

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING AUGUST 2017

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 August 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:

CASE NO. 2017CW10 - WHISPERING MEADOWS, LLC, 4131 NE 22nd Avenue, Portland, OR 97211; (970) 390-1776

Application for Absolute Water Rights (Surface)

CUSTER COUNTY

Name of structure: Jackson Savage ditch. **Legal description of each point of diversion:** **UTM coordinates (Zone 13, NAD83):** Easting 0462031; Northing 4197034. **Street Address:** TBD Ute Valley Road, Westcliffe, CO. **Subdivision:** Capote Springs; **Lot:** Whispering Meadows. **PLSS Description:** Custer County, Section 34, Township 24 South, Range 72 West, 6th P.M., 2672 feet from the south line. **Source:** Cottonwood Creek. See Attachment 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.) **Date of Appropriation:** July 3, 2017; **How appropriation was initiated:** New flume installed and headgate cleaned. **Date water applied to beneficial use:** July 3, 2017. **Amount claimed:** 1.2 cfs Conditional. **Uses or Proposed Uses:** Irrigation for livestock and crops. **If irrigation, number of acres historically irrigated:** 20; **proposed to be irrigated:** 45. **Does the Applicant intend to use this water right to supplement irrigation on an area of land already irrigated under another water right?** No. Applicant owns a water right for part of the acreage subject to this application, but intends to abandon that right in favor of this right. **Legal description of irrigated acreage:** 45 acres north of Cottonwood Creek in the N ½ of Sec. 34, plus 10 acres to the south of Cottonwood Creek in the N ½ of Sec. 34. See map attached to the Application as Attachment B. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new or existing diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant is the only owner of land upon which a diversion structure is located. No water will be stored on any land in connection with this applied for water right. **Remarks or any other pertinent information:** Applicant applies for this water right to replace a separate right which it plans to abandon (J. Riggs Ditch No. 369, Priority No. 463 with appropriation date of April 15, 1889) because the headgate for the J. Riggs right was moved by a prior owner to a place that was not decreed by the water court.

CASE NO. 2017CW11 - R. MATTHEWS MILES, JR., 1621 Ridgewood Avenue, Holly Hill, FL 32117; (386) 451-1000

Application for Simple Change in Surface Point of Diversion Pursuant to § 37-92-305(3.5), C.R.S.

CUSTER COUNTY

Decreed Water Right for which change is sought: Name of structure: F. Caldwell Antelope Creek Ditch. **Date of original and all relevant subsequent decrees:** 3/12/1896; **Case No.:** No known case no. "3/12/1896". **Court:** Fremont District Court. **Legal description of structure as described in most recent decree that adjudicated the location:** "...N Bank of Antelope Creek, at a point whence the S.E. cor. Sec. 5, Tp. 23 S. R. 72 W., bears N. 71 deg. W. 750 feet, and in the N.W. 4 N.W. 4 Sec. 9..." **Decreed source of water:** Antelope Creek. **Appropriation Dates:** August 1, 1870 (Priority 12-B); August 1, 1876 (Priority 178-A); May 31, 1890 (Priority 491-A). **Total amount decreed to structure in cubic feet per second:** August 1, 1870: 0.44 c.f.s. absolute; August 1, 1876: 0.44 cfs absolute; May 31, 1890: 0.44 cfs absolute. **Decreed use:** Irrigation. **Amount of water that applicant intends to change:** August 1, 1870: 0.44 cfs; August 1, 1876: 0.44 cfs; May 31, 1890: 0.44 cfs. **Detailed description of proposed change in a surface point of diversion:** **A. Complete statement of change:** Applicant seeks to change the decreed point of diversion for the three F. Caldwell Antelope Creek Ditch water rights due to changes in the nature of Antelope Creek. Applicant seeks to change the decreed point of diversion to a new location approximately 1,000 feet upstream. There are no intervening water rights, instream flow rights nor tributary inflows within this change reach. No other changes to these three water rights are sought. **Location of the new surface point of diversion: UTM coordinates (Zone 13):** Northing 4213820; Easting 460921. **Source of UTM:** Trimble RTK survey grade taken by NRCS personnel. **Accuracy of location displayed on GPS device:** accurate to 1 cm. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion structure, or modification to any existing diversion structure is or will be constructed:** John L. Reis (5240 Redcreek Springs, Pueblo, CO 81005) & Julia Shaw (215 W. 3rd St., Walsenburg, CO 81089), as Trustees of the Leonard R. and Jean Reis Revocable Inter Vivos Living Trust.

CASE NO. 2017CW3044 - THE LAKE MEREDITH RESERVOIR COMPANY v. KEVIN REIN, P.E., in his capacity as the Colorado State Engineer, and STEVEN J. WITTE, P.E., in his capacity as the Division Engineer in and for Water Division No. 2.

This case is a Complaint for Declaratory Judgment and is listed in the resume for purposes of accounting for the case number in consecutive order.

CASE NO. 2017CW3045 - SKY UNLIMITED, LLC, a Colorado Limited Liability Company, 9001 Hwy 96 West, Pueblo, CO 81005. (Please direct all correspondence and pleadings to counsel, David M. Shohet, of Monson, Cummins & Shohet, LLC, 319 N. Weber Street, Colorado Springs, CO 80903 (719) 471-1212)).

Application for Plan for Augmentation

PUEBLO COUNTY, COLORADO

Background and Summary of Plan for Augmentation. Applicant leases approximately 47.72 acres located in the E1/2 of the E1/2 of the NE ¼ of Section 4, Township 21 South, Range 68 West of the 6th P.M., Pueblo County, Colorado (“Property”). The Property’s address is 9001 Highway 96 West, Pueblo, Colorado 81005, and 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.) The Applicant seeks a plan to augment up to two wells on its 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, which may be completed to the Dakota Aquifer or to the alluvium of Red Creek, to be constructed on the Property. **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 user 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. **Lease with Pueblo Board of Water Works.** Applicant will enter into a lease for fully consumable water with Pueblo Water prior to using such water. 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 the 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, 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 30 annual acre feet. **Depletions.** Water diverted use 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 any Dakota wells located on the Property may occur to the Arkansas River at the base of the Pueblo Reservoir Dam in Section 36, Township 20 South, Range 66 West of the 6th P.M., or at another point to be determined, including the confluence of the Arkansas River and Red Creek. **Replacement Water.** Total Replacement water to augment the Applicant's well depletions will be 30 are-feet from the Lease, less any transit losses. Applicant estimates that replacement water less transit losses will be approximately 27 annual acre feet. Applicant reserves the right to acquire additional water supplies so that total annual depletions under this plan may equal up to 45 annual acre feet. The replacement water to be 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.** The land leased by the Applicant is owned by Zixiao Liu, whose address is 3151 E. Spaulding Ave., Apt 101, Pueblo, CO 81008-2231.

CASE NO. 2017CW3046; Previous Case No. 1999CW160 - SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT, 31717 United Avenue, Pueblo, CO 81001. (Please send all pleadings and correspondence to: Stephen H. Leonhardt and Katherine E. McAuley, Burns, Figa & Will, P.C., attorneys for Applicant; 6400 S. Fiddlers Green Circle, Suite 1000, Greenwood Village, CO 80111; (303) 796-2626.)

Application for Finding of Reasonable Diligence and to Make Absolute in Part
FREMONT AND CUSTER COUNTIES, COLORADO

2. Decrees. 2.1. Original Decree: Case No. 99CW160, Water Division 2, entered August 9, 2011. **2.2. Decreed Uses:** The water will be used beneficially for Fryingpan-Arkansas Project purposes, including but not limited to irrigation of lands served by DeWeese-Dye Ditch and Reservoir Company ("DeWeese-Dye"). Fryingpan-Arkansas Project uses occur within the Southeastern District boundaries, which are generally depicted on Exhibit 3 to the Application, and include irrigation, manufacturing, domestic, municipal, power purposes, flood control, recreation, and wildlife conservation; all municipal purposes, including human consumption, fire protection, sewage treatments, street sprinkling, watering of parks, lawns, and grounds, and maintaining adequate storage reserves; all farming purposes, including the growing of crops of all kinds, stock water, domestic purposes, and the watering of lawns, trees and shrubs; all industrial

purposes, and the generation of electric power; for a succession of such uses and to fill and refill Fryingpan-Arkansas Project reservoirs; and use and reuse of all project waters herein described. Fryingpan-Arkansas Project Water ("Project Water") also may be used to replace evaporation losses on Project Water stored by exchange in DeWeese Reservoir. **3. Decreed Legal Description of Exchange Structures:** **3.1. Structures to divert or store water by exchange:** 3.1.1. DeWeese Reservoir: The DeWeese Dam and Reservoir is located in Custer County, Colorado; the southeasterly corner of said dam is North 41 degrees and 37 minutes East, and is distant 785.7 feet, from the North East corner of Section 21 in Township 21 South, Range 72 West, Sixth Principal Meridian, as generally depicted on Exhibit 1 (a map attached to the Application). All referenced Exhibits are incorporated by reference and may be inspected at the office of the clerk of this Court.) The UTM coordinates for the DeWeese-Dye Reservoir are UTMx = 460051.7 and UTMy = 4229294.¹ 3.1.2. DeWeese-Dye Main Ditch: The headgate of the DeWeese-Dye Main Ditch is located on the east bank of Grape Creek in Fremont County, Colorado at a point whence the North quarter corner of Section 6 in Township 19 South of Range 70 West of the Sixth Principal Meridian bears North 30 degrees and 58 minutes East and is distant 4790 feet, as generally depicted on Exhibit 2 to the Application. The UTM coordinates for the DeWeese-Dye Main Ditch are UTMx = 476341.3 and UTMy = 4252322. **3.2. Structures to release exchange water:** 3.2.1. Turquoise Reservoir: Turquoise Reservoir is formed by a dam across Lake Fork Creek in Lake County in Section 19, Township 9 South, Range 80 West of the 6th Principal Meridian, as described in the Decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980, and generally depicted on Exhibit 3 to the Application. It is decreed to store 129,432 a.f. The UTM coordinates for Turquoise Reservoir are UTMx = 381385.2 and UTMy = 4348865. 3.2.2. Twin Lakes Reservoir: Twin Lakes Reservoir is formed by a dam across Lake Creek in Lake County in Section 23, Township 11 South, Range 80 West of the 6th Principal Meridian, as described in the Decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980, and generally depicted on Exhibit 3 to the Application. It is decreed to store 141,000 a.f. The UTM coordinates for Twin Lakes Reservoir are UTMx = 387247 and UTMy = 4326098. **4. Source of Exchange Water:** Fryingpan-Arkansas Project Water. 4.1. 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 the Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes

