

IN THE DISTRICT COURT IN AND FOR WATER DIVISION NO. 4  
STATE OF COLORADO  
TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER  
DIVISION NO. 4

Pursuant to C.R.S. 37-92-302, as amended, you are notified that the following is a resume of all applications filed in the Water Court during the month of December 2023.

The names, address of applicant, source of water, description of water right or conditional water right involved, and description of the ruling sought are as follows:

**The water right claimed by this application may affect in priority any water right 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.**

**SUBSTITUTE WATER SUPPLY PLAN AND PRODUCED NONTRIBUTARY  
GROUNDWATER NOTIFICATION LIST**

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

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

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

**CASE NO. 2023CW28.** Applicant: Chad Simmons and 2 Bar S Ranch, LLC., UPS Store 1221, #189, 33-A Office Park Road, Hilton Head Island, SC 29928. Amended Application for Absolute and Conditional Surface and Storage Water Rights: Simmons Spring No. 7 - NE1/4SW1/4 of Section 36, T48N, R6W, NMPM., Easting 283412, Northing 4250355, Zone 13. Amount Claimed: 0.02 cfs (10 gpm) absolute for stockwater, wildlife, and to fill Westview Pond for its decreed uses. Appropriation Date: 05/27/2009. Simmons Spring No. 8 - NW1/4SW1/4 of Section 29, T48N, R5W, NMPM., Easting 284909, Northing 4251164, Zone 13. Amount Claimed: 0.10 cfs (45 gpm) absolute for stockwater, wildlife, irrigation of 1 acre, and conditional for irrigation of an additional 3 acres and to fill Westview Pond. Appropriation Date: 05/20/2009, 06/12/2023 when Engineer was contacted. Simmons Wastewater No. 9 - NW1/4SW1/4 of Section 29, T48N, R5W, NMPM., Easting 284918, Northing 4251159, Zone 13. Amount Claimed: Amount Claimed: 0.10 cfs (45 gpm) absolute for stockwater, wildlife, irrigation of 1 acre, and conditional for irrigation of an additional 11 acres and to fill Westview Pond. Appropriation Date: 05/27/2009, 06/12/2023 when Engineer was contacted. Westview Pond - SE1/4NW1/4 of Section 36, T48N, R6W, NMPM., Easting 283392, Northing 4250421, Zone 13. Amount Claimed: 2.57 acre-feet absolute for stockwater, wildlife, fish, and irrigation of 5 acres of areas below pond. Appropriation Date: 05/27/2009. Source for all Structures: Little Cimarron River, Big Cimarron River, Gunnison River. **GUNNISON COUNTY.**

**CASE NO. 2023CW39 (REF NO. 17CW44, 11CW14, 04CW72, 97CW150).** Applicants: Keith and Tamra Osborn, 78822 Black Bear Trail, Crawford, CO 81415. Application For Finding of Reasonable Diligence: Coyote Canyon Spring 4 – NE1/4NE1/4NE1/4 of Section 26, T51N, R7W, NMPM, Easting: 272737, Northing: 4282702, Zone 13, 55 feet from the North section line and 518 feet from the East section line. Coyote Canyon Spring 5 – NE1/4SE1/4SE1/4 of Section 23, T51N, R7W, NMPM, Easting: 272824, Northing: 4283009, Zone 13, 959 feet from the South section line and 260 feet from the East section line. Coyote Canyon Spring 6 – NE1/4SE1/4SE1/4 of Section 23, T51N, R7W, NMPM, Easting: 272858, Northing: 4282976, Zone 13, 853 feet from the South section line and 145 feet from the East section line. Source for all Springs: Smith Fork, North Fork Gunnison River, Gunnison River. Appropriation Date for all Springs: 09/25/1997. Amount Claimed Cumulative for all Springs: 0.30 c.f.s. conditional for domestic use, irrigation of 10 acres. The application on file with the water court contains an outline of the work performed during the diligence period. **MONTROSE COUNTY.**

**CASE NO. 2023CW40 (REF NO. 17CW43).** Applicant: Henry Warren, Jr. and Charles Warren, 280 Capetown, Montgomery, TX 77356. Application to Make Absolute: J & P Pipeline – NE1/4NW14, Section 1, T13S, R94W, 6th P.M., Easting: 253435, Northing: 4315967, Zone 13. Source: West Currant Creek, Dry Creek, Gunnison River. Appropriation Date: 05/25/2017. Amount Claimed: .05 c.f.s. absolute for irrigation and wildlife use. The application on file with the water court contains an outline of the work performed during the diligence period. **DELTA COUNTY.**

**CASE NO. 2023CW41.** Applicant: Haus Home, LLC. and Barthold Lichtenbelt, 3157 Ponderosa Dr., Ridgway, CO 81432. Application for Absolute Surface Water Rights: Willow Creek Ditch #1 – W1/4SE1/4 of Section 14, T44N, R10W, NMPM., Easting: 242706, Northing: 4216716.7, Zone 13. Amount Claimed: 0.75 cfs absolute for irrigation, livestock, wildlife, piscatorial, and fire control. Willow Creek Ditch #3 – SE1/4NW1/4 of Section 14, T44N, R10W, NMPM., Easting: 242431.3, Northing: 4217158.3, Zone 13. Amount Claimed: 1.00 cfs absolute for irrigation, livestock, wildlife, piscatorial, and fire control. Application for Absolute Storage Water Rights: Pond #1 – SE1/4NW1/4 of Section 14, T44N, R10W, NMPM., Willow Creek Ditch #3 is the diversion for Pond #1, Easting: 242431.3, Northing: 4217158.3, Zone 13. Amount Claimed: 3.0 acre feet absolute for irrigation, livestock, wildlife, piscatorial, and fire control. Pond #2 – SW1/4NW1/4 of Section 14, T44N, R10W, NMPM., Willow Creek Ditch #1 is the diversion for Pond #2, Easting: 242706, Northing: 4216716.7, Zone 13. Amount Claimed: 2.8 acre feet absolute for irrigation, livestock, wildlife, piscatorial, and fire control. Pond #3 – NW1/4NW1/4 of Section 14, T44N, R10W, NMPM., Willow Creek Ditch #1 is the diversion for Pond #3, Easting: 242706, Northing: 4216716.7, Zone 13. Amount Claimed: 2.0 acre feet absolute for irrigation, livestock, wildlife, piscatorial, and fire control. Source for all Ditches and Ponds: Willow Creek, Hay Creek, Leopard Creek, San Miguel River. Appropriation Date for all Ditches and Ponds: 07/01/2023. **SAN MIGUEL COUNTY.**

**CASE NO. 2023CW42.** Applicant: Garrett Gruener, DBA Dark Sky Ranch, PO Box 5018, Berkeley, CA 94705. Application for Absolute Storage Water Rights: Dark Sky Pond – NW1/4SE1/4 of Section 32, T44N, R10W, NMPM., Easting: 237706.2, Northing: 4212237.3, Zone 13. Source: San Miguel River. Appropriation Date: 10/31/2023. Amount Claimed: 1.20 acre feet absolute for irrigation, livestock, wildlife, and fire control. **SAN MIGUEL COUNTY.**

**CASE NO. 2023CW43.** Applicant: John J. Brown, 2110 5500 Rd., Delta, CO 81416. Application for Absolute Surface Water Rights: Brown Spring – SW1/4SW1/4 of Section 24, T51N, R11W, NMPM., Easting: 234208.3, Northing: 4284285.5, Zone 13. Amount Claimed: 0.67 cfs absolute for irrigation, livestock, fire prevention, piscatorial, and wildlife. Application for Absolute Storage Water Rights: Brown Pond – SW1/4SW1/4 of Section 24, T51N, R11W, NMPM., Easting: 234208.3, Northing: 4284285.5, Zone 13. Amount Claimed: 33 acre feet absolute for irrigation, livestock, fire prevention, piscatorial, and wildlife. Trickle Pond – SW1/4SW1/4 of Section 24, T51N, R11W, NMPM., Easting: 234238, Northing: 4283972.7, Zone 13. Amount Claimed: 1.5 acre feet absolute for irrigation, livestock, fire prevention, piscatorial, and wildlife. Source for the Spring and both Ponds: Dry Creek, Uncompahgre River. Appropriation Date for the Spring and both Ponds: 07/15/2023. **MONTROSE COUNTY.**

**CASE NO. 2023CW44 (REF NO. 17CW35, 11CW30, 04CW172, 98CW15).** Bud and Cindy Hawkins, 1606 Peach Valley Rd., Delta, CO 81416. Application For Finding of Reasonable Diligence - Tamerack Ditch – NW1/4SE1/4NW1/4 of Section 17, T51N, R9W, NMPM. 1,350 feet east of the west section line and 1,350 feet south of the north section line. Source: Gunnison River. Appropriation Date: 02/08/1998. Amount Claimed: 6.0 cfs conditional for irrigation of 140 acres and stockwater. The application

on file with the Water Court contains an outline of the work performed during the diligence period. **DELTA COUNTY.**

**CASE NO. 2023CW45.** Applicant: McAdams Trust #33478, 278 W Bridge St., #70, Hotchkiss, CO 81419. Application for Conditional and/or Absolute Surface and Storage Water Rights: Eagle Ditch System Diversion #1 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275791.18, Northing: 4302010.22, Zone 13. Eagle Ditch System Diversion #2 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 276069.10, Northing: 4302017.67, Zone 13. Eagle Ditch System Diversion #3 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 276102.05, Northing: 4301992.27, Zone 13. Eagle Ditch System Diversion #4 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 276092.88, Northing: 4301778.70, Zone 13. Eagle Ditch System Diversion #5 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 276085.68, Northing: 4301582.31, Zone 13, and running the entire line/ditch east west between approximately point #5 and point #6. Eagle Ditch System Diversion #6 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275943.38, Northing: 4301588.73, Zone 13. Eagle Ditch System Diversion #7 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275814.38, Northing: 4301857.79, Zone 13 and generally running north and south. Eagle Ditch System Diversion #8 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275831.59, Northing: 4301897.58, Zone 13. Eagle Ditch System Diversion #9 (pipe) – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275796.16, Northing: 4301954.71, Zone 13. Eagle Ditch System Diversion #10 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275755.56, Northing: 4301982.81, Zone 13. Amount Claimed for each Eagle Ditch System Diversion: 1.0 cfs absolute for gardens/landscaping/greenhouse irrigation, stockwater, domestic, commercial, recreation, piscatorial, wildlife, fire protection, storage and irrigation of 40 acres owned by the applicant. Eagle Pump #1 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275836.34, Northing: 4301898.20, Zone 13. Eagle Pump #2 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275831.60, Northing: 4301898.03, Zone 13. Eagle Pump #3 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275815.97, Northing: 4301893.93, Zone 13. Eagle Pump #4 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275807.00, Northing: 4301891.40, Zone 13. Eagle Pump #5 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275795.72, Northing: 4301956.11, Zone 13. Amount Claimed for each Eagle Pump: 50 gpm absolute for gardens/landscaping/greenhouse irrigation, stockwater, domestic, commercial, recreation, piscatorial, wildlife, fire protection, storage and irrigation of 40 acres owned by the applicant. Eagle Spring #1 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275893.02, Northing: 4301978.22, Zone 13. Eagle Spring #2 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275830.60, Northing: 4301995.45, Zone 13. Eagle Spring #3 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275890.24, Northing: 4301660.38, Zone 13. Eagle Spring #4 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275954.77, Northing: 4301596.72, Zone 13. Amount Claimed for each Eagle Spring: 50 gpm absolute for domestic, gardens/landscaping/greenhouse irrigation, stockwater, commercial, recreation, piscatorial, wildlife, fire protection, storage and irrigation of 40 acres owned by the applicant. Eagle Pond #1 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275802.80, Northing: 4301976.82, Zone 13.

