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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING APRIL 2017  
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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 2017, 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:

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**CASE NO. 2016CW3088 - GLENN W. HUNSINGER FAMILY TRUST and MARY V. HUNSINGER FAMILY TRUST, c/o Steven G. Hunsinger, co-trustee, 4406 College Park Court, Colorado Springs, CO 80918** (Please direct all correspondence and inquiries regarding this matter to Applicant's attorney: Henry D. Worley, Worley Law Firm, LLC, 611 North Weber, Suite 104, Colorado Springs, CO 80903, phone 719.634.8330, email [hank.worley@pcisys.net](mailto:hank.worley@pcisys.net))

**AMENDMENT TO Application for Approval of Plan for Augmentation**

**EL PASO COUNTY**

**I. APPLICATION FOR APPROVAL OF AMENDED PLAN FOR AUGMENTATION. 1.**

**Name of structures to be augmented:** Two wells in the Denver aquifer, including two of the following existing wells, permit no. 172650, permit no. 172651, permit no. 250314, and permit no. 250314A, plus three yet-to-be constructed wells in the Arapahoe aquifer. **2. Previous decrees for water rights to be used for augmentation:** None. **3. Historic use:** Not applicable. **4. Statement of plan for augmentation:** Applicants seek approval of a plan for augmentation which will allow pumping for 300 years of approximately 0.3 AF/yr from each of two Denver aquifer wells and 0.35 AF/yr from each of three Arapahoe aquifer wells. All wells will be located on Applicants' property in the N1/2 NW1/4 Section 28, T. 12 S., R. 66 W., 6<sup>th</sup> P.M. The water will be used for indoor residential uses, limited livestock watering, and augmentation through septic system return flows. Depletions during pumping will be replaced using septic system return flows from non-evaporative septic systems. All 449 acre feet of the nontributary Laramie-Fox Hills aquifer water decreed herein will be reserved for replacing post-pumping depletions. Applicants seek to reserve the right to replace such depletions with any other judicially acceptable source of augmentation water, upon judicial approval. **5. Miscellaneous provisions.** The amounts available for annual pumping under the augmentation plan may be changed from the amounts published herein, based on the Amended Consultation Report which will be generated pursuant to the amendments in this application.

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**CASE NO. 2017CW3; Previous Case Nos. 2002CW60; 2010CW68 – M. ANGELA McGEHEE and MARK E. REIGLE, P. O. Box 798, La Veta, CO 81055; (719) 742-3142**

Application to Make Absolute in Whole or in Part

**HUERFANO COUNTY**

**Name of Structure:** Indian Creek Diversion. **Date of Original Decree:** 22 Nov 2004; **Case No.:** 02CW60, Water Division 2. **Decrees awarding findings of diligence:** **Date of Decree:** 20 Apr. 2011; **Case No.:** 2010CW68, Water Division 2. **Legal description:** Huerfano County, SE ¼ SE ¼ Sec. 3, T30S, R69W, 6<sup>th</sup> P.M., 1000 feet from south line and 950 feet from East line. **Street Address:** 5100 County Road 421, La Veta, CO 81055. **UTM Coordinates:** Northing 4146158, Easting 0491974, Zone 13. **Source:** Indian Creek. **Appropriation Date:** 25 June 1994; **Amount:** 0.5 cfs. **Use:** Watering livestock (horses, goats, cattle) and domestic use (washing equipment, etc.) **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:** Water is diverted out of Indian Creek through a submersible pump and hose to fill a trough for stockwater and buckets for washing equipment. Expenditures: pump \$82, hose \$12, trough \$45. **If claim to make absolute:** **Date water applied to beneficial use:** 27 Oct 2004; **Amount:** 0.5 cfs; **Use:** Watering livestock and domestic use (washing equipment, etc.) **Description of place of use:** Water is diverted out of creek via pump and hose to a flat grassy area approximately 150 feet wide between County Road 421 and north side of creek for washing equipment, and to trough in grassy corral on south side of creek for watering livestock. **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.

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**CASE NO. 2017CW4 – RONALD G. MILLER and LAURA M. MILLER, 5184 Siloam Road, Beulah, CO 81023; (719) 252-1727**

Application for Storage Right

**PUEBLO COUNTY**

**Name of Reservoir:** Miller Reservoir Enlargement. **Legal description of location of dam centerline:** SE ¼ SE ¼ Sec. 30, T22S, R7W, 6<sup>th</sup> P.M., Pueblo County, 605 feet from the south line and 545 feet from the east line. **Street Address:** 5184 Siloam Road, Beulah, CO 81023. **Source:** Run off water with an unnamed water course tributary to Rock Creek, tributary to Arkansas River. **Date of appropriation:** Absolute: Spring 1940; **How appropriation was initiated:** Successors used stored water for stock watering; **Date water applied to beneficial use:** Feb. 28, 2006 and since Millers have formed intent to use water in Miller Reservoir for irrigation and intend pumping to the reservoir to allow irrigation. **Amount claimed:** 20.7 a.f. Conditional. **List all uses or proposed uses:** Irrigation and livestock watering. **If irrigation, complete the following:** **Number of acres historically irrigated:** 40.56; **proposed to be irrigated:** 40.56. Map of irrigated acreage is on file with the application and is available for inspection at the Office of the Clerk of this Court. **Surface area of high water line,**

**vertical height of dam and length of dam:** To be determined. **Total capacity of reservoir in acre feet:** 50-60. **Active capacity and dead storage:** To be determined. **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. **Remarks:** Applicants have previously been awarded up to 39.3 a.f. of water usage from reservoir holding 7.86 a.f. of water (07CW64). We are requesting enlargement of water holding capacity to 50-60 a.f. and an additional 20.7 a.f. of water storage and use.

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**CASE NO. 2017CW5 – PEGGY (MARGARET) S. COLGATE, 601 Griffin Avenue, Canon City, CO 81212; (719) 429-1057**

Application for Absolute Water Rights (Surface)

**FREMONT COUNTY**

**Name of structure:** Colgate Homestead Spring. **Legal Description:** UTM **coordinates:** Easting 479250; Northing 4254100; Zone 13. **Source of UTM:** Scaled from USGS topographical map; **Accuracy of location:** 14 ft. **PLSS Description:** SE ¼ SE ¼ Sec. 32, T18S, R70W, 6<sup>th</sup>, P.M., Fremont County, Colorado, 1053 feet from north line and 439 feet from west line. **Source of PLSS information:** Property Deed boundary descriptions and County Easement property location description. **Street Address:** 601 Griffin Avenue, Canon City, CO 81212. **Source:** Colgate Homestead Spring. **Date of appropriation:** May 1, 1895; **How appropriation was initiated:** Spring on family homestead used for house, irrigation of crops, water for milk cow, chickens; **Date water applied to beneficial use:** May 1895. Documents of earliest written records are 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.) **Amount claimed:** 2.7 gpm Absolute. **Uses:** Stock water, agricultural irrigation, wildlife use. **Number of acres historically irrigated:** Approx. 3.23 acres; **proposed to be irrigated:** Approx. 2.23 acres. **Does the Applicant intend to use this water right to supplement irrigation on an area of land already irrigated under another water right?** Yes. **Legal description of irrigated acreage:** R70W, T18S, S32, PM6: E1/2 of SE1/4; Beg. 1053ft. N and 439 ft. W of SE Corner Section 32, then N11degW 815.5ft, N79deg30minE 198ft, S11degE 174.5ft, S85degW 99ft, S11degE 660 ft, S85degW 99ft. Map is on file with the application. **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.