¹ Southeastern obtained all UTM coordinates described in this Application from the HydroBase database found at <http://cdss.state.co.us/OnlineTools/Pages/StructuresDiversions.aspx>. The UTM coordinates are included in this Application at the request of the Division Engineer to facilitate administration. In the event that any UTM coordinates are inaccurate, it shall not affect the rights to be adjudicated through this Application.

Reservoir and elsewhere, and applied to beneficial use within Southeastern's District boundaries. Because the water is imported from another river basin, it is fully consumable in Water Division 2.

4.2. 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, Pueblo Reservoir, and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed for exchange, reuse and successive use to extinction, 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.

4.3. Project Water Allocations and Limitations: 4.3.1. DeWeese-Dye and other entities within the Southeastern District are eligible to receive annual allocations of Project Water and Project Water Return Flows, which they may purchase and use after the water is allocated to them by Southeastern. Southeastern allocates Project Water, and Project Water Return Flows, annually based on its decrees, principles, policies, procedures, contracts, charges and rules and regulations, as they may be amended from time to time. Purchase and use of Project Water and purchase and use of Project Water Return Flows will be made consistent with Southeastern's decrees and Allocation Principles (as they may from time to time be amended), and such policies, procedures, contracts, charges, and terms as may be lawfully determined from time to time by Southeastern in its discretion. This Application, and any decree in this case, do not give DeWeese-Dye and other entities any rights of ownership or rights to purchase or receive allocation of Project Water or Project Water Return Flows, but do not alter any existing right DeWeese-Dye and other entities may otherwise have. 4.3.2. This Application does not in any way seek to modify Southeastern's decrees for the Fryingpan-Arkansas Project Water rights. The description of or reference to structures and water rights herein, other than the proposed exchanges described in this Application, does not in any way seek to amend or limit the decrees for those structures and water rights, and omissions in such descriptions and references shall in no way prejudice the owners of those structures and water rights.

5. Description of Appropriative Rights of Exchange: 5.1. Source: Grape Creek. 5.2. Exchange Reach: The exchange operates on the following reach of Grape Creek: The upstream terminus is at DeWeese Reservoir (described in paragraph 3.1 above). The downstream terminus is the confluence of Grape Creek with the Arkansas River, which is located in the NE1/4 of the NW1/4 of Section 6, Township 19 South, Range 70 West of the Sixth Principal Meridian, Fremont County, Colorado. 5.3. Appropriation Date: February 10, 1939. 5.4. Amount: Maximum exchange rate of 31.85 c.f.s.; maximum total volume of 4,132 a.f. per year for exchange into storage.

6. Finding of Reasonable Diligence: 6.1. During the diligence period, lasting from September 2011 through August 2017, Southeastern's staff has communicated with the United States Bureau of Reclamation, the Division Engineer for Division 2, and DeWeese-Dye to develop accounting for the exchanges decreed in Case No. 99CW160

and to monitor their operation. Southeastern and DeWeese-Dye previously entered into an agreement on October 19, 2009, to provide for cooperation on exchanges and storage of Project Water made by Southeastern and DeWeese-Dye, including exchanges under the decree in Case No. 99CW160. 6.2. Southeastern defended its water rights by filing statements of opposition and negotiating stipulations in various water court cases, including one case primarily to protect its Grape Creek Exchange rights. Southeastern's efforts in these cases show diligence made specifically toward protecting and developing the Grape Creek Exchange. 6.3. DeWeese-Dye relies in part on Project Water for the operation of its irrigation water systems, and received allocations of Project Water every year during the diligence period. The Grape Creek Exchange is an important way to deliver Project Water to DeWeese-Dye. DeWeese-Dye has cooperated with Southeastern in operating the exchange claimed as absolute. Operation of the Grape Creek Exchange, the structures involved in the exchange and Southeastern's integrated water system as a whole shows diligence made toward developing Southeastern's conditional rights decreed in Case No. 99CW160. 6.4. As this Court has previously found, the construction, operation and maintenance of parts of the Fryingpan-Arkansas Project demonstrate reasonable diligence for other parts of the Project. See, e.g., Decree in Case No. 10CW23 at 9 ¶7 (Sept. 21, 2011); Decree in Case No. 02CW37 at 8 ¶7 (April 27, 2004). The collection, transportation, storage, and power systems of the Fryingpan-Arkansas Project comprise one overall, integrated water supply project. *Id.* The Fryingpan-Arkansas Project is the source of water for the Grape Creek Exchange. Reasonable diligence on the Fryingpan-Arkansas Project is reasonable diligence on the Grape Creek Exchange. 6.5. Work in connection with the Fryingpan-Arkansas Project and all its decreed diversions has been prosecuted with reasonable diligence. The existing East Slope structures of the Fryingpan-Arkansas Project have been used to convey and store Project Water, including that diverted from the West Slope, and to deliver such water for decreed beneficial uses. Southeastern has contractual agreements for planning, construction, operation, maintenance and repayment of the Fryingpan-Arkansas Project with the United States Bureau of Reclamation. Consequently, the acts of the Bureau of Reclamation evidence diligence with respect to Southeastern's water rights. 6.6. Fryingpan-Arkansas Project activities include operation, maintenance and improvement of the collection system. Operation is subject to the terms of Water Division 5 and Division 2 Decrees, the Operating Principles, and the Congressional authorizing legislation. Current diversions and recordkeeping are integral to future development of the system's conditional rights. 6.7. Throughout the diligence period, the existing facilities of the Fryingpan-Arkansas Project, including Turquoise Lake and Twin Lakes Dam, were in operation and maintenance status. From September 2011 through August 2017, the Fryingpan-Arkansas Project expended more than \$11.7 million on East Slope and West Slope Project operation and maintenance costs. 6.8. During the diligence period, Southeastern has expended more than \$400,000 for engineering and more than \$1.8 million for legal fees and costs, primarily to protect Southeastern's West and East Slope water decrees and for further Project development. Southeastern has appeared as a party in various water rights proceedings involving water rights along the Arkansas River and its tributaries in order to protect Southeastern's various decreed rights in the Fryingpan-Arkansas Project. Southeastern also has expended substantial executive

time and legal and engineering expense toward protecting and administering the Winter Water Storage Program in Pueblo Reservoir pursuant to the Decree in 84CW179, which program contributes to repayment of the Fryingpan-Arkansas Project costs. Southeastern has taken part in various legislative, administrative and judicial proceedings to protect Southeastern's rights in the Fryingpan-Arkansas Project, including its absolute and conditional East Slope water rights. 6.9. During the diligence period, Southeastern diligently pursued adjudication of exchange applications that have recently been decreed in Water Division 2. Such exchanges help to "secure the greatest benefit from the use and reuse of imported project waters within project boundaries in the State of Colorado," as provided in the Operating Principles and contemplated in the decrees for Southeastern's water rights. Southeastern's activities demonstrate reasonable diligence with respect to Southeastern's water rights for the Project. **APPLICATION TO MAKE CONDITIONAL RIGHT ABSOLUTE IN PART 7. Water Applied to Beneficial Use:** 7.1. Date Water Applied to Beneficial Use: September 2011 to present. 7.2. Amount: Maximum daily average exchange rate of 29.95 c.f.s. on September 19, 2011; maximum annual exchange into storage of 300.00 a.f. during 2011. Exhibit 4 to the Application shows diversion records kept by the Water Commissioner during the diligence period. 7.3. Use: Irrigation of lands served by DeWeese-Dye. 7.4. Place of Use: On lands served by DeWeese-Dye within Southeastern's district boundaries. 7.5. Owners of Structures and Land: The owner of the DeWeese-Dye Main Ditch and DeWeese Reservoir is the DeWeese-Dye Ditch and Reservoir Company, P.O. Box 759, Canon City, CO 81212-0759. The owner of Twin Lakes Reservoir and Turquoise Reservoir is the United States Department of the Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18E, Loveland, CO 80537-9711. The owner of land at Turquoise Reservoir is the United States Forest Service, San Isabel National Forest, 2840 Kachina Drive, Pueblo, CO 81008.