Eagle Pond #2 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275982.09, Northing: 4301923.43, Zone 13. Eagle Pond #3 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275991.34, Northing: 4301936.13, Zone 13. Eagle Pond #4 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275998.80, Northing: 4301947.25, Zone 13. Eagle Pond #5 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 276009.16, Northing: 4301961.74, Zone 13. Eagle Pond #6 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 276802.80, Northing: 4301976.82, Zone 13. Eagle Pond #7 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 276036.44, Northing: 4301982.89, Zone 13. Eagle Pond #8 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 276056.06, Northing: 4301991.76, Zone 13. Eagle Pond #9 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 276065.61, Northing: 4302005.85, Zone 13. Eagle Pond #10 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 276079.90, Northing: 4302018.26, Zone 13. Eagle Pond #11 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 276076.13, Northing: 4301792.56, Zone 13. Eagle Pond #12 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 276087.68, Northing: 4301774.23, Zone 13. Eagle Pond #13 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 276070.61, Northing: 4301644.90, Zone 13. Eagle Pond #14 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 276057.15, Northing: 4301629.13, Zone 13. Eagle Pond #15 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 276042.98, Northing: 4301645.85, Zone 13. Eagle Pond #16 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275950.53, Northing: 4301620.34, Zone 13. Eagle Pond #17 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275948.63, Northing: 4301643.28, Zone 13. Eagle Pond #18 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275948.78, Northing: 4301656.76, Zone 13. Eagle Pond #19 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275948.80, Northing: 4301675.99, Zone 13. Eagle Pond #20 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275959.87, Northing: 4301775.68, Zone 13. Eagle Pond #21 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275936.17, Northing: 4301775.37, Zone 13. Eagle Pond #22 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275925.84, Northing: 4301795.17, Zone 13. Eagle Pond #23 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275944.24, Northing: 4301830.04, Zone 13. Eagle Pond #24 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275924.82, Northing: 4301847.30, Zone 13. Eagle Pond #25 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275891.62, Northing: 4301867.48, Zone 13. Eagle Pond #26 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275879.38, Northing: 4301873.81, Zone 13. Eagle Pond #27 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275871.00, Northing: 4301875.08, Zone 13. Eagle Pond #28 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275858.77, Northing: 4301885.99, Zone 13. Eagle Pond #29 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275897.76, Northing: 4301813.53, Zone 13. Eagle Pond #30 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275867.48, Northing: 4301837.36, Zone 13. Eagle Pond #31 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275817.85, Northing: 4301852.01, Zone 13. Eagle Pond #32 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275726.54, Northing: 4301902.55, Zone 13. Eagle Pond #33 –

SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275843.23, Northing: 430841.32, Zone 13. Eagle Pond #34 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275855.19, Northing: 4301832.02, Zone 13. Eagle Pond #35 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 275869.84, Northing: 4301822.20, Zone 13. Amount Claimed for each Eagle Pond: 2.0 acre feet, together with the right to fill and refill each in priority, for storage, gardens/landscaping/greenhouse irrigation, stockwater, domestic, commercial, recreation, piscatorial, wildlife, fire protection, and irrigation of 40 acres owned by the applicant. Eagle Diversion #1 – SW1/4NE1/4 of Section 17, T14S, R92W, 6<sup>th</sup> PM., Easting: 276185.68, Northing: 4301551.74, Zone 13. Amount Claimed: 1.0 cfs absolute for domestic, gardens/landscaping/greenhouse irrigation, stockwater, commercial, recreation, piscatorial, wildlife, fire protection, storage and irrigation of 40 acres owned by the applicant. Source for all Structures: North Fork of the Gunnison River, Gunnison River. Appropriation Date for all Structures: 02/09/1891. **DELTA COUNTY.**

**CASE NO. 2023CW3079 DELTA COUNTY.** 1. Applicants: **Jacqueline M. Avis**. P.O. Box 888, Franktown, CO 80116. APPLICATION TO MAKE ABSOLUTE. 2. Name of Structure: **Coats Wastewater Ditch**. 3. Date of Original Decree: December 13, 2017; Case No. 2017CW4045 in Water Division 4. 4. Legal Description: SE1/4 SW1/4 SE1/4, Section 27, Township 15 South, Range 92 West, 6<sup>th</sup> P.M., at a point 71 feet from the south section line and 1702 feet from the east section line, UTM coordinates, Zone 13, NAD83, Easting 0268923m, Northing 4288146m. 5. Source: Return flow (wastewater) taken tributary to Alum Gulch, tributary to the North Fork of the Gunnison River. 6. Date of Appropriation: March 27, 2017. 7. Amount: 0.35 c.f.s. 8. Use: Irrigation of 7 acres. 9. Outline of what has been done toward completion of the water right: From a pumphouse on the property, the waste water collected on Applicant's property is pumped to a water canon-sprinkler system and used to help irrigate 7 acres on Applicant's property. The water right was transferred to Applicant in 2021. 10. Names of owners of the land upon which structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use: Applicant. **DELTA COUNTY.**

**CASE NO. 2023CW3080.** (Ref. Case Nos. 17CW3030, 10CW42, 03CW93). Name, address, and telephone number of Applicant: Gunnison Riverbanks Ranch Association, 6850 State Highway 135, Gunnison, CO, 81230 512-426-9307. Please direct all correspondence to LAW OF THE ROCKIES, Kendall K. Burgemeister, Atty. Reg. #41593, 525 North Main Street, Gunnison, CO 81230, (970) 641-1903, kburgemeister@lawoftherockies.com. APPLICATION FOR FINDING OF REASONABLE DILIGENCE. Name of right: GUNNISON RIVERBANKS RANCH WELL FIELD. Case Number, Date, and Court of Original Decree and Subsequent Decrees: 03CW93 (March 4, 2004), 10CW42 (May 31, 2011), and 17CW3030 (Dec. 21, 2017), all in District Court, Water Division 4. Location: NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, N<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub> Section 4, Township 50 North, Range 1 East, N.M.P.M. and S<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub> Section 33 Township 51 North, Range 1 East, N.M.P.M. Source: Groundwater tributary to the Gunnison River. Appropriation Date: January 30, 2003. Amount: The well field will consist of 24 wells that may divert at a cumulative rate of 0.8 cubic feet per second ("cfs"), and in a cumulative amount of 10.6 acre-feet per year. Uses: Domestic, irrigation and livestock

watering. Depth: The well field will consist of 24 wells completed to various depths. The conditional water right for the GUNNISON RIVERBANKS RANCH WELL FIELD was previously made absolute in the cumulative amount of 0.267 cfs (120 gpm), for the following wells: Gunnison Riverbanks Ranch Caretaker / Barn Well; Gunnison Riverbanks Ranch Clubhouse Well; Gunnison Riverbanks Ranch Lot 11 Well; Gunnison Riverbanks Ranch Lot 13 Well; Gunnison Riverbanks Ranch Lot 15 Well; Gunnison Riverbanks Ranch Lot 16 Well; Gunnison Riverbanks Ranch Lot 17 Well; and Gunnison Riverbanks Ranch Lot 21 Well. The conditional water right was continued in the cumulative amount of 0.533 cfs (240 gpm) for the remaining wells. Name of right: GUNNISON RIVERBANKS RANCH PUMP AND PIPELINE. Case Number, Date, and Court of Original Decree and Subsequent Decrees: The water right was decreed in District Court, Water Division 4, in Case No. 03CW93, on March 4, 2004, and continued in Case No. 10CW42, on May 31, 2011. Location: NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 33, Township 50, North, Range 1 East, N.M.P.M. at a point approximately 2140 feet from the east line and 1280 feet from the north line of said Section 4. Source: Gunnison River. Appropriation Date: January 30, 2003. Amount: 1.0 cfs. Uses: domestic, irrigation and stock watering. Legal description of lands to be irrigated: A portion of NW $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$  Section 4, Township 50 North, Range 1 East, N.M.P.M.; a portion of S $\frac{1}{2}$ SE $\frac{1}{4}$  Section 33, Township 51 North, Range 1 East, N.M.P.M.; in Gunnison County. The locations of the GUNNISON RIVERBANKS RANCH WELL FIELD and GUNNISON RIVERBANKS RANCH PUMP AND PIPELINE are illustrated on Exhibit A filed with this Application. Relief Requested: Applicant seeks a finding of reasonable diligence with respect to the GUNNISON RIVERBANKS RANCH WELL FIELD and the GUNNISON RIVERBANKS RANCH PUMP AND PIPELINE. During the diligence period, the following actions have been taken, which demonstrate diligence towards completion of the appropriation of the remaining conditional water rights: Applicant has paid annually for augmentation water pursuant to a water allotment contract. Lot owners who have not drilled wells have been working on plans to construct residences that would be served by wells to be drilled. Applicant has made physical improvements to water rights infrastructure within Gunnison Riverbanks Ranch, including replacing ditch culverts under Lost River Lane and under Rainbow Run, \$16,000 of ditch clearing and cleaning work, and multiple repairs to a ditch diversion wing dam. All of the water rights owned by Applicant are part of an integrated project for the Gunnison Riverbanks Ranch subdivision. "When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system." C.R.S. § 37-92-301(4)(b); see also City & Cty. of Denver By & Through Bd. of Water Comm'rs v. Colorado River Water Conservation Dist., 696 P.2d 730, 750 (Colo. 1985) ("work accomplished on one portion of an integrated project may be considered evidence of reasonable diligence on the part of the appropriator as to another portion of the project, even in another drainage basin, if the portion on which the work is done must necessarily be constructed in order that the second portion may be successfully operated."). The owner of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored: All new structures will be located on land that is owned by Applicant or by

members of Applicant on whose behalf the Applicant files this Application. **GUNNISON COUNTY.**

