

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING APRIL 2012

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during April 2012, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 12CW25 – KIOWA COUNTY ECONOMIC DEVELOPMENT FOUNDATION, INC., P. O. Box 250, Eads, CO 81036-0250

Application for Absolute Water Rights (Surface) and Absolute Water Storage Right, as amended

KIOWA COUNTY

Application for Surface Water Right: Name of Structure: Jackson's Pond Dam. **Legal description of each point of diversion in UTM format: UTM Coordinates:** Northing 4259966; Easting 693890; Zone 13. **Source of UTM:** USDA Arc Map verified with Garmin Handheld GPS; **Accuracy of location displayed on GPS device:** Less than 20 ft. **Legal description Using PLSS:** Kiowa County, NE ¼ NW ¼ Section 27, Township 18 South, Range 48 West, 6th P.M., 825 feet from the North line and 2345 feet from the West line. **Source of PLSS information:** USDA Aerial Photography & USGS Eads Quadrangle 7.5 minute series. **Source:** Tributary to Arkansas. **Date of appropriation:** February 29, 2012. **How appropriation was initiated:** February 29, 2012. **Date water applied to beneficial use:** Date dam built 1950 (per Dan Jackson former owner). **Amount claimed:** 3 cfs Absolute. **Use:** Stock water, wildlife habitat and recreation. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.

Application for Absolute Water Storage Right. Name of Reservoir: Jackson's Pond. **Legal description of location of dam centerline: UTM coordinates:** Northing 4259966; Easting 693890, Zone 13. **Source of UTM:** USDA Arc Map; **Accuracy of location displayed on GPS device:** Less than 50'. **Legal Description Using PLSS:** Kiowa County, NE ¼ NW ¼ Section 27, Township 18 South, Range 48 West, 6th P.M., 825 feet from the North line and 2345 feet from the West line. **Source of PLSS information:** USDA Aerial Photography & USGS Eads Quadrangle 7.5 minute series. **Source:** Tributary to Arkansas. **Date of appropriation:** February 29, 2012; **How appropriation was initiated:** Court Filing; **Date water applied to beneficial use:** 1950. **Amount claimed:** 55 acre feet Absolute. **Use:** Stock water, wildlife habitat and recreation. **Surface area of high water line:** 7.3 acres. **Vertical height of dam in feet:** 8.9 feet. **Length of dam in feet:** 375 feet. **Total capacity of reservoir in acre feet:** 21.1 acre feet. **Active capacity:** 14.6 a.f. **Dead storage:** 21.1 a.f. **Name(s)**

and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: Applicant.

CASE NO. 12CW32; Previous Case Nos. 98CW36 and 05CW48 – PETER F. MICHAELSON, P. O. Box 1505, Westcliffe, CO 81252; (719) 371-2250

Application to Make Absolute, as Amended

CUSTER COUNTY

Name of structure: RSpring2. **Describe conditional water right:** **Date of Original Decree:** August 23, 1999 Case No. 98CW36, Div. 2 Water Court. **Subsequent decrees awarding findings of diligence:** May 15, 2006; Case No. 05CW48(96CW36), Div. 2 Water Court. **Legal description:** 340 feet west of the west section line and 1890 feet south of the north section line of the NW ¼ Sec. 36, T22S, R73W, 6th P.M. **Source of water:** groundwater. **Appropriate Date:** December 31, 1985. **Amount:** 0.07 cfs; **Use:** Livestock and irrigation. **Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use:** This water supply currently serves part of a 160-acre ranch on which Applicant grows hay, and waters cattle and other livestock, and which consists of surface springs, a windmill well for livestock watering by permit, and a domestic well by permit. Since 2005 Applicant has constructed a series of lateral ditches on his property to distribute the water across a larger area of pasture, expanding the possible irrigation by seven acres. The area within which the laterals can distribute water is marked on the topographic map on file with the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Applicant was able to appropriate water from the springs for irrigation, hay production, and livestock use on the property identified above on the following dates and in the following amounts:

<u>Date</u>	<u>RSpring2</u>
June 18, 1998	.07 cfs
April 25, 1999	.15 cfs
May 2, 2004	.003 cfs
May 9, 2004	.001 cfs
February 21, 2005	.002 cfs
March 20, 2005	.14 cfs
April 15, 2005	.24 cfs
May 8, 2005	.08 cfs
April 1, 2005	.03 cfs
April 17, 2005	.01 cfs
April 30, 2005	.01 cfs
May 3, 2006	.02 cfs
March 25, 2007	.4 cfs
May 19, 2007	.3 cfs
July 3, 2007	.2 cfs
April 20, 2008	.1 cfs
May 17, 2008	.15 cfs

