0.02	0.01	0.01	0.01	0.01	0.01	0.01	0.01

3. Wellhead depletions related to the industrial uses described in 6(B)(2), above, shall be considered 100% consumptive. All diversions trucked to parcels not located adjacent to the structures proposed for augmentation above shall be replaced on a one-to-one basis. D. Replacements: Replacement of stream depletions resulting from the pumping of the PEPIII Wells will utilize such water rights as physically and legally available to AGRA including the sources described in Paragraph 5, above, and/or through Applicant's water rights as may be stored for timed release in the PEPIII Reservoir, as described in the application in the as described in the application in Case No. 20CW3012, and additional augmentation and replacement rights made available to Applicant and added to this plan pursuant to decreed due process, including notice, comment, and objection procedures. E. AGRA Membership: Applicant is a shareholder member of AGRA. Applicant may enter additional leases with AGRA. AGRA allocates augmentation water to its members and lessees each year based on available supplies, members' usage, usage of water by its approved Rule 14 plan, ongoing obligations from pumping in prior years, and other factors determined by AGRA. F. Terms and Conditions. Applicant proposes the following terms and conditions to its plan for augmentation: 1. All wells shall be metered and shall be installed, constructed, operated, maintained, tested, and verified in accordance with the Amended Rules Governing the Measurement of Ground Water Diversions Located in the Arkansas River Basin, Case No. 05CW88, or a successor rule adopted by the State Engineer; 2. Accounting acceptable to the Court shall be recorded daily and provided monthly to DWR; 3. An annual maximum volumetric limit on pumping from the existing PEPIII Well No. 1 and PEPIII Well No. 2, and new PEPIII Well No. 3 described in Paragraph 4, above, of 1,600 annual acre feet individually or in combination; 4. Applicant's pumping from the PEPIII Wells will be adjusted so as not to exceed such volumes for which all resulting out-of-priority depletions can be replaced by AGUA or Applicant's other available augmentation supply. 5. Any water trucked to gravel mining operations shall be limited to properties owned or operated by the Applicant and shall be further limited to Pueblo County 7. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool. Applicant is the owner 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.

CASE NO. 2023CW3019; Desert Reef, LLC, c/o Shawn Bertini, P.O. Box 770740, Steamboat Springs, Colorado 80477 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Tod J. Smith, Law Office of Tod J. Smith, LLC, 5777 Central Ave., Suite 228, Boulder, Colorado 80301, Telephone: (303) 956-1106, tod@tjs-law.com)

Concerning The First Amended Application For Water Rights Of Desert Reef, Llc To Add Use Of Water, Plan For Augmentation, And Approval Of A Dewatering System

FREMONT COUNTY

2. Introduction and Background.

Desert Reef is the owner of the Desert Reef Hot Spring located in Fremont County, Colorado at the following street address: 1194 County Road 110, Florence, Colorado 81226. A full property description is attached to the application as **Exhibit A**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The hot spring has operated for approximately 35 years and was acquired by Desert Reef in 2020. Water is provided to the hot spring pools from an artesian well located on the property which was originally decreed for industrial use in Case No. W-2114, District Court, Water Division No. 2, Well Permit No. 10651-F (the "Well"). The Well withdraws water from the Dakota Aquifer. The Applicant seeks in this first amended application to add commercial use of that water right including operation and maintenance of the hot spring pools, and related domestic uses for locker room, showers, bathrooms, and recreational vehicle and tiny home overnight rentals. The Well was originally drilled as an oil well and subsequently refitted as a water well. It is drilled into the Dakota Aquifer at a depth of approximately 1,096 feet, is under artesian pressure, and has flowed constantly since it was refitted as a water well in about 1966. Original reports indicate the well flowed at 250 g.p.m. utilizing a pump. It currently flows naturally, without a pump, at approximately 120 g.p.m. The Applicant also seeks in this Application approval of a plan for augmentation to replace the out of priority depletions resulting from use of water flowing from the artisan well for the operations of the hot spring pools and related domestic uses described above. Finally, the Applicant seeks in this first amended application, the approval of a dewatering system which collects water that leaks from the Well. Water collected by the dewatering system is not used but is part of the return flows delivered to Hardscrabble Creek. Applicant plans at sometime in the future, to replace the Well infrastructure that is leaking and, following those repairs, will cease use of the dewatering system and will then plug and abandon the dewatering system. **3.**

Decree Information. The Decree Information remains as set forth in the Original Application as follows: 3.1. Water Rights. Well No. 1, Permit No. 10651-F and its associated water right decreed in Case No. W-2114 as follows: 3.1.1. Location of Well: SW1/4 NW1/4 Section 30, Township 19 South, Range 68 West of the 6th P.M., in Fremont County, Colorado. 3.1.2. Depth: 1096 feet. 3.1.3. Priority Date: February 7, 1966. 3.1.4. Rate of flow: 0.56 c.f.s or 250 g.p.m. 3.1.5. Use: Industrial purposes. 3.1.6. Means of Diversion: Well and pump. **4. Addition of Commercial Use.** 4.1. Pursuant to the Division Engineer's Summary of Consultation and Recommendations, and further discussions with the Division Engineer, the Applicant withdraws its claim for a change of water right for the Well and requests, instead, that commercial use for its hot spring operation be added as a use of the water in addition to the currently decreed industrial use. As stated in the Original Application, the added commercial use for hot springs operation includes filling and maintaining the hot spring pools, as well as related domestic

