

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING AUGUST 2020

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 2020, 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. 2020CW7; GRIFFIN HAY FARM L.L.C., 1500 County Road 125, Westcliffe CO 81252, (719) 783-2968.

Application for Simple Change in Surface Points of Diversion

CUSTER COUNTY

2. Name of structure: Thos. Speer Ditch No 2, a.k.a. Thomas Speer Ditch No 2. **Date of Original and all relevant subsequent decrees:** **Case No:** 03/12/1896 **Court:** Fremont County District Court **Legal Description:** at a point whence the W4 Cor. Sec.8 Twp. 23 S. Rg. 72 W. bearts S.1 West 1300 ft., and in the NW4, NW4 Sec.8. See Map attached to the application for a general location map. (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Decreed source of water:** For the Thomas Speer Ditch No 2; Spring Creek (a.k.a. Stanton Creek), tributary to Grape Creek, tributary to the Arkansas River. **Appropriation Date:** 06/10/1887 (priority no. 433). **Total amount decreed to structure:** 0.95 cfs. Absolute. **Decreed uses:** Irrigation. **Amount of water that applicant intends to change:** 0.95 cfs. **3. Detailed description of proposed change in a surface point of diversion:** **A. Complete statement of change:** The Thomas Speer Ditch No. 1 and the Thomas Speer Ditch No. 2 water rights are both decreed to divert water from Spring Creek. The two decreed points of diversion are approximately 80 feet distant from each other. A single physical diversion structure exists on Spring Creek in this location. This diversion structure is considered by the Division Engineer's Office to be the Thomas Speer Ditch No 1. Both the Thomas Speer Ditch No. 1 water rights and the Thomas Speer Ditch No. 2 water right have historically been diverted through this structure. In this application the applicant seeks to change the decreed point of diversion of the Thomas Speer Ditch No. 2 water right from that location decreed in the "3/12/1896" decree as quoted above to the actual point of diversion of the Thomas Seer Ditch No. 1. The involved stream reach is approximately: 50 feet, intervening between the Thomas Speer Ditch No. 1. The involved stream reach is approximately 50 feet. Intervening between the Thomas Speer Ditch No. 2 decreed location and the actual point of diversion of the Thomas Speer Ditch No.1, there are no other decreed water rights, there are no flowing tributary stream inflows, there are no known exchange termini and there are no decreed in-stream flow water rights. The applicant seeks the above requested change in point of diversion or otherwise confirmation from the court confirming that the existing Thomas Speer Ditch No. 1 diversion structure is the legal point of diversion for the Thomas Speer Ditch No. 2 water right. **B. Legal Description: Location:** NW ¼ of NW ¼, Section 8, Township 23S, Range 72W, Principal Meridian 6th, **UTM Coordinates:**

Easting: 458830; Northing 4213630, Zone 13, **UTM Source:** State Engineer's Office and applicant GPS field checked. **Accuracy of location displayed on GPS device:** 20 feet.

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

CASE NO. 2020CW3041; LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION, c/o Donald Higbee, Manager, 310 South 6th Street, P.O. Box 1161, Lamar, CO, 81052 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Richard J. Mehren, Jennifer M. DiLalla, John E. Peckler, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Blvd., Suite 300, Boulder, Colorado 80302, (303) 443-8782).

Application for Plan for Augmentation

BENT COUNTY

2. Purpose of application: LAWMA is a non-profit corporation organized for the purpose of, among other things, providing a means for its members to continue to make ground water diversions from wells and other structures with junior priorities and to continue to make surface water diversions from structures with junior priorities in the Arkansas River water rights regime. The purpose of this application is to include a well in LAWMA's plan for augmentation ("Augmentation Plan"), which was decreed on March 8, 2007 in Case No. 02CW181, Water Division No. 2 ("02CW181 Decree"). Under paragraph 43 of the 02CW181 Decree, LAWMA may add wells to the Augmentation Plan by filing an application with the Water Court. 3. Description of structure to be augmented: The well described in **Exhibit A** ("Additional LAWMA Structure") is 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.). A map showing the location of the Additional LAWMA Structure is attached as **Exhibit B**. The Additional LAWMA Structure is owned by the McClave Water Association and located north of Hasty, Colorado within Bent County. 4. Water rights and other sources of water to be used for augmentation: Those water rights and other sources of water identified in paragraph 40 of the 02CW181 Decree and in the decrees entered in Case Nos. 05CW52, 10CW85, 15CW3067, and 17CW3068 ("Existing Augmentation Supplies"); and those water rights and other sources of water that are added to the Augmentation Plan consistent with paragraph 41 of the 02CW181 Decree. A table identifying the Existing Augmentation Supplies by name, decree(s), location, source, appropriation date, amount, and decreed use(s) is attached as **Exhibit C**, and maps showing the decreed locations of the Existing Augmentation Supplies are attached as **Exhibits D-1** and **D-2**. 4.1 Use of Fryingpan-Arkansas Project water and return flows as an augmentation source: The Additional LAWMA Structure is located within the boundaries of the Southeastern Colorado Water Conservancy District, and water pumped from the Additional LAWMA Structure will be used within such boundaries. Thus, LAWMA will use Fryingpan-Arkansas Project water, including return flows, to replace depletions caused by the Additional LAWMA Structure. 5. Statement of plan for augmentation: The amount, timing, and location of depletions from the Additional LAWMA Structure will be determined in accordance with the methodologies approved in the 02CW181 Decree. Under the Augmentation Plan, LAWMA shall account for and fully replace all out-of-

priority depletions caused by the Additional LAWMA Structure. LAWMA shall replace such depletions with fully consumable water in accordance with the terms and conditions of the 02CW181 Decree and the decree to be entered in this case, in a manner that protects Colorado senior surface water rights from injury and ensures compliance with the Arkansas River Compact. 5.1 Integration into Case No. 02CW181 accounting and projection: The accounting for operation of the Additional LAWMA Structure will be incorporated into the accounting and projection required by paragraphs 47.E and 47.I of the 02CW181 Decree. Such accounting will include, without limitation, monthly diversions, monthly unlagged depletions, and monthly lagged depletions, if any, for the Additional LAWMA Structure, as well as the fully consumable water sources available for replacement of such depletions. Additionally, in accounting for operation of the Additional LAWMA Structure, LAWMA shall use the integrated accounting forms approved in the decree entered in Case No. 14CW3004 on August 1, 2017. 5.2 No modification of 02CW181 Decree: This Application does not seek to change any provision of the 02CW181 Decree other than the inclusion of the Additional LAWMA Structure. This Application does not seek a change of water right for any of the Existing Augmentation Supplies, nor any change to decreed terms and conditions applicable to augmented structures previously included in the Augmentation Plan. 6. Name and address of owner of 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: Lynden Gill, 34705 County Road 24, McClave, CO 81057. WHEREFORE, LAWMA respectfully requests that this Court enter a decree (i) approving the inclusion of the Additional LAWMA Structure in the Augmentation Plan; and (ii) finding and concluding that LAWMA will fully replace, so as to prevent injury to Colorado senior surface water rights and ensure compliance with the Arkansas River Compact, all out-of-priority depletions caused by the Additional LAWMA Structure under the Augmentation Plan.

CASE NO 2020CW3042; The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2.

CASE NO. 2020CW3043; Previous Case No. 14CW3013 and 01CW152 – PUEBLO WEST METROPOLITAN DISTRICT, c/o Jim Blasing, Director of Utilities, 109 E. Industrial Boulevard, PO Box 7005, Pueblo West, CO 81007 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorney: Robert F.T. Krassa, Krassa & Miller, LLC 2300 Canyon Blvd., Ste. 2, Boulder, CO 80302, (303) 442-2156).
Application for Finding of Reasonable Diligence

IN LAKE, CHAFFEE, PUEBLO AND CROWLEY COUNTIES

Introduction, Description of Decree. Pueblo West Metropolitan District ("Pueblo West") seeks a finding of reasonable diligence for the appropriative rights of exchange decreed on January 4, 2008 in Case 01CW152, Water Division No. 2. That decree may be inspected at the office of the clerk of this Court or at the office of the Chaffee County Clerk and Recorder under Reception # 371896 recorded January 10, 2008. Said decree adjudicated several rights of exchange associated with Pueblo West’s change of water rights previously used on the Hill Ranch in Chaffee County. **3. Names of Structures:** Pueblo Reservoir, Pueblo West Diversion Facilities, Colorado Canal Headgate, Lake

