

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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

INVITATION TO JOIN THE STATE ENGINEER'S SUBSTITUTE WATER SUPPLY  
PLAN NOTIFICATION LIST AND/OR PRODUCED NONTRIBUTARY GROUND  
WATER NOTIFICATION LIST

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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during December 2017, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

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**CONSOLIDATED CASE NOS. 1994CW68, 1994CW69, 1994CW75 - SILVER PONDS  
PROPERTY OWNERS ASSOCIATION, INC., 7275 Silver Ponds Heights, Colorado**

**Springs, CO 80908** (Please address all correspondence and inquiries to Applicant's attorney: Henry D. Worley, Worley Law Firm, LLC, 3209 Springridge Drive, Colorado Springs, CO 80906; (719) 634-8330)

Application for Change of Water Right

**IN EL PASO COUNTY**

1. Silver Ponds subdivision is located in the N1/2 SW1/4 and the S1/2 NW1/4 of Section 32, T. 12 S., R. 65 W., 6<sup>th</sup> P.M. The Silver Ponds Property Owners' Association ("Applicant" or "Silver Ponds") is comprised of the owners of 23 lots originally intended for residential use and two lots, Lots 1 and 25, intended for commercial use in the Silver Ponds subdivision. As it has turned out, Lot 1 is instead used for a residence. Except for Lot 8, which is vacant, the remaining residential lots are built-out, as is Lot 25, the sole commercial lot. There are two on-channel ponds on Cottonwood Creek within the subdivision. The existing consolidated decrees specify that the net evaporation from the two ponds is 11.5 acre feet annually. 2. The decree in these consolidated cases provides for a 200 year water supply from a total of 4,000 acre feet of not-nontributary "4%" Denver aquifer water for the 23 lots intended for residential use and two lots intended for commercial use. Most of the 2,420 acre feet of nontributary Laramie-Fox Hills aquifer water underlying the property is intended to be used to make up the remaining 100 year supply of water for the subdivision; 300 acre feet from the Laramie-Fox Hills aquifer were to be reserved in case they were required for the replacement of post-pumping depletions caused by pumping the Denver aquifer wells. 3. The decree specifies that during the 200 year period during which the Denver aquifer will be pumped, 0.1 acre foot of depletions caused by pumping must be replaced to Monument Creek or its tributaries annually, and 0.7 acre foot of depletions must be replaced to Sand Creek each year. In addition, two ponds were determined to cause average annual evaporation of 11.5 acre feet, for total average annual depletions of 12.3 acre feet. 4. Historically, Silver Ponds has replaced the depletions with water from three sources: septic system return flows from the dwellings and commercial buildings within

the subdivision, with 120 shares of stock in Great Divide Water Company, representing 1.2 acre feet annually, and with fully consumable water it controls pursuant to two contracts with Cherokee Metropolitan District, in the amounts of 1.25 acre feet and 1.0 acre feet. Septic system return flows and the Great Divide water accrue to Monument Creek and its tributaries, particularly Cottonwood Creek. The Cherokee Metropolitan District water accrues to Sand Creek. **5.** Septic system return flows have not occurred in the anticipated amounts, for two reasons, both associated with Lots 1 and 25, upon which commercial use was anticipated to occur. First, only Lot 25 is being used for commercial purposes; a residence was constructed on Lot 1. The residence generates far less septic system return flows than was anticipated from commercial development. Second, at the current level of development from the commercial structures on Lot 25, not as much septic system return flows are being generated was anticipated. As a result of this unexpected turn of events, not enough replacement water is being introduced to the Fountain Creek system to replace total annual depletions. **6.** David Deidrich, former assistant water commissioner for former Water District 11, estimated that the average net deficit in replacement of depletions is 3.67 acre feet annually. That did not take into account the water available from one of the contracts with the Cherokee Metropolitan District, in the amount of 1.0 acre feet, which would bring the average deficit down to 2.67 acre feet. However, Silver Ponds has concluded that replacing average depletions is probably not adequate to prevent injury, and proposes to revise the plan for augmentation so that the maximum amount of reasonably foreseeable annual depletions, based on past experience, will be replaced. **7.** Silver Ponds has determined that the largest deficit in replacements was 4.01 acre feet and occurred in 2016 (which was not included in Mr. Dietrich's calculations, which occurred before than information was available). Even though pumping that year, 7.0 acre feet, was the lowest amount of pumping during 13 years of records, the Division of Water Resources calculated that septic system return flows that year were only 4.07 acre feet, the lowest amount of the eight years for which septic system return flows were calculated (they were not calculated between 2004 and 2008). **AMENDMENTS SOUGHT TO DECREE.** **8.** Silver Ponds has leased 5.0 acre feet annually of fully consumable water from Donala Water and Sanitation District. Such lease was for a period of one year, commencing on November 1, 2016, and ceasing on October 31, 2017, but was automatically renewed in 2017 and will continue to be so automatically renewed each year unless terminated by Silver Ponds or by Donala Water and Sanitation District. The fully consumable leased water will be introduced into Monument Creek upon the direction of the Water Commissioner, in an amount equal to 5.0 acre feet annually. The location of the discharge is in the SE1/4 of the SE1/4, Section 35, T11S, R67W of the 6<sup>th</sup> PM; 39.0422 Latitude North, 104.8524 Latitude West. Transit losses will be determined pursuant to the USGS Transit Loss Model for Monument Creek or, if that is not available for one reason or another, the transit losses will be determined by the Division Engineer for Water Division 2. **9.** Because Lot 1 is used for a residence, rather than for commercial purposes, Silver Ponds also seeks to re-allocate the 4.13 annual acre feet of Denver aquifer water originally allocated to that lot, to increase allowable annual pumping for each of the 24 residential lots from 0.5 acre foot annually to 0.651 acre foot annually, for those owners of residential lots who choose to re-permit their wells to allow the increased amount of usage. Applicant also

seeks to increase the allowable irrigation from 5,000 square feet per lot to 6,000 square feet per lot. No lot owner would be required to obtain a new well permit if they did not want this benefit. 10. Applicant notes that with these amendments, the maximum amount of water which may be annually pumped from the Denver aquifer will remain unchanged at 20 acre feet, and the replacements will continue to be made to the same drainages (Monument Creek and its tributaries and Sand Creek), in the same amounts, and in the same time frame as specified by the original decree.

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**CASE NO. 2016CW3103 - BOARD OF WATER WORKS OF PUEBLO, COLORADO ("Pueblo Water"), 319 W. 4<sup>th</sup> St., Pueblo, CO 81003** (Please address all correspondence and inquiries to Applicant's Attorneys: William A. Hillhouse II, John J. Cyran, John P. Justus, HOSKIN FARINA & KAMPF, Professional Corporation, 200 Grand Avenue, Suite 400, Post Office Box 40, Grand Junction, Colorado 81502-0040; (970) 986-3400)

First Amended Application for Approval of Conditional Appropriative Rights of Exchange.

**PUEBLO, FREMONT, CHAFFEE, LAKE, CROWLEY AND OTERO COUNTIES**

**2. Description of Application and Exchanges:** a. Pueblo Water is an independent governmental entity under the home rule charter of the City of Pueblo, Colorado, which has exclusive control of the management and operation of the water system that supplies its customers. b. Pueblo Water is supplied by a variety of water rights, which divert from the Arkansas River or its tributaries or from streams on the Western Slope of the Rocky Mountains. Pueblo Water has Eastern Slope raw water storage in Clear Creek, Twin Lakes and Turquoise Reservoirs and in Pueblo Reservoir. Pueblo Water serves treated water to residential, commercial, industrial and municipal customers in and around the City of Pueblo, including unincorporated Pueblo County, and, from time to time, leases raw water determined to be in excess of its current needs to other water users. Pueblo Water has a need for the appropriative rights of exchange herein requested for the purpose of supplying water to its customers. c. **Source of Substitute Supply to be Exchanged:** Pueblo Water has purchased 5,540.88 shares of stock in the Bessemer Irrigating Ditch Company, a Colorado mutual ditch company ("BIDC"). Pueblo Water is seeking in Case No. 2017CW3050, Water Division No. 2 (the "Change Case"), to change the point of diversion and the type, manner, season and place of use of the water rights represented by these shares (the "Bessemer Shares") so as to add municipal and related uses (the "Changed Uses") by Pueblo Water. d. In this application Pueblo Water seeks a decree awarding it the conditional right to make exchanges of water generated by the Bessemer Shares in conjunction with the Changed Uses by Pueblo Water. Subject to its maintaining the return flows historically generated by the Bessemer Shares in irrigation (the "Return Flow Obligations"), Pueblo Water claims the right to use, reuse, successively use and fully consume the water produced by the Bessemer Shares pursuant to the exchanges claimed in this application. e. For purposes of the non-speculation provisions of C.R.S. § 37-92-103(3)(a), Pueblo Water is a governmental agency and/or an agent in fact for the persons to benefit from such appropriation. This Court recently discussed and applied this standard in Case No. 2010CW4, In the matter of the application of water rights of the Lower Arkansas Valley Water Conservancy District and the Lower Arkansas Valley Super Ditch Company, Inc.