uses for bathrooms, showers, locker rooms, and small overnight facilities for guests. All well use information remains as set out in the Original Application except that uses will now include the currently decreed industrial use, commercial use, and related domestic uses as described above. 4.2. The Place of Delivery and Use remains as described in paragraph 4.2 of the Original Application as follows: Water will be delivered, as it has for the past 35 years, from the Well to the hot spring pool facilities. The Well water will fill and then be run through up to 15 hot springs pools with a total surface area of approximately 2,832 square feet. After running through the hot spring pools, the water is returned to Hardscrabble Creek and delivered to the Arkansas River in the SW1/4 of the NW1/4 of Section 17, Township 19 South, Range 68 West of the 6th P.M., in Fremont County, Colorado. When the pools are being drained and cleaned, the water runs directly from the Well to Hardscrabble Creek and from there to the Arkansas River. Water will also be delivered from the Well to an on-site water filtration and reverse osmosis treatment system and then distributed to bathroom and locker room facilities as well as to recreational vehicle hook-ups and tiny home overnight rentals. Once used, that water is delivered to a septic system and, once treated, returns to Hardscrabble Creek. 4.3. The location of Return Flows remains as described in paragraph 4.3 of the Original Application as follows: Water from the Well was historically delivered to the Minnequa Canal. Following Applicant's acquisition of the hot springs, delivery of the water to the Minnequa Canal after use in the hot spring pools was terminated at the direction of the Division Engineer and the return flows are now delivered to Hardscrabble Creek which discharges into the Arkansas River in the SW1/4 of the NW1/4 Section 17, Township 19 South, Range 68 West of the 6th P.M., in Fremont County, Colorado. **5. Plan for Augmentation.** 5.1. General Overview of Plan. The Well withdraws water from the Dakota Aquifer and, based upon the revised determination of the Division Engineer, the depletions from the Well withdrawals accrue to the Arkansas River at Pueblo Reservoir, WDID 1403526. Pueblo Reservoir is located in Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 20 South, Range 66 West, 6th P.M., Sections 1, 2, 3, 4, 5, 9, 10. and 11, Township 21 South, Range 66 West, 6th P.M., and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, Township 20 South, Range 67 West, 6th P.M., in Pueblo County, Colorado. The location of the Well and the point of depletion are depicted on **Exhibit B**. Additionally, the Division Engineer has determined that water returning from the hot spring pools operation to Hardscrabble Creek, a tributary of the Arkansas River, has contributed to the growth of a stand of reeds that cover approximately 0.23 acres as depicted on **Exhibit C**. The Applicant calculates the reeds consume approximately 0.97 acre-feet annually. Applicant seeks a plan for augmentation to set forth the terms and conditions under which it may continue to deliver water from the Well for operation of the hot spring pools including the replacement of evaporative losses and losses resulting from bathroom and locker room uses and guest facilities described above. The Well may continue to operate under annual Substitute Water Supply Plans during the pendency of this Application and upon approval of the addition of use and plan for augmentation sought in this Application. 5.2. Name of Structure to be Augmented. Same as set forth in Original Application as follows: Well No. 1, WDID 1205695, Permit No. 10651-F, Easting 495687.3, Northing 4246694.2, decreed in Case No. W-2114, District Court, Water Division No. 2. The Applicant has submitted an application for a new well permit which will include commercial use and related domestic activities as set forth above. 5.3. Water

to be Used for Augmentation and Replacement. 5.3.1. Based upon the Division Engineer's revised determination that the Applicant's out of priority depletions will accrue to the Arkansas River at Pueblo Reservoir, Desert Reef will replace its depletions to the Arkansas River at Pueblo Reservoir. That water will be made available to the Applicant at Pueblo Reservoir pursuant to its contract with the Upper Arkansas Water Conservancy District (which has now been fully executed) and will be accounted for at the dam, Easting 524024, Northing 4235675. 5.3.2. As claimed in the Original Application, the Applicant seeks approval to add temporary and permanent sources of augmentation and replacement water to this plan for augmentation. 5.4. Statement of Plan for Augmentation. 5.4.1. Based upon the State Engineer's revised determination and the Applicant's revised analysis, the Well depletes the Arkansas River at Pueblo Reservoir. Applicant's depletions resulting from evaporation in the hot spring pools, related domestic uses, and consumption from reed growth along the course of the return flow channel which discharges into Hardscrabble Creek, may be out of priority and subject to a call on the Arkansas River below Pueblo Reservoir. The Well has run constantly since 1966 and the Division Engineer agrees that its depletions have reached a steady state, accruing to the Arkansas River at Pueblo Reservoir. Colorado. Based upon Applicant's current analysis of the use of water as described in the Original and this First Amended Application, depletions related to the consumptive use from the hot spring operations and reed consumptive use accruing to Pueblo Reservoir are approximately 7.15 acre-feet annually. Upon removal of the reeds, the depletions will only be related to the consumptive use from the hot spring operations and are approximately 6.15 acre-feet annually. 5.4.2. Replacement of Out of Priority Depletions. Applicant will utilize water leased from the Upper Arkansas Water Conservancy District delivered from the Conservancy District's water stored for replacement purposes in Pueblo Reservoir. The Applicant may also utilize other supplies that it may acquire by purchase, lease, or otherwise to replace its out of priority depletions to the Arkansas River at Pueblo Reservoir. **6. Dewatering System.** The Applicant has constructed a dewatering system that collects water leaking from the Well. That water is collected and returned to Hardscrabble Creek. No water from the dewatering system is placed to beneficial use. Applicant seeks a decree for the dewatering system which will operate until such time as the Applicant replaces infrastructure in the Well. 6.1. The Applicant has filed an application for a well permit for the dewatering system. 6.1.1. Location of dewatering well: SW1/4 NW1/4 Section 30, Township 19 South, Range 68 West of the 6th P.M., in Freemont County, Colorado. 6.1.2. Depth: 17 feet. 6.1.3. Priority Date: October 31, 2023, the date this First Amended Application was filed. 6.1.4. Rate of flow: The dewatering well collects water that leaks from the Well at rates to be determined. 6.1.5. Use: No use is made of the water collected by the dewatering system. Following collection, the water is returned to Hardscrabble Creek together with the return flows from the hot spring operations. 6.1.6. Means of Diversion: Well and pump. **7. Accounting and Reporting.** Applicant will provide accounting, projection, and reporting as required by the Division Engineer and the decree entered in this case. Applicant may develop appropriate forms to report the required information in a format acceptable to the Division Engineer. **8. Names and Addresses of Owners, Structures and of Land on which Structures Are Located.** The Applicant owns the Well, the water right associated with the Well, and the land on which the Well is located. Pueblo Reservoir is owned and operated by the Bureau of Reclamation. The

water leased for use in this plan for augmentation is owned by the Upper Arkansas Water Conservancy District and stored in Pueblo Reservoir by agreement with the Bureau of Reclamation. WHEREFORE, the Applicant, Desert Reef, LLC, requests entry of a decree approving the addition of commercial use for the Well and plan for augmentation described in this Amended Application, and granting such other relief as is deemed proper.