Meredith Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, Clear Creek Reservoir Pueblo West Chalk Creek Augmentation Station and Pueblo West Browns Creek Augmentation Station. **4. Describe conditional water right giving the following from the Judgment and Decree:** **a. Date of Original Decree:** January 4, 2008 (Corrected Findings of Fact, Conclusions of Law, Judgment and Decree); Case 01CW152, Water Division No. 2. **b. List all subsequent decrees** awarding findings of diligence (all in this Court): 14CW3013 entered August 20, 2014. **c. Location of structures:** **i. Pueblo West Chalk Creek Augmentation Station** is located on Chalk Creek in the SE 1/4, SE 1/4 of in Section 18, Township 15 South, Range 78 West of the 6th P.M., Chaffee County in the immediate vicinity of the historical location of the Willowdale headgate as provided in paragraph 24 of said decree in Case 01CW152. **ii. Pueblo West Browns Creek Augmentation Station** is located on Browns Creek in the SE 1/4, SE 1/4 of in Section 8, Township 16 South, Range 78 West of the 6th P.M., Chaffee County in the immediate vicinity of the historical location of the Pioneer Ditch headgate as provided in paragraph 24 of said decree in Case 01CW152. **iii. Pueblo Reservoir.** The Pueblo Reservoir is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 in Township 20 South, Range 66 West, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, in Township 21 South, Range 66 West, and Sections 5, 8, 9, 13,14, 15, 16, 22, 23 and 25, in Township 20 South, Range 67 West, all from the 6th P.M. in Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section bears North 61E 21' 20" East, a distance of 2,511.05', all more particularly described in the decree in Case No. B-42135, District Court, Pueblo County, Colorado. **iv. Pueblo West Diversion Facilities.** At present, Pueblo West diverts water at the Trifurcation Point at the South end of the concrete portion of the dam of Pueblo Reservoir, in the SW 1/4 of the NE 1/4 of said Section 36. **v. Colorado Canal Headgate.** The Colorado Canal headgate and point of diversion is located approximately 15 miles downstream from Pueblo near Boone, Colorado, and was originally decreed at a point on the North bank of the Arkansas River in the NE1/4 of the NE1/4, Section 10, Township 21 South, Range 62 West of the 6th P.M., at a point bearing S. 0E 58' W 426 feet from the S.W. corner of Section 2, T21S, R62W of the 6th P.M., in Pueblo County, Colorado. The Arkansas River has shifted and relocated to the northeast to the extent that the center of the diversion gates is located slightly more than 300 feet northeasterly at a point in the NW1/4 of the NW1/4 of Section 11, Township 21 South, Range 62 West of the 6th P.M., at a point bearing south 63E 14' East a distance of 117.3 feet from the S.W. corner of said Section 2. The Arkansas River is in excess of 500 feet wide at the Colorado Canal diversion dam and either point, one on the bank and one further out in the river, accurately describe the headgate of the Colorado Canal as originally decreed and constructed. **vi. Lake Meredith Reservoir.** Lake Meredith Reservoir is located in all or portions of Sections 15, 16, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32 and 33 in Township 21 South, Range 56 West, Sections 1, 6 and 12 in Township 22 South, Range 57 West, and in Sections 24, 25 and 36 in Township 21 South, Range 57 West, all from the 6th P.M., in Crowley County, Colorado. Lake Meredith Reservoir dam axis and the centerline of the outlet canal intersect at a point located in the NW1/4 of the SW1/4 of Section 12, Township 22 South, Range 57 West of the 6th P.M., at a point from which the West Quarter Corner of said Section 12 bears North 27E

14' West a distance of 564.30 feet. **vii. Turquoise Reservoir.** Turquoise Reservoir is located in all or portions of Sections 7, 8, 17, 18, 19 and 20, Township 9 South, Range 80 West, and Sections 10, 11, 12, 13, 14 and 15, Township 9 South, Range 81 West, all from the 6th P.M., in Lake County Colorado. The Turquoise Reservoir Dam axis and the centerline of Lake Fork Creek intersect at a point whence the Northwest corner of Section 16, Township 9 South, Range 80 West of the 6th P.M., bears North 44E 46' 18" East a distance of 10,344.35 feet, all as more particularly described in the decree in Civil Action No. 1541 (District Court, Chaffee County). **viii. Twin Lakes Reservoir.** The Reservoir is located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in Township 11 South, Range 81 West of the 6th P.M., in Lake County, Colorado. Twin Lakes Dam axis and center line of Lake Creek intersect at a point whence the SE corner of Section 23, Township 11 South, Range 80 West of the 6th P.M. bears South 54E 13' 8" East, a distance of 3,803.10' all as more particularly described in the decree in Civil Action No. 5141 (District Court, Chaffee County, Colorado). **ix. Clear Creek Reservoir.** Clear Creek Reservoir is located on Clear Creek in Sections 7 and 8, T.12S, R.79W and Section 12, T. 12S, R.80W of the 6th P.M. in Chaffee County. **d. Source.** The source of water used in these exchanges is the historic consumptive use water under the water rights described in said Decree in Case 01CW152, plus the delayed return flows described in paragraphs 25.a. and 25.c of said Decree. However, this exchange water does not include the Princeton Ditch water right, the Gas Creek Ditch water right or the January 18, 1932 Willowdale stock water and domestic water rights, which are among those described in paragraph 12 of the Decree. The exchange from Lake Meredith involves the temporary storage of that water in Lake Meredith for subsequent exchange. **e. Date of Appropriation:** December 12, 2000 **f. Amounts.** At times when there is a live stream between the described points, Pueblo West will operate exchanges up to the following maximum rates: These exchanges may be run simultaneously; for example, if the first two exchanges were run at the same time the total exchange rate above the Chalk Creek confluence would be 33.4 cfs. (1) From Chalk Creek upstream to Clear Creek, Twin lakes or Turquoise Reservoirs: 24.7 cfs. (2) From Browns Creek upstream to Clear Creek, Twin Lakes or Turquoise Reservoir: 8.7 cfs. (3) From Lake Meredith upstream to storage in Pueblo Reservoir and/or diversion at the Pueblo West Trifurcation Point: 100 cfs. **g. Exchange reaches:** (1) From the said Pueblo West Augmentation Stations on Chalk Creek and Browns Creek, downstream to the confluences of Chalk Creek and Browns Creek with the Arkansas River, respectively, and then upstream on the Arkansas River to storage in Clear Creek Reservoir, Twin Lakes Reservoir and/or Turquoise Lake as described above. The downstream points of said exchanges will be: the confluence of Chalk Creek with the Arkansas River, in the SW/4SW/4 Section 13, Township 15 South, Range 78 West of the 6th P.M. in Chaffee County; and the confluence of Browns Creek with the Arkansas River, located in the NW/4SW/4 Section 31, Township 15 South, Range 77 West of the 6th P.M. in Chaffee County. (2) From Lake Meredith described above to the confluence of the outlet canal of Lake Meredith, which ultimately discharges into the Arkansas River in the NW/4SE/4 Section 27, Township 22 South, Range 57 West of the 6th P.M. in Otero County, and then upstream to storage in Pueblo Reservoir described above and/or diversion at the above described Pueblo West Trifurcation point. The routing of Lake Meredith releases is more particularly described as follows. Waters released from Lake Meredith Reservoir are carried through the Lake

Meredith Reservoir Outlet Canal to a point in the South Half of Section 21, Township 22 South, Range 57 West of the 6th P.M., where they can be released to the Holbrook Canal and/or discharged into the Fort Lyon Storage Canal whence they are carried southeasterly approximately one-half mile in the Fort Lyon Storage Canal to a point at which they either continue in said Fort Lyon Storage Canal or are discharged through a headgate on its Southerly bank in the Southwest Quarter of Section 22, Township 22 South, Range 57 West of the 6th P.M., in Crowley County, Colorado whence they travel South-Southeast approximately one mile to discharge into the Arkansas River in the NW1/4 of the SE1/4 of Section 27, Township 22 South, Range 57 West of the 6th P.M., in Otero County, Colorado. **h. Use of Water.** The subject water may be used for irrigation and all municipal purposes including domestic, industrial, commercial, manufacturing, agricultural, irrigation, stock watering, recreational, piscatorial, fish and wildlife, fire protection, street washing, hydroelectric power production, for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of depletions resulting from use of water from other sources, for all augmentation purposes and for all other beneficial purposes. Such use shall include the right to use, re-use and successively dispose of to extinction that portion of the water available to the subject water rights which was historically consumed through irrigation use. **5. 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:** a. Pueblo West has worked on revegetation and weed control on the Hill ranch in cooperation with Chaffee County. The revegetation process included: (1) annual ditch cleaning and maintenance; (2) cultivation and tillage to prepare for seeding; (3) perennial grass seedings performed annually; (4) daily irrigation applications through the irrigation season; (5) implementing weed control practices on Hill Ranch; and (6) technical field monitoring and evaluations that provide statistical data to assess Pueblo West's revegetation progress. A revegetation team has been developed that includes rangeland consultants, a ranch manager, and a revegetation crew to perform daily revegetation activities. Equipment (tractors, sprinklers, pumps, irrigation pipe, trucks, utility vehicles, and storage buildings) have been leased or purchased to facilitate the revegetation operations. An onsite operations headquarters has been established on Hill Ranch from which daily revegetation activities are directed and managed. **b. An "Amended Settlement Agreement" was executed** between Pueblo West and Chaffee County. The amended agreement updated the previous agreement (2006) and established future cooperative revegetation guidelines for establishing perennial grasses on the formerly irrigated fields. **c. Two public meetings were conducted** in cooperation with Chaffee County to discuss current and future revegetation activities. In addition to these public meetings, Pueblo West representatives have attended Chaffee County Commissioner meetings to provide updates and solicit comments on the development of Pueblo West's revegetation plan. **d. Mapping of Hill Ranch landowner property boundaries was completed** and annually updated based on information provided by the Chaffee County assessor's office. **e. The Chalk Creek diversion structures and measuring device have been annually maintained** and operated for revegetation purposes. **f. The Browns Creek diversion structure and measuring device was constructed.** **g. mapping and engineering interpretation** of the continued dry-up of the historic irrigated area using aerial photography was performed