June 2, 2008	.09 cfs
July 3, 2008	.3 cfs
April 20, 2009	.1 cfs
June 10, 2009	.01 cfs
May 9, 2010	.2 cfs
June 6, 2010	.05 cfs

If claim to make absolute in whole or in part—Date water applied to beneficial use: January 27, 1998; **Amount applied for:** 0.07 cfs; **Use:** For irrigation and livestock use; **Amount used seasonally since application (see above):** RSpring2 = .13 cfs. **Provide evidence that diversion of water was made in priority:** The Water Commissioner never made a call on the flow from the springs. Applicant's diversion records are set forth above. **Description of place of use where water is applied to beneficial use:** Portions of the NW ¼ of the NW ¼ of Sec. 36, T22S, R73W of the 6th P.M. A USGS topographic map is attached to the application and the location of the area irrigated is marked thereon. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Jo Ellen Liedel, 7843 W. Windemere Circle, Littleton, CO 80120; Marion Arthur Alexander III and Rebeccah M. Alexander, 312 Homestead, Cary, NC 27513. Applicant requests the amount historically used as set forth above be the amount made absolute.

CASE NO. 12CW33 – WILLIAM E. GOLLAM, JR. and JANIS A. GOLLAM, 15751 State Hwy. 10, Walsenburg, CO 81089; (719) 738-1878

Application for Absolute Underground Water Right

HUERFANO COUNTY

Name of Well: Gollam #1; **Permit No.:** 169052. **Legal description of Well Using PLSS:** Huerfano County, NW ¼ NE ¼ Section 1, Township 27 South, Range 64 West, 6th P.M., 200 feet from the North line and 1600 feet from the East line. **Source of PLSS information:** Permit/Well Construction and Test Report. **Street Address:** 15751 State Hwy. 10, Walsenburg, CO 81089. **Source of water:** Ground water tributary to the Cucharas River. **Depth of well:** 240 ft. **Date of appropriation:** March 16, 1993; **How appropriation was initiated:** Well driller contacted. **Date water applied to beneficial use:** June 1993. **If well is tributary:** **Amount claimed:** 15 gpm Absolute. **Use or proposed use:** Household purposes inside 1 single-family dwelling, fire protection, domestic animal, livestock and poultry watering, tree and garden irrigation under 1 acre.

CASE NO. 12CW34 – PROTEST TO REVISED ABANDONMENT LIST. Protestant: LMJM, Ltd. Structure: La Jara Ditch. Source: Turkey/Trujillo Creek.

CASE NO. 12CW35 – JOSEPH R. McCAIN and THERESA A. McCAIN, P. O. Box 200, Gardner, CO 81040; (719) 746-2386

Application for Absolute Underground Water Right
HUERFANO COUNTY

Name of Well: Silver Fox; **Permit No.:** 252332. **Legal description of well using PLSS:** Huerfano County, NW ¼ SE ¼ Sec. 27, T25S, R69W, 6th P.M., 1644 feet from the South line and 1655 feet from the East line. **Source of PLSS information:** Well permit #252332. **Street Address:** 3250 CR 625, Gardner, CO 81040; **Subdivision:** Silver Fox Ranches; **Lot:** 2. **Source of water:** Ground water tributary to Maes Creek, tributary to the Huerfano River. **Depth of well:** 75 feet. **Date of appropriation:** 9-12-03. **How appropriation was initiated:** Well construction completed by Sharp Drilling Co.; **Date water applied to beneficial use:** 09-20-03. **If well is tributary – Amount claimed in gallons per minute:** 15 gpm Absolute. **Use:** fire protecton – domestic (1 single-family dwelling), domestic animals and livestock (horses, sheep, goats, chickens), up to 1 acre for gardening/orchard/lawn. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.

CASE NO. 12CW36 – TODD and WYNELLE TURNER This case was filed during April 2012, but the Water Judge ordered that this case not be published until an amended application is filed.

CASE NO. 12CW37 - LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION (“LAWMA”), 310 South 6th Street, P. O. Box 1161, Lamar, CO 81052 (Richard J. Mehren and Jennifer M. DiLalla, Moses, Wittemyer, Harrison and Woodruff, P.C., Attorneys for Applicant, P. O. Box 1440, Boulder, CO 80306-1440, (303) 443-8782 rmehren@mwhw.com, jdilalla@mwhw.com) Application for Plan for Augmentation
PROWERS AND BENT COUNTIES