CASE NO. 2023CW3044; Previous Case Nos. 17CW3028; 08CW91 – LUCAS ESCH FARMS, INC., PATRICK ESCH FARMS, INC. C/O Patrick Esch, 932 Hill Street, Springfield, CO 81073 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Chris D. Cummins and W. James Tilton of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921, (719) 471-1212)

Application for Finding of Reasonable Diligence

LINCOLN COUNTY

Lucas Esch Farms, Inc., Patrick Esch Farms, Inc., (collectively "Applicant") seek a finding of reasonable diligence regarding the conditional water rights decreed in Case No. 08CW91, District Court, Water Division 2, and that were granted a finding of reasonable diligence in case 17CW3028, District Court, Water Division 2. **Lucas Pond No. 1. Legal Description:** In the NW¼ SW¼ of Section 17, Township 17 South, Range 58 West, of the 6th P.M. UTM Coordinates being Northing: 42_69881 N, Easting: 13_0593885 E, Zone 13, NAD83, as depicted on **Exhibit A** map attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Source of Water:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **Date and Case Number of Original Decree:** May 10, 2011; decreed in Case No. 08CW91. **Date of Appropriation:** December 10, 2008. **Amount:** 2.6 annual acre-feet, conditional. **Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, and fire protection. **Pond Specifications:** Lucas Pond No. 1 will have approximately 1.4 acres of surface area, and impound approximately 2.6 acre feet of water. The height of the dam shall be less than 10 feet. Lucas Pond No. 1 will be located and the waters therefrom used exclusively upon the lands of the Applicants. **Remarks:** The uses conditionally decreed to Lucas Pond No. 1 include components of wetlands uses which may result in the use of up to 9.3 annual acre feet of water in Lucas Pond No. 1. As Such, Lucas Pond No. 1 is decreed for the use of 9.3 annual acre feet of total diversions, conditional, with 2.6 acre feet being stored in Lucas Pond No. 1 at any one time. The 6.7 acre foot difference between the maximum 9.3 annual acre feet of diversion and the 2.6 acre feet of storage at any one time was affirmed and decreed by the Water Court, Division 2, in Case No. 13CW3040. **Lucas Pond No. 3. Legal Description:** In the NE¼ NE¼ of Section 20, Township 17 South, Range 58 West, of the 6th P.M. UTM Coordinates being Northing: 42_68964 N, Easting: 13_0594990 E, Zone 13, NAD83, as depicted on attached **Exhibit A**. **Source of Water:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **Date and Case Number of Original Decree:** May 10, 2011; decreed in Case No. 08CW91. **Date of Appropriation:** December 10, 2008. **Amount:** 2.1 annual acre-feet, conditional. **Uses:** Stockwater,

wildlife, wetlands, recreation, piscatorial, and fire protection. Pond Specifications: Lucas Pond No. 3 will have approximately 1.1 acres of surface area, and impound approximately 2.1 acre feet of water. The dam shall be less than 10 feet in height. Lucas Pond No. 3 will be located and the waters therefrom used exclusively upon the lands of the Applicant. Remarks: The uses conditionally decreed to Lucas Pond No. 3 include components of wetlands uses which may result in the use of up to 7.5 annual acre feet of water in Lucas Pond No. 3. As Such, Lucas Pond No. 3 is decreed for the use of 7.5 annual acre feet of total diversions, conditional, with 2.1 acre feet being stored in Lucas Pond No. 3 at any one time. The 5.4 acre foot difference between the maximum 7.5 annual acre feet of diversion and the 2.1 acre feet of storage at any one time was affirmed and decreed by the Water Court, Division 2, in Case No. 13CW3040. The water rights conditionally decreed in 08CW91 are a part of a wetlands banking project developed by Applicants and their partners. Additional conditional water rights were acquired for this same project in companion cases 11CW47, 13CW3040, and 14CW3048. The water rights for Lucas Pond 1 and 3 were awarded a finding of continued diligence in case 17CW3028. Pursuant to C.R.S. § 37-92-301(4)(b), work on one component of an integrated system shall be considered in finding that reasonable diligence has been shown for all components of the integrated system. The conditional water rights described in Case No. 08CW91 are part of such an integrated system, along with absolute and conditional water rights decreed in Case Nos. 11CW47 (diligence granted in 19CW3066), 13CW3040 (diligence granted in 20CW3000), and 14CW3048 (diligence granted in 22CW3019). During the subject diligence period, Applicants have outlaid the following expenditures or completed the following work related to the Lucas Pond Nos. 1 and 3: Expenditures for design, engineering, surveys, and construction plans for the Lucas Pond Nos. 1 and 3, and related mitigation credits plan. Attended meetings and maintained ongoing communication with the Army Corp of Engineers for the development and approval of a mitigation plan, including the construction of a mitigation bank, on Cramer Creek. The Applicants have incurred extensive legal fees associated with drafting and filing of documents pertaining to the Applicants' integrated water system, previous related applications and decrees, including those specified above, as well as the present filing. Applicants own the land where the Lucas Pond No. 1 and Lucas Pond No. 3 are located and the beneficial use of the water from this source will be upon the Applicants' land.