CASE NO. 2017CW3047, Water Division 2, and CASE NO. 2017CW3112, Water Division 1 - OWEN B. CARLETON AND CAROL L. CARLETON, 3261 Estates Circle, Larkspur, CO 80118

(Please address all correspondence and inquiries regarding this matter to Applicants' attorney: Henry D. Worley, Worley Law Firm LLC, 611 North Weber Street, Suite 104, Colorado Springs, CO 80903; (719) 634-8330)

Application for Adjudication of Denver Basin Ground Water and for Approval of Plan for Augmentation **DOUGLAS COUNTY.**

I. APPLICATION FOR DENVER BASIN WATER RIGHTS. 1. Names of wells and permit, registration, or denial numbers: Permit No. 266283 **2. Legal description of wells:** Permit No. 266283 is constructed in the Dawson aquifer in the SE1/4 SW/14 Section 30, T. 10 S., R. 66 W., 6th P.M., 907 feet from the south section line and 1791 feet from the east section line. One well in each of the Denver, Arapahoe and Laramie-Fox Hills aquifers is contemplated, plus all necessary additional and/or replacement wells, to be located anywhere on Applicant's 4.77 acre property, the legal description of which is Tract I Assembly Estates in Douglas County (the "Property"). The address of the Property is 3261 Estates Circle, Larkspur, CO 80118. A map showing the general location of the property is attached to the Application as Figure 1; a second more detailed map is attached to the Application as Figure 2. (All exhibits mentioned herein

are incorporated by reference and may be inspected at the office of the clerk of this Court.) **3. Sources:** not nontributary Dawson aquifer; nontributary Denver aquifer; nontributary Arapahoe aquifer; nontributary Laramie-Fox Hills aquifer. **4. A. Date of appropriation:** Not applicable. **4.B. How appropriation was initiated:** Not applicable. **4.C. Date water applied to beneficial use:** Not applicable. **5. Amount claimed:** Dawson aquifer - 15 gpm, 386 acre feet absolute; Denver aquifer - 15 g.p.m., 453 acre feet absolute; Arapahoe aquifer - 150 g.p.m., 239 acre feet, absolute; Laramie-Fox Hills aquifer - 150 g.p.m., 149 acre feet, absolute. The water court will be asked to retain jurisdiction over such decree to enter a final determination of the amount of water available for appropriation from each aquifer based on geophysical logs for such wells. **6. Proposed uses:** Drinking, cooking and sanitary purposes inside a primary house and a guest house/detached home office; commercial for crop irrigation; stock water; hot tub/spa and/or swimming pool; lawn and garden irrigation; other landscaping features; fire suppression; augmentation through septic system return flows. **7. Name and address of owner of land on which wells are/will be located:** Same as Applicants. **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.** **8. Name of structures to be augmented:** Well permit 266283. No other water rights are or will be diverted from that well. After entry of a decree, permit 266283 will be re-permitted consistent with the provisions of the augmentation plan. **9. Previous decrees for water rights to be used for augmentation:** None. **10. Historic use:** Not applicable. **11. Statement of plan for augmentation:** Well permit 266283 is only permitted for indoor residential uses. Applicants seek approval of a plan for augmentation which will allow multiple uses from this structure, including without limitation indoor residential and commercial uses, crop irrigation for personal and commercial purposes, landscape irrigation, a detached home office or guest house, livestock water, hot tub and/or swimming pool, and augmentation of depletions through septic system return flows. Indoor use for the primary house is conservatively expected to be no less than 0.2 acre foot annually. Treatment of waste water from indoor uses will be achieved using a nonevaporative individual septic tank and leach field system; the State Engineer conservatively estimates that annual return flows from water so treated will no be less than 0.18 acre foot. Such return flows will accrue to tributaries of the South Platte River. This plan for augmentation will allow annual pumping not to exceed 0.75 acre foot over a 300 year period, based upon estimated depletions of 24 percent of pumping in the 300th year. By observing that pumping limitation, septic system return flows will equal or exceed the 0.18 acre foot of maximum stream depletions during the pumping period. Change of the type of wastewater treatment to a central sewage treatment with direct discharge to any tributary of the South Platte River shall not require an amendment to this plan for augmentation, but change to any other type of waste water disposal shall require an amendment. Applicants propose to replace depletions during pumping with return flows from the nonevaporative septic system return flows, and to replace post-pumping depletions with the nontributary Denver aquifer water decreed herein, approximately 198 acre feet of which will be reserved for that purpose. Applicants will reserve the right to replace such depletions with any other judicially acceptable source of augmentation water, upon judicial approval after appropriate notice. **12. Miscellaneous provisions.** (1) There is one lien against the Applicants' property. The lienor has been notified of this application as

required by C.R.S. 37-92-302(2)(b). See Exhibit A to the Application. (2) This application is being filed in Water Divisions 1 and 2. After the period for filing statements of opposition has expired, Applicants will seek to consolidate the two cases in Division 1, where the Property is located. (3) Applicants reserve the right to make minor changes in the amounts claimed for appropriation and in the allowable amounts to be pumped annually under the augmentation plan, based on variations between the information currently available to Applicants and the information contained in the Determinations of Facts and the Consultation Report.

CASE NO. 2017CW3048; Previous Case No. 2000CW130 - TOWN OF LA VETA, P. O. Box 174, La Veta, CO 81055 (Please direct all correspondence and inquiries regarding this matter to Applicant's attorney: Henry D. Worley, Worley Law Firm LLC, 611 North Weber Street, Suite 104, Colorado Springs, CO 80903, phone 719.634.8330, email hank.worley@pcisys.net) Application for Finding of Diligence

HUERFANO COUNTY

2. Name of Water Right: La Veta Mexican Ditch appropriative right of exchange (note: the appropriative right of exchange was not actually given a name in the original decree.) **3. A.** The La Veta Mexican Ditch appropriative right of exchange was decreed in Case No. 00CW130 by the Water Court for Water Division 2 on July 19, 2010. **B.** This is the first application for a finding of diligence since the La Veta appropriative right of exchange was first decreed; a notice of the need for a diligence was first sent to Applicant and its counsel on June 28, 2017, and that notice extended the deadline to the end of August 2017. **C. The location of the La Veta appropriative right of exchange is as follows:** The downstream terminus of the exchange reach is the point of diversion for the Mexican Ditch, located in the NE1/4 NW1/4 Section 31, T. 27 S., R. 65 W., 6th P.M. The upstream terminus is up the Cucharas River at the point of diversion for the La Veta Pipeline, located at a point on the east bank of the Cucharas River bearing south 71° 23' west 2862 feet from the east quarter corner of Section 5, T. 30 S., R. 68 W., 6th P.M. **D. The source** is the Cucharas River. **E. Date of appropriation:** December 5, 2000. **F. Amount:** 0.96 cfs. **4. Detailed outline of work, including expenditures.** The Town of La Veta has an integrated water system, such that work on one aspect of the system constitutes diligence on other aspects. During the past six years, the Town has completed infrastructure on the Mexican Ditch, rehabilitated the North Dam for the La Veta Town Reservoir, and leased water to replace lagged accretions to the Cucharas River that were necessary in order to implement the change of water rights and appropriative right of exchange decreed in Case No. 00CW130. In addition, La Veta has participated in several water rights cases as an opposer in order to preserve its own water rights; such cases include the completed Case Nos. 97CW108(A) (Pinon Hills), 97CW108(C) (Huajatolla Valley Estates), 11CW56 (City of Walsenburg), 02CW116 (Corsentino Dairy), and in pending cases 14CW3041 (J.D. Partners), 15CW3048 (Blouin), 16CW3022 (Cucharas Sanitation and Water District), and 16CW3048(Ojo Springs). All of these actions constitute diligence for the La Veta Town Reservoir Expansion. Expenditures were as follows: Augmentation station and related work for Mexican Ditch - \$160,000; Rehabilitation of staff gauge at the La Veta Town Reservoir Dam – \$968; Rehabilitation of La Veta Town Reservoir North Dam and outlet – \$500,000; Engineering fees -

\$34,198; Legal fees - \$58,217; Water lease expenditure for 2017 - \$5,000. **6. Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure will be located.** There will be no new diversion or storage structures constructed as a result of the appropriate right of exchange.

CASE NO. 2017CW3049 - TOWN OF LA VETA, P. O. Box 174, La Veta, CO 81055

(Please direct all correspondence and inquiries regarding this matter to Applicant's attorney: Henry D. Worley, Worley Law Firm LLC, 611 North Weber Street, Suite 104, Colorado Springs, CO 80903, phone 719.634.8330, email hank.worley@pcisys.net)
Application for Change of Water Rights

HUERFANO COUNTY

2. Explanatory information: In Case No. 00CW130, La Veta obtained a change of water right for 2.0 cfs of the Mexican Ditch. The decree allows La Veta to divert the consumptive use associated with its Mexican Ditch right by exchange, at the La Veta Pipeline. A condition precedent to the operation of such exchange is the replacement of lagged underground return flows which accrete to the Cucharas River subsequent to the cessation of irrigation each year "Lagged Stream Accretions." Until recently, La Veta has not had the means to replace such Lagged Stream Accretions. In 2016, La Veta entered into a long term lease of 10.0 acre feet (5.0 acre feet of which may be consumed) of the Coler System water rights from Navajo Western Water District ("Leased Water"); the allowed use of the Leased Water was changed to include augmentation as an approved use in Case No. 02CW121. ¶ 18.E of Case No. 00CW130 allows La Veta to use water to replace such lagged accretions with water other than its Mexican Ditch depletion credits "provided that La Veta's use of such additional sources for this purpose is subject to subsequent court approval or administrative approval pursuant to a substitute water supply plan." In this application, La Veta seeks court approval to allow the use of the Leased Water to replace Lagged Stream Accretions which were historically caused by use of La Veta's 2.0 cfs of the Mexican Ditch. **3. Water right sought to be changed – Coler System water rights.**