2. Purpose of application: LAWMA is a non-profit corporation organized for the purpose of, among other things, providing a means for its members to continue to make groundwater diversions from wells and other structures with junior priorities and to continue to make surface water diversions from structures with junior priorities in the Arkansas River water rights regime. The purpose of this application is to include 20 additional wells or other structures in LAWMA’s plan for augmentation, which was decreed on March 8, 2007 in Case No. 02CW181, Water Division No. 2 (“02CW181 Decree”). Pursuant to paragraph 43 of the 02CW181 Decree, additional wells or structures may be added to the plan for augmentation by filing a new application with the Water Court. **3. Description of structures to be augmented:** A total of 20 additional wells or other structures will be included in LAWMA’s plan for augmentation through this application. The wells and other structures are: GP Resources, LLC, SEO ID 6705350; Permit No. 6434R; Case No. W-1822; Location: NW NE Sec. 32, T22S, R46W, 6th P.M., Prowers County, 1140 feet from the North line and 1390 feet from the East line; Source: Arkansas River Valley Fill Aquifer. GP Resources, LLC, SEO ID

6705373; Permit 4231F; Case No. W-1822; Location: NE NW Sec. 33, T22S, R46W, 6th P.M., Prowers County, 1140 feet from the North line and 2650 feet from the West line; Source: Arkansas River Valley Fill Aquifer. GP Resources, LLC, SEO 6705374; Permit 4230F; Case No. W-1822; Location: NE NW Sec. 34, T22S, R46W, 6th P.M., Prowers County, 1110 feet from the North line and 1840 feet from the West line; Source: Arkansas River Valley Fill Aquifer. GP Resources, LLC, SEO ID 6705355; Permit 5060F; Case No. W-1822; Location: NE NE Sec. 32, T22S, R46W, 6th P.M., Prowers County, 1150 feet from the North line and 50 feet from the East line. Source: Arkansas River Valley Fill Aquifer. GP Resources, LLC, SEO ID 6705491; Permit No. 12877R; Case No. W-3236; Location: SW NE Sec. 10, T23S, R44W, 6th P.M., Prowers County, 2550 feet from the North line and 2390 feet from the East line; Source: Arkansas River Valley Fill Aquifer. GP Resources, LLC, SEO ID 6705543; Permit 3124F; Case No. W-1940; Location: SE SW Sec. 31, T22S, R44W, 6th P.M., Prowers County, 1220 feet from the South line and 2530 feet from the West line; Source: Arkansas River Valley Fill Aquifer. GP Resources, LLC, SEO ID 6705481; Permit 7261R; Location: SW SE Sec. 1, T23S, R44W, 6th P.M., Prowers County, 630 feet from the South line and 2570 feet from the East line; Source: Arkansas River Valley Fill Aquifer. GP Resources, LLC, SEO ID 6705539; Permit 14273R; Case No. W-3303; Location: SW NW Sec. 11, T23S, R44W, 6th P.M., Prowers County, 2240 feet from the North line and 600 feet from the West line; Source: Arkansas River Valley Fill Aquifer. Santa Fe Trail River Ranch, Cottonwood Creek Pond; Location: NE NW Sec. 30, T22S, R44W, 6th P.M., Prowers County, 1150 feet from the North line and 1570 feet from the West line; Source: Cottonwood Creek. Santa Fe Trail River Ranch, Parrish Pond; Location: SE NW Sec. 29, T22S, R44W, 6th P.M., Prowers County, 1500 feet from the North line and 1890 feet from the West line; Source: Parrish Creek. Santa Fe Trail River Ranch, East Parrish Pond; Location: SE NW Sec. 29, T22S, R44W, 6th P.M., Prowers County, 1800 feet from the North line and 2440 feet from the West line; Source: Parrish Creek. Santa Fe Trail River Ranch, East Pond; Location: NW SE Sec. 26, T22S, R44W, 6th P.M., Prowers County, 1850 feet from the South line and 1550 feet from the East line; Source: Neumeister Return. Ronald Wollert, SEO ID 6705963; Permit 25132F; Case No. 79CW63; Location: NW NW Sec. 2, T21S, R48W, 6th P.M., Bent County, 180 feet from the North line and 1120 feet from the West line; Source: Arkansas River Valley Fill Aquifer. Ronald Wollert, SEO ID 6705964; Permit 6125F; Case No. W-247; Location: NW NW Sec. 2, T21S, R48W, 6th P.M., Bent County, 1080 feet from the North line and 1010 feet from the West line; Source: Arkansas River Valley Fill Aquifer. Ronald Wollert, SEO ID 6705959; Permit 4556F; Case No. W-2586; Location: SE NE Sec. 10, T21S, R48W, 6th P.M., Bent County, 2630 feet from the North line and 1260 feet from the East line; Source: Arkansas River Valley Fill Aquifer. Ronald Wollert, SEO ID 6705960; Permit 20251F; Location: SW NE Sec. 10, T21S, R48W, 6th P.M., Bent County, 2495 feet from the North Line and 1925 feet from the East line; Source: Arkansas River Valley Fill Aquifer. Ronald Wollert, SEO ID 6705962; Permit 5719F; Case No. W-246; Location; NW NE Sec. 10, T21S, R48W, 6th P.M., Bent County, 300 feet from the North line and 1910 feet from the East line; Source: Arkansas River Valley Fill Aquifer. Ronald Wollert, SEO ID 6705965; Permit 6936F; Case No. W-247; Location: SW NW Sec. 11, T21S, R48W, 6th P.M., Bent County, 2475 feet from the North line and 325 feet from the West line; Source: Arkansas River Valley