**CASE NO. 2023CW3081.** San Miguel County. **Application for Findings of Reasonable Diligence.** Applicants, TSG Ski & Golf, LLC (“TSG”) c/o Director of Operations and Town of Mountain Village (“TMV”), c/o Paul Wisor, Town Manager, c/o Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602; 970-945-6546. Applicants request findings of reasonable diligence in the development of Oak Street Pump and Pipeline, Direct Use Enlargement and Oak Street Pump and Pipeline, Storage Enlargement, described below and collectively referred to herein as the “Subject Water Rights”. Oak Street Pump and Pipeline, Direct Use Enlargement and Oak Street Pump and Pipeline, Storage Enlargement decreed in 08CW191 entered 06/14/2011, and 17CW3036 entered 12/13/2017, in Dist. Ct., Water Div. 4. Structure: Oak Street Pump and Pipeline, Direct Use Enlargement. Legal Description: Located in the NE1/4 NW1/4, Sec. 1, T. 42 N., R. 9 W., N.M.P.M., 942 ft. from N. line and 2,521 feet from W. line. Also described as UTM Zone 13, NAD83, Easting 252,688 m and Northing 4,202,399 m. This is the corrected location per 10CW141 decree. See Exh. A on file with the Water Ct. Sources: San Miguel River. Date of Approp.: 12/31/2008. Amt.: 4.0 c.f.s., conditional. Use: Direct application to snowmaking, muni., irr., dom., com., rec., and fire protection uses consistent with the Decree in 90CW112, and subject to the limitations and conditions in that Decree. Structure: Oak Street Pump and Pipeline, Storage Enlargement. Legal Description: Located in the NE1/4 NW1/4, Sec. 1, T. 42 N., R. 9 W., N.M.P.M., 942 ft. from N. line and 2,521 ft. from W. line. Also described as UTM Zone 13N, NAD83, Easting 252,688 m and Northing 4,202,399 m. This is the corrected location per 10CW141 decree. Sources: San Miguel River. Date of Approp.: 12/31/2008. Amt.: 9.0 c.f.s., conditional. Use: Diversion and delivery of water into storage in the Prospect Creek Reservoir, Upper Prospect Creek Reservoir No. 1, and Upper Prospect Creek Reservoir No. 2 at their decreed alternate places of storage, and up to the storage volumes, described below. Water delivered through the Oak Street Pump and Pipeline under this priority into these reservoirs may be used for the purposes decreed to the reservoirs as described below, and solely to serve the projected demands described in 90CW112 decree. Prospect Creek Reservoir: Original Decree: 80CW405 entered 10/13/1982, in Dist. Ct., Water Div. 4. Decreed Location: The center of the embankment of the dam is located at a point from whence the SW corner of Sec. 9, T. 42 N., R. 9 W., N.M.P.M. bears N. 22 degrees E., 12,550 ft. Source: Prospect Creek, as filled and refilled continually when in priority by the Prospect Creek Reservoir Pumping Plant and Pipeline; Telco Well Nos. 9, 10, and 11; and Telco Well Nos. 6 and 8, including as changed for diversion at Telco Well Nos. 6/8A1 through 6/8A9 as 90CW112 decree. Amt.: 25 AF, absolute; 91CW25-91CW30 (Consolidated), 02CW153. Use: Irr., muni., com., dom., fire protection, recreation, aesthetic, snowmaking, and all other beneficial uses, either directly or by exchange. The Ct.’s decree in 90CW112 specifically provides that water stored under the Prospect Creek Reservoir water right may be used for replacement purposes under the plan for aug. approved in that case; 90CW112 Decree, paragraph 8.B. Upper Prospect Creek Reservoirs 1 & 2: Original Decree: 90CW112 entered 08/07/1996, in Dist. Ct., Water Div. 4. Decreed Locations: Upper Prospect Creek Reservoir No. 1: Located in the SW1/4 SE 1/4, Sec. 3, T. 42 N., R. 9 W., N.M.P.M. at a point that bears N. 56 degrees E., a distance of 11,090 ft. from the



SW Corner, Sec. 9, T. 42 N., R. 9 W., N.M.P.M Upper Prospect Creek Reservoir No. 2: Located in the SW1/4 SE1/4, Sec. 3, T. 42 N., R. 9 W., N.M.P.M. at a point that bears N. 58 degrees 10' E. a distance of 10,820 ft. from the SW Corner, Sec. 9, T. 42 N., R. 9 W., N.M.P.M. Source: Prospect Creek, as filled by the Upper Prospect Creek Snowmaking Pumping Plant & Pipeline; Telco Well Nos. 9, 10, and 11; and Telco Well Nos. 6 and 8, including as changed for diversion at Telco Well Nos. 6/8A1 through 6/8A9 as 90CW112 decree. Amt.: 20 AF was decreed conditional to each of the Upper Prospect Creek Reservoir Nos. 1 and 2 in 90CW112. 5.5 AF was decreed absolute to each of the Upper Prospect Reservoir Nos. 1 and 2, with 14.5 AF remaining conditional to each of the Upper Prospect Reservoir Nos. 1 and 2 in 02CW153. Use: The right to fill and refill continually when in priority for snowmaking, aesthetic, aug., muni., industrial and dom. purposes. A portion of the storage capacity is reserved to allow higher peak pumping rates for Upper Prospect Creek Snowmaking Pumping Plant & Pipeline. This Ct.'s decree in 90CW112 specifically provides that water stored under the Upper Prospect Creek Reservoir Nos. 1 and 2 water rights may be used for replacement purposes under the plan for aug. approved in that case; 90CW112 Decree, paragraph 8.B. Alternate Places of Storage: The Prospect Creek Reservoir and Upper Prospect Creek Reservoirs Nos. 1 and 2 were changed to the following alternate places of storage by the decree entered in 96CW232, and the original decreed locations were abandoned by that decree. The decreed sources to fill these three reservoirs at the three alternate locations described below were confirmed in the decree in 96CW232. The Oak Street Pump and Pipeline, Storage Enlargement water right decreed herein is an additional source that may be used to fill all of these three structures for the purposes, and up to the storage volumes, decreed to the Prospect Creek Reservoir and Upper Prospect Creek Reservoir Nos. 1 and 2. Prospect Creek Reservoir Alternate No. 1. Decreed Location: A point located in the N1/2 N1/2, Sec. 11, T. 42 N., R. 9 W., N.M.P.M., San Miguel Cty., CO, described as follows: Commencing at the NW Corner of said Sec. 11, from which the NW Corner of Sec. 2, T. 42 N., R. 9 W., N.M.P.M. bears N. 01°15' 39" E., 5,266.63 ft. (basis of bearing) thence S. 79°02' 56" E., 2,420 ft. to said point. The location may also be described as a point in the NE1/4 NW1/4, Sec. 11, T. 42 N., R. 9 W. of the N.M.P.M., 644 ft. from the N. Sec. line and 2,275 ft. from the W. Sec. line of said Sec. 11. Also described as UTM, NAD83, Zone 13, Easting 250,945 m and Northing 4,200,929 m. Storage capacity available at this location: 30 AF. Prospect Creek Reservoir Alternate No. 2. Decreed Location: A point located in the S1/2 S1/2 of Sec. 2, T. 42 N., R. 9 W., N.M.P.M., San Miguel Cty., CO, described as follows: Commencing at the SW Corner of said Sec. 2 from which the NW Corner of said Sec. 2 bears N. 01°15'39' E., 5,266.63 ft. (basis of bearing), thence N. 84°22' 05" E., 2,675 ft. to said point. The location may also be described as a point in the SE1/4 SW1/4, Sec. 2, T. 42 N., R. 9 W. of the N.M.P.M., 65 ft. from the S. Sec. line and 2,590 ft. from the W. Sec. line of said Sec. 2. Also described as UTM NAD83, Zone 13, Easting 251,047 m and Northing 4,201,143 m. Storage capacity decreed available at this location: 10AF. Prospect Creek Reservoir Alternate No. 3. Decreed Location: A point located in the S1/2 S1/2 of Sec. 2, T. 42 N., R. 9 W., N.M.P.M., San Miguel Cty., CO, described as follows: Commencing at the SW Corner of said Sec. 2 from which the NW Corner of said Sec. 2 bears N. 01°15'39" E. 5,266.63 ft. (basis of bearing), thence N. 74°17'27" E., 2,545 ft. to said point. The location may also be described as a point in the SE1/4 SW1/4, Sec. 2, T. 42 N., R. 9 W. of the N.M.P.M., 500 ft. from the S. Sec. line and

2,393 ft. from the W. Sec. line of said Sec. 2. Also described as UTM NAD83, Zone 13, Easting 250,991 m and Northing 4,201,277 m. Storage capacity available at this location: 25 AF. The surface area of the three alternate facilities combined will not exceed 15.5 acres, as decreed in 96CW232. Integrated System: As decreed in 10CW206, each of the water rights described herein is a component of Applicants' integrated water supply system for service to the TMV and TSG's resort facilities. A list of diligence activities performed in the six years preceding the filing of this Application is on file with this Ct. Name and address of owners of land: Applicants. (10 pages of original application, Exh. A) **SAN MIGUEL COUNTY.**

**CASE NO. 2023CW3082 DELTA COUNTY.** 1. Applicants: **Jan Chyc and Anna Chyc**, PO Box 900, Cedaredge CO 81413. Phone: 970-856-2539. APPLICATION TO MAKE ABSOLUTE IN PART, AND FOR A FINDING OF REASONABLE DILIGENCE. 2. Name of Structure: **JJAK WELL No. 2** (aka JJAK EAST WELL) and **ALEXANDER LODGE WELL.** Note: Applicants want to rename the JJAK Well No. 2 the "KUROS WELL." 3. Date of Original Decree: November 15, 2010; Case No. 2004CW89; Court: Division 4. 4. Legal Description: **JJAK Well No. 2 (KUROS WELL)** is located in the SE1/4 NW1/4, Section 1, Township 12 South, Range 95 West, 6th P.M., at a point 1520 feet east of the west section line and 1730 feet south of the north section line. **Alexander Lodge Well** is located in the SW1/4 NW1/4, Section 1, Township 12 South, Range 95 West, 6th P.M., at a point 1175 feet east of the west section line and 1700 feet north of the south section line. 5. Source: Groundwater tributary to Ward Creek, Tongue Creek, and the Gunnison River. 6. Date of Appropriation: August 1, 2003 for each well. 7. Amount: 0.067 c.f.s. for the **JJAK Well No. 2 (KUROS WELL)** and for 0.045 c.f.s. for the **Alexander Lodge Well.** 8. Use: Domestic, irrigation, commercial, recreation, fire protection and stock watering uses at the Alexander Lake Lodge and up to twenty (20) single family cabins. All uses protected by the augmentation plan stated in 2004CW89. 9. Outline of what has been done toward completion of the water right: Applicants continue to use both wells. Applicants built an eight (8) room boarding house that is served by the wells. Each room in the boarding house has a bathroom and stand-up shower – but no kitchen. Additionally, they have remodeled and updated the exterior of seven (7) cabins on Applicants' property, including new decks and new roofs. Applicants further installed a new roof on Alexander Lodge and remodeled its exterior. Applicants request to make absolute the water used since the addition of the boarding house, and for a finding of reasonable diligence with respect to the remaining water conditionally decreed. 10. Names of owners of the land upon which structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use: Applicants. **DELTA COUNTY.**