three times during the diligence period. **h. Since August 2014, Pueblo West has spent over \$2.2 million** on its Hill Ranch Revegetation Project, all of which was reasonable and necessary in order to place the subject appropriative rights of exchange to use. **i. Pueblo West owns** and operates a single, unified and integrated municipal water supply and wastewater collection and treatment system that contain numerous components. Those components include, but are not limited to, the individual water rights and points of diversion described in this application, and the appropriative rights of exchange and reuse rights that are the subject of this application. Paragraph 207 of the said decree in Case 01CW152 provides that for the purposes of showing diligence and completion of the appropriative rights of exchange requested, diligence as to any part of the Pueblo West water rights system which is used to operate, or which benefits from the exchanges herein confirmed, shall be evidence of diligence as to the completion of the said appropriative rights of exchange. **j. In addition to activities** and expenditures directly related to the subject water rights as described above, Pueblo West has during the diligence period expended over \$6.8 million on other work on its water rights system. **k. The work performed** and actions taken by Pueblo West during the Diligence Period demonstrate Pueblo West's continuing intent to develop the conditional appropriative rights of exchange described in this application. Pueblo West has shown that it can and will divert, store or otherwise capture, possess or control and beneficially use the subject exchange rights and that the subject exchange rights can and will be completed with diligence and within a reasonable time. Pueblo West has in all respects diligently worked toward placing the subject conditional water right to beneficial use. **6. Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure necessary for the subject rights of exchange is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool.** **a. Pueblo Reservoir**, Turquoise Lake and Twin lakes Reservoir are on land owned by the U.S. Department of Interior, Bureau of Reclamation, ("Reclamation"), Eastern Colorado Area Office, 11056 West County Rd. 18-E, Loveland, Colorado 80537-9711. All use of such structures will be pursuant to applicable laws, regulations and contracts with the Bureau of Reclamation and/or the Southeastern Colorado Water Conservancy District. In addition, Pueblo West is a shareholder in the Twin Lakes Reservoir and Canal Company. All use of Twin Lakes Reservoir will be pursuant to applicable provisions of the governing documents of said Company and/or contracts with other shareholders, and consistent with the provisions of this Decree, as provided in paragraphs 17.e and 17.f of said decree in Case 01CW152. **b. Clear Creek Reservoir** is owned by The Board of Water Works of Pueblo, Colorado, 319 West 4th Street, P.O. Box 400, Pueblo. CO 81002. **c. The Colorado Canal** and Lake Meredith Reservoir are owned by: The Colorado Canal Company and The Lake Meredith Reservoir Company 331 Main Street P.O. Box 8 Ordway, CO 81063. Pueblo West is a shareholder in said companies. All use of Lake Meredith will be pursuant to applicable provisions of previous decrees of this court, stipulations to which Pueblo West is a party, the governing documents of said Company and/or contracts with other shareholders, and consistent with the provisions of this Decree. **d. The fee title** to the land upon which the Chalk Creek augmentation station is located is held by: Princeton Holdings, LLC., 5151 Collins Avenue, Suite 1727, Miami, Florida, 33140. **e. The fee title** to the land upon which the Browns Creek augmentation station is

located is held by: Marvin and Barbara Ebel, 13000 County Road 261D, Nathrop, CO, 81236, AND Thomas and Joyce Peryam Family Trust, 13030 County Road 261D, Nathrop, Colorado, 81236. **f. Pueblo West owns** or has the right to use the sites upon which all other structures associated with this matter will be located.

CASE NO. 2020CW3044; Previous Case No. 14CW3019; 07CW60, 01CW5 and 82CW212 – TOWN OF MONUMENT, 645 Beacon Lite Road, Monument, CO 80132

(Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Robert F.T. Krassa, Krassa & Miller, LLC, 2300 Canyon Blvd., Ste. 2, Boulder, CO 80302, (303) 442-4156).

Amended Application for Finding of Reasonable Diligence and to Make Absolute in Part
EL PASO COUNTY

This Amended Application adds specific locations of structures to paragraph 3.c hereof pursuant to Minute Order in this matter dated August 28, 2020. No other Changes are made. **2. Name of Structures:** The conditional water right which is the subject of this Application is an exchange to the following wells: Monument Wells No. 4, 5, QAL-3, QAL-4, QAL-5, QAL-6, QAL-7, QAL-8, QAL-3(ALT), QAL-4(ALT), QAL-5(ALT), QAL-6(ALT), QAL-7(ALT), and QAL-8(ALT) (herein collectively "the alluvial wells"), from or attributable to the water rights of Monument Wells A-1 and LFH-1. The water from said rights may accrue from the said wells themselves, return flows attributable to said water rights discharged from Tri-Lakes Waste Water Facility, from LIRFs (lawn irrigation return flows) attributable to said water rights, and direct return flows from outdoor use in areas with paved streets from use of water attributable to said water rights. **3. Describe conditional water right** giving the following from the Referee's Ruling and Judgment and Decree: **a. Date of Original Decree:** June 7, 1988; Case 82CW212, Water Division No. 2 and Supplemental Findings, Judgment and Decree entered October 20, 1993. Said decrees may be inspected at the office of the Clerk of this Court. They were recorded June 13, 1988 at Book 5578, page 1250, rec. no. 01713104 and Oct. 24, 1994 at Book 6549, page 114, rec. no. 094145672, records of El Paso County, respectively. **b. List all subsequent decrees** awarding findings of diligence (all in this Court): 94CW34 entered January 19, 1995, 01CW5 entered June 29, 2001; 07CW60 entered April 28, 2008; and 14CW3019 entered August 7, 2014. (Note: the diligence deadline in the original decree was extended to June 1994 by Order dated June 12, 1990 based on SB 1990-13.) **c. Location of structures:** All of the structures are located in Township 11 South, Range 67 West of the 6th P.M. in El Paso County, at the following specific locations. **(1) Monument Well No. 4** - SW 1/4 NW 1/4, Section 15 at a point 2020 feet from the North line and 790 feet from the West line of said Section 15; **(2) Monument Well No. 5** - SW 1/4 NW 1/4, section 15 at a point 2100 feet from the North line and 600 feet from the West line of said Section 15; **(3) Well QAL-3** - NE 1/4 NE 1/4 Section 16 at a point 50 feet from the North line and 500 feet from the East line of said Section 16; **(4) Well QAL-4** - NE 1/4 NE 1/4 Section 16 at a point 400 feet from the North line and 300 feet from the East line of said Section 16. **(5) Well QAL-5** - NW 1/4 NW 1/4 Section 15 at a point 400 feet from the North line and 70 feet from the West line of said Section 15; **(6) Well QAL-6** - NE 1/4 NE 1/4 Section 16 at a point 750 feet from the North line and 100 feet from the East line of said Section 16; **(7) Well QAL-7** - NW 1/4 NW 1/4 Section 15 at a point 850 feet from the North line and 300 feet from the West line of said Section 15; **(8) Well QAL-8** - NW 1/4 NW 1/4 Section 15 at a point 1,250 feet from the North line and 300 feet from the West line of

said Section 15; **(9) Well QAL-3(ALT.)** - SW 1/4 NW 1/4 Section 15, at a point 2,200 feet from the North line and 750 feet from the West line of said Section 15; **(10) Well QAL-4(ALT.)**-SW 1/4 NW 1/4 Section 15, at a point 2,350 feet from the North line and 500 feet from the West line of said Section 15; **(11) Well QAL-5(ALT.)** - SW 1/4 NW 1/4 Section 15, at a point 2,550 feet from the North line and 1,250 feet from the West line of said Section 15; **(12) Well QAL-6(ALT.)** - NE 1/4 SW 1/4 Section 15, at a point 2,800 feet from the North line and 1,500 feet from the west line of said section 15; **(13) Well QAL-7(ALT.)** - SW 1/4 NW 1/4 Section 15 at a point 2,050 feet from the North line and 1,000 feet from the west line of said section 15; **(14) Well QAL-8(ALT.)** - SE 1/4 NW 1/4 Section 15 at a point 2,250 feet from the North line and 1,350 feet from the West line of said Section 15; **(15) Monument Well A-1** - NE 1/4 of the NE 1/4, section; 15, being 750 feet from the North line and 500 feet from the East line of said Section 15; **(16) Monument Well LFH-1** - NE 1/4 of the NE 1/4, Section 15, being 750 feet from the North line and 600 feet from the East line of said Section 15; **(17) Tri-Lakes Waste Water Facility** - NW 1/4 NE 1/4 Section 27. **d. Source:** the ultimate source of water exchanged is water from the nontributary Arapahoe and Laramie Fox Hills aquifers withdrawn from the said Monument Wells A-1 and LFH-1, which may reach the stream system as discharges from the Tri-Lakes Waste Water Facility and LIRFs. **e. Date of Appropriation:** December 30, 1982 for exchanges to Monument Wells 4 and 5 with relative priority under C.R.S. §37-92-306 based upon filing of application in calendar year 1982, and March 18, 1986 for exchanges to Monument Wells QAL-3 through QAL-8 and QAL-3(ALT) through QAL-8(ALT) with relative priority dates under C.R.S. §37-92-306 based upon filing of an amendment to the application in said case 82CW212 during calendar year 1986. **f. Amount:** 0.8 cfs, conditional. **g. Exchange reach:** Monument Creek, from the discharge of the said Tri-Lakes Waste Water Facility in the NW 1/4 NE 1/4 Section 27, Township 11 South, Range 67 West of the 6th P.M. in El Paso County upstream to the SE 1/4 Section 9, same range and township. This reach includes the portion between the area where LIRFs accrue, and the alluvial wells. A map of the exchange reach is attached as Exhibit A. **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: **a. During the diligence period,** the following capital improvements were made to the Town's water system for a total of over \$ 1.3 million: valve replacement/addition to Safeway vicinity to allow for better and more specific isolation of areas; addition of 12" PRV station to Wagons West development to control high water pressures; 8" valve and water main for loop from Adams St. to Beacon Lite at the Bethesda location; Well 9 pump upgrade to increase production from 165 gpm to 190 gpm; Well 3 pump upgrade to increase production from 85 gpm to 100 gpm; PLC upgrades to the Town booster station and WTP 7; VFD upgrade to the Town booster station; Complete renovation to WTP 4/5 for better water quality and control; new chemical feed skid for WTP 3/9; Blending project to decrease radium in well 9 water levels; WTP's 7,8, and 3/9 media cleanse for better water quality; water main looping project from Village Inn to 7/11 underneath Hwy 105; and finish water main loop on South end of Mitchell Ave. During the diligence period the Town has spent over \$1.3 million on these and other water system projects, all of which increased the Town's ability to fully utilize the subject water rights. **b. Monument owns and operates** a single, unified and integrated municipal water supply system that contains numerous components. Those

components include but are not limited to the appropriative rights of exchange that are the subject of this application. **c. In addition**, during the diligence period, the Town filed and completed a number of Water Court cases to increase the yield of its water system, including 19CW3009 to augment Dawson aquifer water produced from Wells 1, 2 and 3, and 19CW3010 to confirm nontributary status of Denver aquifer water produced from Wells 2 and 3. The Town also participated in a few water court cases filed by others in order to protect the Town's water rights. **d. The Town of Monument has** in all respects diligently worked toward placing these conditional water rights to beneficial use. **5. Claim to make absolute in part:** **a. Date water applied** to beneficial use: May 9, 2019; Amount: 0.33 c.f.s. **b. Supporting evidence** showing that applicants diverted water in-priority and applied such water to beneficial uses: a summary of the water system records showing the in-priority exchange is attached as Exhibit B. **c. The water was applied** to beneficial use in the service areas of the Town of Monument. This service area is shown on map attached as Exhibit C. **6. Names and addresses of owners or reputed owners of the land** upon which any new diversion or storage structure or modification to any existing diversion or storage structure necessary for the subject rights of exchange is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: Monument owns or has the right to use the sites upon which all structures associated with this matter will be located.