The Coler System water rights of which the Leased Water is a part, are described as defined, established, and described by the Stipulation between the City of Walsenburg and George Habib and others Civil Action No 4468, District Court of Huerfano County, Colorado, dated February 5, 1975, and other agreements mentioned therein, as described in other previous decrees including those entered in Case Nos. 02CW121, 10CW35, and 10CW61, and more particularly described as follows: A. Lake Miriam Ditch. (1) The headgate of the Lake Miriam Ditch which diverts from the Cucharas River is located in the NW1/4SE1/4, Section 32, Township 28 South, Range 67 West, 6th P.M., Huerfano County, Colorado. The Lake Miriam Ditch is the feeder canal for Lake Miriam Reservoir, Lake Oehm Reservoir, and the Coler Seepage Reservoir. (2) Lake Miriam Ditch was awarded a decree for a 20 cfs direct flow water right from the Cucharas River with an appropriation date of March 1, 1884, Priority No. 61, by the District Court of the Third Judicial District, Huerfano County, on June 12, 1889. ii) Lake Miriam Reservoir (aka Horseshoe Reservoir). (1) Lake Miriam Reservoir is located in the W1/2 Section 13, and the NW1/4 Section 24, Township 28 South, Range 67 West, 6th P.M., Huerfano County, Colorado. (2) Lake Miriam Reservoir was awarded a storage decree for 50,000,000 cubic feet (1,148 acre-feet) of water from the Cucharas

River with an appropriation date of April 14, 1901, by the Huerfano County District Court, Water District 16, on October 3, 1921. B. Lake Oehm Reservoir (aka Martin Lake). (1) Lake Oehm Reservoir is located in the E1/2 Section 13, Township 28 South, Range 67 West, 6th P.M., and the W1/2 of Section 18, Township 28 South, Range 66 West, 6th P.M., Huerfano County Colorado. (2) Lake Oehm Reservoir was awarded a storage decree for 100,000,000 cubic feet (2,296 acre-feet) of water from the Cucharas River with an appropriation date of April 30, 1901, by the Huerfano County District Court, Water District 16, on October 3, 1921, in addition the Lake Oehm Reservoir Enlargement was decreed for 12,070,000 cubic feet (277 acre-feet) with an appropriation date of November 25, 1905, by the Huerfano County District Court, Water District 16, on October 3, 1921. C. The Coler Reservoir System Cucharas Delivery Flume. Water released to the Cucharas River from storage in the above-described reservoirs is delivered through the Coler Reservoir System Cucharas Delivery Flume which is located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 17, Township 28 South, Range 66 West, 6th P.M., at a point approximately 1,600 feet from the west section line and 2,150 feet from the south section line. D. Civil Action Nos. 3266 and 3848. On December 30, 1966, in Civil Action Nos. 3266 and 3844 (the Ackerman Decree), the Huerfano County District Court, Water District 16, entered a decree changing the above-described Coler System water rights to allow their use as follows: "Not only for irrigation but also for domestic and culinary use, for fire protection, for sewer flushing, for street sprinkling and flushing, for generation of steam and electricity, for manufacturing for recreation, and for such other purposes and uses as are usual or customary for municipal purposes and for the welfare of the inhabitants of a municipality; PROVIDED HOWEVER that irrigation as used herein shall mean lawn and garden, park, and other municipal irrigation and shall not mean rental or leasing by the City to farmers and ranches for irrigation of crops." E. One-thirtieth, minus 3.0 acre feet, of the Coler System water rights is owned by and was changed by Navajo Western Water District, which is La Veta's lessor. In Case No. 02CW121, Water Division No. 2, dated March 18, 2005, those water rights were changed to allow augmentation use. F. The Leased Water that will be used for augmentation water in this change of water rights include 5.0 acre feet of annual consumptive use water (10.0 acre feet total) of the Coler System water rights leased from Navajo Western Water District, pursuant to the terms and conditions of the decree in Case No. 02CW121, whether or not such terms and conditions are expressly stated in the lease, a copy of which 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.) **4. Water Rights to be changed - La Veta Plan for Augmentation Decreed in Case No. 00CW130**. A. The decree in Case No. 00CW130 quantified the historical consumptive use of La Veta's 2.0 cfs of the Mexican Ditch, approved a conditional appropriative right of exchange from the Mexican Ditch head gate to the point of diversion for the La Veta Pipeline, and imposed various terms and conditions up the exchange of such HCU to the La Veta Pipeline, including the requirement that La Veta replace to the Cucharas River the Lagged Stream Accretions which occurred historically after the cessation of irrigation each year. B. The decree contemplated that the Lagged Stream Accretions would be replaced using consumptive use credits attributable to La Veta's 2.0 cfs of the Mexican Ditch, but ¶ 18.E of the decree in Case No. 00CW130 allows La Veta to use water other than its Mexican Ditch

depletion credits to replace Lagged Stream Accretions, “provided that La Veta’s use of such additional sources for this purpose is subject to subsequent court approval or administrative approval pursuant to a substitute water supply plan.” The application seeks to allow La Veta to use the Leased Water rather than Mexican Ditch depletion credits to replace Lagged Stream Accretions. **5. Changes in place of use.** The Leased Water shall be released to the Cucharas River through the Coler System Cucharas Delivery Flume and shall be marshalled past the headgates for intervening diversions (the Walsenburg Ditch, the Gomez Ditch, and the Ballejos Ditch). The diversion structures for those ditches are sufficiently sophisticated to allow the water to be diverted at times when one or more of those ditches are sweeping the stream, and to then return the Leased Water to the Cucharas River. At the Mexican Ditch headgate, the consumptive use portion of the Leased Water will be diverted, measured, and then returned to the stream. Applicant is required to dry up 87 acres of land formerly irrigated by the Mexican Ditch in order to receive full credit for its depletion credits. The consumptive use portion of the Leased Water will be diverted at the Mexican Ditch and will be returned to the Cucharas River east or west of Walsen Arroyo, in proportion to the amount of land dried up east and west of that arroyo. The amount of land to be dried up east and west of Walsen Arroyo has not yet been determined, and that must be done prior to operation of the exchange conditionally decreed in Case No. 00CW130 (and for which an application for a finding of diligence is currently pending in Case No. 17CW3048). **6. Change in source of replacement water.** As set forth in this application, La Veta seeks to utilize the Leased Water as an alternative to Mexican Ditch depletion credits for the replacement of Lagged Stream Accretions. **7. Timing of replacements.** The procedures for the timing and amount of replacements are set forth in ¶ 18, Maintenance of Return Flows, in Case No. 00CW130, and are set forth below: **“A.** During years when La Veta has elected to exercise its right to divert its depletion credits by exchange, it shall divert, measure, and return to the Cucharas River the return flow portion of its Mexican Ditch water right, as described in paragraph 17.A., in accordance with the requirements of that paragraph and the procedures set forth in this paragraph. La Veta may call for its *pro rata* interest in the Mexican Ditch water right at the Mexican Ditch headgate if necessary to allow it to divert its depletion credits by exchange at the La Veta Pipeline, until such time as it has reached the monthly or annual river headgate diversion volumetric limits set forth in paragraph 14. La Veta shall only exercise its portion of the Mexican Ditch water right during the months of April through October. Subject to these conditions, return flows will be maintained using the following procedures. **“B.** Historic return flow patterns will be maintained by returning at least 51.8% of water attributable to La Veta’s *pro rata* interest in the Mexican Ditch directly to the Cucharas River. This return flow amount incorporates both surface return flow requirements and subsurface delayed return flows from previous months. La Veta will utilize monthly accounting to calculate the monthly historic subsurface return flow requirements. Return flow requirements will be calculated as the consumptive credits multiplied by a factor of 1.075 (51.8% return flows / 48.2 % depletions). Historic return flows were split 50% as surface runoff and 50% as subsurface accretions. The subsurface accretions occurred as 64% in the same month as the diversion with 31%, and 5% returning in the subsequent months. For purposes of accounting, 82% of the calculated return flow requirement, which includes historic surface runoff and

subsurface accretion, will occur in the same month as the diversion. Delayed impacts will be calculated as 15.5% and 2.5% of the return flow requirement for the subsequent two months, respectively. If the actual return flow amount administered at the headgate is less than the return flow amount required in the accounting, then La Veta shall return a portion of its depletion credits to make up any shortages. If shortages occur when the credits from the Mexican Ditch are unavailable, previously stored credits or other legally available sources will be released to satisfy downstream return flow requirements. Releases of such previously stored credits may be increased to offset any stream carriage losses, as may be required by the Division Engineer. *** **D.** When storing its depletion credits in the La Veta Town Reservoir, La Veta shall keep in reserve no less than 18 percent of the depletion credits so diverted in the previous month, to replace delayed return flows. Because all delayed return flows historically accrued to the river within two months after the diversion for irrigation, La Veta may use any previously reserved depletion credits pursuant to this subparagraph which were not used to replace delayed return flows within two months of their diversion by exchange and storage for any purpose approved by this decree. The requirements of this subparagraph 18.D. shall not apply if La Veta has another legally available source for replacement of delayed return flows, other than returns from direct flow diversion of its pro rata interest in the Mexican Ditch water right, as described in subparagraph 18(E) below.” (Note: subparagraph 18(E) is omitted from this application but may be reviewed in Exhibit B to the Application.) **8. Miscellaneous. A.** The Division of Water Resources shall determine and assess any applicable transit losses against the amount necessary to replace the Lagged Stream Accretions. **B.** Because of the difficulty of releasing very small amounts of water from storage with complete accuracy, Applicant will seek approval of a provision in any decree entered in this case which allows Applicant to aggregate the releases from storage necessary to replace Lagged Stream Accretions and perform “slug” releases to the extent allowed by the Division of Water Resources, but no less frequently than monthly. **C.** For ease of reference, a copy of the decree in Case No. 00CW130, without its exhibits, is attached to the Application as Exhibit B.