f. Pueblo Water satisfies the legal requirements to obtain a conditional water right, including a conditional appropriative right of exchange, articulated in Case No. 2010CW4 in that: (1) it has taken a first step toward appropriation of a certain amount of water; (2) its intent to appropriate is not based upon the speculative sale or transfer of the appropriative right; and (3) there is a substantial probability that the applicant can and will complete the appropriation with diligence. *City of Thornton v. Bijou Irrigation Co.*, 926 P.2d 1, 31 (Colo.1996); *Pagosa Area Water and Sanitation Dist. v. Trout Unlimited*, 170 P.3d 307, 314 (Colo. 2007). g. Pueblo Water satisfies the legal requirements for non-speculative exchanges for the benefit of its customers articulated in Case No. 2010CW4, i.e. if a governmental agency intends to use the appropriated water within the City of Pueblo and its environs, then it can establish a specific plan and intent to divert, store, or otherwise capture, possess, and control a specific quantity of water for specific beneficial uses by demonstrating a current need and beneficial use for the water *or* by meeting the following more flexible water supply planning standard: (1) what is a reasonable water supply planning period; (2) what are the substantiated population projections based on a normal rate of growth for that period; and (3) what amount of available unappropriated water is reasonably necessary to serve that population for the planning period, above its current water supply. *Pagosa Area Water and Sanitation Dist. v. Trout Unlimited*, 170 P.3d 307, 315 (Colo. 2007) (“A governmental agency need not be certain of its future water needs; it may conditionally appropriate water to satisfy a projected normal increase in population within a reasonable planning period.”). h. Further, with respect to exchanges for the benefit of its customers, as articulated in Case No. 2010CW4, Pueblo Water can establish a specific plan and intent to divert, store, or otherwise capture, possess, and control a specific quantity of water for specific beneficial uses by demonstrating a current need and beneficial use for the water *or* by meeting the following more flexible water supply planning standard: (1) what is a reasonable water supply planning period; (2) what are the substantiated population projections based on a normal rate of growth for that period; and (3) what amount of available unappropriated water is reasonably necessary to serve that population for the planning period, above its current water supply. *Pagosa Area Water and Sanitation Dist. v. Trout Unlimited*, 170 P.3d 307, 315 (Colo. 2007) (“A governmental agency need not be certain of its future water needs; it may conditionally appropriate water to satisfy a projected normal increase in population within a reasonable planning period.”). i. To the extent that Pueblo Water may provide water derived from the exchanges for which it seeks a decree herein for the benefit of water users other than its customers, Pueblo Water will do so only where firm contractual commitments or agency relationships exist and where there is a need for the water. This standard also was articulated in Case No. 2010CW4. **3. Bessemer Ditch Exchanges (previously identified as Pueblo Water’s Arkansas River Exchanges):** a. Pueblo Water will divert the water available to the Bessemer Shares that it puts to Changed Uses, and will replace the historical return flows attributable to such shares (Pueblo Water’s “Return Flow Obligations”), either through direct releases to the Arkansas River, or its tributaries, or by recharge through the aquifer. There will be times when the amounts delivered by Pueblo Water to the Arkansas River and its tributaries through the Bessemer Ditch, either directly or by recharge, exceed Pueblo Water’s Return Flow Obligations, and Pueblo Water seeks to divert those excess amounts by exchange as

described in this application. **b.** Pueblo Water's Arkansas River exchanges may be made from the confluence of the Arkansas River with the St. Charles River, Sixmile Creek or the Huerfano River, the points for which are described in paragraph 7.f. of this application, or from any intermediate locations within the exchange reach, to any of the upstream exchange to locations described in paragraph 6 of this application. **4. Pueblo Water System Exchanges (previously identified as Pueblo Water's Exchanges of Sewered Effluent and LIRFs):** **a.** Pueblo Water's initial use of water available to the Bessemer Shares for the Changed Uses may not fully consume the amount of water produced by the Bessemer Shares. Once Pueblo Water has met its Return Flow Obligations, the remaining water from the Bessemer Shares will be fully consumable. In addition to the situations described in paragraph 3, there may be exchangeable yield produced as releases to the Arkansas River or its tributaries as sewered effluent or other measured point source discharges from locations described in paragraph 7.b., 7.c. and 7.d. of this application, following a first use of the water in Pueblo Water's system. **b.** Portions of the water produced by the Bessemer Shares for Changed Uses will be used for outdoor irrigation purposes by Pueblo Water and its customers. Such outdoor irrigation uses will result in both surface returns and groundwater accretions of fully consumable water to the Arkansas River and its tributaries. The groundwater recharge to the alluvial aquifer underlying the lands supplied by Pueblo Water's system is the result of (1) deep percolation from irrigation of lawns, gardens, parks, and landscaped areas; (2) septic system leaching; (3) distribution system leakages; and (4) other unmetered uses. In this application Pueblo is only claiming surface return flows and accretions attributable to groundwater recharge to the alluvial aquifer ("LIRFS") from deep percolation from irrigation of lawns, gardens, parks, and landscaped areas by Pueblo Water and its customers, but does not waive its right to claim return flow accretions from other sources in the future. **c.** Pueblo Water proposes to use the same or a similar methodology for calculating the timing, location, and amount of LIRFS from its use of water attributable to the Bessemer Shares as was approved by the Water Court for Water Division 2 for other Pueblo Water LIRFs, in the Decree entered August 3, 1995 in Case Nos. 84CW177(B) and 86CW111(B). In those consolidated cases it was determined that: **i.** Approximately 69.5% of Pueblo Water's LIRFS are anticipated to accrue to the Arkansas River above the Avondale Gage. **ii.** Approximately 22.5% of Pueblo Water's LIRFS are anticipated to accrue to Fountain Creek above the stream flow gage on Fountain Creek immediately upstream of the Arkansas River; **iii.** Approximately 8% of Pueblo Water's LIRFS are anticipated to accrue to Wildhorse Creek (also known as Dry Creek) above its confluence with the Arkansas River; and Notwithstanding the foregoing, Pueblo Water reserves the right to (1) propose alternative percentages with respect to the proportion of its LIRFS accruing to the Arkansas River at the above locations and/or (2) to propose alternative methodologies for calculating the timing, location, and amount of LIRFS from its use of water attributable to the Bessemer Shares. LIRFS attributable to the use of water available from the Bessemer Shares for the Changed Uses will be exchanged from the locations described in paragraph 7.e. of this application to any of the upstream "exchange to" locations described in paragraph 6 of this application. **5. Recaptured Bessemer Water ("RBW") Exchanges (previously identified as Storage and Subsequent Exchanges):** If Pueblo Water is unable to exchange fully consumable water

attributable to the Bessemer Shares as a result of stream conditions that limit or preclude exchange potential, or as a result of the terms of certain intergovernmental agreements to which Pueblo Water is a party, or otherwise, then Pueblo Water may capture such water by storage at or below the confluence of the Arkansas River and Fountain Creek. The reservoirs in which Pueblo Water may store such water, subject to agreement with the owners and/or preferential users of such reservoirs and subject to the availability of capacity, are referred to herein as the “ROY Storage locations” because they are so described in other decrees. The reservoirs are described in paragraph 8 below. The exchangeable water so stored will subsequently be moved upstream by exchange to the “exchange to” locations described in paragraph 6 when conditions permit. These operations are more fully described in paragraph 8 below. **6. Exchange to Points:** Pueblo Water’s exchanges of the water produced by the Bessemer Shares will be made to the following locations, which are illustrated in the figures attached as Exhibits A, B, and C to the Amended Application (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.): **a. Pueblo Dam and Reservoir:** Pueblo Water will store the exchanged water in Pueblo Reservoir, described below, for subsequent use, or it may exchange such water to Pueblo Water’s municipal intakes at Pueblo Dam, as they currently exist or may exist in the future, so that such water may be introduced directly into the Pueblo Water system. **i.** UTM: Zone 13S, Easting 524036, Northing 4235771. **ii.** PLSS: The Pueblo Reservoir Dam axis and the centerline of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West, 6<sup>th</sup> P.M., from which the Northeast corner of said Section 36 bears North 61° 21’ 20” East, a distance of 2,511.05 feet. **b. Pueblo Water - Northside Intake:** Pueblo Water may divert the exchanged water from the Arkansas River at the Pueblo Water – Northside Intake. **i.** UTM: Zone 13S, Easting 528701; Northing 4235890. **ii.** PLSS: Pueblo Water’s Northside Intake 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. **c. Pueblo Water - Southside Intake:** Pueblo Water may divert the exchanged water from the Arkansas River at the Pueblo Water – Southside Intake. **i.** UTM: Zone 13S, Easting 529931, Northing 4235508. **ii.** 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. **d. Pueblo Water - Comanche Pump Station:** Pueblo Water may divert the exchanged water from the Arkansas River by exchange at the Pueblo Water – Comanche Pump Station. **i.** UTM: Zone 13S, Easting 525559, Northing 4234786. **ii.** PLSS: Considering the south line of the SE1/4 of Section 31, Township 20 South, Range 65 West of the 6th P.M., to bear N. 89 degs. 24’53” E. with all bearings 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 ¼ of said Section 31 bears S 00 degs. 39’25” E, a distance of 660.62 feet; thence N 47 degs. 12’21” E, a distance of 58.61 feet; thence N 02 degs. 29’30” W, a distance of 80.47 feet; thence N 87 degs. 30’30” E, a distance of 132.5 feet; thence N 02 degs. 29’30” W, a distance of 92.5 feet to the point of diversion. **e. Clear**