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**CASE NO. 2017CW6; Previous Case Nos. 97CW56, 04CW49, 10CW86 – JOSEPH LOUTH, 13538 Ducat Court, Corpus Christi, TX 78418; (361) 652-2510**

Application to Make Absolute in Whole or in Part

**LAKE COUNTY**

**Name of structure:** Parcels A, B and C Wells. **Date of original decree:** 7/28/1998; **Case No.:** 97CW56, Water Division 2. **Decrees awarding findings of diligence:** Case No. 2004CW49, Water Division 2 on 7/7/2004; Case No. 2010CW86, Water

Division 2 on 4/4/2011. **Legal Description:** Bobby Well No. 1: SE ¼ SE ¼ Sec. 5, T11S, R80W, 6<sup>th</sup> P.M., Lake County, Colorado, 300 feet from south line and 700 feet from east line. Parcel A Well: SE ¼ SE ¼ Sec. 5, T11S, R80, 6<sup>th</sup> P.M., Lake County, Colorado, 500 feet from south line and 500 feet from east line. Parcel C Well: SE ¼ SE ¼ Sec. 5, T11S, R80W, 6<sup>th</sup> P.M., Lake County, Colorado, 100 feet from south line and 125 feet from east line. **Source of water:** Arkansas River – Lake Creek. **Appropriation Date:** April 14, 1997; **Amount:** A, B & C Wells 15 gals/min each absolute. **Use:** Commercial, domestic, irrigation and stock water purposes on the Majestic Mountain Ranch Subdivision. **Depth:** 160 feet. **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:** The subject wells provide water to Parcels A, B and C of the Majestic Mountain Ranch Subdivision. The wells supply water to one single family residential home with a bunk house with rest rooms and kitchen. The wells also provide water for boarding up to six horses during the summer months and gardens not to exceed an aggregate of 3500 square feet. **Claim to make absolute: Date water applied to beneficial use:** October 21, 1999; **Amount:** 15 gals/min. **Use:** Commercial, domestic, irrigation and stock water. **Description of place of use:** Parcels A, B and C, Majestic Mountain Ranch Subdivision. **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.

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**CASE NO. 2017CW3016 - MICHAEL STETLER, 2204 Hickory Street, Pueblo, CO 81001** (Please address all pleadings and correspondence to: David M. Shoheit, Ryan W. Farr, Monson, Cummins & Shoheit, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, Colorado 80903, (719) 471-1212)

Application for Plan for Augmentation

**PUEBLO COUNTY, COLORADO**

**Background and Summary of Plan for Augmentation.** Applicant is the owner of approximately 10 acres located in the SW ¼ of the SW ¼ of Section 33, Township 20 South, Range 66 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado (“Property”). The Property is shown on the Exhibit A map attached to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Property’s address is 2204 Hickory Street, Pueblo, CO 81001 and is Lot 19 and the North 326.5 feet of Lot 20 of the Booth Gardens Subdivision. The Applicant seeks a plan to augment up to two wells on his property for both indoor and outdoor cultivation and irrigation of crop including cannabis (hemp and marijuana), and the associated commercial, domestic, drinking and sanitary needs for the grow facility. **Application for Approval of Plan for Augmentation. Structures to be Augmented.** The structures to be augmented consist of up to two wells to be constructed on Applicant’s Property. One well, Well Permit No. 2067-F, adjudicated in Case No. W-2656, District Court, Water Division 2, decreed on November 23, 1973, for 1.33 c.f.s. (or 600 g.p.m.) but not to exceed 425 acre feet in any one calendar year for the irrigation of 10 acres of land, and domestic use with a priority date of December 16,

1959, may be used under this plan for augmentation. The decree entered in Case No. W-2656 is attached to the Application as Exhibit B. Applicant seeks the use of this well structure for use as one of the two wells under this plan for augmentation. **Water Rights to be Used for Augmentation.** Water rights to be used for augmentation consists of fully consumable water leased from the Board of Water Works of Pueblo, Colorado (“Pueblo Water”). Applicant may seek to transfer this plan for augmentation to a well users group in the future. Applicant may also seek a term and condition in any final decree requesting the Water Court to retain perpetual jurisdiction over the plan for augmentation for the sole purpose to add new or additional sources of augmentation water pursuant to Section 37-92-305(8), C.R.S. Applicant may also seek to include this plan for augmentation or any wells part of the plan for augmentation under the decree entered in Case No. 08CW12, District Court, Water Division 2, decreed on May 3, 2016. Accordingly, a decreed source of augmentation water in Case No. 08CW12 could be used as a replacement source for the wells subject of this Application. **Lease with Pueblo Board of Water Works.** Applicant has entered into a lease for 12 acre-feet of fully consumable water with Pueblo Water. Applicant’s lease with Pueblo Water is attached to the Application as Exhibit C (“Lease”). The water rights or sources of water that may be used for augmentation in this augmentation plan include the following: Fully consumable water owned or controlled by Pueblo Water. All water to be used in this augmentation plan provided by Pueblo Water must be decreed or otherwise legally available for augmentation purposes. The source of such water is unspecified in the lease, but may include Pueblo Water’s water stored in Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, from direct flow transmountain water or from any other reservoir or place from which Pueblo Water may deliver water, the sources of which are at the option of Pueblo Water, as long as they are legally available for augmentation purposes. Water deliveries may include, without limitation, water stored in Twin Lakes Reservoir (located in all or portions of Sec. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in T.11S., R.81W., 6th P.M., in Lake County), Turquoise Reservoir (located on Lake Fork Creek in Sec. 7, 8, 17, 18, 19, and 20, T.9S., R.80W., 6th P.M. and Sec. 10, 11, 12, 13, 14, and 15, T.9S., R.81W., 6th P.M., in Lake County), Clear Creek Reservoir (located in Sec. 7 and 8, T.12S., R.79W, and Sec. 12, T.12S., R.80W., 6th P.M. in Chaffee County, and reusable return flows. The sources of such water may include, but are not limited to, the water rights decreed in Case Nos. 84CW177, District Court, Water Div. No. 2; 84CW177(B), District Court, Water Div. No. 2; 90CW340, District Court, Water Div. No. 5; W-1901, District Court, Water Div. No. 5; 95CW321, District Court, Water Div. No. 5; 90CW55, District Court, Water Div. No. 2; and 04CW130, District Court, Water Div. No. 2. **Statement of Plan for Augmentation. Diversions and Depletions. Uses.** Indoor and outdoor cultivation and irrigation of a crop, including cannabis (hemp and marijuana), and the associated commercial, processing, industrial, domestic, drinking and sanitary needs for the grow facility. **Diversions.** Applicant’s grow facility will operate year-round, with all uses generally increasing during the summer months. The anticipated maximum well diversions under this plan is 11 annual acre feet. **Depletions.** Water diverted for all uses will be considered to be one-hundred percent consumptive. **Return Flows.** As all uses are being considered one hundred percent consumptive Applicant is not claiming any return flows from diversions from the wells. However, Applicant reserves the right to claim

such return flows in the future through amendment of the decree. Location and Timing of Depletions. Well pumping by all wells on Applicant's Property will be entitled to occur on a year-round basis, resulting in year-round lagged depletions to the Arkansas River. Depletions from pumping wells located on the Property occur to the Arkansas River in either the SW ¼ of the SW ¼, Section 33, Township 20 South, or in the NW ¼ of the NW ¼, Section 4, Township 21 South, all in Range 64 West of the 6th P.M. Applicant's water resource engineer has generated a Unit Response Function (URF) for the wells using the Glover Method (Glover, 1954). The lagging analysis shows that over 95 percent of the depletions are expected to occur within at least 10 months of pumping. Replacement Water. Replacement water to augment the Applicant's well depletions currently totals 12 are-feet from the Lease, less any transit losses, or any such augmentation water applicant may acquire in the future. Applicant estimates that replacement water less transit losses will be approximately 11 annual acre feet. Accordingly, total annual depletions, including lagged depletions, shall not exceed 11 annual acre feet. Current replacement water provided by Pueblo Board of Water Works is fully consumable and is available to the Applicant at the point of depletion on the Arkansas River caused by the pumping of any well under this plan. Name and Address of Owners of Land Upon Which Structures are Located. All structures, wells, and operations covered by this Application occur on property owned by the Applicant.