CASE NO. 2017CW3050 - BOARD OF WATER WORKS OF PUEBLO, COLORADO
(“Pueblo Water”), 319 W. 4th Street, Pueblo, CO 81003 (Please direct all correspondence and inquiries regarding this matter to Applicant’s attorneys: William A. Hillhouse, II, John P. Justus, John C. Cyran, and Karoline M. Henning, Hoskin Farina & Kampf, P.C., 200 Grand Avenue, Suite 400, P. O. Box 40, Grand Junction, CO 81502-0040)

Application for Changes of Water Rights

PUEBLO COUNTY

2. Decreed water rights for which change is sought: a. **Background:**

Pueblo Water has purchased 5,540.88 shares of stock in the Bessemer Irrigating Ditch Company, a Colorado mutual ditch company (“BIDC” or the “Company”), represented by Certificate Nos. 13280, 13355, 13468, 13529, 13555, and 13607 (the “Pueblo Water Shares”). There are 19,738.593 issued and outstanding shares in the Company. The Pueblo Water Shares account for 28.071% of the issued and outstanding shares in the Company. Pueblo Water seeks to change the point of diversion and the type and place

of use of the water rights represented by the Pueblo Water Shares, as described below. In addition, although Pueblo Water will take the water attributable to the Pueblo Water Shares from the BDC system at the same time that other BDC shareholders do, Pueblo Water may use this water for its operations year around. For example, to the extent that water attributable to the Pueblo Water Shares is stored in Pueblo Reservoir, Pueblo Water will draw upon that water throughout the year. Pueblo Water seeks to change its share of the direct flow water rights described in paragraph 2.c of this application and of the Winter Water Storage Program waters (“Winter Water”) that are allocated to the Bessemer Ditch. Pueblo Water does not seek to change any portion of Fryingpan – Arkansas Project water that is allocated to the Bessemer Ditch; nor does Pueblo Water seek to change the 2 cfs water right decreed to the ditch on March 23, 1896, with a priority date of April 1861, which is owned by the City of Pueblo. **b. Name of structure: Bessemer Ditch**. **i.** The decreed point of diversion for the Bessemer Ditch is on the right bank of the Arkansas River, in the NW 1/4 of Section 33, Township 20 South, Range 66 West, at a point whence the corner stone common to Sections 28, 29, 32, and 33 of said Township and Range bears North 34°15’ West 2,450 feet, in Pueblo County, Colorado (the “Original Headgate”). **ii.** The Original Headgate and upper four miles of the Bessemer Ditch have been inundated by water stored in Pueblo Reservoir. As a result of the construction of Pueblo Reservoir, the point at which water is now delivered into the Bessemer Ditch is an outlet through Pueblo Dam. The Pueblo Reservoir Dam axis and the centerline of the Arkansas River intersect at a point in Section 36, Township 20, Range 66 West, 6th P.M., from which the Northeast corner of said Section 36 bears North 61° 21’ 20” East, a distance of 2,511.05 feet, all as more particularly described in the decree in Case No. B-42135, District Court, Pueblo County (“Bessemer Ditch Headgate”). A map showing the locations of the Original Headgate and the current point of delivery from Pueblo Dam into the Bessemer Ditch is attached as Exhibit 1 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 outlet itself is described as UTM: 13S 523969mE, 4234738mN. **c. Water Rights Represented by Pueblo Water Shares:** The Bessemer Ditch is entitled to divert water rights that were either originally adjudicated to the Bessemer Ditch or were transferred into the Bessemer Ditch over time as listed below. These water rights are referred to collectively in this application as the “Bessemer Water Rights”. **i. Excelsior Ditch**. (1) Original and all relevant subsequent decrees: **(a)** The original decree for the Excelsior Ditch was entered March 23, 1896 by the Pueblo County District Court In the matter of the adjudication of the priorities of water rights in Water District No. 14, Pueblo County, State of Colorado (“District 14 Adjudication”). **(b)** 20 cfs of the water right originally decreed to the Excelsior Ditch were changed to the Bessemer Ditch by decree entered on September 23, 1905 by the Pueblo County District Court in CA 9531. (2) Legal description of structure as described in most recent decree that adjudicated the location: The Original Headgate for the Bessemer Ditch. (3) Decreed source of water: Arkansas River. (4) Appropriation Date: December, 1861. (5) Total amount decreed to structure in cfs: 20 cfs, Absolute. (6) Decreed use or uses: Irrigation. (7) Amount of water that applicant intends to change: 5.61 cfs, Absolute. **ii. Cañon City & Oil Creek Ditch** **Priority No. 20.** (1) Original and all relevant subsequent decrees: **(a)** Decree entered February 3, 1894 by the District Court of the Eleventh Judicial District, Fremont County,

Colorado, In the matter of the adjudication of water rights in Water District No. 12 (“District 12 Adjudication”); (b) 3.74 cfs of the water right originally decreed to the Cañon City & Oil Creek Ditch were changed to the Bessemer Ditch by Decree entered February 8, 1918 by the Fremont County District Court in CA 3657. (2) Legal description of structure as described in most recent decree that adjudicated the location: The Original Headgate of the Bessemer Ditch. (3) Decreed source of water: Arkansas River. (4) Appropriation Date: May 31, 1864. (5) Total amount decreed to structure in cfs: 3.74 cfs Absolute. (6) Decreed use or uses: Irrigation and Domestic. (7) Amount of water that applicant intends to change: 1.05 cfs, Absolute. **iii. Cañon City & Oil Creek Ditch Priority No. 34.** (1) Original and all relevant subsequent decrees: (a) Decree entered February 3, 1894 by the District Court of the Eleventh Judicial District, Fremont County, Colorado, in the District 12 Adjudication. (b) 5.13 cfs of the water right originally decreed to the Cañon City & Oil Creek Ditch were changed to the Bessemer Ditch by Decree entered February 8, 1918 by the Fremont County District Court in CA 3657. (2) Legal description of structure as described in most recent decree that adjudicated the location: The Original Headgate of the Bessemer Ditch. (3) Decreed source of water: Arkansas River. (4) Appropriation Date: May 31, 1867. (5) Total amount decreed to structure in cfs: 5.13 cfs Absolute. (6) Decreed use or uses: Irrigation and Domestic. (7) Amount of water that applicant intends to change: 1.44 cfs, Absolute. **iv. Rogers Ditch.** (1) Original and all relevant subsequent decrees: Decree entered May 21, 1898 by the Pueblo County District Court in the District 14 Adjudication. (2) Legal description of structure as described in most recent decree that adjudicated the location: The water right was decreed to Original Headgate of the Bessemer Ditch at the time of its adjudication. (3) Decreed source of water: Arkansas River. (4) Appropriation Date: June 1866. (5) Total amount decreed to structure in cfs: 3 cfs, Absolute. (6) Decreed use or uses: Irrigation. (7) Amount of water that applicant intends to change: 0.84 cfs, Absolute. **v. Arkansas Ditch.** (1) Original and all relevant subsequent decrees: (a) The original decree for the Arkansas Ditch was entered March 23, 1896 by the Pueblo County District Court in the District 14 Adjudication. (b) 3.0 cfs of water originally decreed to the Arkansas Ditch were changed to the Bessemer Ditch by a decree entered May 10, 1923 by the Pueblo County District Court in CA 17983. (2) Legal description of structure as described in most recent decree that adjudicated the location: The Original Headgate of the Bessemer Ditch. (3) Decreed source of water: Arkansas River. (4) Appropriation Date: January 8, 1867. (5) Total amount decreed to structure in cfs: 2.5 cfs, Absolute. (6) Decreed uses: Irrigation and Domestic. (7) Amount of water that applicant intends to change: 0.70 cfs, Absolute. **vi. Hamp-Bell Ditch Priority No. 27.** (1) Original and all relevant subsequent decrees: (a) Decree entered March 23, 1896 by the Pueblo County District Court in the District 14 Adjudication. (b) 1.47 cfs of the water right originally decreed to the Hamp-Bell Ditch were changed to the Bessemer Ditch by a Decree entered October 3, 1903 by the Pueblo County District Court in CA 8135. (2) Legal description of structure as described in most recent decree that adjudicated the location: The Original Headgate of the Bessemer Ditch. (3) Decreed source of water: Arkansas River. (4) Appropriation Date: November 1870. (5) Total amount decreed to structure in cfs: 1.47 cfs Absolute. (6) Decreed use: Irrigation. (7) Amount of water that applicant intends to change: 0.41 cfs, Absolute. **vii. Hamp-Bell Ditch Priority No. 36.** (1) Original and all relevant subsequent decrees: (a) Decree