**Creek Reservoir:** Pueblo Water may divert the exchanged water from Clear Creek at Clear Creek Reservoir for storage and subsequent use. **i.** UTM: Zone 13S, Easting 392176, Northing 4319875. **ii.** PLSS: Clear Creek Reservoir is located on Clear Creek in Sections 7 and 8, Township 12 South, Range 79 West of the 6<sup>th</sup> P.M., and Section 12, Township 12 South, Range 80 West of the 6<sup>th</sup> P.M., in Chaffee County. **f. Twin Lakes Reservoir:** Pueblo Water may divert the exchanged water from Lake Creek at Twin Lakes Reservoir for storage and subsequent use. **i.** UTM: Zone 13S, Easting 387227, Northing 4326203. **ii.** PLSS: Twin Lakes Reservoir is formed by a dam across Lake Creek in Lake County, where the intersection of the dam and Lake Creek is at a point whence the Southeast corner of Section 23, Township 11 South, Range 80 West of the 6<sup>th</sup> P.M., bears South 54° 13' 08" East a distance of 3,803.10 feet. **g. Turquoise Lake:** Pueblo Water may divert the exchanged water from the Lake Fork of the Arkansas at Turquoise Reservoir for storage and subsequent use. **i.** UTM: Zone 13S, Easting 381601, Northing 4345778. **ii.** PLSS: Turquoise Lake is formed by a dam across Lake Fork Creek, where the intersection of the dam and Lake Fork Creek is at a point whence the Northwest corner of Section 16, Township 9 South, Range 80 West of the 6<sup>th</sup> P.M., bears North 44° 46' 18" East a distance of 10,344.35 feet. **h. ROY Storage locations:** To the extent that Pueblo Water has fully consumable water that it cannot immediately exchange to the "exchange to" locations described above in this paragraph 6, as discussed in paragraph 5 of this application, Pueblo Water may re-divert directly or by exchange such water into one or more of the ROY Storage locations described in paragraph 8, subject to agreement with the owners and/or preferential users of such reservoirs and subject to the availability of capacity. Pueblo Water also may exchange such water from one or more of the ROY Storage locations to one or more of the other ROY Storage locations. In either event, Pueblo Water subsequently may exchange such water to one or more of the "exchange to" locations described in this paragraph 6 when conditions permit. The diversion points from the Arkansas River for those ROY Storage locations are as follows: **i. Excelsior Ditch:** Pueblo Water will divert the exchanged water from the Arkansas River at the Excelsior Ditch headgate for storage in the Excelsior Ditch Storage Facility and the Arkansas Gravel Pit Reservoir and subsequent use. The location of the Excelsior Ditch headgate is: **(1)** UTM: Zone 13S, Easting 543851, Northing 4234780. **(2)** PLSS: The Excelsior Ditch headgate is located in the SE1/4, Section 36, Township 20 South, Range 64 of the 6<sup>th</sup> P.M., Pueblo County, Colorado. **ii. Colorado Canal:** Pueblo Water will divert the exchanged water from the Arkansas River at the Colorado Canal headgate for storage in Lake Henry, Lake Meredith Reservoir, and Haynes Creek Reservoir and subsequent use. The location of the Colorado Canal headgate is: **(1)** UTM: Zone 13S, Easting 560225, Northing 4233250. **(2)** PLSS: The originally decreed point of the Colorado Canal diversion is in the NE1/4 of Section, 10, Township 21 South, Range 62 West of the 6<sup>th</sup> P.M., at a point bearing South 0° 58' West 426 feet from the Southwest corner of Section 2, Township 21 South, Range 62 West of the 6<sup>th</sup> P.M. The 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 NW1/4 of Section 11, Township 21 South, Range 62 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado, at a point bearing South 63° 14' East a distance of 117.3 feet from the Southwestern 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. **iii. Holbrook Canal:** Pueblo Water will divert the exchanged water from the Arkansas River at the Holbrook Canal headgate for storage in Dye Lake Reservoir and Holbrook Reservoir and subsequent use. The location of the Holbrook Canal headgate is: **(1)** UTM: Zone 13S, Easting 601202, Northing 4220100. **(2)** PLSS: The point of diversion for the Holbrook Canal which is located on the north bank of the Arkansas River in the NE1/4, Section 24, Township 22 South, Range 58 West of the 6<sup>th</sup> P.M., Crowley County, Colorado. **7. Exchange from Points and Exchange from Reaches:** Pueblo Water may exchange water made available from the use of the Bessemer Shares for Changed Uses from the following locations, which are illustrated in Exhibits A, B, and C attached to the Amended Application: **a. Pueblo Dam and Reservoir, including any current or future outlet works from Pueblo Dam to the Arkansas River:** The location of Pueblo Dam is described in paragraph 6 a. Exchanges from this location to any upstream reservoir exchange to location described in paragraph 6 will be an “Inter-Reservoir Exchange,” as described in paragraph 7.h. **b. City of Pueblo James R. Dilorio Water Reclamation Facility (“Pueblo WRF”) (previously identified as the Pueblo Municipal Wastewater Treatment Plant).** **i.** UTM: Zone 13S, Easting 537427, Northing 4234318. **ii.** PLSS: NE1/4 of the NE1/4 of Section 5, Township 21 South, Range 64 West of the 6<sup>th</sup> P.M., at a point approximately 972 feet from the North Line and 560 feet from the East Line of said Section 5. Exchanges from this location to any of the upstream “exchange to” locations described in paragraph 6 are referred to as the “Pueblo WRF Exchanges”. **c. Comanche Generating Station.** **i.** UTM: Zone 13S, Easting 537578, Northing 4227163. **ii.** PLSS: Comanche Generating Station discharges to the St. Charles River at a point in the Northwest quarter of Section 28, Township 21 South, Range 64 West of the 6<sup>th</sup> Principal Meridian. Exchanges will occur from the confluence of the St. Charles and Arkansas Rivers, the location of which is: **iii.** PLSS: Confluence of the St. Charles River and the Arkansas River is currently located in the SE1/4 SW1/4 of Section 32, Township 20 South, Range 63 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado. Exchanges from the confluence of the St. Charles and Arkansas Rivers to any of the “exchange to” locations described in paragraph 6 are referred to as the “Comanche Generating Station Exchanges”. **d. EVRAZ Rocky Mountain Steel WWTP, formerly known as Pueblo CF&I Steel Plant WWTP.** **i.** UTM: Zone 13S, Easting 538805, Northing 4234484. **ii.** PLSS: EVRAZ discharges to Salt Creek, a tributary of the Arkansas River, at a point in the NE ¼ of the NW ¼ of Section 18, Township 21 South, Range 64 West of the 6<sup>th</sup> Principal Meridian. Exchanges will occur from the confluence of Salt Creek and the Arkansas River, the location of which is: **iii.** PLSS: Confluence of Salt Creek and the Arkansas River is currently located in the NE1/4 of the NE1/4 of Section 4, Township 21 South, Range 64 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado. Exchanges from the confluence of Salt Creek and the Arkansas River to any of the upstream “exchange to” locations described in paragraph 6 are referred to as the “EVRAZ Exchanges”. **e. LIRF Exchanges.** The locations at which LIRFs are accounted for as accruing to the receiving stream, which are shown on the Figure attached as Exhibit B to the Amended Application. Exchanges from these locations to any of the upstream “exchange to” locations described in paragraph 6 are referred to as the “LIRF Exchanges”. **i.** LIRFs



are accounted as accruing to Fountain Creek above the stream flow gage on Fountain Creek upstream of the Arkansas River. **(1) PLSS:** A point in the NE ¼ of the NE ¼ of Section 6, Township 21 South, Range 64 West of the 6<sup>th</sup> P.M.,. Exchanges will occur from the confluence of Fountain Creek and the Arkansas River, the location of which is: **(2) PLSS:** The confluence of Fountain Creek and the Arkansas River is currently in the NE1/4 of the NE1/4 of Section 6, Township 21 South, Range 64 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado. **ii. LIRFs** are accounted as accruing to Wildhorse Creek (also known as Dry Creek) above its confluence with the Arkansas River.**(1) PLSS:** The confluence of Wildhorse Creek and the Arkansas River is currently in the NE ¼ of the NW ¼ of Section 35, Township 20 South, Range 65 West of the 6<sup>th</sup> P.M. **iii. LIRFs** are accounted as accruing to Arkansas River above the Avondale Gage. **(1) UTM:** Zone 13S, Easting 552595, Northing 4233571. **(2) PLSS:** NE1/4 of the SW ¼ of Section 1, Township 21 South, Range 63 West of the 6<sup>th</sup> P.M., approximately 2550 feet from the South Line and 1685 feet from the West Line of said Section 1. **f. Bessemer Ditch Exchanges (previously identified as Arkansas River Exchanges).** Pueblo Water will exchange from the confluences of the St. Charles River, Sixmile Creek and/or the Huerfano River with the Arkansas River, at which water from the Bessemer Shares in excess of historical return flows is accounted for, or from any location within the exchange reach. Such water may be delivered to the Arkansas River or its tributaries either directly from the Bessemer Ditch system by augmentation structures or as accretions from recharge structures within the relevant reach. Exchanges from these locations to any of the upstream “exchange to” locations described in paragraph 6 are referred to as the “Bessemer Ditch Exchanges”. **i.** The location of the St. Charles River and the Arkansas River confluence is described as: PLSS: The confluence of the St. Charles River and the Arkansas River is currently in the SE1/4 SW1/4 Section 32 Township 20 South, Range 63 West, 6<sup>th</sup> P.M., Pueblo County, Colorado. **ii.** The location of the Sixmile Creek and Arkansas River confluence is described as: PLSS: The confluence of Sixmile Creek and the Arkansas River is currently in the NW1/4 SE1/4 Section 1, Township 21 South, Range 63 West, 6<sup>th</sup> P.M., Pueblo County, Colorado. **iii.** The location of the Huerfano River and Arkansas River confluence is described as: PLSS: The confluence of the Huerfano River and the Arkansas River is currently in the SW1/4 SW1/4 Section 8, Township 21 South, Range 61 West, 6<sup>th</sup> P.M., Pueblo County, Colorado. **g. Exchanges from ROY Storage.** To the extent that Pueblo Water stores fully consumable water attributable to the Bessemer Shares in one or more of the ROY Storage locations, as described in paragraphs 5 and 8 of this application, Pueblo Water subsequently will exchange such water from one or more of the ROY Storage locations to one or more locations described in paragraph 6 when conditions permit. These exchanges of recaptured Bessemer Water are referred to as “RBW Exchanges”. **h. Inter-Reservoir Exchanges.** Pueblo Water claims the right to exchange water produced by Bessemer Shares for Changed Uses, once exchanged into storage in one of the reservoirs described in paragraphs 6.a., 6.e., 6.f., and 6.g., to any other reservoir described in paragraphs 6.a., 6.e., 6.f., and 6.g. Pueblo Water may release water from one of the above-described reservoirs and an equivalent amount may be stored or diverted by exchange in one or more of the other above-described reservoirs, subject to assessment of transit losses, if applicable, as reasonably assessed by the Division Engineer. Some of those reservoirs will release to, and divert by exchange from,