**CASE NO. 2023CW3083,** Colorado Water Conservation Board ("CWCB"), 1313 Sherman Street, Suite 718, Denver, Colorado 80203. Please direct communications regarding this case to Jennifer Mele, First Assistant Attorney General, Mackenzie Herman, Assistant Attorney General, Water Conservation Unit, Natural Resources & Environment Section, Office of the Colorado Attorney General, 1300 Broadway, 7<sup>th</sup> Floor, Denver, Colorado 80203. Telephone: (720) 508-6282 (Mele); (720) 508-6317 (Herman). Email: [jen.mele@coag.gov](mailto:jen.mele@coag.gov); [mackenzie.herman@coag.gov](mailto:mackenzie.herman@coag.gov). APPLICATION FOR WATER RIGHTS TO PRESERVE THE NATURAL ENVIRONMENT TO A REASONABLE

**DEGREE 1. Name & Address of Applicant:** Colorado Water Conservation Board (“CWCB”), 1313 Sherman Street, Suite 718 Denver, CO 80203, (303) 866-3441 Please direct communications regarding this case to the attorney listed in the caption. **2. Name of water right:** Cottonwood Creek Instream Flow Water Right. **3. Legal Description:** The Cottonwood Creek Instream Flow Water Right is located in the natural stream channel of Cottonwood Creek from the Hawkins Ditch headgate to the confluence with Roubideau Creek, a distance of approximately 23.30 miles. A map depicting the approximate location of the Cottonwood Creek Instream Flow Water Right reach is attached as **Exhibit 1**. A. Upstream Terminus: Hawkins Ditch headgate at: 1. UTM: Northing: 4267917.29; Easting: 206927.98 (NAD 1983 Zone 13 North) 2. Lat/Long: Latitude 38° 30' 41.13"N; Longitude 108° 21' 39.94"W. B. Downstream Terminus: confluence with Roubideau Creek at: 1. UTM: Northing: 4289842.88; Easting: 226016.62 (NAD 1983 Zone 13 North) 2. Lat/Long: Latitude 38° 42' 53.27"N; Longitude 108° 9' 4.03"W. C. The Universal Transverse Mercator (UTM) of the upstream and downstream termini will be used as the legal description for the decree in this matter. The Lat/Long coordinates are provided as cross-reference locations only. The UTM and Lat/Long locations for the upstream and downstream termini were derived from CWCB GIS using the National Hydrography Dataset (NHD). **4. Source:** Cottonwood Creek, tributary to Roubideau Creek, tributary to Gunnison River, tributary to Colorado River. A. Date of initiation of appropriation: July 19, 2023. B. How appropriation was initiated: Appropriation and beneficial use occurred on July 19, 2023, by the action of the CWCB pursuant to sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. C. Date applied to beneficial use: July 19, 2023. **6. Amount of water claimed (Absolute):** All of the unappropriated flow that is available from April 1 to September 30, effective after the flow rate in Cottonwood Creek exceeds 183 cubic feet per second (“cfs”) until such time that the flow rate recedes to 3.6 cfs or until September 30 whichever occurs first. The subject instream flow water right shall be subject to future water development allowances described in the chart below. Water rights that are decreed subsequent to the priority date for the instream flow water right claimed herein and that are within the applicable volume or flow rate shown below shall not be subject to curtailment by a call placed by the instream flow water right claimed herein. The allowances will be allocated based upon application to water court for a decree for such uses. The quantified allowance is appropriate in this case only because the Board is seeking all unappropriated flow during these certain conditions.

Water Development Uses	Annual Amount	Diversions Amount	Uses
	(AF)	(cfs)	
Water Use on Private Parcels	557.2	2.06	Irrigation, domestic, stock watering, recreation, wildlife, piscatorial, fire protection, and storage
BLM	2.0	0.22	
USFS	2.0	0.22	
CPW	1.0	0.1	
<b>Total</b>	<b>562.2</b>	<b>2.6</b>	

**7. Proposed Uses:** Instream flow to preserve the natural environment to a reasonable degree. **8. Terms and Conditions** pursuant to May 31, 2023 Stipulation and Agreement between the CWCB and the Colorado River Water Conservation District (“River District”) to be included in the findings of fact, conclusions of law and decree: A. The CWCB is provided with the authority to adopt conditions attached to an appropriation and to enter into stipulations for decrees or other forms of contractual agreements that the CWCB determines will preserve the natural environment to a reasonable degree. § 37-92-102(4)(a), C.R.S. B. The CWCB determined that the instream flow water right appropriated by the CWCB and claimed in this case shall be subject to the terms and conditions identified in paragraphs 8.C-I, and further determined that the inclusion of such terms and conditions as a component of the claimed instream flow water right will preserve the natural environment to a reasonable degree. C. This instream flow appropriation is unique in that it is the result of a consensus of various stakeholders with diverse interests, that the appropriation seeks to protect a range of flows between base and peak flows that were determined important to maintain the unique and rare riparian habitat, and that the appropriation was designed in part, and is intended in part, to be an alternative for protecting resources identified by the Bureau of Land Management to be “outstanding remarkable value” as defined by the 1968 Wild and Scenic Rivers Act, in lieu of a formal designation of the subject stream segment by the United States Congress into the National Wild and Scenic Rivers System. The terms and conditions, below, are part of a compromise and settlement with the River District and are unique circumstances that shall not establish any precedent and shall not be construed as a commitment to include any specific findings of fact, conclusions of law or administrative practices in future appropriations. D. Pursuant to section 37-92-102(3)(b), C.R.S., this instream flow appropriation shall be subject to the present uses or exchanges of water being made by other water users pursuant to appropriation or practices in existence on the date of this appropriation whether or not previously confirmed by court order or decree. E. The CWCB agrees that the instream flow appropriation in this case shall be subject to a future water development allowance of up to 562.2 acre-feet per year and a flow rate of up to 2.6 cfs and that water rights decreed subsequent to the priority date of the instream flow that are within the applicable volume or flow rate of the development allowance do not result in injury or adverse impact to the instream flow. New water uses that fall within the development allowance provided in paragraph 6 shall not be subject to curtailment by a water rights priority call placed by the instream flow water right decreed herein. The CWCB shall install and maintain suitable and proper measuring devices and keep such records as the Division Engineer may require for administration of the instream flow water right decreed herein. F. Any decree for this instream flow water right must indicate that the State Engineer and Division Engineer for Water Division 4 find that the decree is administrable. G. In addition to the water development allowance provided for in paragraph 6, above, the CWCB agrees not to file a statement of opposition to applications for water rights filed after July 19, 2023 that: (1) are for changes of existing senior water rights in the Cottonwood Creek basin for a change in point of diversion so long as there is no change in the type of use, and provided that the diversion and use of the changed senior water right continues to occur within the Cottonwood Creek basin as originally decreed; or (2) are for new junior water rights with decreed diversion amounts that do not result in an exceedance of the future water development allowance of up to 562.2 acre-

feet per year and a flow rate of up to 2.6 cfs within the subject instream flow basin. This paragraph 8.G applies only to water court applications for water rights and does not preclude the Board from enforcing its instream appropriation in accordance with the priority system against such water rights, provided, however, that new water rights decreed subsequent to the priority date of the instream flow that fall within the development allowance set forth in paragraph 6, above, shall not be subject to curtailment by a water rights priority call placed by the instream flow water right decreed herein. H. It is the intent of the CWCB that the instream flow water right decreed herein provide protection of the natural environment only to the extent authorized by state statute against adjudications of water rights made after the date of this filing. The CWCB intends that the instream flow water right decreed herein is not intended to be used as a stream flow standard in other administrative or regulatory permitting contexts. I. The findings of fact, conclusions of law and decree in this matter were completed as a result of substantial discussions, negotiations, and compromises by, between and among the CWCB and stakeholders pertaining to all parts of the findings, conclusions and decree. It is specifically understood and agreed by the parties hereto, and found and concluded by the Court, that the acquiescence of the parties to a stipulated decree under the specific factual and legal circumstances of this matter and upon the numerous and interrelated compromises reached by the parties shall never give rise to any argument, claim, defense or theory of acquiescence, waiver, bar, merger, stare decisis, res judicata, estoppel, laches, or otherwise, nor to any administrative or judicial practice or precedent, by or against any of the parties hereto in any other matter, case or dispute, nor shall testimony concerning such acquiescence of any party to a stipulated decree herein be allowed in any other matter, case or dispute. All parties stipulate and agree that they do not intend the findings, conclusions, and decree to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The parties further stipulate and agree that they each reserve the right to propose or to challenge any legal or factual position in any other matter filed in this or any other court without limitation by these Findings, Conclusions and Decree. **9. Names and addresses of owners or reputed owners of the land upon which any new or existing diversion structure will be located:** The notice required by section 37-92-302(2)(b), C.R.S., to the owners or reputed owners of the land upon which any new or existing diversion or storage structure is or will be constructed is not applicable in this case. This Application is for instream flow water rights, exclusive to the CWCB under the provisions of section 37-92-102(3), C.R.S. As an instream flow water right, the CWCB's appropriation does not require diversion structures or storage. See *Colo. River Water Conservation Dist. v. Colo. Water Conservation Bd.*, 594 P.2d 570, 574 (Colo. 1979); § 37-92-103(4)(c), C.R.S. As a surface water right, the CWCB's appropriation of instream flow water rights does not involve construction of a well. **10. Remarks:** This appropriation by the CWCB, on behalf of the people of the State of Colorado, is made pursuant to sections 37-92-102(3) & (4) and 37-92-103(3), (4) & (10), C.R.S. The purpose of the CWCB's appropriation is to preserve the natural environment to a reasonable degree. At its regular meeting on July 19, 2023, the CWCB determined, pursuant to section 37-92-102(3)(c), C.R.S., that the natural environment of Cottonwood Creek will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the CWCB's water rights herein, if granted; and that such

environment can exist without material injury to water rights. The CWCB has an existing instream flow water right on Cottonwood Creek from the Hawkins Ditch headgate to the confluence with Roubideau Creek, in the amount of 3.6 cfs (4/1 - 6/15), decreed in case 06CW0166 with an appropriation date of 1/25/2006. The flow rates sought herein are in addition to the amount of the existing instream flow water right. The terms and conditions described in paragraph 8, above, apply only to the Cottonwood Creek instream flow water right that is the subject of this application, and not the existing instream flow water rights on Cottonwood Creek decreed in Case No. 06CW166. **DELTA AND MONTROSE COUNTIES.**