CASE NO. 2020CW3045; Previous Case No. 14CW3020, 07CW61, 01CW4, 94CW35 and 83CW10 – TOWN OF MONUMENT, 645 Beacon Lite Road, Monument, CO 80132

(Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Robert F.T. Krassa, Krassa & Miller, LLC, 2300 Canyon Blvd., Ste. 2, Boulder, CO 80302, (303) 442-4156).

Amended Application for Finding of Reasonable Diligence and to Make Absolute in Part
EL PASO COUNTY

This Amended Application adds specific locations of structures to paragraph 3.c

hereof pursuant to Minute Order in this matter dated August 28, 2020. No other Changes are made. **2. Name of Structures:** The conditional water right which is the subject of this Application is an exchange to the following wells: Monument Wells No. 1, 2, 3, 4, 5, QAL-3, QAL-4, QAL-5, QAL-6, QAL-7, QAL-8, QAL-3(ALT), QAL-4(ALT), QAL-5(ALT), QAL-6(ALT), QAL-7(ALT), and QAL-8(ALT), from or attributable to the water rights of Beaver Creek Wells A-1, A-2, A-3, LFH-1, LFH-2 and LFH-3, and the Welty Ditch, Shideler Ditch, South Side Ditch, Waldron Domestic Ditch and Keno Ditch (collectively "the Beaver Creek ditches"). The water from said rights may accrue from the said wells or ditches themselves, return flows attributable to said water rights discharged from Tri-Lakes Waste Water Facility, from LIRFs (lawn irrigation return flows) attributable said water rights, and direct return flows from outdoor use in areas with paved streets from use of water attributable to said water rights. **3. Describe conditional water right** giving the following from the Referee's Ruling and Judgment and Decree: **a. Date of Original Decree:** April 5, 1985. Date of First Amendment of Findings, Judgment and Decree which confirms the exchange was implicit in the 1985 decree: June 7, 1988. Date of Supplemental Findings, Judgment and Decree which specifies method of calculation of LIRFs which were decreed in the 1985 decree: October 20, 1994. All of said decrees were entered by this Court in Case 83CW10 and may be inspected at the office of the Clerk of this Court. Said decrees were recorded Apr. 10, 1985 at Book 3993, page 1301, rec. no. 01235240, June 13, 1988 at Book 5518, page 1268, rec. no. 01713105, and Oct. 24, 1994 at Book 6549, page 85, rec. no. 094145671, records of El Paso County, respectively. **b. List all subsequent decrees** awarding findings of diligence (all in this Court): 94CW35 entered January 19, 1995; 01CW4 entered June 29, 2001; 07CW61 entered April 28, 2008; and 14CW3020

entered August 7, 2014. (Note: the diligence deadline in the original decree was extended to June 1994 by Order dated June 12, 1990 based on SB 1990-13.) **c. Location of structures:** All of the structures are located in Township 11 South, Range 67 West of the 6th P.M. in El Paso County, at the following specific locations. **(1) Monument Well No. 1** - SE 1/4 NE 1/4 Section 15 at a point 1600 feet from the North line and 850 feet from the East line of said Section 15; **(2) Monument Well No. 2** - NW 1/4 NW 1/4 Section 14 at a point 920 feet from the North line and 1020 feet from the West line of said Section 14; **(3) Monument Well No. 3** - NE 1/4 SE 1/4 Section 15 at a point 1980 feet from the South line and 50 feet from the East line of said Section 15; **(4) Monument Well No. 4** - SW 1/4 NW 1/4, Section 15 at a point 2020 feet from the North line and 790 feet from the West line of said Section 15; **(5) Monument Well No. 5** - SW 1/4 NW 1/4, section 15 at a point 2100 feet from the North line and 600 feet from the West line of said Section 15; **(6) Well QAL-3** - NE 1/4 NE 1/4 Section 16 at a point 50 feet from the North line and 500 feet from the East line of said Section 16; **(7) Well QAL-4** - NE 1/4 NE 1/4 Section 16 at a point 400 feet from the North line and 300 feet from the East line of said Section 16; **(8) Well QAL-5** - NW 1/4 NW 1/4 Section 15 at a point 400 feet from the North line and 70 feet from the West line of said Section 15; **(9) Well QAL-6** - NE 1/4 NE 1/4 Section 16 at a point 750 feet from the North line and 100 feet from the East line of said Section 16; **(10) Well QAL-7** - NW 1/4 NW 1/4 Section 15 at a point 850 feet from the North line and 300 feet from the West line of said Section 15; **(11) Well QAL-8** - NW 1/4 NW 1/4 Section 15 at a point 1,250 feet from the North line and 300 feet from the West line of said Section 15; **(12) Well QAL-3(ALT.)** - SW 1/4 NW 1/4 Section 15, at a point 2,200 feet from the North line and 750 feet from the West line of said Section 15; **(13) Well QAL-4(ALT.)** - SW 1/4 NW 1/4 Section 15, at a point 2,350 feet from the North line and 500 feet from the West line of said Section 15; **(14) Well QAL-5(ALT.)** - SW 1/4 NW 1/4 Section 15, at a point 2,550 feet from the North line and 1,250 feet from the West line of said Section 15; **(15) Well QAL-6(ALT.)** - NE 1/4 SW 1/4 Section 15, at a point 2,800 feet from the North line and 1,500 feet from the west line of said section 15; **(16) Well QAL-7(ALT.)** - SW 1/4 NW 1/4 Section 15 at a point 2,050 feet from the North line and 1,000 feet from the west line of said section 15; **(17) Well QAL-8(ALT.)** - SE 1/4 NW 1/4 Section 15 at a point 2,250 feet from the North line and 1,350 feet from the West line of said Section 15; **(18) Monument Well A-1** - NE 1/4 of the NE 1/4, section; 15, being 750 feet from the North line and 500 feet from the East line of said Section 15; **(19) Monument Well LFH-1** - NE 1/4 of the NE 1/4, Section; 15, being 750 feet from the North line and 600 feet from the East line of said Section 15; **(20) Tri-Lakes Waste Water Facility** - NW 1/4 NE 1/4 Section 27; **(21) Welty Ditch** - Section 28 (no quarter section or quarter quarter section stated in previous decrees) WDID 1000524; **(22) Shideler Ditch** - Section 31 (no quarter section or quarter-quarter section stated in previous decrees) WDID 1000525. **(23) Southside Ditch** - SE/4 Section 28. WDID 1000526; **(24) Waldron Domestic Ditch** - headgate at a point on the North bank of Beaver Creek in the SW 1/4 Section 28 whence the West Quarter corner of said Section 28 bears North 13 degrees 13 minutes West 554.5 feet; **(25) Keno Ditch** - headgate in the SE 1/4 Section 29 at a point on the South bank of Beaver Creek whence the SE corner of said Section 29 bears South 89 degrees 15 minutes East 600 feet; **(26) Beaver Creek Well A-1** - SW 1/4 SE 1/4 Section 27 at a point 2000 feet from the East line and 1250 feet from the South line of said Section 27 at a point; **(27) Beaver Creek Well A-2** - SW 1/4 SE 1/4 Section 28 at a point 2020 feet from the East line and 1200 feet from the South line of said Section 28; **(28) Beaver Creek Well A-3** - SE 1/4 SE 1/4 Section 29 at a point 300 feet from the East line and 1200 feet from the South line of said Section 29; **(29) Beaver Creek Well LFH-1** - SW 1/4 SE 1/4 Section 27 at a point 2000 feet from the East line and 1200 feet from the South line of said Section 27 at a point; **(30) Beaver Creek Well LFH-2** - SW 1/4 SE 1/4 Section 28 at a point 2020 feet from the East line and 1220 feet from the South line of said Section 28; **(31) Beaver Creek Well LFH-3** - SE 1/4 SE 1/4 Section 29 at a point 320 feet from the East line and 1200 feet from the South line of said Section 29 and LFH-1 are in the