tributaries of the Arkansas River, the confluences with which will also constitute “exchange from” points for operations of those exchanges. Those additional locations are as follows: **i.** For Inter-Reservoir Exchanges involving Clear Creek Reservoir, the confluence of Clear Creek and the Arkansas River will serve as an exchange from location and is currently located in the NE1/4 of Section 8, Township 12 South, Range 79 West of the 6<sup>th</sup> P.M., Chaffee County, Colorado. **ii.** For Inter-Reservoir Exchanges involving Twin Lakes Reservoir, the confluence of Lake Creek and the Arkansas River will serve as an exchange from location and is currently located NW1/4 of the SE1/4 of Section 24, Township 11 South, Range 80 West of the 6<sup>th</sup> P.M., Lake County, Colorado.

**i. Contract Exchanges:** Pueblo Water claims the right to make contract exchanges, i.e. exchanges agreed to between contracting parties, which are not injurious to other water users. Without limiting the generality of such arrangements, examples include: **i.** Pueblo Water may accomplish exchanges whereby a volume of water stored by another party in one of the reservoirs identified in paragraph 6 may be exchanged, with the consent of the owners of that stored water, for fully consumable water attributable to Pueblo's Water's Bessemer Shares then being discharged/accreting to the Arkansas River or already reduced to storage in another reservoir; or **ii.** Pueblo Water may accomplish exchanges with another water user that has replacement obligations that could be met through the use of fully consumable water attributable to Pueblo's Water's Bessemer Shares. The exchangeable water attributable to the Bessemer Shares, which is either physically available in the river for diversion, or has been stored in one of the reservoirs identified in paragraphs 6 and 8, may be used to meet such replacement obligations of the other water user, in exchange for water previously stored by the other water user in one of the reservoirs identified in paragraphs 6 and 8.

**8. RBW Exchanges:** The ROY Storage locations at which Pueblo Water may store water as described in paragraph 5 above, are Holbrook Reservoir No. 1 and Dye Lake Reservoir after diversion at the Holbrook Canal, Lake Henry, Lake Meredith Reservoir, and Haynes Creek Reservoir after diversion at the Colorado Canal, and the future Arkansas Gravel Pit Reservoir and Excelsior Ditch Storage Facility after diversion at the Excelsior Ditch, by agreement with the owners of those structures. The points from which fully consumable water attributable to the Bessemer Shares may be released to the Arkansas River for exchange to the “Exchange To” locations identified in paragraph 6 above are illustrated in the Figures attached as Exhibits B and C to the Amended Application, and described as: **a. Holbrook Outlet Canal:** **i.** UTM: Zone 13S, Easting 621152, Northing 4210040. **ii.** PLSS: The Holbrook No. 1 Outlet Canal originates in NE1/4 of the SE1/4, Section 7, Township 23 South, Range 55 West, 6th P.M., Otero County, Colorado, and delivers water to the Arkansas River in the NE1/4 of the SE1/4, Section 24, Township 23 South, Range 56 West, 6th P.M., Otero County, Colorado. **b. Dye Reservoir Outlet Canal:** **i.** UTM: Zone 13S, Easting 614070, Northing 4214926. **ii.** The Dye Reservoir Outlet Canal is located in SE1/4 of Section 5, Township 23 South, Range 56 West, 6th P.M., Otero County, Colorado. The diversion is into the Reservoir from the Canal, which can also act as a release back to the storage canal. It is located in the NE1/4 of Section 5, Township 23 South, Range 56 West, 6th P.M., Otero County, Colorado. **c. Lake Meredith Outlet Canal:** **i.** UTM: Zone 13S, Easting 607422, Northing 4218130. **ii.** PLSS: Waters released from Lake Henry and Lake Meredith Reservoir are carried through the Lake Meredith Reservoir Outlet Canal to a point in the S1/2 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 to the Fort Lyon 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 SW1/4 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 SE1/4 of Section 27, Township 22 South, Range 57 West of the 6th P.M., in Otero County, Colorado. **d. Haynes Creek Reservoir** is a yet to be constructed reservoir generally located in portions of Sections 5, 7, 8 and 9 of Township 21 South, Range 61 West of the 6th P.M., in Pueblo County, Colorado. Haynes Creek Reservoir will return water to the main stem of the Arkansas River via a return outlet to be located somewhere in the SW1/4 of Section 9 or the NW1/4 of Section 16, Township 21 South, Range 61 West of the 6<sup>th</sup> P.M., in Pueblo County, Colorado. **e. Arkansas Gravel Pit Reservoir** (“AGPR”) is a yet to be constructed reservoir that will receive water from the main stem of the Arkansas River via the Excelsior Ditch with the headgate located in the SE1/4 of the SE1/4 of Section 36, Township 20 South, Range 64 West, 6th P.M., in Pueblo County, Colorado. The AGPR will return water to the main stem of the Arkansas River via a return outlet to be located in the SE1/4 of the SE1/4 of Section 34, Township 20 South, Range 63 West of the 6<sup>th</sup> P.M., in Pueblo County, Colorado. **f. Excelsior Ditch Storage Facility Outlet** is a yet to be constructed reservoir generally located in portions of Sections 33, 34, 35 and 36 of Township 20 South, Range 63 West; Sections 1 and 2 of Township 21 South, Range 63 West; Section 31 of Township 20 South, Range 62 West; and Section 6 of Township 21 South, Range 62 West of the 6th P.M., in Pueblo County, Colorado. **9. Claimed Priority:** Pueblo Water seeks a conditional decree, with an appropriation date of October 16, 2007, for the proposed rights to exchange. On that date, the Board of Water Works of Pueblo, Colorado, approved a proposed water plan and authorized staff to acquire shares of the Bessemer Irrigating Ditch Company, which would be changed so as to permit their use within the Pueblo Water system. Pueblo Water gave notice of this first step in its minutes of the October 16, 2007 meeting. Subsequently, Pueblo Water has proceeded diligently by purchasing the Bessemer Shares and performing engineering analyses to determine the amounts of water that may be put to the Changed Uses and that may be exchanged hereunder. **10. Claimed Rates of Exchange:** **a.** The rates and volumes of the exchanges operated pursuant to the conditional rights of exchange claimed hereunder are expected to increase over time as a greater proportion of the Bessemer Shares are converted to Changed Uses within the Pueblo Water municipal system. The conditional amounts claimed herein are based upon the maximum exchanges that can and will be completed using all of the Bessemer Shares for Changed Uses, during times when that exchange potential exists. **b.** Pueblo Water claims the following exchange rates: **i.** The maximum exchange rate to the Pueblo Water – Northside Intake is 82 cfs. **ii.** The maximum exchange rate to the Pueblo Water – Southside Intake is 54 cfs. **iii.** The maximum exchange rate to the Pueblo Water – Comanche Pump Station is 33 cfs. **iv.** Pueblo Water System Exchanges: **(1)** A maximum combined exchange rate of 30 cfs, conditional, for the Pueblo WRF Exchange and the EVRAZ Exchange; **(2)** A maximum exchange rate of 6 cfs, conditional, for the Comanche Generating Station Exchange;