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**CASE NO. 2017CW3017; Previous Case Nos. 04CW49; 10CW86 – BOBBY & JOLENE WOOD FAMILY TRUST, Jolene Wood, Trustee, 2600 Hunter Road, Apt. 3212, San Marcos, TX 78666** (Please direct all correspondence to Robert F. T. Krassa, Krassa & Miller, LLC, Attorney for Applicant, 2737 Mapleton Ave., Suite 103, Boulder, CO 80304, 303-442-2156)

Application for Finding of Reasonable Diligence

**LAKE COUNTY, COLORADO**

**2. Name of Structures:** The conditional water right which is the subject of this Application is FOR the following well: Parcel C Well. **3. Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree:** **a. Date of Original Decree:** Jul 28, 1988, Case 97CW56, Water Division No. 2. **b. Subsequent decrees awarding findings of diligence:** Case 04CW49 decree entered December 14, 2004, and 10CW86 entered April 4, 2011, all in this Court. **c. Location of structure:** the Parcel C Well is located in the SE 1/4 SE 1/4 Sec. 5, Township 11 South, Range 80 West of the 6th P.M. in Lake County, Colorado at a point 100 feet north of the south section line and 125 feet west of the east section line. Also described as Parcel C of Majestic Mountain Ranch Subdivision, Lake County, Colorado. Street address: 1287 CR 24, Twin Lakes, CO 81251. **d. Source:** groundwater tributary to Lake Creek, tributary to the Arkansas River. **e. Date of Appropriation:** April 14, 1997. **f. Amount of Water:** 15 gallons per minute, conditional. **g. Use:** Water from the subject well will be used for commercial, domestic, irrigation, and stock water purposes on the Majestic Mountain Ranch Subdivision, as described herein. **h. Depth of well:** anticipated depth 150 to 200 feet. **4. Provide a detailed outline of what has been done toward completion or for completion of appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** Woods and Trails,

Inc was a small family corporation, consisting of Bobby and Jolene Wood. During the diligence period, Mr. Bobby Wood passed. This occasioned the change of ownership to the Bobby and Jolene Wood Family Trust. During the diligence period, Parcel A and the Parcel A well which were originally decreed in 97CW56 and which well was included in previous diligence proceedings, were sold to Joseph and Christine Louth. Applicant has continued with development and marketing of the Parcel C property, and has Parcel C listed for sale with reputable Realtors. The water right constitutes an essential and valuable component of the value of the parcel, but until the parcel is sold, it will not be economically feasible to construct or operate the Parcel C well. In addition to the death of Mr. Bobby Wood, economic conditions in the Twin Lakes area of Lake County have not recovered from the 2008 crash and sales are still slow. These are circumstances beyond the control of Applicant. The property has signage and brochures, has been shown several times, and is listed on several multilist (MLS) services. Applicant has in all respects diligently worked toward placing the water right to beneficial use. **5. If claim to make absolute:** not applicable. **6. Names and addresses of owners of the land on which structures are or will be located:** Applicant WHEREFORE, Applicant requests that the Court find that Applicant has been reasonably diligent in regard to the subject conditional water right, and that the Court continue the conditional right for the 15 gpm conditional right of the Parcel C well.

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**CASE NO. 2017CW3018; Previous Case Nos. 10CW92, 01CW48, 94CW58, 87CW61 - CITY OF SALIDA (“Salida”), James LiVecchi, Mayor, 448 E. First Street, Suite 112, Salida, Colorado 81201** (Please direct all correspondence and inquiries regarding this matter to Applicant’s attorneys: Jennifer M. DiLalla, William D. Davidson, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Boulevard, Suite 300, Boulder, Colorado 80302; (303) 443-8782)

Application for Finding of Reasonable Diligence

**CHAFFEE COUNTY**

**2. City of Salida North Fork Reservoir Exchange (“North Fork Exchange”) 2.1**

**Original decree:** September 19, 1988, Case No. 87CW61, District Court, Water Division No. 2. **2.2 Subsequent decrees granting findings of reasonable diligence:**

June 1, 1995, Case No. 94CW58, District Court, Water Division No. 2 (“94CW58 Decree”); December 23, 2004, Case No. 01CW48, District Court, Water Division No. 2;

April 20, 2011, Case No. 10CW92, District Court, Water Division No. 2. **2.3 Exchange**

**reach:** The appropriative right of exchange operates between the confluence of the Arkansas River and the South Arkansas River near the City of Salida, and the North Fork Reservoir. The exchange reach is shown on the map attached to the Application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 2.3.1 The exchange-from point is the confluence of the South Arkansas River with the Arkansas River, located in the SW1/4 SE1/4 of Section 4, Township 49 North, Range 9 East of the N.M.P.M., at a point approximately 300 feet north of the South section line and 2,300 feet west of the East section line of said Section 4, as shown on Exhibit A. 2.3.2 The exchange-to point is North Fork Reservoir, located on the North Fork of the South Arkansas River in the SE1/4 of Section 5, Township 50 North, Range 6 East of the N.M.P.M., the northeasterly point of contact of the dam axis with the existing ground being situated

whence the northwest corner of Section 21, Township 50 North, Range 7 East of the N.M.P.M. bears South 68°50' East a distance of 31,920 feet; said point being further described by bearing on the Peak of Granite Mountain of North 23°28' West and by bearing on the Peak of Calico Mountain of North 37°03' East, thence South 15°30' West a distance of 500 feet to the southwesterly point of contact of the dam axis with existing ground, as shown on Exhibit A. The location of North Fork Reservoir is further described by the following UTM coordinates (NAD 83): Northing 4274282; Easting 384890.40. The water stored by exchange in North Fork Reservoir is water accruing to the drainage of the North Fork of the South Arkansas River upstream of the location of North Fork Reservoir as described above. **2.4 Sources of substitute supply:** 2.4.1 Water regularly allocated to Salida under the Fryingpan-Arkansas Project pursuant to lawful rules, regulations, and policies of the Southeastern Colorado Water Conservancy District ("Project Water"). 2.4.2 Excess augmentation credits available under Salida's plan for augmentation decreed in Case No. 84CW158. **2.5 Amount:** 3.6 cfs, ABSOLUTE; 56.4 cfs, CONDITIONAL. The 94CW58 Decree confirmed 3.6 cfs of the North Fork Exchange as absolute. **2.6 Appropriation date:** December 21, 1987. **2.7 Use:** Municipal, including incidental irrigation, by delivery to the North Fork of the South Arkansas River from North Fork Reservoir and subsequent diversion from or delivery to the South Arkansas River as described in paragraphs 2.7.1 through 2.7.3 below. Excess augmentation credits exchanged to North Fork Reservoir under the North Fork Exchange retain all uses for which they were decreed, including replacement of out-of-priority depletions under the plan for augmentation decreed in Case No. 84CW158. 2.7.1 The Harrington Ditch, located on the north bank of the South Arkansas River at a point in the NW1/4 of the SE1/4 of Section 10, Township 49 North, Range 8 East of the N.M.P.M., whence the Southwest corner of said Section 10 bears South 64°6' West a distance of 3,969 feet, in Chaffee County, Colorado, as shown on Exhibit A. 2.7.2 The Municipal Water System of the City of Salida, consisting of three underground collection galleries located in the NE1/4 of Section 12, Township 49 North, Range 8 East of the N.M.P.M., which galleries feed into an underground reservoir. Water is pumped from the underground reservoir at a point in the NE1/4 of Section 12, Township 49 North, Range 8 East of the N.M.P.M, approximately 500 feet from the North section line and 1,175 feet from the East section line of said Section 12, as shown on Exhibit A. 2.7.3 Augmentation releases to the South Arkansas River to replace out-of-priority depletions under Salida's plan for augmentation decreed in Case No. 84CW158. **3. Outline of work and expenditures during the diligence period towards completion of the appropriations and application of water to beneficial use:** The diligence period for the North Fork Exchange is April 2011 through April 2017 ("Diligence Period"). During the Diligence Period, Salida worked diligently to develop the North Fork Exchange, complete the appropriation, and place the water to beneficial use, as demonstrated by the following activities and expenditures: 3.1 The Salida City Council directed Salida's engineering consultant and legal consultants to engage in a review and analysis of Salida's storage operations, with a purpose of maximizing storage by exchange in North Fork Reservoir and making the North Fork Exchange absolute. Salida expended approximately \$7,600 in engineering and legal fees on this project. 3.2 Salida paid the Southeastern Colorado Water Conservancy District in excess of \$15,600 for Project Water, which is a source of substitute supply for the North Fork Exchange. 3.3 Salida