**CASE NO. 2023CW3084**, Colorado Water Conservation Board (“CWCB”), 1313 Sherman Street, Suite 718, Denver, Colorado 80203. Please direct communications regarding this case to Jennifer Mele, First Assistant Attorney General, Mackenzie Herman, Assistant Attorney General, Water Conservation Unit, Natural Resources & Environment Section, Office of the Colorado Attorney General, 1300 Broadway, 7<sup>th</sup> Floor, Denver, Colorado 80203. Telephone: (720) 508-6282 (Mele); (720) 508-6317 (Herman). Email: jen.mele@coag.gov; mackenzie.herman@coag.gov. APPLICATION FOR WATER RIGHTS TO PRESERVE THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE **1. Name & Address of Applicant:** Colorado Water Conservation Board (“CWCB”), 1313 Sherman Street, Suite 718 Denver, CO 80203, (303) 866-3441 Please direct communications regarding this case to the attorney listed in the caption. **2. Name of water right:** Monitor Creek Instream Flow Water Right. **3. Legal Description:** The Monitor Creek Instream Flow Water Right is located in the natural stream channel of Monitor Creek from the confluence of Little Monitor Creek to the confluence with Potter Creek, a distance of approximately 8.29 miles. A map depicting the approximate location of the Monitor Creek Instream Flow Water Right reach is attached as **Exhibit 1**. A. Upstream Terminus: confluence with Little Monitor Creek at: 1. UTM: Northing: 4271672.53; Easting: 213030.78 (NAD 1983 Zone 13 North). 2. Lat/Long: Latitude 38° 32' 49.96" N; Longitude 108° 17' 33.99" W. B. Downstream Terminus: confluence with Potter Creek at: 1. UTM: Northing: 4279535.32; Easting: 220671.03 (NAD 1983 Zone 13 North). 2. Lat/Long: Latitude 38° 37' 13.36" N; Longitude 108° 12' 30.11" W. C. The Universal Transverse Mercator (UTM) of the upstream and downstream termini will be used as the legal description for the decree in this matter. The Lat/Long coordinates are provided as cross-reference locations only. The UTM and Lat/Long locations for the upstream and downstream termini were derived from CWCB GIS using the National Hydrography Dataset (NHD). **4. Source:** Monitor Creek, tributary to Potter Creek, tributary to Roubideau Creek, tributary to the Gunnison River, tributary to Colorado River. **5. A. Date of initiation of appropriation:** July 19, 2023. **B. How appropriation was initiated:** Appropriation and beneficial use occurred on July 19, 2023, by the action of the CWCB pursuant to sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. **C. Date applied to beneficial use:** July 19, 2023. **6. Amount of water claimed (Absolute):** All of the unappropriated flow that is available from April 1 to September 30, effective after the flow rate in Monitor Creek exceeds 111 cubic feet per second (“cfs”) until such time that the flow rate recedes to 4.6 cfs (4/1 - 5/31), 3.6 cfs (6/1 - 6/30) or 3.6 cfs, or until September 30, whichever occurs first. The subject instream flow water right shall be subject to future water development allowances described in the chart below. Water rights

that are decreed subsequent to the priority date for the instream flow water right claimed herein and that are within the applicable volume or flow rate shown below shall not be subject to curtailment by a call placed by the instream flow water right claimed herein. The allowances will be allocated based upon application to water court for a decree for such uses. The quantified allowance is appropriate in this case only because the Board is seeking all unappropriated flow during these certain conditions.

7.

WDA Uses	Annual Amount	Diversion Amount	Uses
	(AF)	(cfs)	
Future Irrigation <sup>(1)</sup>	1,623.1	6.85	Irrigation, domestic, stock watering, recreation, wildlife, fire protection, and storage
BLM	2.0	0.22	
USFS	2.0	0.22	
<b>Total</b>	<b>1,627.1</b>	<b>7.29</b>	

**Proposed Uses:** Instream flow to preserve the natural environment to a reasonable degree. **8. Terms and Conditions** pursuant to May 31, 2023 Stipulation and Agreement between the CWCB and the Colorado River Water Conservation District (“River District”) to be included in the findings of fact, conclusions of law and decree: A. The CWCB is provided with the authority to adopt conditions attached to an appropriation and to enter into stipulations for decrees or other forms of contractual agreements that the CWCB determines will preserve the natural environment to a reasonable degree. § 37-92-102(4)(a), C.R.S. B. The CWCB determined that the instream flow water right appropriated by the CWCB and claimed in this case shall be subject to the terms and conditions identified in paragraph 6, and further determined that the inclusion of such terms and conditions as a component of the claimed instream flow water right will preserve the natural environment to a reasonable degree. C. This instream flow appropriation is unique in that it is the result of a consensus of various stakeholders with diverse interests, that the appropriation seeks to protect a range of flows between base and peak flows that were determined important to maintain the unique and rare riparian habitat, and that the appropriation was designed in part, and is intended in part, to be an alternative for protecting resources identified by the Bureau of Land Management to be “outstanding remarkable value” as defined by the 1968 Wild and Scenic Rivers Act, in lieu of a formal designation of the subject stream segment by the United States Congress into the National Wild and Scenic Rivers System. The terms and conditions, below, are part of a compromise and settlement with the River District and are unique circumstances that shall not establish any precedent and shall not be construed as a commitment to include any specific findings of fact, conclusions of law or administrative practices in future appropriations. D. Pursuant to section 37-92-102(3)(b), C.R.S., this instream flow appropriation shall be subject to the present uses or exchanges of water being made by other water users pursuant to appropriation or practices in existence on the date of this appropriation whether or not previously confirmed by court order or decree. E. The CWCB agrees that the instream flow appropriation in this case shall be subject to a future water development allowance of up to 1,627.1 acre-feet per year and a flow rate of up to 7.29

cfs and that water rights decreed subsequent to the priority date of the instream flow that are within the applicable volume or flow rate of the development allowance do not result in injury or adverse impact to the instream flow. New water uses that fall within the development allowance provided in paragraph 6 shall not be subject to curtailment by a water rights priority call placed by the instream flow water right decreed herein. The CWCB shall install and maintain suitable and proper measuring devices and keep such records as the Division Engineer may require for administration of the instream flow water right decreed herein. F. Any decree for this instream flow water right must indicate that the State Engineer and Division Engineer for Water Division 4 find that the decree is administrable. G. In addition to the water development allowance provided for in paragraph 6, above, the CWCB agrees not to file a statement of opposition to applications for water rights filed after July 19, 2023 that: (1) are for changes of existing senior water rights in the Monitor Creek basin for a change in point of diversion so long as there is no change in the type of use, and provided that the diversion and use of the changed senior water right continues to occur within the Monitor Creek basin as originally decreed; or (2) are for new junior water rights with decreed diversion amounts that do not result in an exceedance of the future water development allowance of up to 1,627.1 acre-feet per year and a flow rate of up to 7.29 cfs within the subject instream flow basin. This paragraph 8.G applies only to water court applications for water rights and does not preclude the Board from enforcing its instream appropriation in accordance with the priority system against such water rights, provided, however, that new water rights decreed subsequent to the priority date of the instream flow that fall within the development allowance set forth in paragraph 6, above, shall not be subject to curtailment by a water rights priority call placed by the instream flow water right decreed herein. H. It is the intent of the CWCB that the instream flow water right decreed herein provide protection of the natural environment only to the extent authorized by state statute against adjudications of water rights made after the date of this filing. The CWCB intends that the instream flow water right decreed herein is not intended to be used as a stream flow standard in other administrative or regulatory permitting contexts. I. The findings of fact, conclusions of law and decree in this matter were completed as a result of substantial discussions, negotiations, and compromises by, between and among the CWCB and stakeholders pertaining to all parts of the findings, conclusions and decree. It is specifically understood and agreed by the parties hereto, and found and concluded by the Court, that the acquiescence of the parties to a stipulated decree under the specific factual and legal circumstances of this matter and upon the numerous and interrelated compromises reached by the parties shall never give rise to any argument, claim, defense or theory of acquiescence, waiver, bar, merger, stare decisis, res judicata, estoppel, laches, or otherwise, nor to any administrative or judicial practice or precedent, by or against any of the parties hereto in any other matter, case or dispute, nor shall testimony concerning such acquiescence of any party to a stipulated decree herein be allowed in any other matter, case or dispute. All parties stipulate and agree that they do not intend the findings, conclusions, and decree to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The parties further stipulate and agree that they each reserve the right to propose or to challenge any legal or factual position in any other matter filed in this or any other court without limitation by these Findings, Conclusions and Decree. **9. Names and addresses of owners or reputed owners of the land upon**



**which any new or existing diversion structure will be located:** The notice required by section 37-92-302(2)(b), C.R.S., to the owners or reputed owners of the land upon which any new or existing diversion or storage structure is or will be constructed is not applicable in this case. This Application is for instream flow water rights, exclusive to the CWCB under the provisions of section 37-92-102(3), C.R.S. As an instream flow water right, the CWCB's appropriation does not require diversion structures or storage. See *Colo. River Water Conservation Dist. v. Colo. Water Conservation Bd.*, 594 P.2d 570, 574 (Colo. 1979); § 37-92-103(4)(c), C.R.S. As a surface water right, the CWCB's appropriation of instream flow water rights does not involve construction of a well. **10. Remarks:** This appropriation by the CWCB, on behalf of the people of the State of Colorado, is made pursuant to sections 37-92-102(3) & (4) and 37-92-103(3), (4) & (10), C.R.S. The purpose of the CWCB's appropriation is to preserve the natural environment to a reasonable degree. At its regular meeting on July 19, 2023, the CWCB determined, pursuant to section 37-92-102(3)(c), C.R.S., that the natural environment of Monitor Creek will be preserved to a reasonable degree by the water available for the appropriations to be made; that there is a natural environment that can be preserved to a reasonable degree with the CWCB's water rights herein, if granted; and that such environment can exist without material injury to water rights. The CWCB has an instream flow water right on Monitor Creek pending in Case No. 22CW3076, from the confluence with Little Monitor Creek to the confluence with Potter Creek, in the amount of 4.6 cfs (04/01 - 05/31), 3.6 cfs (06/01 - 06/30) with an appropriation date of January 24, 2023. The flow rates sought herein are in addition to the amount of the pending instream flow water right. The terms and conditions described in paragraph 8, above, apply only to the Monitor Creek instream flow water right that is the subject of this application, and not the instream flow water right on Monitor Creek pending in Case No. 23CW3076. **MONTROSE COUNTY.**