Fill Aquifer. E. Prowers Cemetery District (Hartman), SEO ID 6706459; Location: NW NE Sec. 26, T22S, R43W, 6th P.M., Prowers County, 280 feet from the North line and 2400 feet from the East line. Source: Fort Hays Limestone. E. Prowers Cemetery District (Holly), SEO ID 6706461; Location: SE SW Sec. 11, T23S, R42W, 6th P.M., Prowers County, 1260 feet from the South line and 2615 feet from the West line; Source: Dakota Sandstone. A map of the structures is attached to the application as Exhibit B. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **4. Water rights and other sources of water to be used for augmentation:** Those water rights and other sources of water identified in paragraph 40 of the 02CW181 Decree. **5. Statement of plan for augmentation:** The amount, timing and location of depletions from the wells and other structures described above will be determined in accordance with the methodologies approved in the 02CW181 Decree. LAWMA intends to account for and fully replace all out-of-priority stream depletions caused by the wells and other structures described above with fully-consumable water in accordance with the terms and conditions of the 02CW181 Decree in a manner that protects Colorado senior surface water rights from injury and assures compliance with the Arkansas River Compact. This application does not seek to change any provisions of the 02CW181 Decree other than the inclusion of additional wells and structures. **6. Name and address of owners of land upon which structures are or will be located:**

Owner	SEO ID No.	Address	City	State	ZIP
GP Resources, LLC	6705350	7991 Schaffer Parkway, Suite 200	Littleton	CO	80127
GP Resources, LLC	6705373	7991 Schaffer Parkway, Suite 200	Littleton	CO	80127
GP Resources, LLC	6705374	7991 Schaffer Parkway, Suite 200	Littleton	CO	80127
GP Resources, LLC	6705355	7991 Schaffer Parkway, Suite 200	Littleton	CO	80127
GP Resources, LLC	6705491	7991 Schaffer Parkway, Suite 200	Littleton	CO	80127
GP Resources, LLC	6705543	7991 Schaffer Parkway, Suite 200	Littleton	CO	80127
GP Resources, LLC	6705481	7991 Schaffer Parkway, Suite 200	Littleton	CO	80127
GP Resources, LLC	6705539	7911 Schaffer Parkway, Suite 200	Littleton	CO	80127
Santa Fe Trail River Ranch	Cottonwood Creek Pond	1600 Broadway, Suite 1580	Denver	CO	80202
Santa Fe Trail River Ranch	Parrish Pond	1600 Broadway, Suite 1580	Denver	CO	80202
Santa Fe Trail River Ranch	East Parrish Pond	1600 Broadway, Suite 1580	Denver	CO	80202
Santa Fe Trail River Ranch	East Pond	1600 Broadway, Suite 1580	Denver	CO	80202
Ronald Wollert	6705963	41969 County Road 34	Wiley	CO	81092
Ronald Wollert	6705964	41969 County Road 34	Wiley	CO	81092
Ronald Wollert	6705959	41969 County Road 34	Wiley	CO	81092
Ronald Wollert	6705960	41969 County Road 34	Wiley	CO	81092
Ronald Wollert	6705962	41969 County Road 34	Wiley	CO	81092
Ronald Wollert	6705965	41969 County Road 34	Wiley	CO	81092

East Prowers Cemetery District	6706459	P. O. Box 315	Holly	CO	81047
East Prowers Cemetery District	6706461	P. O. Box 315	Holly	CO	81047

WHEREFORE, LAWMA respectfully requests that this Court enter a decree approving this plan for augmentation and determining that such plan for augmentation will not cause injury to the vested or decreed conditional water rights of others and will not violate the Arkansas River Compact.