and **(3)** A maximum combined rate of exchange of 2.6 cfs, conditional for the LIRF Exchanges. **v. Bessemer Ditch Exchanges:** A maximum exchange rate of 60 cfs, conditional, for the Bessemer Ditch Exchanges. **vi. Maximum Simultaneous Exchange Rate for the Pueblo Water System and Bessemer Exchanges:** Should Pueblo Water operate its Pueblo Water System Exchanges and its Bessemer System Exchanges simultaneously, Pueblo Water claims 98.6 cfs for the total amount for such simultaneous exchanges. **vii. Inter-Reservoir Exchanges:** For water available pursuant to Bessemer Shares reduced to storage, and which Pueblo Water further exchanges to other reservoir locations described herein, Pueblo Water claims the ability to exchange against the inflow to the receiving reservoir at the maximum rate of such inflow, and for exchanges against releases of water previously reduced to storage in the receiving reservoir at the maximum rate of flow of such releases. **viii. Contract Exchanges:** Contract exchanges shall be limited to the amounts and flow rates agreed to by the contracting parties and further limited by physical constraints. **ix. RBW Exchanges:** Pueblo Water's RBW Exchanges will not exceed the following rates specified in the decree entered on August 17, 2016 in Case No. 2006CW120 (the "ROY Decree"): **(1)** A maximum exchange rate of 160 cfs, conditional, from the Holbrook Outlet Canal; **(2)** A maximum exchange of 275 cfs, conditional, from the Dye Reservoir Outlet Canal; **(3)** A maximum exchange rate of 500 cfs, conditional, from the Lake Meredith Outlet Canal; **(4)** A maximum exchange rate of 150 cfs, conditional, from the Haynes Creek Reservoir outlet; **(5)** A maximum exchange rate of 150 cfs, conditional, from the Arkansas Gravel Pit Reservoir; and **(6)** A maximum exchange rate of 150 cfs, conditional, from the Excelsior Ditch Storage Facility Outlet. **11. Proposed uses and place of use of exchanged water:** **a.** Water attributable to the Bessemer Shares that is diverted by exchange, either directly or after initial use, will be used for all beneficial uses related to Pueblo Water's municipal water supply and distribution system, as approved in the Change Case. Those uses include municipal, domestic, commercial, industrial, irrigation, mechanical, power generation and cooling, wastewater treatment, recreation, fish and wildlife, replacement, exchange, augmentation, recharge, substitution, and storage of water for subsequent use. From time to time, to the extent that water diverted pursuant to the claimed exchanges is in excess of Pueblo Water's needs, it may make such water available for use by others who contract with Pueblo Water, including but not limited to doing so in compliance with Pueblo Water's Intergovernmental Agreement with the St. Charles Mesa Water District, as amended. **b.** The place of use of water diverted pursuant to the exchanges shall be consistent with the changed places of use approved by the Court for the Bessemer Shares in the Change Case, including but not limited to lands and customers receiving water from Pueblo Water's system as it exists now and as it may exist in the future, including any areas served by Pueblo Water by extra-territorial agreement or by contract. **12. Proposed Terms and Conditions:** **a.** The exchanges claimed herein will not be operated so as to deprive water rights located between the claimed exchange from and exchange to locations of water to which such rights are entitled by priority or because of their use of imported water. **b.** The exchanges claimed herein will be operated as junior to water rights and exchanges submitted for adjudication in years prior to 2016 and to exchanges adjudicated in proceedings initiated in 2016 if it is determined that such water rights or exchanges are senior in priority to those claimed herein. **c.** Pueblo Water

will make the exchanges claimed hereunder only when exchange potential exists. **d.** The exchanges claimed hereunder will be limited by the amount of water attributable to the Bessemer Shares that is available for exchange at the “exchange from” location and by the physical supply available at the “exchange to” location. **e.** Pueblo Water has an existing system of other exchanges and existing exchange accounting. Pueblo Water will integrate the exchanges claimed hereunder into its existing accounting. **f.** Pueblo Water has decrees for other fully consumable sources of its water supplies (collectively the “Prior Pueblo Water Exchange Decrees”). Pueblo Water will operate the exchanges that are the subject of this application in a manner that does not violate the terms and conditions of the Prior Pueblo Water Exchange Decrees. **i.** Decree in Case No. 84CW178, entered on February 19, 1988, which authorizes exchanges of certain “Transmountain Sources” and certain “Arkansas River Sources” to and between specified reservoirs in the Arkansas River drainage. **ii.** Decree in Case No. 84CW177, entered on February 24, 1988, which authorizes exchanges of return flows produced by Pueblo Water’s “Transmountain Sources” through “discrete, measured points”, including but not limited to waste water treatment plants. **iii.** Decree in Case No. 86CW111, entered on December 4, 1992, which authorizes exchanges of “Transmountain Return Flows” released at certain wastewater treatment facilities (“sewered return flows”). **iv.** Decree in Case Nos. 84CW177 (B) and 86CW111 (B), entered on August 3, 1995, which authorizes exchanges of return flows from the use of the water rights at issue in Case Nos. 84CW177 and 86CW111, but which occur as “non-sewered return flows”, including lawn irrigation return flows (“LIRFs”). **v.** Decree in Case No. 06CW120, entered on August 17, 2016, which authorizes the exchange of “Foregone Diversions” by Pueblo Water, Colorado Springs Utilities, Aurora, the Southeastern Colorado Water Conservancy District and the City of Fountain. The Application includes a list of the apparent owners 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.

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**CASE NO. 2017CW15 - GARY L. MILLS and LAURIE A. MILLS, 3990 Plateau Drive, Colorado Springs, CO 80921; (719) 640-3976 or (719) 424-0009**

Application for Absolute Underground Water Right for an Exempt Well Pursuant to § 37-92-602(4), C.R.S.

**EL PASO COUNTY**

**Name of well and permit number, registration or denial number:** Domestic Well; Permit 167991; **Total area of parcel on which this well is located:** 5 acres. **Legal description of well (PLSS Description):** El Paso County, NW ¼ of the NW ¼ Sec. 33, T11S, R67W, 6<sup>th</sup> P.M., 400 feet from the North line and 1200 feet from the West line. **Source of PLSS information:** original well permit. **Street Address:** 3990 Plateau Drive, Colorado Springs, CO 80921; **Subdivision:** Green Mountain Ranch Estates, Lot 5, Block 3, Filing unit 2. **Date of appropriation:** December 28, 1992; **How appropriation was initiated:** December 28, 1992; **Date water applied to beneficial use:** April 26, 1993. **Source of water:** Dawson; **Depth of well:** 540. **Amount claimed:** 2.5 gpm absolute. **Use:** In-house use only for one (1) single family dwelling and watering non-commercial domestic animals. **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: n/a.

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**CASE NO. 2017CW3065 - COLORADO WATER CONSERVATION BOARD**  
**("CWCB"), 1313 Sherman Street, Suite 718, Denver, CO 80203** (Please direct all

future correspondence and pleadings regarding this Application to Applicant's attorney: Ema Schultz, Assistant Attorney General, Natural Resources and Environment Section, Colorado Department of Law, 1300 Broadway, 7<sup>th</sup> Floor, Denver, CO 80203. Telephone: (720) 508-6307. E-mail: ema.schultz@coag.gov)

Application for Instream Flow Water Rights to Preserve the Natural Environment to a Reasonable Degree

**LAS ANIMAS COUNTY, COLORADO.**

**2. Name of water right:** Apishapa River Instream Flow Water Right. **3. Legal Description:** The Apishapa River Instream Flow Water Right is located in the natural stream channel of the Apishapa River from its headwaters to the confluence with Herlick Canyon, a distance of approximately 4.52 miles. A map depicting the approximate location of the Apishapa River Instream Flow Water Right reach is attached to the Application as Exhibit 1. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **A. Upstream Terminus:** Apishapa River Headwaters in the Vicinity of: 1. UTM: Northing: 4134067.69; Easting: 498440.80 (NAD 1983 Zone 13 North) 2. Lat/Long: latitude 37° 21' 11.92"N and longitude 105° 1' 3.38"W **B. Downstream Terminus:** Confluence with Herlick Canyon: 1. UTM: Northing: 4131036.76 Easting: 504368.80 (NAD 1983 Zone 13 North) 2. Lat/Long: latitude 37° 19' 33.54"N and longitude 104° 57' 2.48"W **C.** The Universal Transverse Mercator (UTM) of the upstream and downstream termini will be used as the legal description for the decree in this matter. The Lat/Long coordinates are provided as cross-reference locations only. The UTM and Lat/Long locations for the upstream and downstream termini were derived from CWCB GIS using the National Hydrography Dataset (NHD). **4. Source:** Apishapa River, tributary to the Arkansas River. **5. A. Date of initiation of appropriation:** January 24, 2017. **B. How appropriation was initiated:** Appropriation and beneficial use occurred on January 24, 2017, by the action of the CWCB pursuant to sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2017). **C. Date applied to beneficial use:** January 24, 2017. **6. Amount of water claimed:** Instream flow of 0.5 cfs (09/01 - 04/30), 2.9 cfs (05/01 - 06/30), and 1.1 cfs (07/01 - 08/31), absolute. **7. Proposed Uses:** Instream flow to preserve the natural environment to a reasonable degree. **8. Names and addresses of owners or reputed owners of the land upon which any new or existing diversion structure will be located:** The notice required by section 37-92-302(2)(b), C.R.S. (2017), to the owners or reputed owners of the land upon which any new or existing diversion or storage structure is or will be constructed is not applicable in this case. This Application is for instream flow water rights, exclusive to the CWCB under the provisions of section 37-92-102(3), C.R.S. (2017). As an instream flow water right, the CWCB's appropriation does not require diversion structures or storage. See *Colo. River Water Conservation Dist. v. Colo. Water Conservation Bd.*, 594 P.2d 570, 574 (Colo. 1979); § 37-92-103(4)(c), C.R.S. (2017). As

a surface water right, the CWCB's appropriation of instream flow water rights does not involve construction of a well. **9. Remarks:** This appropriation by the CWCB, on behalf of the people of the State of Colorado, is made pursuant to sections 37-92-102(3) & (4) and 37-92-103(3), (4) & (10), C.R.S. (2017). The purpose of the CWCB's appropriation is to preserve the natural environment to a reasonable degree. At its regular meeting on May 17, 2017, the CWCB determined, pursuant to section 37-92-102(3)(c), C.R.S. (2017), that the natural environment of Apishapa River will be preserved to a reasonable degree by the water available for the appropriations to be made; that there is a natural environment that can be preserved to a reasonable degree with the CWCB's water rights herein, if granted; and that such environment can exist without material injury to water rights.