CASE NO. 2023CW3045; J + M INVESTMENTS, LLC, c/o Jay Stoner, 5655 Bridlespur Ridge Place, Colorado Springs, CO 80918 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Chris D. Cummins and Paul J. Raymond of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921, (719) 471-1212)

First Amended Application for Adjudication of Denver Basin Groundwater, Approval of Plan for Augmentation, and Adjudication of Exempt Residential Well

EL PASO COUNTY

Applicant desires to adjudicate the Denver Basin groundwater underlying its property in El Paso County and to obtain a plan for augmentation for the subdivision of the Applicant's Property into two parcels. The plan for augmentation includes a well into the Arapahoe aquifer of the Denver Basin. The Applicant also seeks to adjudicate its existing exempt residential well. These wells will provide water service to an equivalent

number of single-family lots. Legal Description of Wells. Property Description. All wells are and will be located on Applicant's approximately 5.13-acre property ("Applicant's Property") anticipated to be subdivided into two lots of +/- 2.5 acres each. Applicant's Property is depicted on **Exhibit A and Exhibit C maps** 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.) and is more particularly described as a piece of property located in the E ½ of the NW ¼ of Section 28, Township 11 South, Range 66 W. of the 6th P.M., also known as Lot 1, Kettle Creek Estates, as recorded in the records of the El Paso County Clerk and Recorders under Reception NO. 223715184, with a street address of 10245 Otero Ave, Colorado Springs, CO 80921. Existing Well. There is an existing domestic well with Division of Water Resources Permit No. 172655 ("J+M Well No. 1"), permit attached as **Exhibit B.** It is drilled to a total depth of 460 feet to the Denver aquifer, and located 3,997 feet from the South Section Line, and 3,153 feet from the East Section Line. Upon completion of this case and the subdivision process, the J+M Well No. 1 will remain an exempt well pursuant to SB 20-155 amending C.R.S. §37-92-602(3)(b)(IV). Proposed Wells. Applicant proposes to construct an additional well on the Applicant's Property at a specific location not yet determined ("J+M Well No. 2"), to be constructed to the Arapahoe aquifer. Water Source. Not-Nontributary. The ground water to be withdrawn from the Denver and Arapahoe aquifers underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. § 37-90-137(9)(c.5), the augmentation requirements for wells in these aquifers will require the replacement of actual stream depletions. Nontributary. The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicant's Property is nontributary. Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. Estimated Average Annual Amounts of Ground Water Available. Applicant requests the vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code § 8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to C.R.S. § 37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

AQUIFER	NET SAND (Feet)	Total Appropriation (Acre Feet)	Annual Avg. Withdrawal 100 Years (Acre Feet)	Annual Avg. Withdrawal 300 Years (Acre Feet)
Denver (NNT)	197.10*	0	0	0
Arapahoe (NNT)	246.8	245.02	2.45	0.82
Laramie Fox Hills (NT)	185.6	162.59	1.63	0.54

*Applicant has reserved all of the available Denver Aquifer supplies to support pumping from the existing exempt well, J+M Well No. 1, this brings the remaining available Denver Aquifer supplies to 0. The available water amounts before reservation were: Total

Appropriation 195.68af, Annual Avg. Withdrawal 100 Years 1.96af, Annual Avg. Withdrawal 300 Years 0.65af.

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to C.R.S. § 37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. Requested Uses. The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, irrigation, stock water, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct wells or use water from the not-nontributary Denver or Arapahoe aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. § 37-90-137(9)(c.5). Well Fields. Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. Averaging of Withdrawals. Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are and will be located as well as the underlying groundwater is owned by the Applicant. Application for Adjudication of Exempt Well. Name of Structure: J+M Well No. 1. Legal Description of Well: The well is located upon the Applicants' Property in the NE¼ NW¼ of Section 28, Township 12 South, Range 66 West of the 6th P.M., El Paso County, Colorado, located 3,997 feet from the South Section Line, and 3,153 feet from the East Section Line. The J+M Well No. 1 is permitted as an exempt well pursuant to Division of Water Resources Permit No. 172655. Source: The J+M Well No. 1 is permitted to withdraw from the not-nontributary Denver aquifer. Date of Initiation of Appropriation: On or before February 12, 1997. How Appropriation was Initiated: Completion of the construction of the well and placement into operation during the year of 1997. Date Water Applied to Beneficial Use: February 12, 1997. Amount Claimed: 15 g.p.m., absolute, or 0.65 annual acre-foot. Uses: Ordinary household uses in a single residence and the watering of domestic animals. Land Ownership: The land upon where the J+M Well No. 1 is drilled and which the water is and has been used is owned by the Applicant. Remarks: The J+M Well No. 1 is an exempt well issued pursuant to and for the uses authorized in § 37-92-602(1)(b), C.R.S. and a decree for the J+M Well No. 1 is sought pursuant to § 37-92-602(4), C.R.S. The Applicant seeks to maintain the exempt status of the well. Application for Plan for Augmentation. Structure to be Augmented. The structure to be augmented is the J+M Well No. 2, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Arapahoe aquifer of the