**CAE NO. 23CW3085**, Colorado Water Conservation Board ("CWCB"), 1313 Sherman Street, Suite 718, Denver, Colorado 80203. Please direct communications regarding this case to Jennifer Mele, First Assistant Attorney General, Mackenzie Herman, Assistant Attorney General, Water Conservation Unit, Natural Resources & Environment Section, Office of the Colorado Attorney General, 1300 Broadway, 7<sup>th</sup> Floor, Denver, Colorado 80203. Telephone: (720) 508-6282 (Mele); (720) 508-6317 (Herman). Email: jen.mele@coag.gov; mackenzie.herman@coag.gov. APPLICATION FOR WATER RIGHTS TO PRESERVE THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE **1. Name & Address of Applicant:** Colorado Water Conservation Board ("CWCB"), 1313 Sherman Street, Suite 718 Denver, CO 80203, (303) 866-3441 Please direct communications regarding this case to the attorney listed in the caption. **2. Name of water right:** Potter Creek Instream Flow Water Rights. **3. Legal Description:** The Upper Potter Creek Instream Flow Water Right is located in the natural stream channel of Potter Creek from the USFS property boundary to the confluence with Monitor Creek, a distance of approximately 8.10 miles. The Lower Potter Creek Instream Flow Water Right is located in the natural stream channel of Potter Creek from the confluence of Monitor Creek to the confluence with Roubideau Creek, a distance of approximately 1.72 miles. A map depicting the approximate locations of the Potter Creek Instream Flow Water Rights reaches is attached as **Exhibit No. 1. A. Potter Creek (Upper) Instream Flow Water Right:** 1. Upstream Terminus: USFS Property Boundary at: a. UTM:

Northing: 4269972.26; Easting: 216078.92 (NAD 1983 Zone 13 North). b. Lat/Long: Latitude 38° 30' 40.35"N; Longitude 108° 21' 42.68"W. 2. Downstream Terminus: confluence with Monitor Creek at: a. UTM: Northing: 4279535.32; Easting: 220671.03 (NAD 1983 Zone 13 North). b. Lat/Long: Latitude 38° 42' 53.27"N; Longitude 108° 9' 4.03"W. 3. The Universal Transverse Mercator (UTM) of the upstream and downstream termini will be used as the legal description for the decree in this matter. The Lat/Long coordinates are provided as cross-reference locations only. The UTM and Lat/Long locations for the upstream and downstream termini were derived from CWCB GIS using the National Hydrography Dataset (NHD). **B. Potter Creek (Lower) Instream Flow Water Right**: 1. Upstream Terminus: confluence with Monitor Creek at: a. UTM: Northing: 4279535.32; Easting: 220671.03 (NAD 1983 Zone 13 North). b. Lat/Long: Latitude 38° 30' 40.35"N; Longitude 108° 21' 42.68"W. 2. Downstream Terminus: confluence with Roubideau Creek at: a. UTM: Northing: 4281496.83; Easting: 221904.86 (NAD 1983 Zone 13 North). b. Lat/Long: Latitude 38° 42' 53.27"N; Longitude 108° 9' 4.03"W. 3. The Universal Transverse Mercator (UTM) of the upstream and downstream termini will be used as the legal description for the decree in this matter. The Lat/Long coordinates are provided as cross-reference locations only. The UTM and Lat/Long locations for the upstream and downstream termini were derived from CWCB GIS using the National Hydrography Dataset (NHD). **4. Source**: Potter Creek tributary to Colorado River. **5. A. Date of initiation of appropriation**: July 19, 2023. **B. How appropriation was initiated**: Appropriation and beneficial use occurred on July 19, 2023, by the action of the CWCB pursuant to sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. **C. Date applied to beneficial use**: July 19, 2023. **6. Amount of water claimed (Absolute)**: A. Potter Creek (Upper) Instream Flow: Instream Flow protection initiates at 177 cfs and protects all unappropriated streamflow until such time that the flow rate recedes to the existing instream flow right of 4 cfs (4/1 - 6/15), 1.8 cfs (6/16 - 7/31), 1.4 cfs (8/1 - 2/29), or until September 30, whichever occurs first. The subject instream flow water right shall be subject to future water development allowances described in the chart below. Water rights that are decreed subsequent to the priority date for the instream flow water right claimed herein and that are within the applicable volume or flow rate shown below shall not be subject to curtailment by a call placed by the instream flow water right claimed herein. The allowances will be allocated based upon application to water court for a decree for such uses. The quantified allowance is appropriate in this case only because the Board is seeking all the unappropriated flow during these certain conditions.

WDA Uses	Annual Amount	Diversion Amount	Uses
	(AF)	(cfs)	
Water Use on Private Parcels	0.5	0.001	Irrigation, storage, recreation, wildlife, fire protection, domestic, and stock
BLM	2.0	0.22	
USFS	2.0	0.22	
<b>Total</b>	<b>4.5</b>	<b>0.441</b>	

B. Potter Creek (Lower) Instream Flow: Instream Flow protection initiates at 225 cfs and protects all unappropriated streamflow until such time that the flow rate recedes to the existing instream flow right of 4 cfs (4/1 - 6/15), 1.8 cfs (6/16 - 7/31), 1.4 cfs (8/1 - 2/29), or until September 30, whichever occurs first. The subject instream flow water right shall be subject to future water development allowances described in the chart below. Water rights that are decreed subsequent to the priority date for the instream flow water right claimed herein and that are within the applicable volume or flow rate shown below shall not be subject to curtailment by a call placed by the instream flow water right claimed herein. The allowances will be allocated based upon application to water court for a decree for such uses. The quantified allowance is appropriate in this case only because the Board is seeking all unappropriated flow during these certain conditions.

WDA Uses	Annual Amount	Diversion Amount	Uses
	(AF)	(cfs)	
Future Irrigation	1,623.1	6.85	Irrigation, domestic, stock watering, recreation, wildlife, fire protection, and storage
BLM	4.0	0.44	
USFS	4.0	0.44	
<b>Total</b>	<b>1,631.1</b>	<b>7.73</b>	

**7. Proposed Uses:** Instream flow to preserve the natural environment to a reasonable degree. **8. Terms and Conditions** pursuant to May 31, 2023 Stipulation and Agreement between the CWCB and the Colorado River Water Conservation District (“River District”) to be included in the findings of fact, conclusions of law and decree: A. The CWCB is provided with the authority to adopt conditions attached to an appropriation and to enter into stipulations for decrees or other forms of contractual agreements that the CWCB determines will preserve the natural environment to a reasonable degree. § 37-92-102(4)(a), C.R.S. B. The CWCB determined that the instream flow water right appropriated by the CWCB and claimed in this case shall be subject to the terms and conditions identified in paragraphs 8.C-I, and further determined that the inclusion of such terms and conditions as a component of the claimed instream flow water right will preserve the natural environment to a reasonable degree. C. This instream flow appropriation is unique in that it is the result of a consensus of various stakeholders with diverse interests, that the appropriation seeks to protect a range of flows between base and peak flows that were determined important to maintain the unique and rare riparian habitat, and that the appropriation was designed in part, and is intended in part, to be an alternative for protecting resources identified by the Bureau of Land Management to be “outstanding remarkable value” as defined by the 1968 Wild and Scenic Rivers Act, in lieu of a formal designation of the subject stream segment by the United States Congress into the National Wild and Scenic Rivers System. The terms and conditions, below, are part of a compromise and settlement with the River District and are unique circumstances that shall not establish any precedent and shall not be construed as a commitment to include any specific findings of fact, conclusions of law or administrative practices in future appropriations. D. Pursuant to section 37-92-102(3)(b), C.R.S., this instream flow

appropriation shall be subject to the present uses or exchanges of water being made by other water users pursuant to appropriation or practices in existence on the date of this appropriation whether or not previously confirmed by court order or decree. E. The CWCB agrees that the instream flow appropriation in the Potter Creek (Upper) Instream Flow water right shall be subject to a future water development allowance of up to 4.5 acre-feet per year and a flow rate of up to 0.441 cfs, and that the instream flow appropriation in the Potter Creek (Lower) Instream Flow water right shall be subject to a future water development allowance of up to 1,631.1 acre-feet per year and a flow rate of up to 7.73 cfs, and that water rights decreed subsequent to the priority date of the instream flow that are within the applicable volume or flow rate of the development allowance do not result in injury or adverse impact to the instream flow. New water uses that fall within the development allowance provided in paragraph 6 shall not be subject to curtailment by a water rights priority call placed by the instream flow water right decreed herein. The CWCB shall install and maintain suitable and proper measuring devices and keep such records as the Division Engineer may require for administration of the instream flow water right decreed herein. F. Any decree for this instream flow water right must indicate that the State Engineer and Division Engineer for Water Division 4 find that the decree is administrable. G. In addition to the water development allowance provided for in paragraph 6, above, the CWCB agrees not to file a statement of opposition to applications for water rights filed after July 19, 2023 that: (1) are for changes of existing senior water rights in the Potter Creek basin for a change in point of diversion so long as there is no change in the type of use, and provided that the diversion and use of the changed senior water right continues to occur within the Potter Creek basin as originally decreed; or (2) are for new junior water rights with decreed diversion amounts that do not result in an exceedance of the future water development allowance of up to 4.5 acre-feet per year and a flow rate of up to 0.441 cfs (Upper) and up to 1,631.1 acre-feet per year and a flow rate of up to 7.73 cfs (Lower) within the subject instream flow basin. This paragraph 8.G applies only to water court applications for water rights and does not preclude the Board from enforcing its instream appropriation in accordance with the priority system against such water rights, provided, however, that new water rights decreed subsequent to the priority date of the instream flow that fall within the development allowance set forth in paragraph 6, above, shall not be subject to curtailment by a water rights priority call placed by the instream flow water right decreed herein. H. It is the intent of the CWCB that the instream flow water right sought herein provide protection of the natural environment only to the extent authorized by state statute against adjudications of water rights made after the date of this filing. The CWCB intends that the instream flow water right sought herein is not intended to be used as a stream flow standard in other administrative or regulatory permitting contexts. I. The terms and conditions of this appropriation were completed as a result of substantial discussions, negotiations, and compromises by, between and among the CWCB and stakeholders. It is specifically understood and agreed by the River District and the CWCB that any acquiescence of the parties to any stipulated decree under the specific factual and legal circumstances of this matter and any compromise reached by the parties shall never give rise to any argument, claim, defense or theory of acquiescence, waiver, bar, merger, stare decisis, res judicata, estoppel, laches, or otherwise, nor to any administrative or judicial practice or precedent, by or against any of the parties hereto in any other matter, case or dispute, nor shall testimony concerning