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**CASE NO. 2017CW3066 - PUEBLO AGRICULTURE HOLDINGS, LLC, 386 West 29<sup>th</sup> Lane, Pueblo, CO 81006**

(Please address all pleadings and correspondence to: David M. Shohet and Brian G. Sheldon, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for Plan For Augmentation

**PUEBLO COUNTY, COLORADO**

Applicant is the owner of approximately 4.59 acres located in the NW ¼ of the SW ¼ of Section 36, Township 20 South, Range 64 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado ("Property"). The Property is shown on the Exhibit A map attached to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Property's address is 386 West 29<sup>th</sup> Lane, Pueblo, CO 81006. The Applicant seeks a plan to augment up to three wells (one existing well and up two future 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.

**Structures to be Augmented.** The structures to be augmented consist of up to three wells to be constructed on Applicant's Property, one existing well and up to two future wells. The existing well, Well Permit No. 79650-F, adjudicated in Case No. W-302, District Court, Water Division 2, decreed on October 19, 1913, for 1.02 c.f.s. (or 460 g.p.m.) but not to exceed 326 acre feet in any one calendar year for "irrigation and general purpose" use with a priority date of 1926, may be used under this plan for augmentation. The decree entered in Case No. W-302 is attached to the Application as Exhibit B.

**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 water pursuant to Section 37-92-305(8), C.R.S. **Lease with Pueblo Board of Water Works.** Applicant has entered into a lease for 10 acre-feet of fully consumable water with Pueblo Water. Applicant's lease with Pueblo Water is attached to the Application as Exhibit C ("Lease"). The water rights or sources of water that may be used for augmentation in this augmentation plan include the following: Fully consumable water owned or controlled by 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 may include Pueblo Water's water stored in Clear Creek 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, 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. **Diversions and Depletions.** **Uses.** Indoor and outdoor cultivation and irrigation of a crop, including cannabis (hemp and marijuana), and the associated commercial, processing, industrial, domestic, drinking and sanitary needs for a 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 10 annual acre feet. **Depletions.** Water diverted for all uses will be considered to be one-hundred percent consumptive. **Return Flows.** As all uses are being considered one hundred percent consumptive Applicant is not claiming any return flows from diversions from the wells. However, Applicant reserves the right to claim such return flows in the future. **Location and Timing of Depletions.** Well pumping by all wells on Applicant's Property will be entitled to occur on a year-round basis, resulting in year-round lagged depletions to the Arkansas River. Depletions from pumping wells located on the Property occur to the Arkansas River in the SW ¼ of the SW ¼ of Section 36, Township 20 South, Range 64 West of the 6<sup>th</sup> P.M. Applicant's water resource engineer has generated a Unit Response Function (URF) for the wells using the Glover Method (Glover, 1954). The lagging analysis shows that over 95 percent of the depletions are expected to occur within 9 months of pumping. **Replacement Water.** Replacement water to augment the Applicant's well depletions currently totals 10 are-feet from the Lease, less any transit losses, or any such augmentation water applicant may acquire in the future. Current replacement water provided by Pueblo Board of Water Works is fully consumable and is available to the Applicant at the point of depletion on the Arkansas River caused by the pumping of any well under this plan. **Name and Address of Owners of Land Upon Which Structures are Located.** All structures, wells, and operations covered by this Application occur on property owned by the Applicant. Upon entry of a decree in this case, the Applicant shall be entitled to apply for and receive well permits and all subsequent replacement or additional wells for use in accordance with any decree entered in this case. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater and replacement of lagged depletions under the proposed augmentation plan. Applicant intends to waive the 600 foot well spacing requirement for the wells to be located on the Applicant's Property. The wells will be installed and metered as required by the State Engineer. Each well will be equipped with a totalizing flow meter and Applicant will submit diversion records to the Division Engineer on a monthly basis or as otherwise requested by the Division Engineer. The Applicant will also provide Accountings to the Division Engineer and Water Commissioner to demonstrate compliance under this plan of augmentation.

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**CASE NO. 2017CW3067; Previous Case Nos. 2003CW38 and 2011CW21 - MAYTAG MOUNTAIN RANCH ASSOCIATION, c/o T.J. Van Ooyen, 118 Settlers Loop, Cotopaxi, CO 81223**

(Please direct all correspondence and inquiries regarding this matter to Applicant's attorneys: Scott Grosscup and Erika Gibson, Balcomb & Green, P.C., P. O. Drawer 790, Glenwood Springs, CO 81602; (970) 945-6546)

Application for Finding of Reasonable Diligence

**FREMONT COUNTY, COLORADO**

**Summary of Application:** Applicant respectfully requests a finding of reasonable diligence for the MMR Pond No. 3. **Cond. Storage Water Right Description:** MMR Pond No. 3. **Orig. Decree:** Case No. 03CW38, 3/7/2005, Dist. Court, Water Division 2. **Subsequent Decrees Awarding Diligence:** Case No. 11CW21, 12/1/2011, Dist. Court, Water Division 2. **Legal Description:** NE1/4 NE1/4, Sec. 28, T. 47 N., R. 12 E. of the N.M.P.M., 498 ft. from the E. line and 1,279 from the N. line of said Sec. 28. The map attached to the Application as Exhibit A depicts the general location of the pond. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Source:** Groundwater trib. to Lake Creek. The MMR Pond No. 3 will not be supplemented with surface water right diversions from Lake Creek or from other wells located on the Applicant's property. **Approp. Date:** 11/20/2002. **Amt:** 5.0 AF. **Use:** Pisc., wildlife habitat, rec., and aesthetic uses. **Remarks:** The MMR Pond No. 3 is permitted as a groundwater well under Permit No. 60867-F, attached to the Application as Exhibit B. The MMR Pond No. 3 operates pursuant to the plan for aug. decreed in Case No. 03CW38. In Case No. 11CW21, this Court found that the Applicant stored 4.52 AF in MMR Pond No. 3 for all decreed uses based upon diversions and use since 7/1/2004. However, the Arkansas River has been on continuous call since water year 1999 so that Applicant's storage in MMR Pond No. 3 has been out of priority. Storage in the pond is accomplished only through the operation of Applicant's plan for aug. decreed in Case No. 03CW38. A complete list of diligence activities and expenditures is on file with this court. **Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.

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**CASE NO. 2017CW3068 - LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION ("LAWMA"), 310 South 6th Street, P. O. Box 1161, Lamar, Colorado 81052**

(Please direct all correspondence and inquiries regarding this matter to Applicant's attorneys: Richard J. Mehren, Jennifer M. DiLalla, and William D. Davidson, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Blvd., Suite 300, Boulder, Colorado 80302; (303) 443-8782)

Application for Change of Water Rights and Addition of Augmentation and Replacement Supplies to Plan for Augmentation

**PROWERS AND BENT COUNTIES**

**2. Purposes 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 purposes of this Application are as follows: (i) to change the use of certain of LAWMA's water rights that are currently decreed for agricultural irrigation purposes to allow those water rights to be used, both directly and after storage, for augmentation and replacement purposes within LAWMA's plan for augmentation decreed on March 8, 2007, in Case No. 02CW181, Water Division No. 2, as that plan for augmentation has been expanded and modified by the decrees entered in Case Nos. 05CW52, 08CW18, 10CW85, 10CW91, 12CW37, 13CW3004, 13CW3065, 14CW3004, and 15CW3014, and as it may be expanded and modified by the decrees to be entered in pending Case Nos. 16CW3018, 17CW3000, 17CW3001, and 17CW3035, and other future cases ("Augmentation Plan"); in LAWMA's annual Arkansas River Replacement Plan pursuant to Rule 14 of the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin ("Rule 14 Plan"); and/or in any LAWMA-operated Compact Compliance Plan pursuant to Rule 10 of the Compact Rules Governing Improvements to Surface Water Irrigation Systems in the Arkansas River Basin in Colorado ("Rule 10 Plan"); and to allow those water rights to be used for replacement of historical return flows under the decree to be entered in Case No. 15CW3067 and this case, and any future change of water rights decree that LAWMA obtains in this Court; and (ii) to add the changed water rights as a new source of augmentation and replacement supply under the 02CW181 Decree. **3. Change of water rights:** LAWMA seeks to change the use of the water rights described in paragraph 3.1 below ("Subject Water Rights"). LAWMA will quantify the historical consumptive use of the Subject Water Rights and will determine the amount, timing, and location of return flows resulting from the historical use of those water rights. 3.1 Fort Bent Ditch: 162.5 shares of the 11,651.2 total shares outstanding of the capital stock of the Fort Bent Ditch Company. Historical diversions of the Fort Bent Ditch Company water rights are shown on Exhibit A to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Subject Water Rights historically were used for agricultural irrigation purposes on the parcels described in Exhibit B and generally depicted on Exhibit C to the Application. LAWMA acquired the right to use the Subject Water Rights in 2015, and acquired the Subject Water Rights themselves in 2017. Since 2015, a portion or all of the parcels described in Exhibit B and depicted on Exhibit C to the Application have been dried up or irrigated with other water, and water available to the Subject Water Rights has been used in LAWMA's Rule 14 Plan. 3.1.1 Appropriation date, priority, and amount of the Fort Bent Ditch Company's decreed water rights: (1) April 1, 1886, Priority No. 6 for 27.77 cfs. (2) March 10, 1889, Priority No. 10 for 32.77 cfs. (3) September 11, 1889, Priority No. 12 for 11.7 cfs. (4) August 12, 1890, Priority No. 14 for 26.27 cfs. (5) January 1, 1893, Priority No. 1918-2 for 50 cfs. (6) December 31, 1900, Priority No. 1918-9 for 80 cfs. 3.1.2 Original Decree for Priority Nos. 6, 10, 12 and 14: Priority Nos. 6, 10, 12, and 14 were decreed in the Adjudication of Priorities to the use of Water for Irrigation in District Number 67 dated July 1, 1895, in the Bent County District Court. 3.1.3 Original Decree for Priority Nos. 1918-2 and 1918-9: Priority Nos. 1918-2 and 1918-9 were decreed in the Adjudication of Water Rights and Priorities to the use of Water in Water District Number 67 dated October 14, 1918, in the Bent County District Court. 3.1.4 Decreed Point of Diversion:

The decreed headgate location is at “a point on the South bank of the Arkansas River, which point is located as follows: at a point whence it is South 48°17' East 438 feet to the Southwest corner of Lot Four (4), in Section One (1), Township Twenty-three (23) South, Range Forty-nine (49) West of the sixth Principal Meridian, in Bent County, Colorado.” 3.1.5 Source: The Arkansas River. 3.1.6 Decreed use: Irrigation. 3.1.7 Pro-rata interest in the Fort Bent Ditch Company water rights to be changed by this Application: The 162.5 Fort Bent Ditch Company shares represent a pro-rata interest in the Fort Bent Ditch Company’s water rights as follows: (1) Priority No. 6: 0.39 cfs of the 27.77 cfs. (2) Priority No. 10: 0.46 cfs of the 32.77 cfs. (3) Priority No. 12: 0.16 cfs of the 11.7 cfs. (4) Priority No. 14: 0.37 cfs of the 26.27 cfs. (5) Priority No. 1918-2: 0.70 cfs of the 50 cfs. (6) Priority No. 1918-9: 1.12 cfs of the 80 cfs. **4. Detailed description of proposed changes**: 4.1 New types of use: LAWMA seeks to change the Subject Water Rights described in paragraph 3.1 above such that they may be used for the following new purposes in addition to their currently decreed purpose of agricultural irrigation: 4.1.1 Augmentation or replacement of out-of-priority depletions to the Arkansas River or its tributaries caused by the “LAWMA Structures” included in the Augmentation Plan decreed in Case No. 02CW181, as expanded and modified by the decrees entered in Case Nos. 05CW52, 08CW18, 10CW85, 10CW91, 12CW37, 13CW3004, 13CW3065, 14CW3004, and 15CW3014, and as it may be expanded and modified by the decrees to be entered in pending Case Nos. 15CW3067, 16CW3018, 17CW3000, 17CW3001, 17CW3035, and other future cases, and as the term “LAWMA Structures” is defined in those decrees. The LAWMA Structures included in LAWMA’s augmentation plan generally are used for irrigation; domestic and household purposes; commercial, municipal, and industrial purposes; generation of electric power and power generally; and fire protection, recreation, fish and wildlife preservation and propagation, agricultural uses, livestock watering, aquaculture, replacement of evaporation, maintenance of wetlands, and groundwater recharge; 4.1.2 Augmentation or replacement of out-of-priority depletions caused by the wells included in LAWMA’s Rule 14 Plan. The wells included in LAWMA’s annual Rule 14 Plan are used for irrigation purposes; 4.1.3 Replacement of historical return flows attributable to the water rights changed by the decree to be entered in Case No. 15CW3067 and this case, any future change of water rights decrees that LAWMA may obtain in this Court, and any water rights temporarily changed in LAWMA’s Rule 14 Plan; and 4.1.4 Replacement of historical seepage losses and/or return flows under any Rule 10 Plan operated by LAWMA. 4.1.5 The new uses described in paragraphs 4.1.1 through 4.1.4 above are referred to collectively in this Application as the “New Uses.” 4.2 New places of use: LAWMA seeks to change the Subject Water Rights described in paragraph 3.1 above such that in addition to their continuing use for irrigation purposes in their decreed and historical places of use, those water rights also may be used in other locations in the Arkansas River Basin for the New Uses described in paragraph 4.1 above. The locations of the New Uses will be the locations at which LAWMA delivers augmentation or replacement water to the Arkansas River as required by LAWMA’s Augmentation Plan, Rule 14 Plan, or any LAWMA-operated Rule 10 Plan, or by any decree requiring replacement of historical return flows associated with changed water rights. 4.2.1 New manner of use and place of storage: LAWMA seeks to change the Subject Water Rights described in paragraph 3.1 above such that they may be used for the New Uses

both directly and after storage in the West Farm Gravel Pit, which will be located in the S ½ of the SE ¼ of Section 28 and in the NE ¼ and the NE ¼ of the NW ¼ of Section 33, Township 22 South, Range 46 West of the 6th P.M. in Prowers, County, Colorado, as shown on Exhibit D to the Application. 4.2.2 Full consumption and use to extinction: Provided that LAWMA replaces historical return flows associated with the Subject Water Rights, LAWMA will fully consume and use to extinction the consumptive use stream credits attributable to the Subject Water Rights. 4.3 Article II Account Storage in John Martin Reservoir: Pursuant to the terms of the 1980 Operating Plan for John Martin Reservoir, which plan was adopted as a Resolution of the Arkansas River Compact Commission on April 24, 1980, and amended on May 10, 1984, December 11, 1984, and February 11, 2010 (“Operating Plan”), the Fort Bent Ditch Company is allocated 9.9% of the Colorado Water District 67 ditches’ entitlement to conservation storage in the reservoir and is entitled to store water in an account in John Martin Reservoir in accordance with the provisions of the Operating Plan. LAWMA intends to use the Article II Storage Account water associated with the Subject Water Rights described in paragraph 3.1 above for the New Uses and at the new places of use described in paragraph 4.4 above. **5. Addition of Subject Water Rights to Augmentation Plan**: Paragraph 41.A of the 02CW181 Decree provides that LAWMA may add permanent sources of augmentation and replacement water to the Augmentation Plan by filing an application with this Court. By this Application, LAWMA seeks to add, as a permanent source of augmentation and replacement water in the Augmentation Plan, as defined in paragraph 2 above, the Subject Water Rights described in paragraph 3.1 above. **6. Names and addresses of owner(s) or reputed owners 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**: 6.1 West Farm Gravel Pit: GP Aggregates, LLC, c/o Karl Nyquist, 7991 Shaffer Parkway, Suite 200, Littleton, CO, 80127. 6.2 John Martin Reservoir: United States Army Corps of Engineers, Reservoir Manager, 29955 County Road 25.75, Hasty, Colorado 81044. WHEREFORE, LAWMA respectfully requests that this Court enter a decree approving this Application for Change of Water Rights and Addition of Augmentation and Replacement Supplies to Plan for Augmentation, and granting all such other and further relief, whether legal or equitable, as the Court may determine necessary or desirable.

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**CASE NO. 2017CW3069 - LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION (“LAWMA”), 310 South 6th Street, P. O. Box 1161, Lamar, Colorado 81052**

(Please address all correspondence and inquiries regarding this matter to Applicant’s attorneys: Richard J. Mehren, Jennifer M. DiLalla, and William D. Davidson, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Blvd., Suite 300, Boulder, Colorado 80302; (303) 443-8782)