entered March 23, 1896 by the Pueblo County District Court in the District 14 Adjudication. **(b)** 0.41 cfs of the water right originally decreed to the Hamp-Bell Ditch was changed to the Bessemer Ditch by a Decree entered October 3, 1903 by the Pueblo County District Court in CA 8135. (2) Legal description of structure as described in most recent decree that adjudicated the location: The Original Headgate of the Bessemer Ditch. (3) Decreed source of water: Arkansas River. (4) Appropriation Date: 1878. (5) Total amount decreed to structure in cfs: 0.41cfs, Absolute. (6) Decreed use: Irrigation. (7) Amount of water that applicant intends to change: 0.12 cfs, Absolute. **viii. Barnum Ditch.** (1) Original and all relevant subsequent decrees: Decree entered March 23, 1896 by the Pueblo County District Court in the District 14 Adjudication. (2) Legal description of structure as described in most recent decree that adjudicated the location: The water right was originally decreed to the Barnum Ditch, the headgate of which was located on the right bank of the Arkansas River in Lot 1, Sec. 4, T. 21 S., R. 64 W., 1319 feet S. 68° 45' W. from S.W. corner of Sec. 34, T. 20 S., R. 64 W., in Pueblo County Colorado. The water right was subsequently transferred to the Bessemer Ditch prior to the 1899 statute, codified at Ch. 69, § 2273d, Mill's Ann. Stat. 1904 ("the 1899 statute"), which first required Court approval of changes in points or location of diversion. (3) Decreed source of water: Arkansas River. (4) Appropriation Date: 1870. (5) Total amount decreed to structure in cfs: 3.4 cfs, Absolute. (6) Decreed use: Irrigation. (7) Amount of water that applicant intends to change: 0.95 cfs, Absolute. **ix. Cape Horn Ranch Ditch Priority No. 33 ½.** (1) Original and all relevant subsequent decrees: Decree entered December 22, 1896 by the Pueblo County District Court in the District 14 Adjudication. (2) Legal description of structure as described in most recent decree that adjudicated the location: Headgate located on the "left bank of the Arkansas River, at a point in the N.W. ¼ of Sec. 29, T. 20 S., R. 66 W., from which the west corner of said section 29 bears S. 65° 45' W., 28.75 chains distant, in Pueblo County, Colorado". The water right was subsequently transferred to the Bessemer Ditch prior to the 1899 statute. (3) Decreed source of water: Arkansas River. (4) Appropriation Date: September 18, 1873. (5) Total amount decreed to structure in cfs: 2 cfs Absolute. (6) Decreed use: Irrigation. (7) Amount of water that applicant intends to change: 0.56 cfs, Absolute. **x. Cape Horn Ranch Ditch Priority No. 34 ½.** (1) Original and all relevant subsequent decrees: Decree entered December 22, 1896 by the Pueblo County District Court in the District 14 Adjudication. (2) Legal description of structure as described in most recent decree that adjudicated the location: Headgate located on the "left bank of the Arkansas River, at a point in the N.W. ¼ of Sec. 29, T. 20 S., R. 66 W., from which the west corner of said section 29 bears S. 65° 45' W., 28.75 chains distant, in Pueblo County, Colorado". The water right was subsequently transferred to the Bessemer Ditch prior to the 1899 statute. (3) Decreed source of water: Arkansas River (4) Appropriation Date: 1876. (5) Total amount decreed to structure in cfs: 2.5 cfs, Absolute. (6) Decreed use: Irrigation. (7) Amount of water that applicant intends to change: 0.70 cfs, Absolute. **xi. Cape Horn Ranch Ditch Priority No. 34 ½.** (1) Original and all relevant subsequent decrees: **(a)** Decree entered December 22, 1896 by the Pueblo County District Court in the District 14 Adjudication. **(b)** 0.50 cfs of the water right originally decreed to the Cape Horn Ranch Ditch was changed to the Bessemer Ditch by a Decree entered May 10, 1923 by the Pueblo County District Court in CA 17983. (2) Legal description of structure as described in most recent decree that

adjudicated the location: The Original Headgate of the Bessemer Ditch. (3) Decreed source of water: Arkansas River. (4) Appropriation Date: 1876. (5) Total amount decreed to structure in cfs: 0.5 cfs, Absolute. (6) Decreed use or uses: Irrigation and domestic. (7) Amount of water that applicant intends to change: 0.14 cfs, Absolute. **xii. Collier Ditch.** (1) Original and all relevant subsequent decrees: Decree entered March 23, 1896 by the Pueblo County District Court in the District 14 Adjudication. (2) Legal description of structure as described in most recent decree that adjudicated the location: “[H]eadgate located on the South bank of the Arkansas River north 23° 21’ East 3047 feet from the quarter corner between Secs. 8 and 9 T. 21 S., R. 62 W., in Pueblo County, Colorado”. The water right was subsequently transferred to the Bessemer Ditch prior to the 1899 statute. (3) Decreed source of water: Arkansas River. (4) Appropriation Date: May 4, 1881. (5) Total amount decreed to structure in cfs: 14 cfs, Absolute. (6) Decreed use: Irrigation. (7) Amount of water that applicant intends to change: 3.93 cfs, Absolute. **xiii. Cawfield No. 2 Ditch, Priority No. 42.5.** (1) Original and all relevant subsequent decrees: Decree entered December 22, 1896 by the Pueblo County District Court in the District 14 Adjudication. (2) Legal description of structure as described in most recent decree that adjudicated the location: The water right was originally decreed to the headgate of the Collier Ditch, “located on the South bank of the Arkansas River north 23° 21’ East 3047 feet from the quarter corner between Secs. 8 and 9 T. 21 S., R. 62 W., in Pueblo County, Colorado”. The water right was subsequently transferred to the Bessemer Ditch prior to the 1899 statute. (3) Decreed source of water: Arkansas River. (4) Appropriation Date: March 1882. (5) Total amount decreed to structure in cfs: 8 cfs, Absolute. (6) Decreed use or uses: Irrigation and domestic. (7) Amount of water that applicant intends to change: 2.25 cfs, Absolute. **xiv. I.N. Sater Ditch.** (1) Original and all relevant subsequent decrees: Decree entered March 23, 1896 by the Pueblo County District Court in the District 14 Adjudication. (2) Legal description of structure as described in most recent decree that adjudicated the location: “[H]eadgate . . . located on the South bank of the Arkansas River in the S.E. ¼ of the SW ¼ of Sec. 36, T. 20 S., R. 64 W., 102 feet from the north-west corner of N.E. ¼ of Sec. 1, T. 21 S., R. 64 W. . . in Pueblo County.” The water right was subsequently transferred to the Bessemer Ditch prior to the 1899 statute. (3) Decreed source of water: Arkansas River. (4) Appropriation Date: June 20, 1881. (5) Total amount decreed to structure in cfs: 2cfs, Absolute. (6) Decreed use: Irrigation. (7) Amount of water that applicant intends to change: 0.56 cfs, Absolute. **xv. Bessemer Ditch.** (1) Original and all relevant subsequent decrees: Decree entered March 23, 1896 by the Pueblo County District Court in the District 14 Adjudication. (2) Legal description of structure as described in most recent decree that adjudicated the location: The Original Headgate of the Bessemer Ditch. (3) Decreed source of water: Arkansas River. (4) Appropriation Date: May 1, 1887. (5) Total amount decreed to structure in cfs: 322 cfs, Absolute. (6) Decreed use: Irrigation. (7) Amount of water that applicant intends to change: 90.39 cfs, Absolute. **xvi. Winter Water Allocation:** (1) Background: Historically, the Company’s shareholders took delivery of water pursuant to their water rights throughout the winter. However, after the completion of Pueblo Reservoir, a Decree entered in Case No. 84CW179 (the “84CW179 Decree”) provided a change of water rights and the administrative process for the Company and other participating entities to store Winter Water in Pueblo Reservoir. (2) Original and all relevant

subsequent decrees: Decrees set forth in paragraphs c.i through c.xv above; Interlocutory Decree entered November 10, 1987 by the District Court Water Division 2, in Case No. 84CW179, as modified by Order Making Interlocutory Decree Final entered November 10, 1990 by the District Court, Water Division 2, in Case No. 84CW179. (3) Legal description of structure as described in most recent decree that adjudicated the location: Water available pursuant to the Company's water rights may be stored in Pueblo Reservoir, as provided in Case No. 84CW179. (4) Decreed source of water: Arkansas River. (5) Appropriation Date: Winter Water is administered at a priority of March 1, 1910. (6) Decreed use or uses: Irrigation. (7) Amount of Winter Water available to the Company: The 84CW179 Decree allocates 28.8% of the first 100,000 acre feet of Winter Water to participants that possess direct flow rights. The Company, on behalf of its shareholders, is entitled to 21.5%, or 6,190 acre-feet, of such water. Twenty-five percent of the amounts of stored Winter Water exceeding 103,106 acre-feet are allocated to participants who possess direct flow rights. The Company, on behalf of its shareholders, is entitled to 5.3575% of Winter Water in excess of 103,106 acre-feet. (8) Amount of water that applicant intends to change: Pueblo Water intends to change its pro-rata portion of Winter Water, which is 28.071% of the Company's annual allocation. **3. Detailed description of proposed changes of water rights sought: a. Change in type of use. i. Pueblo Water seeks to add all beneficial uses related to its operations to the currently decreed uses for the water rights represented by the Pueblo Water Shares. The uses other than those currently decreed are referred to herein as the "Changed Uses". The Changed Uses include domestic, agricultural, manufacturing, municipal, irrigation, commercial, industrial, mechanical, power generation and cooling, wastewater treatment, recreation, fish and wildlife, replacement, exchange, augmentation, recharge, substitution, and storage of water delivered pursuant to the Pueblo Water Shares. Pueblo Water proposes to continue the currently decreed use of irrigation of lands in the BIDC system until it needs water from the Pueblo Water Shares for the Changed Uses and to continue such irrigation use thereafter to the extent that the water is not required for the Changed Uses. ii. Pueblo Water proposes to maintain historical return flows from the Pueblo Water Shares that are put to the Changed Uses. Pueblo Water proposes to use water available pursuant to its Pueblo Water Shares and its other fully consumable supplies, including but not limited to fully reusable supplies that it may obtain from third parties, for replacement of return flow obligations. (1) Pueblo Water proposes to deliver water to the Arkansas River, St. Charles River, Sixmile Creek and/or the Huerfano River, depending upon where historical return flows accrued and/or the location of the calling water right. Further, water may be delivered to recharge sites approved by the Court to provide lagged return flow replacement to the Arkansas River. (2) Without limiting its obligation to replace historical return flows, Pueblo Water will replace return flows attributable to the Winter Water that it puts to Changed Uses. (3) Pueblo Water's sources of fully consumable transmountain water include the Ewing Placer Ditch, the Warren E. Wurtz Ditch and Wurtz Extension Ditch, the Busk-Ivanhoe System, the Homestake Project, and the Independence Pass Transmountain Diversion System (Twin Lakes). Municipal use and reuse of Pueblo Water's transmountain supplies were decreed in Case Nos. 84CW177 (Sewered Phase) and 84CW177(B) (Non-Sewered Phase). Return flow replacements using these sources of supply can be provided by Pueblo Water to the Arkansas River, including by**