Denver Basin underlying the Applicant's Property as requested and described herein. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Arapahoe aquifer from the J+M Well No. 2, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. Statement of Plan for Augmentation. Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Arapahoe aquifer by one well proposed herein for a residential lot. The J+M Well No. 1 will remain an exempt well upon approval of this plan for augmentation and subdivision of Applicant's Property pursuant to SB 20-155 amending C.R.S. § 37-92-602(3)(b)(IV). Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: Uses. Household Use Only: 0.20 acre-feet annually within a single-family dwelling, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal system. The annual consumptive use will therefore be 0.020 acre-feet, with return flows of 0.18 acre-feet per year. Landscape Irrigation: 0.05 acre-feet annually per 1,000 square feet (2.18 acre-feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre-feet. Horses (or equivalent livestock): 0.011 acre-feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. The well will pump a maximum of 0.79 acre-feet of water per year from the Arapahoe aquifer. Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, and modeled for the State of Colorado's minimum use rules, is household use of 0.20 acre-feet of water per year with the additional 0.59 acre-feet available for irrigation of lawn and garden and the watering of up to two horses or equivalent livestock on the lot annually. An example of the use breakdown for El Paso County land use planning purposes is household use of 0.26 acre-feet of water per year with the additional 0.53 acre-feet of available for irrigation of lawn and garden and the watering of up to two horses or equivalent livestock on the lot annually. Depletions. Maximum stream depletions over the 300-year pumping period for the Arapahoe aquifer amounts to approximately 22.63% of pumping. Maximum annual depletions from the J+M Well No. 2 are therefore 0.178 acre-feet in year 300. Should Applicant's pumping be less than the 0.79 total per year described herein, resulting depletions and required replacements will be correspondingly reduced. Augmentation of Depletions During Pumping. Pursuant to C.R.S. § 37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of the residential well from the Arapahoe aquifer. Depletions during pumping will be effectively replaced by residential return flows from a non-evaporative septic system. The annual consumptive use for non-evaporative septic systems is 10% per year. At a household use rate of 0.20 acre-feet per year, 0.18 acre-feet is replaced to the stream system annually, utilizing a non-evaporative septic system. Thus, during pumping, stream depletions will be more than adequately augmented. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the J+M Well No. 2, Applicant will reserve up to the entirety of the nontributary Laramie Fox Hills aquifer, accounting for actual stream depletions replaced during the plan pumping period, as

necessary to replace any injurious post pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a new well permit for the J+M Well No. 2 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137.

CASE NO. 2023CW3046; Previous Case Nos. 17CW3018, 87CW61, 94CW58, 01CW48, 10CW92 – CITY OF SALIDA (“Salida”), c/o David Lady, Director of Public Works, 448 E. First Street, Suite 112, Salida, CO 81201 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Jennifer M. DiLalla, Evan R. Weis, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Boulevard, Suite 240, Boulder, CO 80302, (303) 443-8782)

Application For Finding Of Reasonable Diligence

CHAFFEE COUNTY

2. City of Salida North Fork Reservoir Exchange (“North Fork Exchange”): 2.1 Original decree: September 19, 1988, Case No. 87CW61, District Court, Water Division No. 2. 2.2 Subsequent decrees granting findings of reasonable diligence: June 1, 1995, Case No. 94CW58, District Court, Water Division No. 2 (“94CW58 Decree”); December 23, 2004, Case No. 01CW48, District Court, Water Division No. 2; April 20, 2011, Case No. 10CW92, District Court, Water Division No. 2; October 18, 2017, Case No. 17CW3018, District Court, Water Division No. 2. 2.3 Exchange reach: The appropriative right of exchange operates between the confluence of the Arkansas River and the South Arkansas River near the City of Salida, and the North Fork Reservoir. The exchange reach is shown on **Exhibit A** map attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 2.3.1 The exchange-from point is the confluence of the South Arkansas River with the Arkansas River, located in the SW1/4 SE1/4 of Section 4, Township 49 North, Range 9 East of the N.M.P.M., at a point approximately 300 feet north of the South section line and 2,300 feet west of the East section line of said Section 4, as shown on **Exhibit A**. 2.3.2 The exchange-to point is North Fork Reservoir, located on the North Fork of the South Arkansas River in the SE1/4 of Section 5, Township 50 North, Range 6 East of the N.M.P.M., the northeasterly point of contact of the dam axis with the existing ground being situated whence the northwest corner of Section 21, Township 50 North, Range 7 East of the N.M.P.M. bears South 68°50' East a distance of 31,920 feet; said point being further described by bearing on the Peak of Granite Mountain of North 23°28' West and by bearing on the Peak of Calico Mountain of North 37°03' East, thence South 15°30' West a distance of 500 feet to the southwesterly point of contact of the dam axis with existing ground, as shown on **Exhibit A**. The location of North Fork Reservoir is further described by the following UTM coordinates (NAD 83): Northing 4274282; Easting 384890.40. The water stored by exchange in North Fork Reservoir is water accruing to the drainage of the North Fork of the South Arkansas River upstream of the location of North Fork Reservoir as described above. 2.4 Sources of substitute supply: 2.4.1 Water regularly allocated to

Salida under the Fryingpan-Arkansas Project pursuant to lawful rules, regulations, and policies of the Southeastern Colorado Water Conservancy District (“Project Water”).

2.4.2 Excess augmentation credits available under Salida’s plan for augmentation decreed in Case No. 84CW158. 2.5 Amount: 3.6 cfs, ABSOLUTE; 56.4 cfs, CONDITIONAL. The 94CW58 Decree confirmed 3.6 cfs of the North Fork Exchange as absolute. 2.6 Appropriation date: December 21, 1987. 2.7 Use: Municipal, including incidental irrigation, by delivery to the North Fork of the South Arkansas River from North Fork Reservoir and subsequent diversion from or delivery to the South Arkansas River as described in paragraphs 2.7.1 through 2.7.3 below. Excess augmentation credits exchanged to North Fork Reservoir under the North Fork Exchange retain all uses for which they were decreed, including replacement of out-of-priority depletions under the plan for augmentation decreed in Case No. 84CW158.

2.7.1 The Harrington Ditch, located on the north bank of the South Arkansas River at a point in the NW1/4 of the SE1/4 of Section 10, Township 49 North, Range 8 East of the N.M.P.M., whence the Southwest corner of said Section 10 bears South 64°6’ West a distance of 3,969 feet, in Chaffee County, Colorado, as shown on **Exhibit A**.

2.7.2 The Municipal Water System of the City of Salida, consisting of three underground collection galleries located in the NE1/4 of Section 12, Township 49 North, Range 8 East of the N.M.P.M., which galleries feed into an underground reservoir. Water is pumped from the underground reservoir at a point in the NE1/4 of Section 12, Township 49 North, Range 8 East of the N.M.P.M, approximately 500 feet from the North section line and 1,175 feet from the East section line of said Section 12, as shown on **Exhibit A**.