CASE NO. 12CW38; Previous Case Nos. 80CW44, 89CW62; 96CW32; 04CW100 - COLORADO CITY METROPOLITAN DISTRICT, P. O. Box 20229, Colorado City, CO 81019-9390 (Richard J. Mehren, Carolyn R. Steffl, Moses, Wittemyer, Harrison and Woodruff, P.C., Attorneys for Applicant, P. O. Box 1440, Boulder, CO 80306-1440, (303) 443-8782, rmehren@mwhw.com; csteffl@mwhw.com)

Application for Finding of Reasonable Diligence

PUEBLO COUNTY

2. Names of structures: a. Colorado City Reservoir No. 2. b. Greenhorn Creek Feeder. **3. Describe conditional water rights (as to each structure) giving the following from the Referee’s Ruling and Judgment and Decree:** **a. Colorado City Reservoir No. 2:** (1) Date of original decree: October 7, 1985, Case No. 80CW44, District Court, Water Division No. 2. (2) Date of subsequent decrees: A finding of reasonable diligence for these conditional water rights was made and decreed in Case No. 89CW62, District Court, Water Division No. 2, dated March 13, 1990; in Case No. 96CW32, District Court, Water Division No. 2, dated November 30, 1998; and in Case No. 04CW100, District Court, Water Division No. 2, dated April 21, 2006. (3) Location: Located in Sections 14, 15, 22 and 23, Township 24 South, Range 67 West, 6th P.M., on a site more particularly described as follows: The north abutment of the dam is located in the SW¼ SW¼, Section 14, Township 24 South, Range 67 West, 6th P.M. at a point approximately 700 feet East of the West section line and 550 feet North of the South section line of said Section 14. The south abutment of the dam is located in the NW¼ NW¼, Section 23, Township 24 South, Range 67 West, 6th P.M. at a point approximately 600 feet East of the West section line and 150 feet South of the North section line of said Section 23. (4) Source: Graneros Creek, Greenhorn Creek and nontributary ground water. (5) Appropriation date: May 14, 1980. Amount: 3,000 acre-feet, CONDITIONAL. (6) Use: Irrigation, domestic, municipal, and all other beneficial uses by exercise of direct flow and storage rights and exchange with treatment plant effluent and releases out of Colorado City Reservoir No. 3 and Colorado City Reservoir No. 4. (7) Depth (if well): Not applicable. **b. Greenhorn Creek Feeder:** (1) Date of original decree: October 7, 1985, Case No. 80CW44, District Court, Water Division No. 2. (2) Date of subsequent decrees: A finding of reasonable diligence for these conditional water rights was made and decreed in Case No. 89CW62, District Court, Water Division No. 2, dated March 13, 1990; in Case No. 96CW32, District Court, Water Division No. 2, dated November 30, 1998; and in Case No. 04CW100, District Court, Water Division No. 2, dated April 21, 2006. (3) Location: Headgate located in the NE¼ NW¼, Section 4, Township 25 South, Range 67 West, 6th P.M., at a point on the North bank of Graneros Creek, approximately 1,500 feet East of the West section line and 500 feet South of the North section line of said Section 4. (4) Source: Graneros Creek.

(5) Appropriation date: May 14, 1980. Amount: 10 cfs, CONDITIONAL. (6) Use: Irrigation, domestic, municipal, and all other beneficial uses. (7) Depth (if well): Not applicable. **4. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** a. The subject conditional water rights comprise an integral part of the District's existing and future water system to supply the District and its customers. "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." § 37-92-301(4)(b), C.R.S. Consequently, all work and expenditures by the District in connection with its projects directly and indirectly constitute part of the District's reasonable diligence in developing the subject conditional water rights to be used in its water system. b. During the diligence period the District undertook the following actions to complete the appropriation and beneficial use of the subject conditional water rights: (1) In 2006, the District contracted with RJH Consultants, Inc. ("RJH") to conduct an engineering study specifically related to development of the conditional water storage right decreed to Colorado City Reservoir No. 2, resulting in the *Colorado City Reservoir Conceptual-Level Engineering Report*, dated February 2007. The District expended approximately \$30,000 in connection with that study during the diligence period. (2) RJH conducted additional geotechnical field investigation, including borings, and laboratory tests in August 2010, which specifically related to development of the conditional water storage right decreed to Colorado City Reservoir No. 2. Based on those investigations and tests, the 2007 engineering report was updated by the Addendum to Conceptual-Level Engineering Report for Colorado City Reservoir No. 2, dated March 2011. The District spent approximately \$40,000 on that update. (3) The District's Board of Directors adopted a Resolution on April 10, 2012 pursuant to which the District resolved to continue the subject conditional water rights. (4) The subject conditional water rights are part of a unified and integrated water supply system that is being constructed and maintained to supply water to Colorado City residents and users for municipal and other purposes. During the diligence period, the District conducted other activities and incurred other expenses to develop, operate and maintain its municipal water system, including: i. The District contracted with Burns & McDonnell to construct a water treatment plant expansion, and paid Burns & McDonnell over \$1,900,000 for designing and building the expansion, during the diligence period, in 2006 and 2007. ii. The District also constructed a new water treatment plant (the Cold Springs Water Treatment Plant) during the diligence period. The District spent over \$1,000,000 in construction costs paid to Aslan Construction Inc., over \$225,000 paid to Malcom Pirnie for construction engineering, over \$450,000 paid to Zenon Environmental Corporation for water treatment plant membranes, and approximately \$10,000 more in additional costs. iii. The District has incurred approximately \$80,000 in engineering costs based on a contract with RJH Consultants, Inc., related to repairs to the Lake Beckwith Dam in 2011 and 2012. iv. The District has expended in excess of \$16,500 on legal fees and costs between May 2006 and March 31, 2012 for participating in various Water Court cases to protect its water rights, including the subject conditional water rights, from injury due to claims of other water users and in consulting with its water attorneys on

