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

**Pursuant to C.R.S. 37-92-302(3), you are notified that the following is a resume in
Water Division 3, containing notice of applications and certain amendments filed in the
office of the Water Clerk during the month of June 2024 for each county affected.**

**Case No.: 24CW3005** (18CW3002; Consolidated Case Nos. 04CW9 and 99CW34) **APPLICATION FOR FINDINGS OF REASONABLE DILIGENCE AND TO MAKE CONDITIONAL WATER RIGHTS PARTIALLY ABSOLUTE** in RIO GRANDE AND MINERAL COUNTIES 1. Name and address of Applicant: Charles E. Nearburg, P.O. Box 823085, Dallas, TX 75382-3085 c/o David S. Hayes, John D. Buchanan, Hayes Poznanovic Korver LLC, 700 17th Street, Suite 1800, Denver, CO 80202, (303) 825-1980. 2. Names of conditional water rights: The following are collectively referred to as the “Conditional Water Rights”: A. Trout Creek Fishery Channel Nos. 1 through 5; B. John R. Grant Ditch Fishery Enlargement; C. Shallow Creek Fishery Channel No. 1; D. Miners Creek Fishery Channel No. 1; E. Rio Grande Fishery Channel Nos. 1 and 2; F. Broadacres Compound Irrigation Diversion; G. Applicants’ Shares Exchange; and H. District Water Exchange. 3. Description of Conditional Water Rights: The Conditional Water Rights were originally decreed on January 24, 2012, in Consolidated Case Nos. 04CW9 and 99CW34, District Court, Water Division No. 3, and subsequently continued by the June 26, 2018, decree entered in Case No. 18CW3002, and are individually more-fully described as follows, and depicted on Exhibits A & B (attached to the application and available for inspection at the office of the Division 6 Water Clerk or via CCE): A. **Trout Creek Fishery Channel No. 1**. i. Legal description. a. Surface water component. The proposed point of diversion for the Trout Creek Fishery Channel No. 1 is in the SW1/4 SE1/4, Section 25, T40N, R2W of the N.M.P.M., at a point 770 feet from the south section line and 2610 feet from the east section line. b. Ground water component. The Trout Creek Fishery Channel No. 1 includes an excavated channel and one or more ponds located along the course of the channel; some or all of this structure may intercept ground water. The proposed pond portion of this overall structure will include “Trout Creek Pond C,” in the SW1/4 SE1/4, Section 25, T40N, R2W of the N.M.P.M., at a point 770 feet from the south section line and 2540 feet from the east section line. ii. Source. a. Surface water component. Trout Creek, tributary to the Rio Grande. b. Ground water component. Ground water tributary to Trout Creek and the Rio Grande. iii. Date of appropriation. June 30, 2006. iv. Amount. a. Surface water component. 1 c.f.s., conditional. b. Ground water component. 1.38 acre-feet, conditional. v. Use. Recreation, piscatorial, and fish and wildlife habitat. B. **Trout Creek Fishery Channel No. 2**. i. Legal description. a. Surface water component. The proposed point of diversion for the Trout Creek Fishery Channel No. 2 is in the SW1/4 SE1/4, Section 25, T40N, R2W of the N.M.P.M., at a point 1320 feet from the south section line and 2570 feet from the east section line. b. Ground water component. The Trout Creek Fishery Channel No. 2 includes an excavated channel and one or more ponds located along the course of the channel; some or all of this structure may intercept ground water. The proposed pond portion of this overall structure will include “Trout Creek Pond I,” in the SW1/4 SE1/4, Section 25, T40N, R2W of the N.M.P.M., at a point 1340 feet from the south section line and 2500 feet from the east section line. ii. Source. a. Surface water component. Trout Creek, tributary to the Rio Grande. b. Ground water component. Ground water tributary to Trout Creek and the Rio Grande. iii. Date of appropriation. June 30, 2006. iv. Amount. a. Surface water component. 1 c.f.s., conditional. b. Ground water component. 0.16 acre-feet, conditional. v. Use. Recreation, piscatorial, and fish and wildlife habitat. C. **Trout Creek Fishery Channel No. 3**. i. Legal description. a. Surface water component. The proposed point of diversion for the Trout Creek Fishery Channel No. 3 is in the NW1/4 SE1/4, Section 25, T40N, R2W of the N.M.P.M., at a point 1920 feet from the south section line and 2440 feet from the east section line; with an alternate point of diversion at the point of diversion for the Trout Creek Fishery Channel No. 2, described above.b. Ground water component. The Trout Creek Fishery Channel No. 3 includes an excavated channel and one or more ponds located along the course of the channel; some or all of this structure may intercept ground water. The proposed pond portion of this overall structure will include “Trout Creek Pond B,” in the NW1/4 SE1/4, Section 25, T40N, R2W of the N.M.P.M., at a point 2140 feet from the south section line and 2520 feet from the east section line. ii. Source. a. Surface water component. Trout Creek, tributary to the Rio Grande. b. Ground water component. Ground water tributary to Trout Creek and the Rio Grande. iii. Date appropriation. June 30, 2006. iv. Amount. a. Surface water component. 