2.7.3 Augmentation releases to the South Arkansas River to replace out-of-priority depletions under Salida’s plan for augmentation decreed in Case No. 84CW158.

3. Outline of work and expenditures during the diligence period towards completion of the appropriations and application of water to beneficial use: The diligence period for the North Fork Exchange is October 2017 through October 2023 (“Diligence Period”). During the Diligence Period, Salida worked diligently to develop the North Fork Exchange, complete the appropriation, and place the water to beneficial use, as demonstrated by the following activities and expenditures:

3.1 The Salida City Council directed Salida’s engineering consultant to prepare an update to the City’s Water Operations Master Plan, with a purpose of maximizing the efficient beneficial use of the City’s water rights portfolio, including the North Fork Exchange. Salida spent approximately \$46,229.27 in engineering fees on this project.

3.2 Salida paid the Southeastern Colorado Water Conservancy District in excess of \$4,680 for Project Water, which is a source of substitute supply for the North Fork Exchange.

3.3 Salida paid the Upper Arkansas Water Conservancy District (“Upper Ark”) \$9,900 to maintain Salida’s right to store water in North Fork Reservoir under the Lease Agreement dated June 21, 1993, between Salida and Upper Ark.

3.4 Salida paid in excess of \$187,591.18 for maintenance and improvement of the Harrington Ditch. Excess augmentation credits derived from Salida’s Harrington Ditch water rights are a source of substitute supply for the North Fork Exchange. As described in paragraph 2.7.1 above, Salida also uses the Harrington Ditch to re-divert and place to beneficial use water exchanged to North Fork Reservoir under the North Fork Exchange. Additionally, Salida devoted significant personnel hours each year to maintenance and operation of the Harrington Ditch.

3.5 Salida paid approximately \$205,500 in legal fees related to filing and prosecuting statements of opposition in Water Court to protect Salida’s water rights,

including the North Fork Exchange, from injury; and preparing and prosecuting Water Court applications to maintain the water rights that, along with the North Fork Exchange, are elements of Salida's integrated municipal system; and planning for and protecting the City's portfolio of water rights and the full integrated system. 3.6 Salida paid approximately \$82,390.50 in costs for engineering consultants in support of the activity described in paragraph 3.5 above, and for accounting under and other compliance with the decrees under which Salida generates the excess augmentation credits that provide a source of substitute supply for the North Fork Exchange. 3.7 Salida paid in excess of \$2,414,541.12 for maintenance and improvement of the integrated municipal system other than the Harrington Ditch. **4. Abandonment of portion of conditional water right.** In preparation for filing this Application, Salida directed its consulting water rights engineers, Hendrix Wai Engineering, Inc. ("HWE"), to develop an exchange potential analysis for the North Fork Exchange. A copy of HWE's report documenting that analysis is attached as **Exhibit B**. Based on HWE's conclusions in the exchange potential analysis, Salida by this Application abandons 25.2 cfs of the North Fork Exchange, leaving 3.6 cfs absolute and 31.2 cfs conditional. **5. Names and addresses of owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored:** North Fork Reservoir is located on land owned by the United States Forest Service, P. O. Box 25127, Lakewood, Colorado 80225. The reservoir is owned by the Upper Arkansas Water Conservancy District, 339 East Highway 50, Salida, Colorado 81201. WHEREFORE, Salida respectfully requests that the Court enter a decree (i) finding that Salida has exercised reasonable diligence in working to develop the North Fork Exchange, complete the appropriation, and place the water to beneficial use; and (ii) continuing the conditional portion of the North Fork Exchange in full force and effect for an additional diligence period.

CASE NO. 2023CW3047; Previous Case Nos. 2017CW3009; 2019CW3063; 2021CW3029; 2021CW3045 – SILOAM WELL ASSOCIATION, 1965 Pope Valley Ranch Rd. Pueblo, CO 81005 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Steven L. Janssen, Esq., 410 Main St., Longmont, CO 80501, Telephone: 303-717-7667, stevenljanssen@cs.com)

Application To Amend Plan For Augmentation To Add Covered Well

PUEBLO COUNTY

2. Description of Applicant: Applicant, Siloam Well Association ("SWA") is a Colorado Nonprofit Corporation organized exclusively for the nonprofit use of its members, a group of well users in the Siloam Road–Highway 96 area, southwest of Pueblo Reservoir ("Pueblo Complex Area") in Pueblo County. SWA was established, among other purposes, to obtain replacement water through a group lease from the Board of Water Works of Pueblo, Colorado (Pueblo Water) and pursue an Augmentation Plan Decree for SWA Member wells. **3. Prior Decree:** On July 18, 2018, in case no. 2017 CW 3009, this Court entered its Findings of Fact, Conclusions of Law, Amended Ruling of Referee, Judgment and Decree ("2017CW3009 Decree") approving a Plan for Augmentation for SWA Member wells, utilizing replacement water provided by SWA's Water Lease with Pueblo Water and establishing terms and conditions for administration of SWA Member wells and accounting of replacement water derived from the Pueblo Water Lease. **4.**

Purpose of Application: Applicant has a new member whose name is Masters Farm, LLC (“Masters”). Masters owns 39.96 acres in the N/2 of NE/4 of Section 10, Township 21 South, Range 68 West of the 6th P.M., and an existing irrigation well located on such property known as Masters Farm Well #2. This well was previously subject to a Decree of this Court in case no. 2016 CW 3059, Water Div. 2, approving a Plan of Augmentation with its depletions to the Arkansas River being calculated based on the parameters set forth therein. The Applicant and Masters now seek to add Masters Farm Well #2 as a “Covered Well” under the 2017CW3009 Decree and agree that thereafter Masters Farm Well #2 shall be operated and used, and its out-of-priority depletions replaced, pursuant to the terms and conditions of the 2017CW3009 Decree.