paid the Upper Arkansas Water Conservancy District (“Upper Ark”) approximately \$3,900 to maintain Salida’s right to store water in North Fork Reservoir under the Lease Agreement dated June 21, 1993, between Salida and Upper Ark. Salida also booked over water to the account of Upper Ark in North Fork Reservoir as partial payment under the Lease Agreement. 3.4 Salida expended in excess of \$52,900 for maintenance and improvement of the Harrington Ditch. Excess augmentation credits derived from Salida’s Harrington Ditch water rights are a source of substitute supply for the North Fork Exchange. As described in paragraph 2.7.1 above, Salida also uses the Harrington Ditch to re-divert and place to beneficial use water exchanged to North Fork Reservoir under the North Fork Exchange. Additionally, Salida devoted approximately fifty-four personnel hours per year to maintenance and operation of the Harrington Ditch. 3.5 Salida expended in excess of \$674,800 on engineering, legal, construction, materials, and settlement costs to comply with and settle a dispute over Salida’s stipulation with Nancy Dominick under the decree entered in Case No. 04CW125, which authorized the Tensassee Ditch change of water rights under which Salida generates a portion of the excess augmentation credits that provide a source of substitute supply for the North Fork Exchange. Salida also devoted approximately twenty-four personnel hours per year to tasks related to such compliance and settlement. 3.6 Salida expended approximately \$105,577 in legal fees related to filing and prosecuting statements of opposition in Water Court to protect Salida’s water rights, including the North Fork Exchange, from injury; and related to preparation and prosecution of Water Court applications to maintain the water rights that, along with the North Fork Exchange, make up Salida’s integrated municipal system. 3.7 Salida expended approximately \$60,997 in costs for engineering consultants in support of the Water Court activity described in paragraph 3.6 above, and for accounting under and other compliance with the decrees under which Salida generates the excess augmentation credits that provide a source of substitute supply for the North Fork Exchange. **4. Names and addresses of owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored:** North Fork Reservoir is located on land owned by the United States Forest Service, P.O. Box 25127, Lakewood, Colorado 80225. The reservoir is owned by Chaffee County, 104 Crestone Avenue, Salida, Colorado 81201, and managed and operated by the Upper Arkansas Water Conservancy District, 339 East Highway 50, Salida, Colorado 81201. WHEREFORE, Salida respectfully requests that the Court enter a decree (i) finding that Salida has exercised reasonable diligence in working to develop the North Fork Exchange, complete the appropriation, and place the water to beneficial use; and (ii) continuing the conditional portion of the North Fork Exchange in full force and effect for an additional diligence period.

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**CASE NO. 2017CW3019 – TRI LAZY W RANCH, c/o Jay R. Wilson, President, 11100 County Road 270, Nathrop, CO 81236** (Please address all correspondence and inquiries regarding this matter to Applicant’s attorney: Gilbert Y. Marchand, Jr., P.C., Gilbert Y. Marchand, Jr., #19870, 2737 Mapleton Avenue, Suite 202, Boulder, CO 80304, phone: 303-444-4256; fax 303-444-5901; [gym@gymlaw.com](mailto:gym@gymlaw.com))

Application for Surface Water Right  
**CHAFFEE COUNTY**

**2. Name of structure:** Jay No. 1 Ditch. **3. Legal description of point of diversion:** at a point located approximately at the Center South 1/16 corner of Section 35, Township 15 South, Range 78 West, 6th P.M., Chaffee County, Colorado, also described as 405987 meters easting, 4283825 meters northing, (UTM Zone 13S, NAD83, scaled from USGS topographic map), as depicted on the map attached to the application. **4. Source:** unnamed tributary of Browns Creek, tributary to the Arkansas River. **5. Appropriation information: 5.A. Date of appropriation:** April 28, 2017. **5.B. How appropriation was initiated:** By construction of a culvert in the year 2015 followed by construction of a dam and headgate at the point of diversion in March of 2017, followed by the filing of the application. **5.C. Date water applied to beneficial use:** Not applicable. **6. Amount claimed:** 0.65 cubic feet per second (“cfs”), conditional. **7. Uses:** irrigation, livestock, and fire mitigation. The area to be irrigated is on land leased by Applicant, consisting of approximately 14 acres whose legal description is approximately the south half of the northeast quarter of the southeast quarter and the north half of the southeast quarter of the southeast quarter of Section 35, Township 15 South, Range 78 West, 6th P.M., Chaffee County, Colorado. The livestock use is on land owned by Applicant to the west (“Bull Pasture”) and to the east (“North 150”) of the irrigated area. **8. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant, whose name and address are listed above, owns the land upon which the diversion structure is located. **WHEREFORE,** Applicant requests the Court to enter a decree confirming the water right claimed herein and to grant such other relief as the Court deems proper under the circumstances.

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**CASE NO. 2017CW3020; Previous Case Nos. 2010CW79, 2004CW14, 1993CW86 – BOARD OF WATER WORKS OF PUEBLO, COLORADO (“Pueblo Water”), c/o Seth Clayton, Executive Director, 319 West Fourth Street, P. O. Box 400, Pueblo, CO 81002** (Please send all correspondence and inquiries regarding this matter to: William A. Paddock, Karl D. Ohlsen, and Johanna Hamburger, Carlson, Hammond & Paddock, LLC, Attorneys for Applicant, 1900 Grant St., Suite 1200, Denver, Colorado 80203; Phone: (303) 861-9000; Fax: (303) 861-9026.

Application for Sexennial Finding of Reasonable Diligence

**PUEBLO COUNTY, COLORADO**

The Board of Water Works of Pueblo, Colorado, seeks a sexennial finding of reasonable diligence for the HARP Tailwater Right, a conditional water right originally decreed on February 19, 1998, in Case No. 93CW86, District Court, Water Division No. 2. The decree in Case No. 93CW86 adjudicated claims for conditional rights for beneficial use as part of the Historic Arkansas River Project (“HARP”), as well as approval of a plan for augmentation for out-of-priority depletions. **1. Name of Structures:** The Historic Arkansas River Project has two water rights, the HARP water right for 30 c.f.s. absolute from the Arkansas River, and the HARP Tailwater Right for 33.75 c.f.s. absolute and 166.25 c.f.s. conditional. The conditional HARP Tailwater Right is the subject of this application. **A. HARP Tailwater Right: (1) Legal Description of Point of Diversion and Physical Reach:** a. Point of Diversion: A point