releases of stored water from Pueblo Reservoir, Clear Creek Reservoir, Twin Lakes Reservoir and/or Turquoise Reservoir. **(4)** Pueblo Water's sources of fully consumable Arkansas River basin water include the net stream depletion credits arising from the change of use of a total of 2.32 cfs of the Hamp-Bell Ditch water rights (quantified in Case No. 03CW008, and as changed by Pueblo Water in Case No. 12CW102), fully consumable West Pueblo Ditch water (changed in Case No. 90CW55) and, pending a subsequent change case, additional West Pueblo Ditch shares owned or controlled by Pueblo Water that were not changed in Case No. 90CW55. Pueblo Water will not use the West Pueblo Ditch's Winter Water Storage Program water for Bessemer Ditch return flow replacement obligations. **(5)** To the extent that Pueblo Water delivers return flow replacement water from above the Southern Colorado Power Company and the Historic Arkansas Riverwalk of Pueblo, the water may first be diverted through the Southern Colorado Power Company and the Historic Arkansas Riverwalk of Pueblo diversion identified in paragraph 3.c.ii.(4) below and then returned to the Arkansas River through the Runyon Lake outlet. **iii.** Subject to its satisfaction of the historical return flow obligations, Pueblo Water claims the right to fully consume the water produced by the Pueblo Water Shares and put to the Changed Uses, either directly or after storage and/or exchange, and to reuse, successively use and to use to extinction all return flows therefrom (including, but not limited to, lawn irrigation return flows and sewered return flows) and the right to dispose of the same. Subject to its satisfaction of the historical return flow obligations, Pueblo Water will seek a decree for exchange of the water produced by the Pueblo Water Shares and put to the Changed Uses, including reuse of return flows therefrom, in another application (now pending as Case No. 2016CW3103). **iv.** Pueblo Water also proposes to use the Pueblo Water Shares at various locations within the BIDD system to replace Bessemer Ditch or lateral losses. **b. Change in place of use.** **i.** As indicated above, Pueblo Water may continue to use Pueblo Water Shares not needed for Changed Uses for irrigation within the BIDD system. **ii.** Pueblo Water also seeks to change the place of use of the water rights represented by the Pueblo Water Shares put to Changed Uses to include all areas to which Pueblo Water provides water now and/or in the future, including any areas outside of the city limits of Pueblo, Colorado, served by Pueblo Water by agreement. From time to time, to the extent that water available pursuant to the Pueblo Water Shares is in excess of Pueblo Water's needs for the Changed Uses and/or for continued irrigation of BIDD lands, it may make such water available for use by others who contract with the Board consistent with legal requirements. **c. Change in point of diversion:** Pueblo Water seeks alternate points of diversion for the water rights represented by the Pueblo Water Shares at the following structures: **i. Pueblo Dam Outlet Works:** Pueblo Water will divert water from Pueblo Reservoir, the location of which is described in paragraph 2.b.ii above, through the following structures owned by the US Bureau of Reclamation: **(1)** The Bessemer Ditch Headgate described in paragraph 2.b.ii, above. **(2)** The South Outlet Works and Delivery Manifold, from which a pipeline extends to Pueblo Water's Whitlock Water Treatment Plant. **(a)** UTM: 13S: 524027 E, 4235570 N. **(b)** PLSS: The South Outlet Works is located in the Southwest quarter of the Northeast quarter of Section 36, Township 20 South, Range 66 West, of the Sixth Principal Meridian that bears North 49°44'07" West, a distance of 2843.79 feet from the Southeast corner of said Section 36. **(3)** North Outlet Works. **(a)** UTM: 13S: 524037 E, 4235771 N. **(b)**

PLSS: The North Outlet Works is located in the Northwest quarter of the Northeast quarter of Section 36, Township 20 South, Range 66 West of the Sixth Principal Meridian that bears South 61°21'20" West, a distance of 2511.05 feet from the Northeast corner of said Section 36. **ii. Pueblo Water's Arkansas River Intake Works:** Water attributable to the Pueblo Water Shares may be released from Pueblo Reservoir to the Arkansas River and diverted or re-diverted into Pueblo Water's municipal system at the following locations: (1) Northside Intake: **(a)** UTM: 13S: 528701 E, 4235890 N. **(b)** PLSS: Pueblo Water's Northside Intake headgate is located on the North bank of the Arkansas River in Pueblo County, Colorado, in the Northwest quarter of the Northeast quarter of Section 33, Township 20 South, Range 65 West, of the Sixth Principal Meridian, at or near a point which lies South 74°14'30" West, 2673.9 feet from the Northeast corner of said Section 33. (2) Southside Intake: **(a)** UTM: 13S: 529931 E, 4235508 N. **(b)** PLSS: Pueblo Water's Southside Intake is located on the right bank of the Arkansas River at a point whence the West quarter corner of Section 34, Township 20 South, Range 65 West of the 6th Principal Meridian bears South 69°35' West 1478 feet. (3) Comanche Pump Station: **(a)** UTM: 13S: 525559 E, 4234786 N. **(b)** PLSS: The Comanche Pump Station is located as follows: Considering the south line of the SE1/4 of Section 31, Township 20 South, Range 65 West of the 6th Principal Meridian, Pueblo County, Colorado, to bear North 89°24'53" East, with all bearing contained herein being relative thereto: Beginning at a point on the northerly right-of-way line of the Denver and Rio Grande Western Railroad from which the Southwest 1/4 corner of the Southeast 1/4 of said Section 31 bears South 00°39'25" East, a distance of 660.62 feet; thence North 47°12'21" East, a distance of 58.61 feet; thence North 02°29'30" West, a distance of 80.47 feet; thence North 87°30'30" East, a distance of 132.5 feet; thence North 02°29'30" West, a distance of 92.5 feet to the point of diversion. (4) Southern Colorado Power Company and the Historic Arkansas Riverwalk of Pueblo ("HARP"). Water is conveyed to HARP through the Southern Colorado Power Company Diversion located at: **(a)** UTM: 13S: 5233025 E, 4235520 N. **(b)** PLSS: In the Southwest quarter of the Northwest quarter, Section 36, Township 20 South, Range 65 West, of the Sixth Principal Meridian, whence the West quarter corner bears South 65°30' West, a distance of 1090 feet. **(c)** Water diverted through the Southern Colorado Power Company and HARP is returned to the Arkansas River at the Runyon Lake Outlet located at: **(i)** UTM: 535433 E, 4233920 N. **(ii)** PLSS: The Runyon Lake Outlet to the Arkansas River is located in the Southwest quarter of the Northeast quarter of Section 6, Township 21 South, Range 64 West, of the 6th Principal Meridian, Pueblo County, Colorado, whereas the Northeast corner of said Section bears North 40°05'27" East, a distance of 2872.25 feet. **(5)** Such other locations as are required for maintaining historical return flows from Pueblo Water Shares put to Changed Uses or as required for Pueblo Water's other operations, including but not limited to maintaining historical return flows, providing augmentation water, and providing deliveries to Pueblo Water customers. **iii. Diversion through the Bessemer Ditch:** **(1)** Pueblo Water may deliver water attributable to the Pueblo Water Shares through the Bessemer Ditch to one or more locations at which the water will be released through augmentation stations or delivered to recharge sites so as to maintain historical return flows, or for delivery of fully consumable water. Should Pueblo Water deliver more water than is needed for such purposes, it reserves the right to exchange such excess water upstream to Pueblo