5. Name of Structure to be Augmented: Masters Farm Well #2 (WDID 1407821), DWR Permit #80641-F. 5.1. Masters Farm Well #2 was decreed in case no. 2016 CW 3059, Water Div. 2. 5.2. Masters Farm Well #2 is located within the NE/4 of the NE/4 of Section 10, Township 21 South, Range 68 West of the 6th P.M., at a point 137 feet from the North section line and 956 feet from the East section line. 5.3. Point of diversion of Masters Farm Well #2 is located at UTM Coordinates (Meters, Zone:13, NAD83) Easting: 501842, Northing: 4232884. 5.4. The location of Masters Farm Well #2 and the location of Use of Masters Farm Well #2 is shown 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.) 5.5. The water source for Masters Farm Well #2 is the Dakota aquifer, tributary to the Arkansas River.

6. Quantity of Depletions for Well Sought to be Added to Augmentation Plan: 10 acre feet per year.

7. Water right(s) to be used for Augmentation: Fully consumable replacement water owned or controlled by Pueblo Water and available under the Pueblo Water Lease. 7.1. Pueblo Water Lease. Applicant has entered a Water Lease Agreement dated January 31, 2017 (“Lease”), amended February 21, 2017 (“First Amendment”), amended November 1, 2017 (“Second Amendment”) and supplemented by Letters dated September 11, 2017, October 2, 2017, September 4, 2018, September 6, 2019, September 18, 2020, September 3, 2021, September 14, 2022 & September 4, 2023 (collectively: “Pueblo Water Lease”) with Pueblo Water for supplying fully consumable replacement water for augmentation of all depletions from Masters Farm Well #2 and the other SWA Member wells authorized under the 2017CW3009 Decree. Said Pueblo Water Lease, as amended and supplemented, is attached as **Exhibit B**. 7.2. Amount of Augmentation Water. The Pueblo Water Lease is for a specific amount of fully consumable replacement water annually; however such amount may also be modified annually upon request of SWA and in the discretion of Pueblo Water. This amount may be increased or decreased for subsequent water years, depending upon demand from SWA Members and upon Pueblo Water’s approval. The amount of replacement water currently leased by SWA from Pueblo Water is 28 acre feet for Water Year 2024. 7.3. Legally Available Replacement Water. All replacement water to be used by Applicant in the 2017CW3009 Decree, including the Decree sought by this Application, and provided by Pueblo Water under the Pueblo Water Lease must be decreed or otherwise legally available for augmentation purposes and deliverable upstream of the point of replacement, the Pueblo Reservoir. The sources of such water are unspecified in the Pueblo Water Lease, which sources are at the option of Pueblo Water, as long as they are legally available for augmentation purposes at the point of replacement, but such sources do not currently include Fryingpan-Arkansas Project

Water. Fully consumable water available for use in the 2017CW3009 Decree, including the Decree sought by this Application, may include, without limitation: 7.3.1. Water stored in Twin Lakes Reservoir in Lake County, if allowed hereafter by the Bureau of Reclamation; 7.3.2. Water stored in Turquoise Reservoir in Lake County, if allowed hereafter by the Bureau of Reclamation; 7.3.3. Water stored in Clear Creek Reservoir in Chaffee County. Currently, Pueblo Water anticipates making all deliveries of replacement water to Applicant from Clear Creek Reservoir; however, in the event Pueblo Water determines to make any deliveries of replacement water from sources other than Clear Creek Reservoir, the Division Engineer will be notified; 7.3.4. The sources of such replacement water may also include, but are not limited to, the water rights decreed in: Case Nos. 84-CW-177 & 84-CW-177(B), District Court, Water Division 2, including the reusable return flows decreed therein; Case Nos. 90-CW-340, W-1901, & 95-CW-321, District Court, Water Division 5; and Case Nos. 90-CW-55 & 04-CW-130, District Court, Water Division 2.

8. Annual Water Report. Pursuant to the 2017CW3009 Decree, SWA files an Annual Water Report with the Water Court by October 1st of each year, which includes: 8.1. the total amount of proposed SWA Member withdrawals and depletions to occur in the following water year; 8.2. the source and quantity of replacement water available to replace these depletions (attaching a current copy of the Pueblo Water Letter demonstrating the amount of water leased by SWA for the following water year); 8.3. a current table of SWA's members showing the amount of water allocated to each SWA Member for the following water year; 8.4. the amount of allowable pumping for all SWA Members based on the quantity and source of available replacement water to replace current depletions and lagged depletions resulting from all previous pumping; and 8.5. the projected total stream depletions from projected pumping in the following water year and previously authorized pumping and identifying the entities responsible for replacement of said depletions. Pursuant to the 2017CW3009 Decree, the Division Engineer shall review the Annual Water Report during the month of October so that approval will be complete before the following water year commences. In the event the Division Engineer does not approve the Annual Notice due to a determination that injury to other water rights will occur, then SWA Members, including Masters, will not be allowed to withdraw water from any SWA Member Wells, including Masters Farm Well #2, during the following water year until and unless acceptable modifications have been made.

9. Applicant does not intend to change a water right to provide a source of augmentation.

10. The plan for augmentation does not include an exchange of water right(s).

11. Complete Statement of Plan for Augmentation:

11.1. Purpose: This Application seeks to add Masters Farm Well #2 as a "Covered Well" under the 2017CW3009 Decree and provide for the augmentation of lagged stream depletions to the Arkansas River, in time, location and amount, as caused by the pumping of Masters Farm Well #2.

11.2. Diversions: Masters Farm Well #2 will make out-of-priority withdrawals of ground water from the Dakota aquifer which is tributary to the Arkansas River. Masters Farm Well #2 is located within Zone 3 of the SWA Inclusion Area as shown on **Exhibit C**, attached.

11.3. Uses: The entirety of the diversions from Masters Farm Well #2 will be used for domestic use, commercial use, including drinking, sanitation, and use in evaporative coolers, indoor irrigation inside two greenhouses and an indoor cultivation facility, and outdoor irrigation on lands owned by Masters Farm, LLC and described above.