1 c.f.s., conditional. b. Ground water component. 0.17 acre-feet, conditional. v. Use. Recreation, piscatorial, and fish and wildlife habitat. D. **Trout Creek Fishery Channel No. 4**. i. Legal description. a. Surface water component. The proposed point of diversion for the Trout Creek Fishery Channel No. 4 is in the NW¼ SE¼, Section 25, T40N, R2W of the N.M.P.M., at a point 2320 feet from the south section line and 2540 feet from the east section line; with alternate points of diversion at the points of diversion for the Trout Creek Fishery Channel No. 2, described above, and the Trout Creek Fishery Channel No. 3, described above. b. Ground water component. The Trout Creek Fishery Channel No. 4 includes an excavated channel and one or more ponds located along the course of the channel; some or all of this structure may intercept ground water. The proposed pond portion of this overall structure will include “Trout Creek Pond L,” in the NW1/4 SE1/4, Section 25, T40N, R2W of the N.M.P.M., at a point 2320 feet from the south section line and 2540 feet from the east section line. ii. Source. a. Surface water component. An unnamed tributary of Trout Creek, tributary to the Rio Grande; and, as to the alternate points, Trout Creek, tributary to the Rio Grande. b. Ground water component. Ground water tributary to an unnamed tributary of Trout Creek, Trout Creek and the Rio Grande. iii. Date of appropriation. June 30, 2006. iv. Amount. a. Surface water component. 1 c.f.s., conditional. b. Ground water component. 0.34 acre-feet, conditional. v. Use. Recreation, piscatorial, and fish and wildlife habitat. E. **Trout Creek Fishery Channel No. 5**. i. Legal description. a. Surface water component. The proposed point of diversion for the Trout Creek Fishery Channel No. 5 is in the SW1/4 NE1/4, Section 25, T40N, R2W of the N.M.P.M., at a point 2090 feet from the north section line and 1990 feet from the east section line. b. Ground water component. The Trout Creek Fishery Channel No. 5 includes an excavated channel and one or more ponds located along the course of the channel; some or all of this structure may intercept ground water. The proposed pond portion of this overall structure will include “Trout Creek Pond A,” in the SW1/4 NE1/4, Section 25, T40N, R2W of the N.M.P.M., at a point 1800 feet from the north section line and 2020 feet from the east section line. ii. Source. a. Surface water component. Trout Creek, tributary to the Rio Grande. b. Ground water component. Ground water tributary to Trout Creek and the Rio Grande. iii. Date of appropriation. June 30, 2006. iv. Amount. a. Surface water component. 1 c.f.s., conditional. b. Ground water component. 0.53 acre-feet, conditional. v. Use. Recreation, piscatorial, and fish and wildlife habitat. F. **John R. Grant Ditch Fishery Enlargement**. Legal description. a. Surface water component. 1. Decreed. The decreed location of the headgate for the John R. Grant Ditch, as described the April 9, 1903, decree for Water District 20, is on the East Bank of Shallow Creek (a tributary of the Rio Grande), at a point whence the 1/4 corner of Sections 3 and 10 in T41N, R1W, of the N.M.P.M. bears N. 20° W. 930 feet, Mineral County, Colorado. 2. Actual. The actual location of the headgate for the John R. Grant Ditch, and, consequently, for the John R. Grant Ditch Fishery Enlargement, is in the NE1/4 NW1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 140 feet from the north section line and 1850 feet from the west section line, alternately described as being at UTM coordinates (NAD83): Zone 13, Easting: 326519 (meters), Northing: 4188194 (meters). b. Ground water component. The John R. Grant Ditch Fishery Enlargement includes an excavated channel and one or more ponds located along the course of the channel; some or all of this structure may intercept ground water. The pond portion of this overall structure will include: (a) “Shallow Creek Pond A,” in the NE1/4 NW1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 