various matters related to the District's water rights, including development of the subject conditional water rights. v. The District has expended approximately \$1375 on water consultants (Michael L. Graber, P.E.) and \$26,000 on engineering costs (Flatirons Engineering, Inc.) between May 2006 and March 31, 2012 for various water projects, including the subject conditional water rights. vi. The District has expended approximately \$100,000 on other contracts related to repair and maintenance of its water system during the diligence period. **5. If claim to make absolute - water applied to beneficial use:** There is no claim made to make any portion of the subject conditional water rights absolute at this time. **6. Names and addresses of owners or reported owners of land on which any new diversion or storage structure, or modification to an existing diversion or storage structure, is or will be constructed or upon which water will be stored, including any modification of the existing storage pool:** a. To the best of the District's knowledge and information, the names and addresses of the owners of the lands on which Colorado City Reservoir No. 2 will be constructed and upon which water will be stored are described in Exhibit A, attached to the Application. b. To the best of the District's knowledge and information, the names and addresses of the owners of the lands on which the Greenhorn Creek Feeder will be constructed are described in Exhibit B, attached to the Application. WHEREFORE, the District respectfully requests the Court enter a decree finding that the District has proceeded with reasonable diligence toward the completion of the appropriations of the subject conditional water rights and continuing the subject conditional water rights in full force and effect for an additional diligence period.

CASE NO. 12CW39; Previous Case No. 01CW160 - PUEBLO, a Municipal Corporation, Attn: Mr. Jerry Pacheco, City Manager, 200 South Main Street, Pueblo, CO 81003, (719) 553-2616. (Christopher L. Thorne and Meghan N. Winokur, Holland & Hart LLP, Attorneys for Applicant, 555 17th Street, Suite 3200, Denver, CO 80202, (303) 295-8000 **AND** Thomas J. Florczak, City Attorney, 503 N. Main Street, Suite 203, Pueblo, CO 81003; (719) 562-3899).

Application to Make Recreational In-Channel Diversion Water Right Absolute in Part and for Finding of Reasonable Diligence With Respect to any Portion Not Made Absolute

PUEBLO COUNTY

Background: In Case No. 01CW160, Applicant obtained a conditional water right decree for the recreational in-channel diversion water right ("RICD Water Right") associated with the Arkansas River Legacy Whitewater Park (the "Whitewater Park") in Pueblo, Colorado. Through this Application, Applicant seeks to make the portion of the RICD Water Right associated with Structures 1 through 8 of the Whitewater Park, absolute. In the alternative, Applicant seeks a finding of reasonable diligence with respect to any portion of the water right associated with such structures not made absolute. Applicant also seeks a finding of reasonable diligence with respect to the portion of the water right associated with Structure 9 of the Whitewater Park.

Description of Water Right: The RICD Water Right is described as follows: **Original Decree.** Case No. 01CW160 (Water Div. 2), decree dated April 5, 2006. **Name of Structures.** The nine control structures comprising the Whitewater Park are numbered consecutively from the upstream structure (Structure 1) to the furthest downstream