located where the tailwater (unconsumed cooling water) discharged from the Southern Colorado Power Company water right, used during the diligence period by the Black Hills Energy Company Power Plant discharged into the historical Arkansas River channel at or near the point where Victoria Street in the City of Pueblo crosses the historical Arkansas River channel in the SW¼ NE¼ of Section 36, Township 20 South, Range 65 West of the 6<sup>th</sup> P.M. b. Physical Reach: Pueblo Water has and will control the HARP Tailwater Right from its point of diversion to the lower terminus of the HARP Project Area by the construction and placement of facilities in the historical Arkansas River channel and the Convention Center Connection to divert, direct, control, and store water therein. A map indicating the location of the HARP Tailwater Water Right and physical reach is attached to the Application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **(2) Date of Original Decree:** February 19, 1998, Case No. 93CW86, District Court, Water Division No. 2, State of Colorado. On November 24, 2004, the Court entered a Ruling that Pueblo Water had been diligent in development of the conditional HARP Tailwater Right and that a portion of the water right had been made absolute. On April 29, 2011, the Court entered a subsequent Ruling that Pueblo Water had continued to be diligent in developing the remaining conditional portion of the HARP Tailwater Right. **(3) Source:** The tailwater and/or wastewater flows from water diverted from the Arkansas River that are discharged into the historical Arkansas River channel at the point of discharge of the Black Hills Energy Company Power Plant at or near the point where Victoria Street crosses the historical Arkansas River channel and any other water entering the historical Arkansas River channel below the Black Hills Energy Company Power Plant's point of discharge and above the lower terminus of the HARP Project Area. **(4) Appropriation Date:** August 17, 1993. **(5) Amount:** 166.25 c.f.s., conditional; 33.75 c.f.s., absolute. **B. Beneficial Use:** All beneficial uses in connection with HARP, a development of a portion of the historical Arkansas River channel as a scenic, aesthetic, recreational, economic development, and park amenity in downtown Pueblo. **2. Provide a detailed outline of what has been done toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures.** A. HARP is an urban waterfront park and associated public amenities that, in part, reestablished the flow of the Arkansas River in its historical location in downtown Pueblo. The current location serves the community by revitalizing a formerly blighted part of downtown Pueblo. This urban development helped transform the area and has attracted new businesses, shoppers, tourists, and others to the area. B. During the Diligence Period of December 2010 to April 2017 ("Diligence Period"), the HARP Authority has continued to manage and operate HARP, including its recreational boating operations under the HARP Authority Recreational Enterprise Operation. The Authority has incurred yearly operating expenses ranging from \$800,723.52 to \$1,042,157.67 for the operation, maintenance and repair of the entire HARP project. C. During the Diligence Period Pueblo Water diverted all water legally and physically available in priority to it under the HARP Tailwater right. Because the HARP Tailwater right did not come into priority, Pueblo Water continued to operate the HARP plan for augmentation to replace out-of-priority depletions associated with the HARP. D. During the Diligence Period work was completed by the Pueblo Conservancy District, in cooperation with Pueblo Water, to rehabilitate the diversion from the Arkansas River to the Black Hills

Energy Company Power Plant and for planning future repairs to ensure the ability to continue to supply water to the HARP Project. The cost for the repair work exceeded \$75,000. E. During the Diligence Period Pueblo Water expended substantial sums in connection with the maintenance of its overall water supply and distributions system and the protection of its water rights. F. During the Diligence Period Pueblo Water negotiated the transfer of the Southern Colorado Power Company water rights from Black Hills Energy Company to Pueblo Water, and that transfer was completed in March 2017. Pueblo Water is now evaluating how best to continue to utilize those water rights to supply the HARP. G. During the Diligence Period Pueblo Water obtained approval of substitute water supply plans that authorized it to divert at rates in excess of 30 c.f.s. through the HARP at times when Black Hills Energy Company was not exercising the Southern Colorado Power Company water rights. H. HARP is a single, integrated project of water diversion, control, and beneficial use. For purposes of showing diligence in completing the conditional water rights originally decreed in Case No. 93CW86, work on one feature of the Project or system must be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project system, pursuant to C.R.S. § 37-92-307(4)(b). The work performed and actions taken during the Diligence Period demonstrate the Applicant's continuing intent to develop the conditional HARP Tailwater Right described in this Application. The Applicant has shown that it can and will divert, store, or otherwise capture, possess, or control and beneficially use the conditional rights and that the subject rights can and will be completed with diligence and within a reasonable time. I. The work performed and actions taken by Pueblo Water during the Diligence Period demonstrate Pueblo Water's continuing intent to develop the remaining conditional portion of the HARP Tailwater Right. Pueblo Water has met all applicable standards in demonstrating reasonable diligence. **4. The Applicant requests the court to enter a decree:** A. Finding and concluding that the Applicant has shown reasonable diligence and has met all applicable legal requirements and is entitled to a decree continuing the conditional right for the HARP Tailwater Right for an additional six year period; B. Fixing the date when the next application for a finding of reasonable diligence is required; C. Confirming that the Applicant maintains a single unified and integrated water supply system and that diligence on any feature of that system shall be considered in finding reasonable diligence in the development of all conditional features of the system, including the conditional water rights that are the subject of this Application; D. Finding that any actions taken by Pueblo Water between the date of filing of this Application and any decree entered herein may be considered in a future proceeding for a determination of reasonable diligence in the development of this conditional water right. E. Granting such other relief as the court deems proper.

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**CASE NO. 2017CW3021 – SOUTH FORTY RECREATION, LLC, 759 Apache Drive, Canon City, CO 81212** (Please direct all correspondence and inquiries regarding this matter to Applicant’s attorneys: Steven T. Monson and David M. Shohet, MONSON, CUMMINS & SHOHEET, LLC, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Approval of Plan for Augmentation

**FREMONT, LAKE, CHAFFEE AND PUEBLO COUNTIES, COLORADO**

**II. Summary of Plan for Augmentation.**

South Forty Recreation, LLC (“South Forty”) is under an option contract to purchase approximately 58 acres of land located in portions of the West ½ of Section 1 in Township 19 South, Range 70 West of the 6th P.M. The property to be acquired by South Forty was formerly a gravel mine site owned and operated by Valco, Inc., known as the Canon City East Pit (DRMS Permit No.M-1977-559). The mining permit remains open for the completion of reclamation obligations to be performed by the Applicant. With completion of mining activities on the property, the property will now be reclaimed leaving two ponds with a total exposed water surface area of approximately 22.6 acres. Of the 22.6 acres of surface area, 15.4 acres is attributable to surface area that existed prior to 1981 resulting in a post-1980 surface area of 7.2 acres for which evaporative depletions will be replaced. South Forty files this Application requesting a permanent plan for augmentation to replace out-of-priority evaporative depletions associated with the ponds. The water rights to be used for augmentation include fully consumable water supplies leased from Upper Arkansas Water Conservancy District, including shares in the Twin Lakes Reservoir and Canal Company (“Twin Lakes”), and Fryingpan-Arkansas Project water allocated to Canon City and supplied to Applicant as a customer of the City.

**III. Plan for Augmentation.** South Forty seeks a plan for augmentation to replace the out-of-priority depletions attributable to evaporation associated with two ponds that adjoin the Arkansas River south of Canon City, described as follows: **A.**

**Name of Structures to be Augmented:** **1. South Forty West Pond:** a. Legal Description of Pond: In the SW1/4 of the NW ¼ and NW ¼ of the SW1/4, Section 1, Township 19 South, Range 70 West of the 6<sup>th</sup> P.M., Fremont County, Colorado. b. Source: Exposed groundwater as the result of previous gravel mining, tributary to the Arkansas River. c. Surface Area of Pond: 9.1 acres. **2. South Forty East Pond:** a. Legal Description: SW1/4 of the NW ¼, and N ½ of the SW1/4, Section 1, Township 19 South, Range 70 West of the 6th P.M., Fremont County, Colorado. b. Source: Exposed groundwater as the result of previous gravel mining, tributary to the Arkansas River. c. Surface Area: Approximately 13.5 acres. Collectively, the above structures are referred to as the South Forty Ponds and are shown on Exhibit A to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