660 feet from the north section line and 2400 feet from the west section line; (b) “Shallow Creek Pond B,” in the NE1/4 NW1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 830 feet from the north section line and 2250 feet from the west section line; and (c) “Shallow Creek Pond C,” the NE1/4 NW1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 920 feet from the north section line and 2420 feet from the west section line. ii. Source. a. Surface water component. Shallow Creek, tributary to the Rio Grande. b. Ground water component. Ground water tributary to Shallow Creek and the Rio Grande. iii Date of appropriation. June 30, 2006. iv. Amount. a. Surface water component. 2 c.f.s., conditional. b. Ground water component. 1.35 acre-feet, conditional. v. Use. Recreation, piscatorial, and fish and wildlife habitat. G. **Shallow Creek Fishery Channel No. 1**. i. Legal description. a. Surface water component. The proposed point of diversion for the Shallow Creek Fishery Channel No. 1 is in the SW1/4 NE1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 1600 feet from the north section line and 2540 feet from the east section line. b. Ground water component. The Shallow Creek Fishery Channel No. 1 includes an excavated channel and one or more ponds located along the course of the channel; some or all of this structure may intercept ground water. The proposed pond portion of this overall structure will include: (a) “Sediment Pond No. 1,” in the SW1/4 NE1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 1650 feet from the north section line and 2500 feet from the east section line; and (b) “Sediment Pond No. 2,” in the SW1/4 NE1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 1740 feet from the north section line and 2420 feet from the east section line. ii. Source. a. Surface water component. Shallow Creek, tributary to the Rio Grande. b. Ground water component. Ground water tributary to Shallow Creek and the Rio Grande. iii. Date of appropriation. June 30, 2006. iv. Amount. a. Surface water component. 5 c.f.s., conditional. b. Ground water component. 0.47 acre-feet, conditional. v. Use. Recreation, piscatorial, and fish and wildlife habitat. H. **Miners Creek Fishery Channel No. 1**. i. Legal description. The proposed point of diversion for the Miners Creek Fishery Channel No. 1 is in the SE1/4 SW1/4, Section 2, T41N, R1W of the N.M.P.M., at a point 1300 feet from the south section line and 2550 feet from the west section line. ii. Source. Miners Creek, tributary to the Rio Grande. iii. Date of appropriation. June 30, 2006. iv. Amount. 2 c.f.s., conditional. v. Use. Recreation, piscatorial, and fish and wildlife habitat. I. **Rio Grande Fishery Channel No. 1**. i. Legal description. a. Surface water component. The proposed point of diversion for the Rio Grande Fishery Channel No. 1 is in the SE1/4 NW1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 2340 feet from the north section line and 1300 feet from the west section line; with an alternate point of diversion in the SW1/4 NW1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 2510 feet from the north section line and 920 feet from the west section line. b. Ground water component. The Rio Grande Fishery Channel No. 1 includes an excavated channel and one or more ponds located along the course of the channel; some or all of this structure may intercept ground water. The proposed pond portion of this overall structure will include: (a) “Rio Grande Pond No. 1,” in the SE1/4 NW1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 2490 feet from the north section line and 1370 feet from the west section line; (b) “Rio Grande Pond No. 2,” in the SE1/4 NW1/4, Section 10, 41N, R1W of the N.M.P.M., at a point 2250 feet from the north section line and 1850 feet from the west section line; and (c) “Rio Grande Pond No. 3,” in the SE1/4 NW1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 2370 feet from the north section line and 1610 feet from the west section line. ii. Source. a. Surface water component. Rio Grande. b. Ground water component. Ground water tributary to the Rio Grande. iii. Date of appropriation. June 30, 2006. iv. Amount. a. Surface water component. 3 c.f.s., conditional. b. Ground water component. 