NE 1/4 SW 1/4 Section 27; **(27) Beaver Creek Wells A-2 and LFH-2** are in the SW 1/4 SW 1/4 Section 28; **(28) Beaver Creek Wells A-3 and LFH-3** are in the SE 1/4 SE 1/4 Section 29; d. Source: the ultimate sources of water exchanged are the nontributary Arapahoe and Laramie Fox Hills aquifers withdrawn from the said Beaver Creek wells, and water from Beaver Creek diverted or credited under the water rights of the said Beaver Creek ditches. **e. Date of Appropriation:** December 30, 1982 for exchanges to Monument Wells 1, 2, 3, 4 and 5 with relative priority under C.R.S. 37-92-306 based upon filing of application in calendar year 1982, and March 18, 1986 for exchanges to Monument Wells QAL-3 through QAL-8 and QAL-3(ALT) through QAL-8(ALT) with relative priority dates under C.R.S. 37-92-306 based upon filing during calendar year 1986. **f. Amount:** 6.0 cfs, conditional. **g. Exchange reach:** Monument Creek, from the confluence with Beaver Creek in the NW 1/4 SW 1/4 Section 35, Township 11 South, Range 67 West of the 6th P.M. in El Paso County upstream to the SE 1/4 Section 9, same range and township. A map of the exchange reach is attached as Exhibit A. **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: **a. During the diligence period**, the following capital improvements were made to the Town's water system for a total of over \$ 1.3 million: valve replacement/addition to Safeway vicinity to allow for better and more specific isolation of areas; addition of 12" PRV station to Wagons West development to control high water pressures; 8" valve and water main for loop from Adams St. to Beacon Lite at the Bethesda location; Well 9 pump upgrade to increase production from 165 gpm to 190 gpm; Well 3 pump upgrade to increase production from 85 gpm to 100 gpm; PLC upgrades to the Town booster station and WTP (water treatment plant) 7; VFD upgrade to the Town booster station; Complete renovation to WTP 4/5 for better water quality and control; new chemical feed skid for WTP 3/9; Blending project to decrease radium in well 9 water levels; WTP's 7,8, and 3/9 media cleanse for better water quality; water main looping project from Village Inn to 7/11 underneath Hwy 105; and finish water main loop on South end of Mitchell Ave. During the diligence period the Town has spent over \$1.3 million on these and other water system projects, all of which increased the Town's ability to fully utilize the subject water rights. **b. Monument owns and** operates a single, unified and integrated municipal water supply system that contains numerous components. Those components include but are not limited to the appropriative rights of exchange that are the subject of this application. **c. In addition**, during the diligence period, the Town filed and completed a number of Water Court cases to increase the yield of its water system, including 19CW3009 to augment Dawson aquifer water produced from Wells 1, 2 and 3, and 19CW3010 to confirm nontributary status of Denver aquifer water produced from Wells 2 and 3. The Town also participated in a few water court cases filed by others in order to protect the Town's water rights. **d. Last but not least**, the Town confirmed locations of its well site on the Forest Lakes Residential Parcel to produce its Denver basin aquifer groundwater from that area as decreed in Cases 83CW9 and 08CW63. Those wells will provide a significant portion of the water eventually exchanged under the subject rights of exchange. **d. The Town of Monument has in all respects diligently worked** toward placing these conditional water rights to beneficial use. **5. Claim to make absolute in part:** **a. Date water applied** to beneficial use: January 22, 2019; Amount: 0.319 c.f.s. **b. Supporting evidence** showing that applicants diverted water in-priority and applied such water to beneficial uses: a summary of the water system records showing the in-priority exchanges is attached as Exhibit B. **c. The water was applied** to beneficial use in the service areas of the Town of Monument. This service area is shown on map attached as Exhibit C. **6. Names and addresses of owners or reputed owners of the land** upon which any new diversion or storage structure or modification to any existing diversion or storage structure necessary for the subject rights of exchange is or will be constructed or upon which water is or will be stored, including any modification to the

existing storage pool: Monument owns or has the right to use the sites upon which all structures associated with this matter will be located.

CASE NO. 2020CW3046; Previous Case Nos. 14CW3, and 06CW86 – ARM, LLC, 102 S. Tejon Street, Suite 800, Colorado Springs, CO 80903 (Please address all pleadings and inquiries regarding this matter to Applicants’ attorneys: Chris D. Cummins, #35154, Emilie B. Polley, #51296, Monson, Cummins & Shoheit, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, (719) 471-1212).

Application for Finding of Reasonable Diligence

PUEBLO COUNTY

II. Summary of Application: ARM, LLC (“Applicant”) seeks a finding of reasonable diligence as to conditional water rights decreed to original Applicant’s use in Case No. 06CW86, District Court, Water Division 2. **III. Conditional Underground Water Rights:**

A. **Name of Structure:** Mathey Well. 1. **Legal Description:** In the NE1/4 SW1/4 of Section 16, Township 24 South, Range 66 West of the 6th P.M., being a distance of 2,940 feet south from the north section line and 1,950 feet east from the west section line of said Section 16. 2. **Source of Water:** Dakota Aquifer. 3. **Depth:** 638 feet. 4. **Amount Claimed:** 150 gallons per minute with an annual volumetric limit of 77 acre feet, conditional. 5. **Date of Appropriation:** October 15, 1971, by the formation of an intent to appropriate waters, and the obtaining of Division of Water Resources Well Permit No. 015879-F. 6. **Uses:** Municipal (provided the water is used by a municipality or a quasi-municipal entity of the State of Colorado), and/or commercial, specifically including but not limited to the typical uses of an industrial park, and an airport, and specifically including irrigation.

IV. Detailed Outline of Diligence: Per the decree entered in Case No. 06CW86 and subsequent finding of diligence in Case No. 14CW3, the above described Mathey Well is a conditional water right awarded to the Applicant for various purposes outlined above. During the subject diligence period, Applicant has outlaid the following expenditures or completed the following work related to the Mathey Well: A. Expenditures amounting to approximately \$338,714 from 2016 to 2020, for engineering, administrative, and legal costs for the application, coordination, operating, and maintenance of an augmentation plan for the Mathey Well. B. Ongoing discussions and negotiations with Colorado City relating to use of municipal right by the Colorado City Metropolitan District. **V. Name and address of the owners of land on which structures are located:** The land upon which the point of diversion for this water right is located is owned by the Applicant, ARM, LLC. WHEREFORE, Applicant requests the Court find that (1) Applicant has maintained diligence for the conditional water rights described herein; (2) that the Applicant can and will complete the decreed conditional appropriations; (3) that the conditional underground water rights decreed in Case Nos. 06CW86 and 14CW3, and described herein continue in full force and effect for an additional diligence period; and (4) for such other relief as the Court deems appropriate.

CASE NO 2020CW3047; Previous Case No. 07CW120 – CITY OF COLORADO SPRINGS, COLORADO SPRINGS UTILITIES, c/o Abigail Ortega, 1521 Hancock Expressway, Mail Code 1825, Colorado Springs, CO 80903 (Please address all pleadings and inquiries regarding this matter to Applicants’ attorney: Michael J. Gustafson, Senior Attorney, City Attorney’s Office-Utilities Division, 30 South Nevada Ave., MC 510, Colorado Springs, CO 80903, (719) 385-5909).

Application for Finding of Reasonable Diligence for the Quail Lake Conditional Water Storage Right.

EL PASO COUNTY

2. Name of Structure: Quail Lake a.k.a. South Lake (WDID 1003352). A. The City of Colorado Springs owns, and Colorado Springs’ Parks, Recreation and Cultural Services manages, Quail Lake, an 18.61-surface-acre, 321 acre-foot capacity lake located within Colorado Springs’ city limits. Quail Lake is a man-made lake located on a drainage

tributary to Fountain Creek. It was constructed by the Gates Land Company and subsequently transferred to Colorado Springs pursuant to a contract dated February 22, 1971, amended by Covenants entered on July 8, 1974 (the "Contract"). Under the Contract, Colorado Springs, acting through Colorado Springs Utilities, provided approximately 315 acre-feet of water for the initial fill of Quail Lake. Colorado Springs Utilities has subsequently provided up to 50 acre-feet of water annually to maintain the water level of Quail Lake. The available storage volume between the surface of Quail Lake and the elevation of the spillway is referred to herein as the "unfilled capacity". During and immediately after precipitation events, Quail Lake intercepts stormwater and runoff from the upstream drainage. When there is unfilled capacity in Quail Lake, the stormwater and runoff is stored in the unfilled capacity. Quantities of water in excess of the unfilled capacity spill from the lake. All water stored in Quail Lake is beneficially used within Quail Lake for recreation, fish and wildlife habitat, and aesthetics purposes. In Water Division 2, Case No. 07CW120, Applicant obtained a decree for a conditional water storage right to fill and subsequently refill the then-existing unfilled capacity of Quail Lake with stormwater and runoff flowing into Quail Lake during any precipitation event. The maximum unfilled capacity available at any one time claimed by the Applicant is 72 acre-feet, which occurs when the water level in Quail Lake is 4 feet below the level of the spillway before storage of stormwater and runoff is initiated. This unfilled capacity may be filled and refilled throughout the year depending on available unfilled capacity in Quail Lake and the amount and frequency of stormwater and runoff and releases from the lake.

3. Describe conditional water right including the following information from the Referee's Ruling and Judgment and Decree: A. Date of Original Decree: August 27, 2014, Case No. 07CW120, District Court, Water Division No. 2. B. Subsequent Decree awarding findings of diligence: N/A. C. Decreed Legal Description and PLSS Description: Quail Lake is located on a drainage tributary to Fountain Creek in the SW1/4 Section 32, Township 14 South, Range 66 West, 6th P.M., 1405 feet from the south section line and 2070 feet from the west section line. The street address is 915 Cheyenne Mountain Blvd., Colorado Springs, CO 80906. UTM Coordinates: (GPS): Easting: 516876.9, Northing: 4292946.8, Zone: 13. A map that shows the location of Quail Lake is attached as Exhibit A. D. Source of Water: Stormwater and runoff from an unnamed tributary to Fountain Creek at or upstream of Quail Lake Dam. E. Appropriation Date: February 22, 1971. F. Amount: Up to 72 acre-feet of storage, with right to refill up to 72 acre-feet, for a total of 144 acre-feet annually. G. Decreed Use: Water diverted in-priority under this decree will be stored in the available unfilled capacity and, unless or until released, will be used for recreation, fish and wildlife habitat, and aesthetic purposes.