Reservoir or to Pueblo Water's Arkansas River Intake Works, pursuant to a separate application (now pending as Case No. 2016CW3103), and/or to store such excess water in one or more downstream storage vessels. **(2)** Pueblo Water may take water attributable to the Pueblo Water Shares through the Bessemer Ditch to one or more ditch headgates that are appropriate to deliver water to the Pueblo Water reserved treatment plant site located on U.S. Bureau of Reclamation land in the SW1/4, Section 31, Township 20 South, Range 65 West of the 6th P.M. **d. Confirmation of previous change in point of delivery to the Bessemer Ditch:** **i.** The Original Headgate of the Bessemer Ditch was inundated by Pueblo Reservoir when the reservoir was constructed and filled, and the Bessemer Ditch now takes delivery at the Bessemer Ditch Headgate, which is located at an outlet from Pueblo Dam. Pueblo Water seeks judicial confirmation that the delivery of water into the Bessemer Ditch at the Bessemer Ditch Headgate is and since the construction of Pueblo Reservoir has been a lawful point of diversion for the Pueblo Water Shares and that the historical use of the Pueblo Water Shares, as supplied at that point of diversion, was a lawful use that appropriately may be included in a historical use analysis. **ii.** The inundation of the Original Headgate and of the first approximately four miles of the Bessemer Ditch by Pueblo Reservoir required the relocation of the point of delivery to the Bessemer Ditch to the current Bessemer Ditch Headgate to secure a sufficient flow of water. This relocation comes within the provisions of C.R.S. §37-86-111. **iii.** The Arkansas River is a natural stream. The channel was changed by Pueblo Reservoir so that the Bessemer Ditch could not receive its proper inflow of water, and the head of the Bessemer Ditch was relocated to its present location, as necessary for securing a sufficient flow of water into the ditch. The relocation did not physically interfere with the enjoyment of any absolute or conditional water right, including the water rights diverted through the Bessemer Ditch. **iv.** The relocation of the Bessemer Ditch headgate has been recognized in other cases to change water rights represented by shares in the BIDC, brought since the construction of Pueblo Reservoir, and the use of water diverted at the relocated headgate has been included in the analysis of historical use. See, e.g., Case No. 04CW08 (St. Charles Mesa Water District). **e. Change from direct flow to storage and subsequent use.** In addition to direct use, Pueblo Water seeks to take delivery of water pursuant to the Pueblo Water Shares in Pueblo Reservoir, the dam for which is described in paragraph 2.b.ii above, to be stored in Pueblo Water's storage account, for later use. **f. Historical Use.** **i. Study period:** Pueblo Water has utilized and proposes a representative study period of 1950 through 2011 (the "Study Period") to evaluate the historical use of the water rights represented by the Pueblo Water Shares. **ii. Historical diversions:** Historical diversions pursuant to the Bessemer Water Rights during the Study Period, as adjusted to address data errors, removal of storage sources entered as direct flow, and diversion pursuant to water rights owned by the City of Pueblo, are summarized in Exhibits 2, 3 and 4, attached to the Application. The tables show BIDC shareholders' direct flow river headgate diversions, Winter Water river headgate diversions, and the shareholders' direct flow and Winter Water river headgate diversions combined. **iii. Historical place of use:** The Pueblo Water Shares historically have been used to irrigate lands served by the Bessemer Ditch. The Pueblo Water Shares were acquired from 77 shareholders in the Company (the "Sellers") between December 6, 2007 and November 17, 2011. The Pueblo Water Shares have been leased to

irrigators under the Bessemer Ditch for continuing irrigation use, but may be used by Pueblo Water as needed. Exhibits 5 and 6, attached to the Application, show the locations of the Sellers' farms from which the Pueblo Water Shares were acquired. In some cases, Pueblo Water did not acquire all of the BIDD shares owned by the Sellers, and, therefore, Pueblo Water claims only the use from the shares that Pueblo Water acquired. The average area irrigated by the Pueblo Water Shares during the Study Period was approximately 4890 acres. A pro-rata portion of lands on the Sellers' farms are subject to dry-up covenants, which specify the lands to be dried up as Pueblo Water puts the water previously used there to the Changed Uses.

iv. Quantification of Historical Consumptive Use: Pueblo Water's pro-rata portion of the Sellers' historical use of Bessemer direct flow and Winter Water attributable to its purchase of the Sellers' shares averaged 16,572 acre-feet per year of river diversions, 14,069 acre-feet per year of farm headgate deliveries, 8,311 acre-feet per year of consumptive use, and 5,757 acre-feet per year of total return flows during the Study Period. Pueblo Water's pro-rata portion of consumptive use attributable to Bessemer direct flow water averaged 7,851 acre-feet per year during the Study Period. Pueblo Water's pro-rata portion of consumptive use attributable to Bessemer Winter Water averaged approximately 460 acre-feet per year during the Study Period. Pueblo Water does not seek nor intend to quantify the historical use of any BIDD shares other than those that it has purchased, i.e. the Pueblo Water Shares.

g. **Additional detail of proposed change:**

i. Pueblo Water will operate the requested changes of water rights so as not to injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right.

ii. Pueblo Water anticipates that there will be volumetric limits on the amounts of water that it may use for Changed Uses. Pueblo Water proposes maximum monthly and annual limits and a 60-year rolling average annual limit on deliveries, imposed on a per-share basis for Pueblo Water Shares put to Changed Uses.

iii. Pueblo Water will notify the Company and the Division Engineer annually which Pueblo Water Shares will be applied to Changed Uses, which Pueblo Water Shares will be used for irrigation within the BIDD system, which lands in the BIDD system will be removed from irrigation, and which lands in the BIDD system will be irrigated with Pueblo Water Shares. Where Pueblo Water Shares are converted permanently to Changed Uses, the lands from which the shares are taken will be dried up permanently, in compliance with the dry-up covenants, and revegetated. Pursuant to §§ 37-92-103 (10.5) and 37-92-305 (4.5)(a), C.R.S., any portions of the historically irrigated lands that are no longer being irrigated with the Subject Water Rights and that are not developed for residential, commercial, industrial or other similar uses, shall be revegetated with a ground cover of plant life demonstrated to be, without irrigation other than that required to establish such cover, reasonably capable of sustaining itself under the climatic conditions, soils, precipitation, and terrain prevailing for the lands from which irrigation water has been removed. Grasses or other plants used for the purpose of revegetation shall not be noxious as such plants are defined under the provisions of the "Colorado Noxious Weed Act," § 35-5.5-101, C.R.S., et seq.

iv. Once Pueblo Water has ceased using particular shares for irrigation of lands within the BIDD system and has applied the water generated by such shares for Changed Uses, Pueblo Water will not use such shares for irrigation of lands within the BIDD system without approval from BIDD.

v. Pueblo Water anticipates that the decree entered in this case will designate

described lands to be dried up. It is possible, however, that after the decree is entered, it will become apparent that other lands are more suitable to be dried up, in order to produce more desirable agricultural, environmental, economic or other conditions, without loss of water yield for Pueblo Water or injury to any other water user. Therefore, if Pueblo Water seeks to modify the dry-up of acreage identified in a decree entered in this case, Pueblo Water will file a petition with the Court, with or without co-petitioners, with notice to the Division Engineer and all opposers. The petition will identify the new parcel(s) of lands Applicant is requesting to dry-up (the "Substitute Lands"), the number of Bessemer shares historically used to irrigate such Substitute Lands, and the documents providing for dry-up of the Substitute Lands. The petition will also identify the lands that have been previously designated for dry-up and which are requested to be allowed to be irrigated (the "Original Lands") and the terms and conditions on which such irrigation would be allowed. The petition will be accompanied by an engineering report that demonstrates that the historical consumptive use on the Substitute Lands is at least as great as the historical consumptive use on the Original Lands, that all historical return flows will continue to be replicated, that the Substitute Lands will be properly revegetated, that all other terms and conditions of the decree will continue to be satisfied, and that no other water user will be injured. The Division Engineer and the opposers will have 63 days to file objections to such a petition, and any disputes over the petition will be resolved by the Court under its continuing jurisdiction. No substitution of dry-up lands can occur until the Court enters an order approving such substitution. **vi.** All Pueblo Water deliveries pursuant to the Pueblo Water Shares will be measured and recorded for accounting and administrative purposes. **4. BIDC Approval:** As required by the Company's bylaws, Pueblo Water applied to the Company for approval of its changes of its Bessemer shares. The Company approved Pueblo Water's application, subject to certain terms and conditions, on August 17, 2017 (the "Company's Determination"). A copy of the Company's Determination is attached as Exhibit 7 to the Application.

CASE NO. 2017CW3051 - THE CATAMOUNT CENTER, HOWARD DROSSMAN and JULIE FRANCIS, 3168 County Road 28, Woodland Park, CO 80863 (Please direct all correspondence or inquiries regarding this matter to Applicants' attorney: Henry D. Worley, Worley Law Firm, LLC, 611 North Weber, Suite 104, Colorado Springs, CO 80903; (719) 634-8330)

Application for Change of Water Right
TELLER COUNTY

Water right to be changed. Well No.1, permit no. 74712-F. This well was originally permitted in 1986 as an exempt well, permit no. 28556-A. It was re-permitted under its current permit number after the approval of a plan for augmenting depletions associated with the well was decreed in Case No. 97CW163, Water Division on May 29, 2003. **The permitted location of permit no. 74712-F** is in the NW1/4 NW1/4 Section 15, T. 13 S., R. 69 W., 1220 feet from the north section line and 920 feet from the west section line. It is permitted to pump 2.7388 acre feet annually for commercial uses, at a rate not to exceed 15 gpm. **Source** is ground water tributary to Crystola Creek. **Applicant seeks to construct a new well to replace permit no. 74712-F**, which has been determined to be under the influence of surface water. **The new well will be located as follows:**

Easting 491154, Northing 4308237, NAD 83. All water produced by the old well is used on, and by the new well will be used on, Applicant's property. A map showing the approximate locations of both wells 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.) **Well permit 74712-F** is augmented pursuant to the decree in Case No. 97CW163, Water Division 2. The new well will be subject to all the same limitations as are imposed on well permit 74712-F by that decree, to wit: the use will be limited to commercial uses, 2.7388 acre feet annually, 15 gpm. **Source** will be the same: ground water tributary to Crystola Creek. **Historical use** is irrelevant because permit no. 74712-F is augmented, and the new well will be augmented pursuant to the same terms and conditions as permit no. 74712-F. **Land Ownership:** Well permit 74712-F is, and the new well will be, constructed on land owned by Applicant.

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 October 2017, (forms available at Clerk's office or at 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.

Witness my hand and the seal of this Court this 8th day of September, 2017.

Mardell R. DiDomenico



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)
Published: September _____, 2017