1.8 acre-feet, conditional. v. Use. Recreation, piscatorial, and fish and wildlife habitat. J. **Rio Grande Fishery Channel No. 2**. i. Legal description. a. Surface water component. The proposed point of diversion for the Rio Grande Fishery Channel No. 2 is in the NW1/4 SE1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 2330 feet from the south section line and 1950 feet from the east section line; with an alternate point of diversion in the NW1/4 SE1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 2510 feet from the south section line and 2630 feet from the east section line. b. Ground water component. The Rio Grande Fishery Channel No. 2 includes an excavated channel and one or more ponds located along the course of the channel; some or all of this structure may intercept ground water. The proposed pond portion of this overall structure will include: (a) “Rio Grande Pond No. 4,” in the NW1/4 SE1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 2280 feet from the south section line and 1850 feet from the east section line; and (b) “Rio Grande Pond No. 5,” the NE1/4 SE1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 2170 feet from the south section line and 1270 feet from the east section line.ii. Source. a. Surface water component. Rio Grande. b. Ground water component. Ground water tributary to the Rio Grande. iii. Date of appropriation. June 30, 2006. iv. Amount. a. Surface water component. 3 c.f.s., conditional. b. Ground water component. 1.3 acre-feet, conditional. v. Use. Recreation, piscatorial, and fish and wildlife habitat. K. **Broadacres Compound Irrigation Diversion**. i. Legal description. Nearburg has appropriated three alternate points of diversion for the Broadacres Compound Irrigation Diversion, described as follows: a. In the NE1/4 SE1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 2430 feet from the south section line and 1080 feet from the east section line (“Alternate Point A”); b. In the NE1/4 SE1/4, Section 10, T41N, R1W of the N.M.P.M., at a point 2540 feet from the south section line and 1330 feet from the east section line (“Alternate Point B”); and c. In the NW¼ SE¼, Section 10, T41N, R1W of the N.M.P.M., at a point 2620 feet from the south section line and 1630 feet from the east section line (“Alternate Point C”). ii. Source. Rio Grande. iii. Date of initiation of appropriation. June 30, 2006. iv. Amount. 50 g.p.m., conditional. v. Use. Irrigation of approximately 5 acres in the NE1/4 SE1/4 and S1/2 NE1/4 of Section 10, T41N, R1W of the N.M.P.M. L. **Appropriative Rights of Exchange**. As a component of the plan for augmentation approved in Consolidated Case Nos. 04CW9 and 99CW34, Applicant has appropriated the following conditional rights of exchange: i. Applicant’s Shares Exchange. a. Upstream termini. The upstream termini are: 1. The points of diversion for the Conditional Water Rights, as more fully described above; 2. The headgate of the Caster Ditch, described as being a point which, from the stem of the gate valve on a 15 inch diameter, X16” pipe to the East quarter corner of Section 35, Township 40 North, Range 2 West, N.M.P.M., is South 64°5’ East 167.7 feet distant, alternately described as being at UTM coordinates (NAD83): Zone 13, Easting: 318924 (meters), Northing: 4172260 (meters); 3. The Shallow Creek Sediment Pond Nos. 3 & 4, which may be constructed for fishery habitat purposes within the channel of Shallow Creek in the SW1/4 NE1/4 of Section 10, T41N, R1W, N.M.P.M.; and 4. The Nearburg Augmentation Reservoir, to be constructed at Nearburg’s Broadacres Ranch or Trout Creek Ranch, the locations of which are described on Exhibits C & D (available for inspection at the office of the Division 3 Water Clerk or via CCE). b. Downstream terminus. The downstream terminus is the headgate of the Rio Grande Ditch No. 1, in the SE1/4 NW1/4 of Section 29, T40N, R6E, N.M.P.M., described as being located N 1° E 15.75 chains from the NE corner of SE1/4 SW1/4 of Section 29, T40N, R6E, N.M.P.M..c. Amount. The maximum rate of exchange is 1.08 c.f.s., conditional, subject to the further limitations of Subparagraph 27.A.iii. of the Decree entered in Consolidated Case Nos. 04CW9 and 99CW34. d. Date of appropriation. March 19, 2004. e. Source of replacement water. The Consumptive Use Credits available pursuant to Applicant’s Shares (in the Rio Grande Ditch No. 1), as changed in Decree entered in Consolidated Case Nos. 04CW9 and 99CW34. f. Use. The water diverted by exchange may be used for the same purposes as the Applicant’s Shares, as more fully described in Paragraph 21 of the Decree entered in Consolidated Case Nos. 04CW9 and 99CW34. ii. District Water Exchange. a. Upstream termini. The upstream termini are those described in Paragraph 3.L.i.a., of this Application. b. Downstream termini. The downstream termini of the appropriative