structure (Structure 9). Construction of Structures 1 through 8 was completed in 2005. Structure 9 will be constructed in the future. These nine structures comprise a whitewater and recreational boating course. Structure 1 of the Whitewater Park includes a permanent boat chute/fish ladder to allow kayaks, boats, and other recreational water craft, as well as native and sport fish, to pass over an existing 13-foot high diversion structure in the river known as the Southern Colorado Power Plant or Aquila Energy diversion dam (the "Power Plant Diversion"). A series of seven smaller, permanent control structures (Structures 2-8) have been constructed in the river between the Power Plant Diversion and the Union Street bridge to create self-scouring pools and to divert and control the flow of the river at specific points to create various wave forms desirable for whitewater kayaking and recreational boating. The Whitewater Park will extend downstream to Structure 9, a permanent boat chute or chutes in the Arkansas River at the location of the existing St. Charles Mesa Water District diversion structure, located just downstream from the Santa Fe Street bridge in Pueblo, near Moffat Street (the "Moffat Street Chute") to allow passage over the existing diversion structure. The Whitewater Park structures were designed to control, concentrate, and direct the flow of the Arkansas River for use by kayaks, canoes, rafts and other types of recreational water crafts, and to establish and maintain fish habitat for piscatorial and other purposes. The structures are of the type and nature described in the letter report dated December 24, 2001 by Gary M. Lacy, submitted as Pueblo's Exhibit D in the hearing before the Colorado Water Conservation Board on July 22-23, 2002, and have been constructed generally in conformity therewith. **Legal Description of Structures:** The Whitewater Park was constructed in the Arkansas River channel, beginning with the boat chute/fish ladder (Structure 1) over and through the Power Plant Diversion. Seven other control structures (Structures 2 through 8) are located in the river between Structure 1 and the Union Street Bridge. Structures 2 through 8 are constructed in a reach of the river that is approximately 2,000 feet in length. The Moffat Street Chute (Structure 9) will be constructed consistent with the decree in Case No. 01CW160 at the location described below. The Power Plant Diversion, the Union Street bridge, and the Moffat Street Chute (Structure 9) are generally located as follows: **Power Plant Diversion (Structure 1):** A water control structure located in the Arkansas River channel in the SW1/4 of the NW1/4, Section 36, T. 20 S., R. 65 W., of the 6th P.M., at a point approximately 2,326 feet South of the North Section line and 810 feet East of the West Section line of said Section 36. **Union Street Bridge:** The Union Street bridge crosses the Arkansas River in Pueblo in the SE1/4 of the SW1/4, Section 36, T. 20 S., R. 65 W., of the 6th P.M., at points approximately 968 feet North of the South Section line and 2,320 feet East of the West Section line of said Section 36. **Moffat Street Chute (Structure 9):** The Moffat Street Chute is a structure in the Arkansas River channel located in the SW1/4 of the NW1/4, Section 6, T. 21. S., R. 64 W., of the 6th P.M., at a point approximately 1,684 feet South of the North Section line and 287 feet East of the West Section line of said Section 6. The U.S. Geological Survey topographic map attached to and incorporated in the Application as Exhibit 1 identifies the general location of the Whitewater Park and the control structures as described above in the decree in Case No. 01CW160. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Structures 1 through 8 were constructed consistent with such decree. **Source.**

The source of the RICD Water Right for the Whitewater Park is the Arkansas River and its tributaries. **Appropriation Date:** May 15, 2000. **Amount Claimed:** The following amounts, in cubic feet of water per second of time (“cfs”) were decreed in Case No. 01CW160 as a conditional RICD water right for each of the specified time periods for each of the structures that comprise the Whitewater Park:

Period	Average Year	Drier Year
Oct. 1 – Oct. 15	250	150
Oct. 16 – Nov. 14	200	150
Nov. 15 – Mar. 15	100	100
Mar. 16 – Mar. 31	250	200
Apr. 1 – Apr. 15	350	250
Apr. 16 – Apr. 30	400	300
May 1 – May 22	450	350
May 23 – Jul. 31	500	500
Aug. 1 – Aug. 15	450	350
Aug. 16 – Sep. 7	300	300
Sep. 8 – Sep. 30	250	150

The U.S. Natural Resources Conservation Service regularly releases a “Water Supply Outlook Report” for Colorado. This report includes a “most probable” forecast (50% chance of exceedance) for flows on the Arkansas River at Salida (the “Forecast”). The “Average Year” flows in the table above shall apply when the most recently released Forecast is 100% or more. The “Drier Year” flows shall apply when the most recently released Forecast is less than 100% and greater than or equal to 70%. If the Forecast ceases to be provided by the Natural Resources Conservation Service, Pueblo shall notify the Court and all parties to this case in writing of a proposed alternative measure for fair implementation of this paragraph. The other parties shall have 30 days in which to provide comments to the Court concerning Pueblo’s proposal, after which the Court shall decide upon the alternative measure to be used. **Uses:** Boating, including but not limited to kayaking, rafting, and canoeing. The RICD Water Right is also used for incidental fishing, wildlife habitat, and piscatorial uses. However, no water right for fishing, wildlife habitat, or piscatorial uses was confirmed by the decree in Case No. 01CW160. **Evidence in Support of Claim to Make Absolute and for Finding of Reasonable Diligence with Respect to any Portion of the Subject Water Right Not Made Absolute:** The flow rates conditionally decreed as the RICD Water Right for each of the specified time periods for Structures 1 through 8 of the Whitewater Park are claimed absolute based upon actual flows controlled through the Whitewater Park and use of the Whitewater Park for the decreed purposes of the water right since entry of the final decree in Case No. 01CW160. Applicant reserves the right to rely upon flow rates and usage that occur while this Application is pending in support of its claim to make the RICD Water Right absolute in part. The activities described below support Applicant’s claim to make the RICD Water Right absolute in part and to continue the RICD Water Right in full force and effect for another six-year diligence period with respect to any portion of such right not made absolute. This list is not intended to be exclusive and may be supplemented by additional evidence. Structures 1 through 8