4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: A. During the period from August 27, 2014 (date of original decree) through July 31, 2020 (the "Diligence Period"), Applicant maintained Quail Lake and contracted for engineering and construction projects to install an additional monitoring well, a sand filter buttress on the east side of the dam, additional rip-rap on the west side of the dam, and the existing under drain was repaired and routed through the new headwall. Applicant has also designed automation and controls, installed remote terminal units, and repaired and calibrated the flow meter. In addition, Applicant filed an application in Case No. 19CW3053 (Water Division No. 2) involving an augmentation plan, and appropriative rights of exchange for multiple storage structures including Quail Lake. B. Applicant has also acted to preserve and protect all of its water rights by filing statements of opposition to, and participating in, many judicial and administrative proceedings. For example, Applicant has consistently opposed water court applications that seek approval of plans for augmentation that operate on Fountain Creek. Applicant has participated in these cases to ensure that the out-of-priority depletions are replaced in time, amount, and location, and that the Division Engineer assesses transit losses on the replacement water supply. Applicant has undertaken endeavors to improve the accuracy of the Fountain

Creek Transit Loss Model, which directly affects the storage right at issue in this Application. C. Applicant's total capital expenditures in connection with the activities related to Quail Lake as described above have exceeded \$266,066. Applicant reserves the right to identify additional relevant efforts that may be later discovered or to make upward adjustments to amounts expended on certain projects. Applicant made diligent efforts with regard to this Application to determine and quantify all efforts made toward completion of the appropriations and application of the water rights decreed in Case No. 07CW120 to beneficial use. However, it is reasonably possible that relevant efforts or expenditures may have been overlooked or need further upward adjustment. **5. If claim to make absolute:** The Applicant had not made any of the portions of the conditional water right for Quail Lake absolute during the diligence period, but reserves the right to do so at any time water is stored in priority or pursuant to the Colorado State Engineer's Instruction No. 2020-01. **6. Names and addresses of owners of the land upon which any structure for this appropriation is or will be constructed:** A. Quail Lake is located on property owned by Applicant, the City of Colorado Springs.

CASE NO. 2020CW3048; Previous Case No. 07CW121 – CITY OF COLORADO SPRINGS, COLORADO SPRINGS UTILITIES, c/o Abigail Ortega, 1521 Hancock Expressway, Mail Code 1825, Colorado Springs, CO 80903 (Please address all pleadings and inquiries regarding this matter to Applicants' attorney: Michael J. Gustafson, Senior Attorney, City Attorney's Office-Utilities Division, 30 South Nevada Ave., MC 510, Colorado Springs, CO 80903, (719) 385-5909).

First Amended Application for Finding of Reasonable Diligence and to Make Partially Absolute a Portion of the Conditional Appropriative Right of Substitution and Exchange for the Fountain Creek Recovery Project.

EL PASO COUNTY

2. Name of Structure: Fountain Creek Recovery Project Exchange. A. **Summary Description of Conditional Water Right:** In District Court, Water Division No. 2, Case No. 07CW121, Applicant obtained a decree for a 59.6 c.f.s absolute and 110.4 c.f.s conditional appropriative right of exchange for the Fountain Creek Recovery Project (the "FCRP") that allow Applicant to capture spills from its wastewater collection system and treatment facilities and water containing pollutants that enter Fountain Creek at or above the location of the FCRP. The FCRP consists of the enlarged Stubbs and Miller Ditch (WDID 1000567) headgate on Fountain Creek, an impoundment called the FCRP Recovery Pond (WDID 1003353, the "Spill Pond"), and an impoundment called the FCRP Exchange Pond (WDID 1003350, the "Exchange Pond"). The FCRP operates by diverting from Fountain Creek streamflows containing spills of treated or partially treated wastewater or water containing other serious pollutants that enter Fountain Creek at or above the enlarged Stubbs and Miller Ditch headgate. Such streamflows are diverted at the Stubbs and Miller Ditch headgate into the Spill Pond, where the water is temporarily stored and the delivered to Applicant's wastewater treatment facilities or other appropriate treatment location for treatment and subsequent discharge. The out-of-priority diversions into the Spill Pond are replaced with fully-consumable water owned or controlled by Applicant and released from the Exchange Pond. Applicant operated an exchange under the 07CW121 decree at the maximum rate of 93.04 c.f.s. on September 22, 2015 resulting in an additional 33.44 c.f.s. of the FCRP conditional exchange right being made absolute.

3. Describe conditional water right including the following information from the Referee's Ruling and Judgment and Decree: A. **Date of Original Decree:** August 27, 2014, Case No. 07CW121, District Court, Water Division No. 2. B. **Subsequent decree awarding findings of diligence:** N/A. C. **Decreed Legal Description and PLSS Description:** I. **Point of discharge from which water will be exchanged:** Exchange Pond Outlet: **Decreed Location:** in the NE1/4 SE1/4 of Section 10, T15S, R66W, of the 6th P.M., approximately 1,450 feet downstream on Fountain Creek from the Stubbs and Miller headgate, at a point approximately 2,060 feet from the West line and 880 feet from the South line of said

Section 3; Actual Location: in the SE1/4 SW1/4 of Section 3, T15S, R66W, of the 6th P.M., approximately 1,450 feet downstream on Fountain Creek of the Stubbs and Miller headgate, at a point approximately 2,380 feet from the West line and 1,020 feet from the South line of said Section 3. The point of discharge is located at the confluence of the Exchange Pond Outlet channel and Fountain Creek, in the SE1/4 SW1/4 of Section 3, T15S, R66W, of the 6th P.M., approximately 1,450 feet downstream on Fountain Creek from the Stubbs and Miller headgate, at a point approximately 2,130 feet from the West line and 820 feet from the South line of said Section 3. Water diverted at the Stubbs and Miller headgate is temporarily stored in the Spill Pond, and then removed and delivered to the Applicant's wastewater treatment facilities or other appropriate treatment location.

UTM Coordinates: Zone 13 Easting: 520137.9 Northing: 4291131.5 (Digitized). II. Structure to which water will be exchanged: The enlarged Stubbs and Miller Ditch headgate, located in the NE1/4 SW1/4 of Section 3, T15S, R66W, of the 6th P.M. at a point approximately 1,600 feet from the West line and 1900 feet from the South line of said Section 3. The point of diversion is located at the confluence of the enlarged Stubbs and Miller Ditch headgate and Fountain Creek in the NE1/4 SW1/4 of Section 3, T15S, R66W, of the 6th P.M. at a point approximately 1,600 feet from the West line and 2,090 feet from the South line of said Section 3. UTM Coordinates: Zone 13 Easting: 519949 Northing: 4291516 (GPS). III. Reach of the exchange: The exchange reach extends from the downstream terminus at the Exchange Pond Outlet upstream on Fountain Creek 1,450 feet to the upstream terminus at the Stubbs and Miller Ditch headgate. A map showing the location of the structures and Exchange Reach is attached as Exhibit A. D. Source of Water: The source of substitute water supply for this exchange is any fully consumable water owned, controlled, or available for use by the Applicant that is stored in the Exchange Pond. These sources include, but are not limited to: I. The Blue River Project diverts water from the headwaters of the Blue River and its tributaries in Summit County. The 1929 water rights associated with this project were adjudicated by the decree in Civil Action No. 1710 (District Court, Summit County) dated October 26, 1937, and were modified by the decree in Civil Action No. 1883 (District Court, Summit County) dated June 15, 1953. These water rights have an appropriation date of August 5, 1929. The 1948 water rights associated with this project were adjudicated by the decree in Civil Action No. 1806 (District Court, Summit County) dated May 10, 1952, the Final Decree in Consolidated Cases No. 2782, 5016, and 5017 (U.S. District Court, District of Colorado) dated October 15, 1955, and were made absolute by the decree in Consolidated Cases No. 2782, 5016, and 5017 (U.S. District Court, District of Colorado) dated February 26, 1968. These water rights have an appropriation date of May 13, 1948. An additional component of the Blue River Project is water diverted from the Middle Fork of the South Platte River in Park County. Water from the Middle Fork of the South Platte is stored in Montgomery Reservoir pursuant to Priority No. A-207 of appropriation dated September 5, 1930, by absolute decree dated May 16, 1966, in Civil Action No. 3286, District Court of Park County. II. The Homestake Project diverts water from the headwaters of tributaries of the Eagle River in Eagle County. The water rights were conditionally adjudicated by the decree in Civil Action No. 1193 (District Court, Eagle County) dated June 8, 1962. These water rights have an appropriation date of September 22, 1952. Applicant has the right to utilize one-half of the waters produced by the Homestake Project by virtue of the agreement dated June 18, 1962, between the City of Aurora and the City of Colorado Springs. III. The Fryingpan-Arkansas Project is decreed as follows: a. West Slope Decrees: The Fryingpan-Arkansas Project diverts water from the headwaters of Hunter Creek and the Fryingpan River and its tributaries in Pitkin County, Colorado. The principal water rights were adjudicated by the decrees in C.A. 4613 (District Court, Garfield County, Colorado) dated June 20, 1958 and August 3, 1959, were modified by the decree in Case No. W-829-76 (District Court, Water Division 5, Colorado) dated November 27, 1979, and were supplemented by the decree 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 Reservoir, and elsewhere, and applied to beneficial use within the boundaries of the Southeastern Colorado Water Conservancy District. Because the water is imported from another river basin, it is fully consumable in Water Division No.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. Such water rights are decreed for use, exchange, reuse and successive use to extinction for beneficial use within Southeastern Colorado Water Conservancy District ("Southeastern") boundaries. The principal rights were adjudicated by the following decrees: Civil Action No. 5141 (District Court, Chaffee County, Colorado) dated July 9, 1969, and Civil Action No. B-42135 (District Court Pueblo County), dated June 25, 1962. The water rights were modified and supplemented by the judgment and decree in Case No. 80CW06 (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. c. Return flows from the Fryingpan-Arkansas Project will be utilized only after they are purchased from Southeastern. IV. The Independence Pass Transmountain Diversion System diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County. The water rights were adjudicated by a decree in Civil Action No. 3082 (District Court, Garfield County) dated August 25, 1936 and were modified by a decree in Case No. W-1901 (District Court, Water Division No. 5), dated May 12, 1976. These water rights have an appropriation date of August 23, 1930. Applicant has the right to take and use its pro rata share of the water diverted and stored by the Twin Lakes Reservoir and Canal Company under this water right. V. The Colorado Canal Waters. a. The Colorado Canal. The Colorado Canal water rights are decreed to divert 756.28 cubic feet of water per second of time from the Arkansas River for direct flow irrigation use with a priority date of June 9, 1890. By decree dated October 21, 1985, in Case No. 84CW62, District Court, Water Division No. 2, the use of the Colorado Canal water rights was changed to include use and total consumption for municipal, commercial, industrial, and all other beneficial uses at any location. Applicant has the right to take its pro rata share of the water diverted and stored by The Colorado Canal Company, pursuant to the decree in Case No. 84CW62, by exchange or by pipeline for use and total consumption in Applicant's municipal water system or elsewhere. b. Lake Meredith Reservoir. Lake Meredith Reservoir's decreed water rights authorize the storage of 26,028.4 acre-feet with diversions from the Arkansas River through the Colorado Canal at a rate of 756.28 c.f.s. under priority of March 9, 1898 and authorize the release of waters stored in Lake Meredith Reservoir and the exchange of such released waters for waters diverted at the Colorado Canal headgate for irrigation purposes with an exchange priority of March 9, 1898. The active storage capacity of Lake Meredith Reservoir is 41,413 acre-feet. Each stockholder in the Lake Meredith Reservoir Company is entitled to a pro rata portion of the waters realized from the operation of Lake Meredith Reservoir and the use of a pro rata portion of Lake Meredith Reservoir storage space. By decree dated October 21, 1985, the Case No. 84CW63, District Court, Water Division No. 2, the use of Lake Meredith water rights was changed to include use and total consumption for municipal, commercial, industrial, and all other beneficial uses at any location. Applicant has the right to take its pro rata share of the water diverted and stored by The Lake Meredith Reservoir Company, pursuant to the decree in Case No. 84CW63, by exchange or by pipeline for use and total consumption in Applicant's municipal water system or elsewhere. c. Lake Henry Reservoir. Lake Henry Reservoir has decreed water storage rights of 11,916 acre-feet and a decreed rate of diversion through the Colorado Canal of 756 c.f.s. By decree dated October 21, 1985, in Case No. 84CW64, District Court, Water Division No. 2, the use of Lake Henry water rights was changed to include use and total consumption for municipal, commercial, industrial, and all other beneficial uses at any