11.4. Depletions: Ground water diversions from Masters Farm Well

#2, and its corresponding out-of-priority depletions, are considered to be one hundred percent (100%) consumptive. Applicant is not claiming any return flows resulting from the uses of water withdrawn from the Covered Wells, including the Masters Farm Well #2, in this application.

11.5. Point of Depletion: The pumping of Masters Farm Well #2, results in depletions to the Arkansas River at the Pueblo Reservoir in Section 36, Township 20 South, Range 66 West of the 6th P.M., Pueblo County, Colorado. A general area map depicting Zones 1, 2 and 3 of the SWA Augmentation Plan Area and the lines from their respective centroids to the point of depletion are shown on **Exhibit D**, attached.

11.6. Timing of Depletions: Timing of all depletions caused by pumping of Masters Farm Well #2 will be calculated according to the methodology approved for all SWA Member covered wells in Applicant's Augmentation Plan Decree in case no. 2017 CW 3009. Masters Farm Well #2 is located within Zone 3 of the SWA Member Inclusion Area as shown on attached **Exhibit C**. All SWA member wells in Zone 3 of the SWA Member Inclusion Area have their depletions calculated based upon the following parameters:

10.6.1. Distance to Depletion Point: 70,400.9 feet; 10.6.2. Aquifer Width: 92,151.90 feet; 10.6.3. Transmissivity: 1,078.4 gallons per day per foot; and 10.7.4 Storage Coefficient: 0.00005. Replacement timing for all lagged depletions was based on a Glover method analysis which was used to create a unit response function ("URF") for the centroid of Zone 3 of the SWA Inclusion Area, which includes Masters Farm Well #2. When developing the URF for Zone 3 of the SWA Inclusion Area, lagged depletions were determined by using the wrapped URF, which was calculated by proportionally wrapping the last 10% of depletions into the first 90% of the depletions. The resulting URF table for all SWA Member Wells within Zone 3 of the SWA Inclusion Area, which includes Masters Farm Well #2, as approved by the Applicant's Augmentation Plan Decree in Case No. 2017 CW 3009, is shown on **Exhibit E**, attached.

11.7. Replacement of Depletions: Replacement of depletions from all SWA Member Wells, including Masters Farm Well #2, during pumping and post-pumping, is achieved pursuant to the Pueblo Water Lease, as amended and supplemented from time to time and subject to the terms thereof. Replacement water is provided by fully consumable water owned or controlled by Pueblo Water that is decreed or otherwise legally available for augmentation purposes and further described in paragraph 7.3 above.

11.8. Point of Replacement: Replacement water is delivered to the Arkansas River at the Pueblo Reservoir at or above Section 36, Township 20 South, Range 66 West of the 6th P.M., Pueblo County, Colorado.

11.9. Limitation of Pumping: Withdrawals from Masters Farm Well #2, shall be limited so that monthly depletions do not exceed the replacement water delivered to the Arkansas River at or above the point of depletion, taking into account transit losses on deliveries of replacement water and that the total amount of annual depletions of all SWA Members, including Masters, do not exceed the total amount of annual replacement water available to Applicant under the Pueblo Water Lease.

11.10. Transit Losses: Any replacement water that is released to the Arkansas River upstream of the point of depletion shall be subject to river transit losses on delivery to the point of depletions, as determined by the Division Engineer and assessed in accordance with the standard administrative procedures used by the Division Engineer.

11.11. Credit for Replacement Water: Applicant will only claim credit for its fully consumable replacement water at the point of depletion, after assessment of transit losses. The Division Engineer's Office and the State Engineer's Office will administer the replacement water decreed herein from the

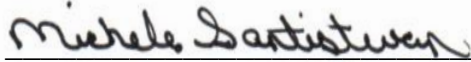
points it enters the river system to the point of depletion less the above transit losses. The replacement water will not be considered native water available for diversion by other water rights until it reaches the point of depletion. Applicant shall not seek any credits, off-sets, reductions in obligations, etc. for transit losses when Pueblo Water supplied replacement water is released from whatever source Pueblo Water determines it will release from. 11.12. Single Credit: Applicant shall only claim a single credit for the augmentation use of fully consumable replacement water made available under the 2017CW3009 Decree. 11.13. Measurement: Applicant requires all SWA Members to install and maintain totalizing flow meters on all Covered Wells, including Masters Farm Well #2, or any additional or replacement wells associated therewith, and thereafter maintain records and provide reports to the State Engineer or Division Engineer for Water Division 2 by the 10th day of the month following the month of pumping. 11.14. Accounting: Applicant has established an on-line database (http://siloam-data.com/depletions_accounting) accessible to the State and Division Engineers and Opposers, containing all required reporting information required by the 2017CW3009 Decree. Applicant will prepare and provide accounting forms subject to approval and revision at the direction of the Division Engineer. The accounting form or format will adhere to all applicable policy, guidelines, and protocol established by the State and Division Engineers for such accounting as long as consistent with the terms of the 2017CW3009 Decree and Colorado law. All accounting shall be submitted monthly, unless required more often at the request of the Division Engineer or Water Commissioner. 11.15. Administration: Applicant's use of the water provided by Pueblo Water under the Pueblo Water Lease, and any amendment(s) and supplement(s) thereto, pursuant to the 2017CW3009 Decree, including this Decree, for replacement of depletions of Masters Farm Well #2 will ensure that the Applicant has provided replacement water necessary to meet the lawful requirements of senior diverters at the time and location and to the **extent that seniors would otherwise be deprived of their lawful entitlement by the Applicant.** 12. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored including any modification to the existing storage pool:** Masters Farm Well #2 is an existing well; no new diversion or storage structure or modification to existing diversion or storage structure is sought by this Application. The owner of the property on which Masters Farm Well #2 is located is: Masters Farm, LLC, 5170 So. Franklin, Greenwood Village, CO 80121-1229.

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

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed

by the last day of December 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 13th day of November 2023.





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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