rights of exchange utilizing the District Water are the confluence of the Rio Grande River with Trout Creek in Section 18, T40N, R1W, N.M.P.M.; Shallow Creek in Section 10, T41N, R1W, N.M.P.M.; and Miners Creek in Section 11, T41N, R1W N.M.P.M. c. Amount. The rate of exchange is up to 1.08 c.f.s., conditional. d. Date of appropriation. March 19, 2004. e. Source of replacement water. Water available to Applicant pursuant to contract(s) with the San Luis Valley Water Conservancy District (“District”). The District operates an Augmentation Program that consists, in part, of augmentation plan decrees in cases including, but not limited to, Case Nos. 84CW16 (August 12, 1985), 93CW43, 94CW62 (January 7, 1999), 03CW41 (August 1, 2005), 05CW13 (October 11, 2007), 07CW63 (December 3, 2008), 09CW34 (April 14, 2016), and 14CW3011 (pending), all in the District Court, Water Division No. 3 (the “District’s Decrees”). f. Use. The water diverted by exchange may only be used for the purposes set forth in the District’s Decrees and any contract for acquisition of water from the District. 4. Evidence of Reasonable Diligence: The Conditional Water Rights are part of an integrated system for supplying the water demands of the Trout Creek Ranch and/or Broadacres Ranch (collectively, the “Ranches”). The application contains a summary of specific projects and work undertaken during the diligence period (from June 2018 to present) and is available for inspection at the office of the Division 3 Water Clerk or via CCE. The list is not intended to be all inclusive and may be supplemented by additional evidence at any hearing in this matter. 5. Can and will: The Conditional Water Rights can and will be diverted, stored, or otherwise captured, possessed, and controlled, and will be beneficially used, with diligence in a reasonable time. C.R.S. § 37-92-305(9)(b). The provisions in the Colorado Supreme Court’s decision in *St. Jude’s Co. v. Roaring Fork Club, LLC*, 351 P.3d 442 (Colo. 2015), do not apply to the Conditional Water Rights, because the decree in Consolidated Case Nos. 04CW9 and 99CW34 was entered prior to July 15, 2015. § 37-92-305(20), C.R.S. 6. Claims to make absolute: On June 15, 2024, and other dates, the Broadacres Compound Irrigation Diversion was operated at a rate of up to 20.03 g.p.m. for irrigation use at Applicant’s Broadacres Ranch. The location of the Diversion is in the NW SE of Section 10, T41N, R1W, N.M.P.M., at a point located at approximately 37 degrees 49 minutes 1 second N, and 106 degrees 57 minutes 51 seconds W. On June 15, 2024, and other dates, the Applicants’ Shares Exchange operated at a rate of up to 0.045 c.f.s. to replace water taken upstream by the Broadacres Compound Irrigation Diversion. In addition, in water year 2023 and other years Applicant operated the Applicants’ Shares Exchange at a rate of up to 0.328 c.f.s. to replace evaporative and SET depletions associated with upstream fishery habitat structures pursuant to the plan for augmentation approved in Case No. 04CW9 and 99CW34. Applicant further reserves the right to make additional amounts absolute based on diversions or exchanges made subsequent to the date of this Application but prior to the entry of any decree pursuant to the Application. 7. Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: Applicant. WHEREFORE, Applicant respectfully requests that this Court enter Findings of Fact, Conclusions of Law, and a Judgment and Decree: (1) finding that Applicant has been reasonably diligent in the development of the Conditional Water Rights decreed in Consolidated Case Nos. 04CW9 and 99CW34, as described in the preceding paragraphs; (2) continuing said conditional water rights in full force and effect; (3) confirming the amounts made absolute for the Broadacres Compound Irrigation Diversion and Applicants’ Shares Exchange as more fully described in Paragraph 6, above, and (4) granting such other relief as may be appropriate.

**You are notified that you have until the last day of August 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 or
a protest to the requested correction. A copy of such a statement of opposition or
protest must also be served upon the Applicant or the Applicant’s attorney and an
affidavit or certificate of such service must be filed with the Water Clerk. The filing fee
for the Statement of Opposition is $192.00. Forms may be obtained from the Water
Clerk’s Office or our website at www.courts.state.co.us. Jennifer Pacheco, Water Clerk,
Water Division 3, 8955 Independence Way, Alamosa, CO 81101.**