location. Applicant has the right to take its pro rata share of the water diverted and stored by The Lake Henry Reservoir Company, pursuant to the decree in Case No. 84CW64, by exchange or by pipeline for use and total consumption in Applicant's municipal water system or elsewhere. d. The Colorado Canal Reusable Water Return Flows. Colorado Canal Reusable Water Return Flows are the fully consumable return flows derived from the Applicant's ownership interests in the sources of supply described above in subparagraphs 3.D.V.a-c and by Decree dated March 15, 1993, in Case No. 86CW118(A), and the amended decree entered on January 8, 1998 in Consolidated Cases No. 84CW202, 84CW203, 86CW118(B), and 89CW36 (Non-Sewered Phase). VI. Sugarloaf Water Rights diverted from Lake Fork Creek, a tributary of the Arkansas River, and decreed for the use of CF&I Steel Corporation. By decree dated June 16, 1994, in Case No. 86CW117, District Court, Water Division No. 2, the use and place of use of the Sugarloaf water rights were changed to include municipal use and all other beneficial uses, including use, reuse, and successive use to extinction. VII. Denver Basin Groundwater. All groundwater and sewerage or non-sewerage return flows therefrom that the Applicant has the legal right to use and that are withdrawn as tributary, not non-tributary or non-tributary groundwater from Denver, Arapahoe, and Laramie Fox Hills Aquifers pursuant to decrees entered in Case Nos. W-4788, 82CW214, 83CW133(A), 83CW134(A), 83CW135(A), 85CW57, 85CW58, 85CW59, Water Court, Water Division No. 2, Case No. 90CW39, Water Court, Water Division No. 2, and any decree to be entered in Case No. 04CW132. VIII. Reusable Water derived from the sources described above and described in Appendix A to the amended decree entered January 8, 1998, in Consolidated Cases Nos. 84CW202, 84CW203, 86CW118(B), and 89CW36, and made available for use pursuant to the terms of the decrees which have been entered in Cases Nos. 84CW202 (both Sewered and Non-Sewered), 84CW203 (both Sewered and Non-Sewered), and 86CW118(A) and (B), Water Division No. 2. IX. Additional Sources. (1) Additional amounts of the specific water rights listed above acquired by Applicant; (2) tributary groundwater that is fully replaced under the augmentation plan in Case No. 89CW36; (3) Temporary Use Agreement Waters that are or will be lawfully available for the Applicant's use, reuse, or successive use that the Applicant acquires by temporary use agreements including, but not limited to, substitute water supply plans pursuant to C.R.S. §37-92-308, interruptible supply agreements, such as short and long-term leases or subleases, pursuant to C.R.S. §37-92-309, and through participation in existing or future water banking programs, such as that created under C.R.S. §§ 37-80.5-101, et seq.; and (4) any other fully consumable water owned or controlled, now or in the future, by the Applicant and available for storage in the Exchange Pond. E. Appropriation Date: September 20, 2006. F. Amount: The maximum rate of flow is 170 c.f.s., of which 59.6 c.f.s. was decreed absolute and 110.4 c.f.s. of which remains conditional. The 170 c.f.s. maximum rate of flow is the current capacity of the enlarged Stubbs and Miller Ditch headgate. Each operation of the exchange will have a maximum volume of 61.4 acre-feet (20 million gallons), the capacity of the Exchange Pond. The exchange will be exercised whenever necessary, with each occurrence resulting in an exchange of up to and including the maximum volume of 61.4 acre-feet. G. Decreed Use: The water diverted into the Spill Pond at the upstream terminus of the exchange (the enlarged Stubbs and Miller Ditch headgate) may be used for all purposes for which the water rights set forth in paragraph 3.D, above, are decreed. By operation of this exchange, the substituted water the Applicant delivers to Fountain Creek from the downstream terminus (the Exchange Pond Outlet) has the same legal characteristics as the water that would have been in Fountain Creek had the Applicant not conducted the substitution and exchange. The water diverted upstream in the Spill Pond will have the same legal characteristics as the water stored by the Applicant in the Exchange Pond prior to its release for exchange. By virtue of the exchange, the water diverted into the Spill Pond will be fully reusable water, and Colorado Springs will adjust its accounting to reflect the timing and quantities of the water discharged from the Spill Pond for further treatment and its subsequent discharge

through its wastewater treatment facilities or other appropriate treatment location. **4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** A. Integrated System: The Applicant owns and operates an integrated system for water diversion, transmission, storage, treatment and distribution, as well as collection and treatment of the resultant wastewater for release, exchange, or reuse. The conditional water right described herein is a part of this integrated water system comprising all water rights decreed and used for development and operation of the City of Colorado Springs municipal water supply system. Reasonable diligence in the development of one component of the system comprises reasonable diligence in the development of all components. B. During the period from August 27, 2014 (date of original decree) through July 31, 2020 (the "Diligence Period"), Applicant operated the exchange that is the subject of this Application on several occasions including, but not limited to, exchanges occurring on September 21, 2015, September 22, 2015, and March 28, 2016 through March 29, 2016. C. During the Diligence Period, Applicant also maintained the structures identified in this Application in order to operate the FCRP exchange when necessary. In addition, the Applicant has also undertaken numerous projects and activities for the improvement and enlargement of its water supply and distribution systems in order to facilitate the completion of the appropriation of the conditionally decreed portion of the exchange that is the subject of this Application including, but not limited to: completion of the Southern Delivery System project; improvements to the raw water pipeline between Pikeview Reservoir and the Tollefson (Mesa) water treatment plant, improvements to the Northfield Reservoir dam and spillway; design of upgrades to 33rd Street Pump Station; improvements to Gold Camp Reservoir; investigations into seepage from Rampart Reservoir dam; replacement of the South Catamount transfer pipeline, design for refacing of the Crystal Creek Reservoir dam; improvements to the Nichols Reservoir dam and spillway; design for refacing of the South Catamount Reservoir dam; reconstruction of dam face and outlet works for rehabilitation/maintenance of Homestake Reservoir (Homestake Project); extensive participation in the Arkansas River Exchange Program; continued development of the Colorado Canal Reuse Program; development and completions of Integrated Water Resources Plan ("IWRP"), which identified a portfolio of water supply projects, policies, and processes that will be necessary to provide a reliable and sustainable supply of water for its customers for the next 50 years; continued pursuit of development of a joint project(s) as contemplated by the 1998 MOU between the cities of Aurora and Colorado Springs, Vail Associates, Upper Eagle River Regional Water Authority, Eagle River Water and Sanitation District, Cypress Climax Mining Company, and the Colorado River Water Conservation District; and pursuit of a project to maximize the yield of the Blue River System. Applicant also purchased shares in the Fountain Mutual Irrigation Company, the Chilcott Ditch Company, and the Lower Arkansas Water Management Association. D. During the Diligence Period, Applicant also filed applications for, prosecuted and completed a number of adjudications of, water rights that comprise portions of Applicant's integrated municipal water supply system. These activities include filing of applications in Water Division 2 (Arkansas River Basin), and Water Division 5 (Colorado River Basin) including, but not limited to, pursuit of adjudication of decrees in: Case No. 16CW3054 (Water Division No. 2) involving claims for diligence for Roby Ditch and Reservoir (application withdrawn and water rights ultimately abandoned); Case No. 13CW9 (Water Division No. 2) involving claims for diligence for Applicant's Arkansas River Exchange originally decreed in Case No. 84CW203; Case No. 16CW3053 (Water Division No. 2) involving claims for diligence for Chancellor Well No. 1 and Chancellor Well No. 2 (application withdrawn and water rights ultimately abandoned); Case No. 18CW3041 (Water Division No. 5) regarding a Colorado River-Blue River Exchange; Case No. 18CW3053 (Water Division No. 2) regarding Applicant's conditional storage Rights for Upper Sugar Loaf Reservoir and Sugar Loaf Reservoir Enlargement and Amendment;