such acquiescence of any party to a stipulated decree herein be allowed in any other matter, case or dispute. The River District and the CWCB stipulated and agreed that they do not intend any findings, conclusions, and decree ultimately entered in this case to have the effect of precedent or preclusion on any factual or legal issue in any other matter. These parties further stipulated and agreed that they each reserve the right to propose or to challenge any legal or factual position in any other matter filed in this or any other court without limitation by these Findings, Conclusions and Decree. **9. Names and addresses of owners or reputed owners of the land upon which any new or existing diversion structure will be located:** The notice required by section 37-92-302(2)(b), C.R.S., to the owners or reputed owners of the land upon which any new or existing diversion or storage structure is or will be constructed is not applicable in this case. This Application is for instream flow water rights, exclusive to the CWCB under the provisions of section 37-92-102(3), C.R.S. As an instream flow water right, the CWCB's appropriation does not require diversion structures or storage. See *Colo. River Water Conservation Dist. v. Colo. Water Conservation Bd.*, 594 P.2d 570, 574 (Colo. 1979); § 37-92-103(4)(c), C.R.S. As a surface water right, the CWCB's appropriation of instream flow water rights does not involve construction of a well. **10. Remarks:** This appropriation by the CWCB, on behalf of the people of the State of Colorado, is made pursuant to sections 37-92-102(3) & (4) and 37-92-103(3), (4) & (10), C.R.S. The purpose of the CWCB's appropriation is to preserve the natural environment to a reasonable degree. At its regular meeting on July 19, 2023, the CWCB determined, pursuant to section 37-92-102(3)(c), C.R.S., that the natural environment of Potter Creek will be preserved to a reasonable degree by the water available for the appropriations to be made; that there is a natural environment that can be preserved to a reasonable degree with the CWCB's water rights herein, if granted; and that such environment can exist without material injury to water rights. The CWCB has an existing instream flow water right on Potter Creek from the BLM-USFS Boundary to the confluence with Roubideau Creek, in the amount of 4.0 cfs (04/01 - 06/15); 1.80 cfs (06/16 - 07/31); 1.4 cfs (08/01 - 02/29); and 1.80 cfs (03/01 - 03/31), decreed in Case No. 04CW161 with an appropriation date of January 28, 2004. The flow rates sought herein are in addition to the amount of the existing instream flow water right. The terms and conditions described in paragraph 8, above, apply only to the Potter Creek instream flow water rights that are the subject of this application, not the existing instream flow water right on Potter Creek decreed in Case No. 04CW161. **MONTROSE COUNTY.**

**CASE NO. 2023CW3086 (90CW69, 97CW26, 05CW102, 17CW3046)** Diamond Ranch Holdings, LLC 858 Happy Canyon Road, Suite 200 Castle Rock, Colorado 80108 Telephone: 303-688-6300 *Please direct all pleadings and correspondence to:* Wayne F. Forman, Colo. Atty. Reg. No. 14082 and Katherine J. Duncan, Colo. Atty. Reg. No. 47890 of Brownstein Hyatt Farber Schreck, LLP at 675 Fifteenth Street, Suite 2900 Denver, CO 80202-4432 Phone Number: 303.223.1100 E-mail: wforman@bhfs.com; kduncan@bhfs.com **APPLICATION FOR FINDINGS OF REASONABLE DILIGENCE** 1. Name, Address, and Telephone Number of Applicant. Diamond Ranch Holdings, LLC<sup>1</sup> 858 Happy Canyon Road, Suite 200 Castle Rock, Colorado 80108 Telephone: 303-688-6300 2. Name of water right diversion structures. 2.1 Carr & Waddle Ditch, First Enlargement. 2.1.1 Decreed points of diversion. In Case No. 90CW69, entered on March 8, 1991, the Water Court entered a final decree establishing a point of diversion for the

Carr & Waddle Ditch, First Enlargement water right in common with the Carr & Waddle Ditch water right point of diversion, which is located at a point on the Southeast bank of the East Fork of Deep Creek in an unsurveyed portion of San Miguel County whence the Northwest Corner of Section 30 of Township 43 North, Range 9 West of the New Mexico P.M. bears South 39°49' West a distance of 8,290 feet, which point of diversion is protracted as being located in the SE¼SE¼ of Section 18, Township 43 North, Range 9 West, New Mexico P.M., approximately 500 feet distant from the protracted South section line and approximately 300 feet distant from the protracted East section line of said Section 18. In Case No. 02CW82, Applicant obtained a decree from the Water Court establishing an alternate point of diversion for its 1.14 cfs, conditional, Carr & Waddle Ditch, First Enlargement water right at the previously decreed point of diversion on Sheep Creek for the Aldasoro Ditch, Priority No. 248 and Aldasoro Ditch, First Enlargement water right, which alternate point of diversion is described as being located on the East bank of Sheep Creek in an unsurveyed portion of San Miguel County protracted as being in the NW¼SE¼ of Section 19, Township 43 North, Range 9 West of the New Mexico P.M., approximately 1,760 feet distant from the South section line and 1,960 feet distant from the East section line of said Section 19. This alternate point of diversion is also described as being located at a point bearing North 24°15' East a distance of 14,850 feet from the Northwest Corner of Section 6, Township 42 North, Range 9 West of the New Mexico P.M. See **Exhibit A** (map of subject conditional water right diversion points).

2.1.2 Subsequent Diligence Decrees: December 18, 2017, Case No. 17CW3046; April 22, 2008, Case No. 05CW102; July 19, 1999, Case 97CW26. 2.1.3 Source. East Fork of Deep Creek, a tributary of Deep Creek, a tributary of the San Miguel River. 2.1.4 Appropriation date. January 30, 1990. 2.1.5 Diversion rate. 1.14 cfs of a total of 2.5 cfs, conditional. 2.1.6 Uses. Domestic, commercial, irrigation, municipal, recreational, aesthetic, fish and wildlife, stock water, including the right to store for later release and to use said water rights by augmentation, replacement and exchange. 2.1.7 The name and address of the owner of land upon which the point of diversion is located. United States Department of Agriculture, Forest Service, Uncompahgre National Forest, Norwood Ranger District, P.O. Box 388, 1150 Forest Street, Norwood, CO 81423. 2.2 Aldasoro Ditch, First Enlargement. 2.2.1 Decreed point of diversion. Located at a point on the Southeast bank of Sheep Creek in an unsurveyed portion of San Miguel County bearing North 24°15' East a distance of 14,850 feet from the Northwest Corner of Section 6, Township 42 North, Range 9 West of the New Mexico P.M., which point of diversion is also protracted as being located in the NW¼SE¼ of Section 19, Township 43 North, Range 9 West of the New Mexico P.M. approximately 1,760 feet distant from the protracted South section line and approximately 1,960 feet distant from the protracted East section line of said Section 19. See Exhibit A. 2.2.2 Subsequent Diligence Decrees: December 18, 2017, Case No. 17CW3046; April 22, 2008, Case No. 05CW102; July 19, 1999, Case 97CW26. 2.2.3 Source. Sheep Creek, a tributary of Deep Creek, a tributary of the San Miguel River. 2.2.4 Appropriation date. January 30, 1990. 2.2.5 Diversion rate. 0.88 cfs of a total of 1.0 cfs, conditional. 2.2.6 Uses. Domestic, commercial, irrigation, municipal, recreational, aesthetic, fish and wildlife, stock water, including the right to store for later release and to use said water rights by augmentation, replacement and exchange. 2.2.7 The name and address of the owner of land upon which the point of diversion is located. United States Department of Agriculture, Forest Service,

Uncompahgre National Forest, Norwood Ranger District, P.O. Box 388, 1150 Forest Street, Norwood, CO 81423. 3. Detailed outline of activity during the diligence period. During the relevant diligence period, Applicant has taken steps to diligently develop the subject water rights including, but not limited to, the activities described below. 3.1 Three of the original twelve lots intended to be served by the augmentation plan originally decreed in Case No. 02CW82 (“augmentation plan”) have now been sold to the Town of Telluride and San Miguel County, reserving the subject conditional water rights for use on the remaining Diamond Ranch lots. Additionally, Diamond Ranch Lot 1, which was part of the twelve lots intended to be served by the augmentation plan, has been sold. That lot will now be served by a separate exempt well and will no longer be part of the augmentation plan. 3.2 Applicant has engaged water resource consultants to evaluate the need for changes to the augmentation plan decreed for the property in light of the sale of the four above-referenced lots, and the expectation that those lots will no longer need to be served by the Diamond Ranch centralized water system. 3.3 Applicant has spent hundreds of hours and more than \$150,000 during the relevant diligence period on civil engineers, water engineers, attorneys, and surveyors to, among other things, evaluate alternative lot configurations for the Diamond Ranch property in San Miguel County, Colorado, the property on which the subject conditional water rights are to be put to beneficial use. In particular, Applicant’s civil engineer spent significant time redesigning and refining the centralized water system to serve the remaining Diamond Ranch property. 3.4 Applicant has also engaged in conversations with at least three separate parties regarding the possibility of selling the remaining Diamond Ranch lots, together with all of the absolute and conditional water rights associated with the property. The existence of the subject conditional water rights is essential to establish that the property can be served with the centralized water system and that there are adequate irrigation rights associated with the property. 3.5 Applicant previously constructed and installed, in conformance with the augmentation plan, over two miles of water main pipeline to the lots. The property has been annually grazed and weed control measures implemented. WHEREFORE, Applicant, requests: 1. A finding of reasonable diligence as to all of the subject conditional water rights; 2. Continuing the subject conditional water rights in full force and effect; and 3. Such other relief as the Court deems just and proper. Footnote: <sup>1</sup> Diamond Ranch, LLC changed its name to Diamond Ranch Holdings, LLC on July 20, 2023. **SAN MIGUEL COUNTY.**