**B. Water Rights to be used for augmentation:** **1. Canon City Leased Water.** On December 19, 2016, South Forty entered into a 30-year Municipal Water Users Agreement for augmentation water from Canon City supplied to South Forty as a water customer of Canon City. A copy of the signed Agreement is attached to the Application as Exhibit B. Under this Agreement, Canon City has agreed to provide fully consumable water for South Forty to use as a portion of the replacement water supply hereunder to replace evaporative depletions from the South Forty Ponds. This

water includes Canon City's allocation of Fryingpan-Arkansas project water, and Canon City's return flows therefrom ("Project Water"), as available and allocated to Canon City, which water rights are described as follows: a. West Slope Decrees: The Fryingpan-Arkansas project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County. The principal water rights were adjudicated by the decrees in Civil Action No. 4613 (District Court, Garfield County) dated June 20, 1958, and August 3, 1959; and were modified by the Decree in Case No. W-829-76 (District Court, Water Division 5) dated November 27, 1979; and were supplemented by the Decree in Case No. 83CW352 (District Court, Water Division No. 5) dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travels under the Continental Divide through Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, and applied to beneficial use within the boundaries of the Southeastern Colorado Water Conservancy District ("Southeastern"). Because the water is imported from another river basin, it is fully consumable in Water Division 2. b. East Slope Decrees: The Fryingpan-Arkansas Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141 (District Court, Chaffee County) dated July 9, 1969; and Civil Action No. B-42135 (District Court, Pueblo County) dated June 25, 1962; and were modified and supplemented by the Decree in Case No. 80CW6 (District Court, Water Division 2), dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed for reuse and exchange for beneficial use within Southeastern's District boundaries. Under these decrees, Turquoise Reservoir and Twin Lakes Reservoir may store native water or imported water, directly or by exchange with each other or with Pueblo Reservoir. The Southeastern District allocates Project Water annually based on its principles, policies, rules and regulations. Any and all use of Project Water and Project facilities will be pursuant to and subject to the above-referenced decrees for the Fryingpan-Arkansas Project, and to all lawful rules, regulations, policies, and contract obligations concerning Project Water and Project Water facilities. Any decree entered in this case will not grant any rights to use Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocations of Project Water therefrom. **2. UAWCD Leased Water**. South Forty has also entered into a 5 year water lease on February 10, 2017, with the Upper Arkansas Water Conservancy District ("UAWCD") to also be used to replace evaporative depletions from the South Forty Ponds. UAWCD has agreed to provide up to 5 annual acre feet of fully consumable water for South Forty to use as a replacement supply hereunder. The UAWCD lease is attached to the Application as Exhibit C. The water provided under the lease with UAWCD may be supplied from any of UAWCD's source locations in the Arkansas River Basin, including the following. a. Twin Lake Shares. The Twin Lakes Share represents a *pro rata* interest in Twin Lakes water supplies, which include native Arkansas River diversions and the Independence Pass trans-mountain diversion system, which diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County for storage in Twin Lakes Reservoirs in Lake County,

Colorado. Twin Lakes Shares consist of direct flow and storage rights that are available for one hundred percent consumptive use and reuse and a portion are available for augmentation. The water rights that produce the pro rata interest of the Applicant in the Twin Lakes Share are described as follows: i. Colorado River Water Rights: 1. Decrees: a. Case No. 3082, District Court, Garfield County, August 25, 1936. b. Case No. W-1901, District Court, Water Division 5, May 12, 1976. 2. Priority: August 23, 1930, No. 431. 3. Source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Division 5, as more fully set forth in the above reference Decrees. 4. Use: Direct flow and storage purposes for irrigation, domestic, commercial, industrial, municipal, and all other beneficial uses. 5. Amount: Direct flow amount for diversions through trans-mountain tunnels of 625 c.f.s. with an annual limit of 68,000 acre-feet, a running ten year limit of 570,000 acre-feet, and other limitations set forth in the decrees. ii. Arkansas River Water Rights: 1. Decrees: a. Original decree, Case No. 2346, District Court, Chaffee County, July 14, 1913. B. Modified decree, Case No. W-3965, District Court, Water Division 2, April 19, 1974. 2. Priorities: December 15, 1896, No. 3, and March 25, 1897, No. 4. 3. Source: Lake Creek and its tributaries, tributary to the Arkansas River. iii. Use: Storage for irrigation, domestic, commercial, industrial, and municipal purposes on any site in the Arkansas River Basin of Colorado below the Twin Lakes Reservoir that are capable of being served with water by diversion from said Arkansas River. iv. Amount: 54,452 acre-feet (20,645.3 acre-feet: Priority No. 3, 33,806.7 acre-feet: Priority No. 4). In previous augmentation plan cases approving the use of water available to Twin Lakes shares, each such share was considered to have a “firm” yield of 0.78 acre-foot of water available for replacement purposes per year, without consideration of any water that a shareholder may have carried over pursuant to the By-laws and policies of Twin Lakes. South Forty does not claim at this time the right to use any of the native yield of Twin Lakes shares in this case. b. UAWCD Other Water. The lease UAWCD water includes other fully consumable water that UAWCD owns or has a right to use, and decreed storage of that water, including: (i) UAWCD’s interest in the White Ditch No. 1, priority 51, appropriation date May 1, 1874, decreed June 19, 1890, as changed by Case No. 91CW19 (Water Division 2) and the storage of 26.08 acre-feet of such water right in North Fork Reservoir; (ii) UAWCD’s interest in the Alfred Katzenstein Ditch No. 1, decreed March 12, 1896, with appropriation dates of March 30, 1873 (Priority 51) and July 1, 1878 (Priority 207B), as changed in Case No. 10CW30; (iii) water and water rights that UAWCD exchanges and makes available pursuant to the application pending in Case No. 04CW96, District Court, Water Division No. 2, only after a decree has been entered; (iv) fully consumable water owned by the City of Salida and leased to UAWCD (ref. 87CW61, 04CW125, 04CW96); (v) fully consumable water owned by the Town of Poncha Springs, with storage, that UAWCD has a right to use (ref. 07CW111); (vi) fully consumable water owned by the Board of Water Works of Pueblo, with storage, pursuant to its decrees and leased to UAWCD; (vii) any other water and water rights that UAWCD has or may acquire that legally can be used to augment or replace out-of-priority depletions, provided the amounts of such water available for such uses have been adjudicated and quantified for such use; (viii) storage in North Fork Reservoir (ref. 82CW204) from the North Fork of the South Arkansas River; (ix) storage in O’Haver Reservoir (ref. 82CW205) from Gray’s Creek, tributary to Poncha Creek, tributary to the South Arkansas River. Applicant does not