Case No. 04CW132 (Water Division No. 2) regarding exchange of Denver Basin groundwater return flows; Case No. 05CW96 (Water Division No. 2) regarding the exchange of Temporary Use Waters (a.k.a. ATM or leased water) in the Upper Arkansas River Basin; Case No. 06CW120 (Water Division No. 2) for exchange regarding Restoration of Yield; Case No. 15CW3019 (Water Division No. 5) involving claims for diligence for Lower Blue Reservoir; Spruce Lake Reservoir, and Mayflower Reservoir; Case No. 16CW3072 (Water Division No. 2) involving claims for diligence related to Applicant's appropriative rights of exchange originally decreed in Consolidated Case Nos. 84CW202, 84CW203, 86CW118(B) and 89CW36; Case No. 07CW120 (Water Division No. 2) for Quail Lake conditional storage right; Case No. 07CW122 (Water Division No. 2) involving rights of exchange to the Local System from Pueblo Reservoir and Williams Creek Reservoir; Case No. 13CW3077 (Water Division No. 5) regarding the proposed administration of Green Mountain Reservoir pursuant to the Blue River Decree; Case No. 12CW31 (Water Division No. 2) for a conditional storage right for Upper Williams Creek Reservoir and associated appropriative rights of exchange for Upper Williams Creek Reservoir and Williams Creek Reservoir; Case No. 15CW3001 (Water Division No. 2) involving a change of water rights in the Chilcott Ditch Company ("Chilcott"); Case No. 15CW3002 (Water Division No. 2) involving a change of water rights in the Fountain Mutual Irrigation Company ("FMIC"); Case No. 16CW3050 (Water Division No. 2) involving a change of water right for Chancellor Well No. 1 (application withdrawn and water rights ultimately abandoned); Case No. 16CW3056 (Water Division No. 2) involving an augmentation plan, replacement plan, and appropriative right of exchange involving Applicant's FMIC and Chilcott water rights; Case No. 19CW3026 (Water Division No. 2) involving claims for diligence related to Applicant's appropriative rights of exchange originally decreed in Case No. 86CW118A; 19CW3052 (Water Division No. 2) involving an augmentation plan, replacement plan, and appropriative right of exchange on Fountain Creek; Case No. 19CW3053 (Water Division No. 2) involving an augmentation plan, and appropriative rights of exchange for multiple storage structures including Quail Lake; Case No. 20CW3024 (Water Division No. 5) involving claims for diligence related to Applicant's rights originally decreed in CA1193; and Case No. 20CW3033 (Water Division No. 2) involving claims for diligence related to Applicant's rights originally decreed in 84CW202. E. Applicant has also acted to preserve and protect all of its water rights by filing statements of opposition to, and participating in, many judicial and administrative proceedings. For example, Applicant has consistently opposed water court applications that seek approval of plans for augmentation that operate on Fountain Creek. Applicant has participated in these cases to ensure that the out-of-priority depletions are replaced in time, amount, and location, and that the Division Engineer assesses transit losses on the replacement water supply. Applicant has undertaken endeavors to improve the accuracy of the Fountain Creek Transit Loss Model, which directly affects the exchange at issue in this Application. F. Applicant's total capital expenditures in connection with the activities described above on its integrated system during the Diligence Period have exceeded \$506,302,967. Applicant reserves the right to identify additional relevant efforts that may be later discovered or to make upward adjustments to amounts expended on certain projects. Applicant made diligent efforts with regard to this Application to determine and quantify all efforts made toward completion of the appropriations and application of the water rights decreed in Case No. 07CW121 to beneficial use. However, it is reasonably possible that relevant efforts or expenditures may have been overlooked or need further upward adjustment. **5. If claim to make absolute:** The Applicant has operated the decreed exchange that is the subject of this Application to divert and beneficially use additional amounts of water beyond the amounts previously made absolute so as to make absolute additional incremental amounts of the decreed exchange, as follows: A. Date of exchange upon which absolute claim is based: September 22, 2015 as documented in the attached Exhibit B. B. Amounts: I. Amount Previously Made Absolute: 59.6 c.f.s. II. Amount Previously Claimed Conditional: 110.4

c.f.s. III. Additional Amount Claimed Absolute: 33.44 c.f.s. IV. New Total Amount Claimed Absolute: 93.04 c.f.s. V. New Remaining Conditional Amount: 76.96 c.f.s. C. Uses: All purposes for which the water rights set forth in paragraph 3.D, above, are decreed in accordance with paragraph 3.G, above. D. Description of place of use where water is applied to beneficial use: Colorado Springs' municipal water system. **6. Names and addresses of owners of the land upon which any structure for this appropriation is or will be constructed**: A. The Fountain Creek Recovery Project is located on the Pinello Ranch, which is owned by Applicant, the City of Colorado Springs.

CASE NO. 2020CW3049; CLIFFORD F. LIKE, P.O. Box 614, Fountain, CO 80817

(Please address all pleadings and inquiries regarding this matter to Applicant's attorney: David M. Shohet, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Suite 250, Colorado Springs, CO 80921, (719) 471-1212).

Application for an Alternate Point of Diversion

EL PASO COUNTY

2. Decreed Name of Structure for Which Change is Sought: A. Name of Structure: Pinkston Well No. 4 (WDID: 1006776). B. Date of original decrees: August 2, 1974; Case No. & Court: W-2452, District Court, Water Division 2. The decree entered in Case No. W-2452 is attached as Exhibit A. C. Date of relevant subsequent decree: November 5, 2001; Case No. & Court: 01CW18, District Court, Water Division 2. The decree entered in Case No. 01CW18 is attached as Exhibit B. D. Legal Description: The Pinkston Well No. 4, was originally decreed in the SW ¼ of the NE ¼, Section 26, Township 17 South, Range 65 West, of the 6th P.M. Case No. 01CW18, decreed the Pinkston Well No. 4 in the SE ¼ of the SE ¼, Section 26, Township 17 South, Range 65 West, of the 6th P.M., approximately 50 feet from the east section line and 1,225 feet from the south section line of said Section 26. See **Exhibit C** attached to the application for a map showing the approximate location of the Pinkston Well No. 4. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Pinkston Well No. 4 may have actually been redrilled in the NE ¼ of the SE ¼, Section 26, Township 17 South, Range 65 West, of the 6th P.M., and the Applicant may seek to correct the decreed location of the Pinkston Well No. 4 in this Application. E. Decreed Source of Water: No source is decreed in either Case Nos. W-2452 or 01CW18. The source for the Pinkston Well No. 4, however, is groundwater tributary to Fountain Creek, which is tributary to the Arkansas River. F. Appropriation Date: June 30, 1963. G. Amount Decreed: 2.44 c.f.s., or 1100 g.p.m. H. Use of Water: Case No. W-2452 decreed the Pinkston Well No. 4 for irrigation of 150 acres of land in Section 26. Case No. 01CW18 determined that the Pinkston Well No. 4 was historically used for the irrigation of 62.3 acres. I. Amount Sought to be Diverted at a new Alternate Point of Diversion: The entire amount decreed to the Pinkston Well No. 4. **3. Summary of Relief Sought**: Applicant is the owner of forty eight percent (48%) of the Pinkston Well No. 4. In Case No. 01CW18, the Water Court found that the Pinkston Well No. 4 historically irrigated 62.3 acres of land. The Decree entered in Case No. 01CW18 changed the point of diversion of the Pinkston Well No. 4 from where it was drilled, which was approximately 2,750 south of its decreed point of diversion in Case W-2452, to a new location on lands not owned by the Applicant. Applicant desires to divert the Pinkston Well No. 4 at an alternate point of diversion located on the Applicant's property. The Applicant's property consists of 35 acres located in the NE ¼ of the SE ¼, Section 26, Township 17 South, Range 65 West, of the 6th P.M., as described in the attached Exhibit D deed. **4. Proposed Alternate Point of Diversion**: Applicant seeks to divert the Pinkston Well No. 4, as an alternate point of diversion to the point of diversion decreed in Case No. 01CW18, at an alternate point located in NE ¼, of the SE ¼, Section 26, Township 17 South, Range 65 West, of the 6th P.M., approximately 1,540 feet north of the south section line and 680 west of the east section line of Section 26 (UTM Zone13, NAD83: x: 532355, y: 4265640). The

approximate location of the alternate point of diversion is shown on the attached Exhibit C map. **5. Name and address or owners:** The new proposed alternate point of diversion is located on lands owned by the Applicant. The current point of diversion for the Pinkston Well No. 4 is located on land owned by Connie Bench-Whatley, whose mailing address according to the El Paso County Assessor is 20255 Wigwam Road, Fountain, Co 80817-9518. **6. Remarks & Comments:** A. Applicant is a member of the Arkansas Groundwater Users Association (“AGUA”). AGUA has replaced the Applicant’s out of priority depletions associated with the Applicant’s use of the Pinkston Well No. 4 to irrigate the Applicant’s property under Rule 14 plans. Applicant seeks confirmation that it may continue to augment the Applicant’s out of priority depletions associated with the Applicant’s use of the Pinkston Well No. 4 at the new alternative point of diversion under Rule 14 plans. B. All well diversions at the new alternative point of diversion shall be separately metered. Applicant shall install all necessary measurement devices as reasonably request by the Division Engineer. C. Applicant seeks the right to divert the entire decreed amount and uses to the Pinkston Well No. 4 at the new alternate point of diversion. This allows the new alternate point of diversion to serve as a backup if the current point of diversion fails and allows Applicant the full diversion of the Pinkston Well No. 4 at the new alternate point under the current rotation with the other owner of diversion or if the Applicant acquires the remaining water right. All future diversion made by Applicant at the alternate point of diversion shall be limited to Applicant’s ownership interest or rotational allowance to divert the Pinkston Well No. 4 at the alternate point of diversion.

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 2020, (forms available at Clerk’s office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$192.00). 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 9th day of September 2020.



Michele Santistevan

Michele M. Santistevan, 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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