**CASE NO. 2023CW3087 (02CW82, 10CW091, 17CW3004)** Diamond Ranch Holdings, LLC 858 Happy Canyon Road, Suite 200 Castle Rock, Colorado 80108 Telephone: 303-688-6300 Please direct all pleadings and correspondence to: Wayne F. Forman, Colo. Atty. Reg. No. 14082 and Katherine J. Duncan, Colo. Atty. Reg. No. 47890 of Brownstein Hyatt Farber Schreck, LLP at 675 Fifteenth Street, Suite 2900 Denver, CO 80202-4432 Phone Number: 303.223.1100 E-mail: wforman@bhfs.com; kduncan@bhfs.com **APPLICATION FOR FINDINGS OF REASONABLE DILIGENCE** 1. Name, Address, and Telephone Number of Applicant. Diamond Ranch Holdings, LLC<sup>1</sup> 858 Happy Canyon Road, Suite 200 Castle Rock, Colorado 80108 Telephone: 303-688-6300 2. Name of Structures. 2.1 Diamond Ranch Well No. 6. 2.1.1 Date of original decree: June 22, 2004; 02CW82; District Court Water Division No. 4. 2.1.2 Subsequent decrees: December 18, 2017, 17CW3004; January 4, 2011, 10CW091. 2.1.3 Legal Description:

Located in an unsurveyed portion of San Miguel County protracted as being in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19, Township 43 North, Range 9 West of the New Mexico Principal Meridian, at a point 980 feet distant from the south section line and 2,180 feet distant from the west section line of said Section 19. Because said Section 19 is an unsurveyed irregular-shaped section, the quarter-quarter section description has been protracted from the southeast corner of this section. The location of the Diamond Ranch Well No. 6 is also described by the following UTM Zone 13 coordinates: 244,876 meters East; 4,206,191 meters North. See map attached hereto as **Exhibit A**. 2.1.4 Source: Groundwater tributary to Sheep Creek, Deep Creek, and the San Miguel River. 2.1.5 Appropriation Date: August 1, 2000, when the State Engineer issued Well Permit No. 226721 for monitoring and water quality sampling purposes. 2.1.6 Diversion Rate and Amount: 0.045 cfs (approximately 20 gpm), conditional, with a maximum cumulative annual diversion amount of 11.0 acre-feet per year diverted from Diamond Ranch Well Nos. 6 and 7. 2.1.7 Uses: Domestic, stock watering, fire protection, and irrigation uses. 2.1.8 Depth: 410 feet from the top of the surface casing according to the State Engineer's records regarding Well Permit No. 246573. 2.2 Diamond Ranch Well No. 7. 2.2.1 Date of original decree: June 22, 2004, 02CW82; District Court Water Division No. 4. 2.2.2 Subsequent decrees: December 18, 2017, 17CW3004; January 4, 2011, 10CW091. 2.2.3 Legal Description: Located in an unsurveyed portion of San Miguel County protracted as being in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19, Township 43 North, Range 9 West of the New Mexico Principal Meridian, at a point 1,240 feet distant from the south section line and 1,620 feet distant from the west section line of said Section 19. Because said Section 19 is an unsurveyed irregular-shaped section, the quarter-quarter section description has been protracted from the southeast corner of this section. The location of the Diamond Ranch Well No. 7 is also described by the following UTM Zone 13 coordinates: 244,696 meters East; 4,206,292 meters North. See Exhibit A. 2.2.4 Source: Groundwater tributary to Sheep Creek, Deep Creek, and the San Miguel River. 2.2.5 Appropriation Date: August 1, 2000, when the State Engineer issued Well Permit No. 226723 for monitoring and water quality sampling purposes. 2.2.6 Diversion Rate and Amount: 0.045 cfs (approximately 20 gpm), conditional, with a maximum cumulative annual diversion amount of 11.0 acre-feet per year diverted from Diamond Ranch Well Nos. 6 and 7. 2.2.7 Uses: Domestic, stock watering, fire protection, and irrigation uses. 2.2.8 Depth: 231 feet from the top of the surface casing according to the State Engineer's records regarding Well Permit No. 246572. 2.3 Diamond Ranch Augmentation Pond. 2.3.1 Date of original decree: June 22, 2004, 02CW82; District Court Water Division No. 4. 2.3.2 Subsequent decrees: December 18, 2017, 17CW3004; January 4, 2011, 10CW091. 2.3.3 Legal Description: Located in an unsurveyed portion of San Miguel County protracted as being in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19, Township 43 North, Range 9 West of the New Mexico Principal Meridian, at a point 1,260 feet distant from the south section line and 2,950 feet distant from the west section line of said Section 19. Because said Section 19 is an unsurveyed irregular-shaped section, the quarter-quarter section description has been protracted from the southeast corner of this section. The location of the Diamond Ranch Augmentation Pond is also described by the following UTM Zone 13 coordinates: 245,127 meters East; 4,206,287 meters North. See Exhibit A. 2.3.4 Source: An off-channel, non-jurisdictional reservoir storing water diverted from Sheep Creek at the common decreed point of diversion for the Aldasoro Ditch, Priority No. 248,



and Aldasoro Ditch, First Enlargement, which is located on the east bank of Sheep Creek in an unsurveyed portion of San Miguel County protracted as being in the NW1/4SE1/4 of Section 19, Township 43 North, Range 9 West of the New Mexico Principal Meridian, at a point approximately 1,760 feet distant from the south section line and 1,960 feet distant from the east section line of said Section 19. This decreed point of diversion is also described as being located at a point bearing North 24°15' East a distance of 14,850 feet from the Northwest Corner of Section 6, Township 42 North, Range 9 West of the New Mexico Principal Meridian. The Diamond Ranch Augmentation Pond will also store water from runoff and precipitation, when such storage is in priority. 2.3.5 Appropriation Date: August 1, 2000, by field inspection and location of the proposed Diamond Ranch Augmentation Pond for storage of 2.0 acre-feet, conditional, which conditional water right is the subject of the Application filed in this case. July 1, 1901 for storage of 1.035 acre-feet of excess historical irrigation consumptive use credits according to the Water Court's final Decree entered in Case No. 08CW82 on June 22, 2004, which excess historical irrigation consumptive use water right is not at issue pursuant to this diligence application. 2.3.6 Storage Amount: 3.035 acre-feet, of which 2.0 acre-feet is conditional and is the subject of this diligence application. The remaining 1.035 acre-feet of the total storage capacity is comprised of stored excess historical irrigation consumptive use credits, which were recognized by the Water Court in the final Decree entered in Case No. 02CW82 on June 22, 2004, and these 1.035 acre-feet of historical irrigation consumptive use credits are not a subject of this diligence application. 2.3.7 Uses: 2.0 acre-feet, conditional, for augmentation purposes. 1.035 acre-feet excess historical irrigation consumptive use credits for augmentation purposes. The 2.0 acre-feet, conditional, water right for augmentation purposes is the subject of this diligence application. The remaining 1.035 acre-feet of historical irrigation consumptive use credits are not a subject of this diligence application. 2.3.8 Surface Area: 0.50 acre. 2.3.9 Height and Length of Dam: Less than 10 feet in height, and approximately 150 feet in length. 2.3.10 Capacity: 3.035 acre-feet active capacity; 0 acre-feet dead storage. 3. Detailed outline of activity during the diligence period: During the relevant diligence period, Applicant has taken steps to diligently develop the subject water rights including, but not limited to, the activities described below. 3.1 Three of the original twelve lots intended to be served by the augmentation plan have now been sold to the Town of Telluride and San Miguel County, reserving the subject conditional water rights for use on the remaining Diamond Ranch lots. Additionally, Diamond Ranch Lot 1, which was part of the twelve lots intended to be served by the augmentation plan, has been sold. That lot will now be served by a separate exempt well and will no longer be part of the augmentation plan. 3.2 Applicant has engaged water resource consultants to evaluate the need for changes to the augmentation plan decreed for the property in light of the sale of the four above-referenced lots, and the expectation that those lots will no longer need to be served by the Diamond Ranch centralized water system. 3.3 Applicant has spent hundreds of hours and more than \$150,000 during the relevant diligence period on civil engineers, water engineers, attorneys, and surveyors to, among other things, evaluate alternative lot configurations for the Diamond Ranch property in San Miguel County, Colorado, the property on which the subject conditional water rights are to be put to beneficial use. In particular, Applicant's civil engineer spent significant time redesigning and refining the centralized water system to serve the remaining Diamond Ranch property. 3.4 Applicant

has also engaged in conversations with at least three separate parties regarding the possibility of selling the remaining Diamond Ranch lots, together with all of the absolute and conditional water rights associated with the property. The existence of the subject conditional water rights is essential to establish that the property can be served with the centralized water system and that there are adequate irrigation rights associated with the property. 3.5 Applicant previously constructed and installed, in conformance with the augmentation plan, over two miles of water main pipeline to the lots. The property has been annually grazed and weed control measures implemented. 4. The real property on which the subject structures are to be located may be owned by the following: 4.1 Applicant; 4.2 Owner of Lot 2 of the Diamond Ranch: Lisa Henson Revocable Trust, 16000 Venture Blvd. Suite 900, Encino, CA, 91436; and 4.3 Owner of Tract C: Deep Creek #12, LLC, a Colorado limited liability company, care of Cristine Mitchell, Registered Agent, P.O. Box 3497, Telluride, CO 81435. WHEREFORE, Applicant, requests: 1. A finding of reasonable diligence as to all of the subject conditional water rights; 2. Continuing the subject conditional water rights in full force and effect; and 3. Such other relief as the Court deems just and proper. Footnote: <sup>1</sup> Diamond Ranch, LLC changed its name to Diamond Ranch Holdings, LLC on July 20, 2023. **SAN MIGUEL COUNTY.**

YOU ARE FURTHER NOTIFIED THAT you have until the last day of February 2024 to file with the Water Clerk a Verified Statement of Opposition setting forth facts as to why a certain application should not be granted or why it should be granted only in part or on certain conditions. A copy of such a Statement of Opposition must also be served upon the applicant or the applicant's attorney and an affidavit of certificate of such service shall be filed with the Water Clerk, as prescribed by C.R.C.P. Rule 5. (Filing fee: \$192.00; Forms may be obtained from the Water Clerk's Office or on our website at <https://coloradojudicial.gov>). (This publication can be viewed in its entirety on the state court website at: <https://coloradojudicial.gov>). FRED CASTLE, Water Clerk, Water Division 4, 1200 N. Grand Ave., Bin A, Montrose, CO 81401