seek a change of water right, re-quantification, or modification of the terms of any existing decrees for any of the water rights that may be delivered pursuant to the lease with UAWCD, but simply seeks approval of their use as a source of replacement water for the plan for augmentation requested herein. **C. Statement of Plan For Augmentation.** South Forty seeks approval of a plan for augmentation to cover replacement obligations from out-of-priority evaporative depletions caused by the South Forty Ponds. The maximum total surface area of the South Forty Ponds is approximately 22.6 acres. 15.4 acres of this exposed surface area is attributable to surface area that existed as of December 30, 1980 and does not require augmentation. Therefore, of the 22.6 acres of exposed surface area, 7.2 surface acres require replacement of out-of-priority stream depletions due to evaporation from the ponds. C.R.S. 37-90-137(11)(b); 37-92-502(2)(b). South Forty's water resource engineers have calculated that the annual gross evaporation rate of the ponds is 3.83 annual acre feet per acre of surface area exposed. After consideration of effective precipitation, the annual net evaporation is approximately 3.1 acre feet per acre annually. C.R.S. 37-92-305(12). Accordingly, the South Forty Ponds will cause maximum depletions to the Arkansas River of approximately 22.32 annual acre-feet. The South Forty Ponds are located an average distance of approximately 510 feet from the Arkansas River. A Glover analysis will be used by South Forty's water resource engineers to determine any lagged depletions associated with the South Forty Ponds. Releases of replacement water will be made from South Forty's replacement sources at or above the calling water right, located downstream of the ponds, to correspond with the amounts and timing of stream depletions to the Arkansas River, and thereby prevent injury to vested water rights and conditional decreed water rights. **IV. Groundwater Right.** South Forty also requests absolute groundwater rights for the South Forty Ponds, to be named the South Forty Ponds Well. These two ponds intercept groundwater that is tributary to the Arkansas River and are currently permitted under Well Permit No. 52183-F. The amount of the groundwater right appropriation is for the out-of-priority evaporative depletions that are replaced under the above plan for augmentation, with an appropriation date as of the filing of this case. The decreed uses requested are for recreational, wildlife, and piscatorial. **V. Name And Address Of Owners Of Land On Which Structures Will Be Located.** Valco Inc., c/o Tom Brubaker, whose address is 9296 Windhaven Dr., Parker, Colorado 80134-2808, owns the land on which the South Forty Ponds are located. Applicant will acquire title to the subject property from Valco upon closing of the option contract in May of 2017. **VI. Additional Terms and Conditions.** A. South Forty shall install and maintain such water measuring devices as deemed essential by the State Engineer or Division Engineer and the same shall be installed and operated in accordance with the instruction of that office. B. The South Forty Ponds are currently permitted under Well Permit No. 52183-F issued by the State Engineer. South Forty will obtain a new single well permit in accordance with any final decree entered in this matter. C.R.S.37-90-137(11)(g). C. South Forty will provide appropriate accounting to the Division Engineer, as required, demonstrating compliance with this plan. D. The Division Engineer shall assess appropriate transit losses, if any, on the provision of the leased augmentation water supplies. E. South Forty intends to use the South Forty Ponds for recreational, wildlife and piscatorial uses. As these uses are non-consumptive and South Forty is replacing 100 percent of the evaporative



depletions associated with the ponds, a separate augmentation plan is not needed to utilize the ponds for such future uses. South Forty, however, seeks confirmation that it can utilize the South Forty Ponds for its future uses so long as it replaces 100 percent of the evaporative depletions from the ponds as provided for herein. F. South Forty seeks the right to replace its fully consumable replacement water supplies, upon expiration of its leases, with other leased fully consumable water that replaces the pond depletions in accordance with the terms of a final decree, upon motion to the Court under its retained jurisdiction and proof of the adequacy of such other leased replacement water. **WHEREFORE**, South Forty requests that its Application for Approval of Plan for Augmentation be granted as requested herein, and for such other and further relief as the Court deems appropriate in these circumstances.

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**CASE NO. 2017CW3022 – TOWN OF BUENA VISTA, COLORADO (“Town”), c/o Town Manager, P.O. Box 2002, Buena Vista, CO 81211** (Direct all pleadings to Applicant’s attorneys: Andrea L. Benson, Cynthia F. Covell and Alyson K. Scott, Alperstein & Covell P.C., 1600 Broadway, Suite 900, Denver, CO 80202; (303) 894-8191)

Application for Plan for Augmentation and Exchange

**CHAFFEE COUNTY, COLORADO**

**FIRST CLAIM: APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.**

**Structure to be augmented:** McPhelemy Pond. **Case Information:** An application for approval of a storage right for the McPhelemy Pond is pending in Case No. 2016CW3101, Water Court, Division 2. **Legal description of structure to be augmented:** The centerline of the dam for the pond is located in the SW ¼ of the SE ¼ of Section 8, Township 14 South, Range 78 West of the 6th P.M., 845 feet from the South section line and 1555 feet from the East section line, in Chaffee County, Colorado. The UTM coordinates sourced from the survey performed on May 17, 2016 for this location are as follows: Northing: 4299839 meters, Easting: 401647 meters, Zone 13, Datum NAD 83. The location of the Pond is depicted on the map attached to the application marked as Exhibit 1. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Source:** On-channel pond, Cottonwood Creek, a tributary of the Arkansas River. **Date of appropriation:** March 24, 1905. **Amount:** 4.16 acre-feet with right to fill and refill continuously. **Uses:** Directly or following storage for municipal uses, including, without limitation, domestic, commercial, industrial, recreation, fishery, piscatorial, freshening, aesthetic, fire protection, and for augmentation, replacement, substitution, exchange, and recharge for subsequent use within the Town’s service area as it now exists and as it may exist in the future, or extraterritorially by contract with the Town. **Surface area at high water line:** 1.06 acres, with 0.62 acres exceeding the natural stream channel. **Total Capacity:** 4.16 acre-feet of activity capacity, with 4.07 acre-feet of active storage and 0.09 acre-feet of dead storage. **Plan for Augmentation: General Description:** McPhelemy Pond is an on-channel impoundment on Cottonwood Creek. The Town wishes to fill the pond and replace evaporation at times when the storage right would otherwise be out-of-priority. Augmentation of out-of-priority storage and evaporation will be made as provided herein using fully-consumable Fryingpan-Arkansas Project water (“Project Water”), described below. The Fryingpan-Arkansas Project is managed and

operated by the U.S. Bureau of Reclamation (“Bureau”) and the Southeastern Colorado Water Conservancy District (“Southeastern”). The Town is entitled to receive annual allocations of Project Water, subject to allocation by and purchase from Southeastern. The Town’s fully-consumable Project Water may be delivered to the Arkansas River in the amounts and at the times requested by the Town, including by exchange to storage in Cottonwood Reservoir and Rainbow Lake pursuant to the decree entered in Case No. 96CW17, Water Division No. 2, on July 12, 1999. This application does not alter the terms of the decree in Case No. 96CW17. In addition, Buena Vista seeks approval of an appropriative right of exchange of Project Water to McPhelemy Pond, as described below. **Water rights to be used for augmentation:** i. **Fryingpan-Arkansas Project Water:** West Slope Decrees: The Fryingpan-Arkansas Project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County. The principal water rights were adjudicated by the decrees in Civil Action No. 4613 (District Court, Garfield County) dated June 20, 1958, and August 3, 1959; and were modified by the Decree in Case No. W-829-76 (District Court, Water Division No. 5) dated November 27, 1979; and were supplemented by the Decree in Case No. 83CW352 (District Court, Water Division No. 5) dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travels under the Continental Divide through Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, and applied to beneficial use within Southeastern’s boundaries. Because the water is imported from another river basin, it is fully consumable in Water Division 2. East Slope Decrees: The Fryingpan-Arkansas Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141 (District Court, Chaffee County) dated July 9, 1969; and Civil Action No. B-42135 (District Court, Pueblo County) dated June 25, 1962; and were modified and supplemented by the Decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed for reuse and exchange, for beneficial use within Southeastern’s boundaries. Project Water Allocations: The Town is eligible to receive annual allocations of Fryingpan-Arkansas Project Water (“Project Water”), which it may purchase and use after the water is allocated to it by Southeastern. Southeastern allocates Project Water annually based on its principles, policies, rules and regulations, as they may be amended. The Town seeks to exchange up to 20 acre-feet per year of Project Water which may be allocated to it by Southeastern. Limitations: Any and all use of Project Water in this case, whether used by exchange or for augmentation, will be pursuant to and subject to the decrees for the Fryingpan-Arkansas Project described above, and to all lawful rules, regulations, policies, and contract obligations of Southeastern. This Application and any decree entered herein does not give the Town any rights to use Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocation of Project Water or return flows therefrom; however, this Application and any decree entered herein will not limit any existing rights the Town may otherwise have. The Town may use Project Water only if, when, and to the extent it has purchased such water after it is allocated to the