described above have been constructed. The Whitewater Park opened on May 7, 2005 and has been maintained and used since entry of the final decree in Case No. 01CW160. Structures 1 through 8 have diverted and controlled water for the intended beneficial uses during the time periods described above. Evidence of use of the Whitewater Park includes the following: The Pueblo Paddlers Club, which provides a forum for boaters to meet and enjoy using the Whitewater Park, hosted events at the Whitewater Park from 2006 through the date of filing, including the Ice Breaker Rodeo and Demo event, weekly "Show-Up Show-Down" paddling sessions, safety clinics and river clean-ups. The Edge Ski Paddle & Pack utilized the Whitewater Park for kayak lessons, boating competitions and benefit events each year from 2006 through the date of filing. The Colorado River Surfing Association hosted International Surfing Day celebrations at the Whitewater Park in June 2009, 2010 and 2011, which included surf contests, trash clean-ups and other events. The Arkansas River Festival was held in May 2006 and 2007 at the Whitewater Park. The Wild Wild West Fest was held in May 2009, 2010 and 2011, and included kayak rodeo events at the Whitewater Park. A Paddle-A-Thon to benefit First Descents was held at the Whitewater Park in July 2007, 2008 and 2009. The Chile & Frijoles Festival was held in late September of each year from 2006 through 2011 and included kayaking events at the Whitewater Park. Outfitters used the Whitewater Park for commercial activities. Instructional clinics were held at the Whitewater Park, including instruction and related activities offered through the Colorado State University-Pueblo Experiential Learning Center. Individual boaters used the Whitewater Park from 2006 through the date of filing. Documentation of such use may include magazine and news publications, photographs, videos, blog posts, equipment rental information and statements by boating users of the Whitewater Park. The Whitewater Park was also used for incidental fishing, wildlife habitat, and piscatorial uses. Based upon measured flows at the U.S. Geological Survey stream gauge no. 07099970, Arkansas River at Moffat Street at Pueblo, CO, flows through and controlled by Structures 1 through 8 of the Whitewater Park met or exceeded the amounts described above during each of the specified time periods described above. Applicant expended significant funds in connection with maintaining, improving and repairing the Whitewater Park and facilities associated therewith, including expenditures in 2011 of approximately \$190,000 for bank stabilization and related maintenance activities. Applicant expended significant funds for legal and consulting fees associated with the Whitewater Park and Applicant's protection of the RICD Water Right through participation as an opposer in numerous water court applications during the diligence period, in excess of \$130,000. **Claim to Make RICD Water Right Absolute in Part:** Based upon the verified facts described above, Applicant requests that the Court confirm and decree that the portion of the RICD Water Right associated with Structures 1 through 8 has been placed to beneficial use for all decreed amounts and uses consistent with C.R.S. § 37-92-305(9)(a). **Claim to Continue RICD Water Right as Conditional in Part:** In the alternative to the claim set forth in Paragraph 5 above, based upon the verified facts described above, Applicant requests that the Court find that it has exercised reasonable diligence toward controlling and placing to beneficial use any portion of the RICD Water Right associated with Structures 1 through 8 not made absolute consistent with C.R.S. § 37-92-301(4)(b). Applicant also requests that the Court find that it has exercised reasonable diligence with respect to the portion of

the RICD Water Right associated with Structure 9. *Id.* **Terms and Conditions to Prevent Injury:** The terms and conditions set forth in Paragraph 7 of the final decree in Case No. 01CW160 will continue to apply to the RICD Water Right. **Name and Address of Owner of Land on Which Points of Diversion and Places of Use are Located:** Applicant, at the above address. The Pueblo Conservancy District, P.O. Box 234, Pueblo, CO 81002.

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

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of June 2012, (forms available at Clerk's office or at www.courts.state.co.us, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$130.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 8th day of May, 2012.



Mardell R. DiDomenico

Mardell R. DiDomenico, Clerk
District Court, Water Div. 2
Pueblo County Judicial Building
320 W. 10th Street
Pueblo, CO 81003; (719) 583-7048

(Court seal)
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