Town by Southeastern. Releases of Project Water from Project structures as provided for in this decree shall be limited to the Town's allocated Project Water then in storage in Project structures, and shall be made upon the Town's request or the request of the Division Engineer to the Bureau office responsible for operation of Fryingpan-Arkansas Project reservoirs. This Application does not, and is not intended to, modify Southeastern's decrees for the Project Water rights. The Town's use of Project Water pursuant to this application, including use for augmentation or by exchange, will be made only within Southeastern's boundaries, as a supplemental supply for the uses decreed herein. Project Water may be used for all lawful municipal purposes, including irrigation of lawns and gardens, municipal parks, golf courses and open space, but may not be used for agricultural irrigation, including pasture irrigation, unless such use is specifically approved by Southeastern. **ii. McPhelemy Pond Storage Right**, described above. **iii. Additional or alternate replacement supplies:** In accordance with C.R.S. § 37-92-305(a)(c), or any subsequent amendment or revision thereof, the Town may use additional or alternative sources of water for augmentation, substitution, replacement and exchange pursuant to the decree entered upon this application in the manner allowed by statute in place at the time the Town seeks to use such additional or alternate replacement supplies. The Town shall comply with all procedures required by such statute before using such additional or alternative supplies in this plan for augmentation. **Statement of plan for augmentation:** Applicant's Water Requirements: McPhelemy Pond is an on-channel impoundment on Cottonwood Creek formed by closing multiple headgates on Cottonwood Creek. Water is actively stored in the months of May through October. McPhelemy Pond is used for municipal purposes, including recreation, fishery, piscatorial, freshening, aesthetic, and fire protection uses. Based upon a topographic survey, the pond surface area with the headgates closed is 1.06 acres, of which 0.44 acres is the natural stream channel. The net increased surface area requiring replacement of evaporative losses is 0.62 acres. Out-of-priority depletions due to the pond evaporation as a result of impoundment will be augmented as provided in this Application or in the final decree entered in this case. According to NOAA Technical Report NWS 33, gross evaporation for the region is 40 inches per year. Depletions were calculated as the net amount of evaporation after subtracting effective precipitation. The Table below shows calculations of annual net evaporative loss, based on the State Engineer's approved methodology for elevations above 6,500 feet. The net evaporation of the McPhelemy Pond is 2.65 feet (31.8 inches). The pond will not store Cottonwood Creek water until May. The water surface is increased above the natural stream area only when the dam headgate is closed, typically in May through October. Because McPhelemy Pond is within the natural stream channel of Cottonwood Creek, depletions are instantaneous to the stream. The total augmentation depletion is 1.37 acre-feet.

### Evaporation Replacement Requirement

May - October	Acres	November - April	
Total Pond Surface Area	1.06	Total Pond Surface Area	0.19
Natural Stream Channel Area	0.44	Natural Stream Channel Area	0.10
Increased Surface Area	0.62	Increased Surface Area	0.09

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Month	Gross Evap Distribution	Gross Evaporation	Precipitation	Effective Precipitation	Unit Net Evaporation	Pond Surface Area Exceeding Natural Channel Area	Evaporation
	(percent)	(feet)	(feet)	(feet)	(feet)	(acres)	(acre-feet)
November	4.0%	0.13	0.04	0.03	0.11	0.09	0.01
December	1.5%	0.05	0.03	0.02	0.00	0.09	0.00
January	1.0%	0.03	0.03	0.02	0.00	0.09	0.00
February	3.0%	0.10	0.04	0.03	0.00	0.09	0.00
March	6.0%	0.20	0.06	0.04	0.16	0.09	0.01
April	9.0%	0.30	0.08	0.05	0.25	0.09	0.02
May	12.5%	0.42	0.08	0.06	0.36	0.62	0.22
June	15.5%	0.52	0.05	0.04	0.48	0.62	0.30
July	16.0%	0.53	0.14	0.10	0.43	0.62	0.27
August	13.0%	0.43	0.14	0.10	0.34	0.62	0.21
September	11.0%	0.37	0.07	0.05	0.32	0.62	0.20
October	7.5%	0.25	0.06	0.04	0.21	0.62	0.13
Totals:	100%	3.33	0.81	0.57	2.65		1.37

**Operation of the Plan for Augmentation:** In the event the calling water right originates on the Arkansas River downstream of its confluence with Cottonwood Creek, the Town shall provide augmentation water directly to the Arkansas River by releases or exchange of the Town's Project Water (plus any transportation losses) stored in Fryingpan-Arkansas Project structures. Releases will be made timely to meet stream depletions upon request of the Town or the Division Engineer to the Bureau office responsible for operation of the Fryingpan-Arkansas Project structure from which water will be released. Sufficient water shall be released to offset out-of-priority depletions from on-channel impoundment of McPhelemy Pond plus transportation losses as determined by the Division Engineer. The Town shall keep a record of Project Water available to it. If Project Water is not available to the Town from Project structures located upstream of the calling Arkansas River water right by release from Project structures, or if the calling water right is on Cottonwood Creek, the Town will augment the depletions by releases of Project Water stored in Cottonwood Lake pursuant to Case No. 96CW17 or by exchange to McPhelemy Pond pursuant to the appropriate right of exchange described below. If the Town's Project Water is unavailable to

augment McPhelemy Pond out-of-priority depletions, the Town will release water stored in priority under the McPhelemy Pond storage right described above for augmentation purposes. If and to the extent out-of-priority depletions cannot be augmented as herein provided, on-channel impoundment at McPhelemy Pond will be curtailed. **SECOND CLAIM: APPROPRIATIVE RIGHTS OF SUBSTITUTION AND EXCHANGE**  
**Description of Exchange:** In Case No. 96CW17, The Town was awarded a conditional decree for an appropriative right of exchange to permit the Town to exchange its allocated and purchased Project Water to storage in Rainbow Lake and Cottonwood Reservoir, as well as to its municipal intake and infiltration gallery on Cottonwood Creek. The Town seeks to include on-channel impoundment and augmentation at McPhelemy Pond as an additional use and point of exchange of its allocated and purchased Project Water under the same terms and conditions as the decree in Case No. 96CW17. McPhelemy Pond is located within the exchange reach described in Case No. 96CW17, and all of the terms, conditions and requirements decreed in that case will apply to the additional point of exchange at the McPhelemy Pond. **Exchange Reach:** Southeastern will deliver Project Water to the confluence of the Arkansas River and Cottonwood Creek using delivery methods decreed to Southeastern. The exchange decreed herein will operate from the confluence of the Arkansas River and Cottonwood Creek up to McPhelemy Pond. A map showing the exchange reach is attached to the Application as Exhibit 2. **Source of Water to be Exchanged:** Project Water. **Amount:** The Town claims an appropriative right of exchange of 20 acre-feet annually with a maximum exchange rate of 2.1 c.f.s. in order to allow storage of the full amount during the spring runoff in a dry year, and augmentation of evaporative losses. **Date of initiation of appropriation:** April 7, 2016. **How initiated:** By notification to all parties who subscribed to the Division 2 Substitute Water Supply Plan list of the Town's request for approval of a temporary one-year exchange of Project Water to McPhelemy Pond; by exchange of 2.1 c.f.s from Pueblo Reservoir and application to beneficial use. **Date water applied to beneficial use:** May 26, 2016. Pursuant to Section 37-92-305(10), C.R.S., this date will be the priority date of the exchange for purposes of administration. **Use:** Directly or following storage for municipal uses, including, without limitation, domestic, commercial, industrial, recreation, fishery, piscatorial, freshening, aesthetic, fire protection, and for augmentation, replacement, substitution, exchange, and recharge for subsequent use within the Town's service area as it now exists and as it may exist in the future, or extraterritorially by contract with the Town. **Names and addresses of owners of the land on which any new or modified diversion or storage structures are or will be located and on which water is or will be stored:** Applicant.

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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 2017, (forms available at Clerk's office or at [www.courts.state.co.us](http://www.courts.state.co.us), after serving parties and attaching a certificate of mailing, filing fee \$158.00). 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.

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Witness my hand and the seal of this Court this 5th day of May, 2017.



*Mardell R. DiDomenico*

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Mardell R. DiDomenico, Clerk  
District Court, Water Div. 2  
Pueblo Judicial Building  
501 N. Elizabeth Street, Suite 116  
Pueblo, CO 81003; (719) 404-8832

(Court seal)  
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