Application for Plan for Augmentation

**BENT AND PROWERS COUNTIES**

**2. Purpose of application**: LAWMA is a non-profit corporation organized for the purpose of, among other things, providing a means for its members to continue to make 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 additional structures 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"). Pursuant to paragraph 43 of the 02CW181 Decree, LAWMA may add wells or other structures to the Augmentation Plan by filing a new application with the Water Court. **3. Description of structures to be augmented:** A total of twenty-eight additional structures ("Additional LAWMA Structures") will be included in LAWMA's Augmentation Plan through this application: twenty-four wells owned by Arkansas River Farms, LLC ("ARF Wells"), and four wells owned by Colorado Dairy Partners, LLC ("Bent Dairy Wells"). A map showing the location of the Additional LAWMA Structures is attached to the Application as Exhibit B. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Additional LAWMA Structures are generally located north of the Arkansas River in Bent County and Prowers County, between Adobe Creek on the west and the Town of Wiley on the east and are described as follows: All UTM coordinate values are in meters for UTM Zone 13; Datum NAD 83; Elevation values are in feet; the Bent Dairy wells are the proposed locations. Exact location and aquifer will be determined after drilling of the wells. **Arkansas River Farms, LLC Wells:** Elmo Sakai Irrig. Well 2: SEO ID 1705032; Permit 19834S; Case No. W2584; NW ¼ NW ¼ Sec. 36 T22S, R52W, 6<sup>th</sup> P.M., 134 feet from North line and 304 feet from West line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 658127, UTM Y 4218339; Elevation 3935. Miller Well No. 2: SEO ID 1705078; Permit 20327R; Case No. W1066; NW ¼ NW ¼ Sec. 26 T22S, R52W, 6<sup>th</sup> P.M., 810 feet from North line and 1110 feet from West line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 656788, UTM Y 4219709; Elevation 3982. Miller Well No. 1: SEO ID 1705079; Permit 20327S; Case No. W1066; NW ¼ NW ¼ Sec. 26 T22S, R52W, 6<sup>th</sup> P.M., 320 feet from North line and 690 feet from West line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 656598, UTM Y 4219779; Elevation 3994. Bilyeu Well No. 6423: SEO ID 1705356; Permit 6423R; Case No. W477; NW ¼ NE ¼ Sec. 36 T22S, R52W, 6<sup>th</sup> P.M., 340 feet from North line and 3190 feet from West line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 658917, UTM Y 4218275; Elevation 3931. Bogner Well No. 1: SEO ID 1705649; Permit 19756R; Case No. W2579; NW ¼ SW ¼ Sec. 33 T22S, R52W, 6<sup>th</sup> P.M., 1340 feet from South line and 52 feet from West line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 653247, UTM Y 4217072; Elevation 3932. Bogner Well No. 3: SEO ID 1705650; Permit 19757R; Case No. W2579; NE ¼ SW ¼ Sec. 33 T22S, R52W, 6<sup>th</sup> P.M., 2561 feet from South line and 2611 feet from West line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 654016, UTM Y 4217491; Elevation 3946. La Junta P C A No. 694-RF: SEO ID 1705656; Permit 19760R; Case No. W352; NE ¼ SE ¼ Sec. 31 T22S, R52W, 6<sup>th</sup> P.M., 2302 feet from South line and 1315 feet from East line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 651208, UTM Y 4217351; Elevation 3958. La Junta P C A 14117-R: SEO ID 1705657; Permit 14117R; Case No. W352; NW ¼ SE ¼ Sec. 31 T22S, R52W, 6<sup>th</sup> P.M., 1848 feet from South line and 2630 feet from East line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 650821, UTM Y 4217188; Elevation 3957. Slack Well No. 13732: SEO ID

1705661; Permit 13732R; Case No. W515; NW ¼ SW ¼ Sec. 31 T22S, R52W, 6<sup>th</sup> P.M., 1330 feet from South line and 45 feet from West line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 650069, UTM Y 4217053; Elevation 3958. Spady Well No. 14: SEO ID 1705688; Permit 14064R; Case No. W3346; NW ¼ NW ¼ Sec. 24 T22S, R53W, 6<sup>th</sup> P.M., 4520 feet from South line and 275 feet from West line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 648420, UTM Y 4221175; Elevation 4011. Spady Well No. 15: SEO ID 1705689; Permit 21599F; Case No. W3346; NE ¼ NE ¼ Sec. 23 T22S, R53W, 6<sup>th</sup> P.M., 1040 feet from North line and 5 feet from East line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 648360, UTM Y 4220970; Elevation 4005. Spady Well No. 17: SEO ID 1705690; Permit 21600F; Case No. W3346; NE ¼ NE ¼ Sec. 23 T22S, R53W, 6<sup>th</sup> P.M., 808 feet from North line and 5 feet from East line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 648358, UTM Y 4221054; Elevation 4008. Brown Well: SEO ID 1705765; Permit 5633F; Case No. W1969; SE ¼ NW ¼ Sec. 34 T22S, R52W, 6<sup>th</sup> P.M., 2815 feet from South line and 2630 feet from West line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 655638, UTM Y 4217574; Elevation 3947. Spady Well No. 4: SEO ID 1705861; Permit 14065R; Case No. CA416; NW ¼ NW ¼ Sec. 24 T22S, R53W, 6<sup>th</sup> P.M., 490 feet from North line and 5 feet from West line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 648360, UTM Y 4221256; Elevation 4010. Richards Well No. 19746: SEO ID 1705900; Permit 19746R; Case No. W2428; NW ¼ SW ¼ Sec. 35 T22S, R52W, 6<sup>th</sup> P.M., 2630 feet from South line and 70 feet from West line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 656463, UTM Y 4217542; Elevation 3931. Reyher Well No. 7: SEO ID 6705012; Permit 9012F; Case No. W780; NE ¼ NW ¼ Sec. 24 T22S, R49W, 6<sup>th</sup> P.M., 1000 feet from North line and 2700 feet from East line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 687116, UTM Y 4222026; Elevation 3835. Reyher Well No. 5: SEO ID 6705015; Permit 9010F; Case No. W780; NW ¼ SE ¼ Sec. 24 T22S, R49W, 6<sup>th</sup> P.M., 4000 feet from North line and 2600 feet from East line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 687227, UTM Y 4221126; Elevation 3816. Morgan Well No. 1: SEO ID 6705066; Permit 3239F; Case No. W1240; NW ¼ SE ¼ Sec. 21 T22S, R51W, 6<sup>th</sup> P.M., 2580 feet from South line and 2610 feet from East line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 663603, UTM Y 4220880; Elevation 3945. Bassee Well No. 19835: SEO ID 6705069; Permit 19835R; Case No. W1859; NW ¼ SW ¼ Sec. 28 T22S, R51W, 6<sup>th</sup> P.M., 1820 feet from South line and 80 feet from West line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 662852, UTM Y 4219067; Elevation 3914. Wright Well No. 10394: SEO ID 6705082; Permit 10394R; Case No. W2186; NW ¼ NE ¼ Sec. 31 T22S, R51W, 6<sup>th</sup> P.M., 75 feet from North line and 2610 feet from East line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 660461, UTM Y 4218405; Elevation 3911. Shaw Well No. 2 1980: SEO ID 6705086; Permit 1980R; Case No. W479; SW ¼ SE ¼ Sec. 31 T22S, R51W, 6<sup>th</sup> P.M., 715 feet from South line and 2120 feet from East line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 660627, UTM Y 4217070; Elevation 3889. Reyher Well No. 1: SEO ID 6705119; Permit 12482R; Case No. W750; NW ¼ SE ¼ Sec. 30 T22S, R51W, 6<sup>th</sup> P.M., 1770 feet from South line and 2630

feet from East line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 660429, UTM Y 4218959; Elevation 3925. Reyher Well No. 2: SEO ID 6705120; Permit 12483R; Case No. W750; NW ¼ SE ¼ Sec. 30 T22S, R51W, 6<sup>th</sup> P.M., 1650 feet from South line and 2035 feet from East line, Bent County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 660619, UTM Y 4218916; Elevation 3922. Sharp Well No. 1: SEO ID 6705202; Permit 5067F; Case No. W206; NW ¼ NW ¼ Sec. 5 T22S, R47W, 6<sup>th</sup> P.M., 800 feet from North line and 100 feet from West line, Prowers County, Colorado; Source is Arkansas River Valley Fill Aquifer; UTM X 699372, UTM Y 4227140; Elevation 3760. **Colorado Dairy Partners, LLC Wells:** Bent Dairy Well No. 1: SW ¼ NW ¼ Sec. 17 T22S, R51W, 6<sup>th</sup> P.M., 1584 feet from North line and 102 feet from West line, Bent County, Colorado; Source is Dakota/Cheyenne Aquifer; UTM X 661179, UTM Y 4222798; Elevation 3999. Bent Dairy Well No. 2: NW ¼ SW ¼ Sec. 8 T22S, R51W, 6<sup>th</sup> P.M., 1532 feet from South line and 101 feet from West line, Bent County, Colorado; Source is Dakota/Cheyenne Aquifer; UTM X 661157, UTM Y 4223748; Elevation 4012. Bent Dairy Well No. 3: NE ¼ SE ¼ Sec. 8 T22S, R51W, 6<sup>th</sup> P.M., 2460 feet from South line and 98 feet from East line, Bent County, Colorado; Source is Dakota/Cheyenne Aquifer; UTM X 662693, UTM Y 4224088; Elevation 4019. Bent Dairy Well No. 4: NE ¼ NE ¼ Sec. 17 T22S, R51W, 6<sup>th</sup> P.M., 623 feet from North line and 78 feet from East line, Bent County, Colorado; Source is Dakota/Cheyenne Aquifer; UTM X 662720, UTM Y 4223149; Elevation 3995. **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 and 10CW85, and those water rights and other sources of water that are added to the 02CW181 Decree pursuant to the terms and conditions of paragraph 41 of that decree. **4.1 Use of Fryingpan-Arkansas Project water and return flows as augmentation source:** Water withdrawn from the Bent Dairy Wells will be used outside of the boundaries of the Southeastern Colorado Water Conservancy District (“Southeastern”). Accordingly, LAWMA will not use Fryingpan-Arkansas Project water to replace depletions caused by the Bent Dairy Wells. The ARF Wells are located within Southeastern’s boundaries, and water pumped from the ARF Wells will be used within such boundaries. Accordingly, LAWMA will use Fryingpan-Arkansas Project water to replace depletions caused by the ARF Wells. **5. Statement of plan for augmentation:** The amount, timing, and location of depletions from the Additional LAWMA Structures will be determined in accordance with the methodologies approved in the 02CW181 Decree. Under the LAWMA Augmentation Plan, LAWMA shall account for and fully replace all out-of-priority depletions caused by the Additional LAWMA Structures. 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 Structures 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 for each 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 Structures, 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 Structures, does not seek a change of water right for any of the water rights identified in paragraph 40 of the 02CW181 Decree, and does not seek any change to those augmented structures or replacement water sources previously decreed to be included in LAWMA's Augmentation Plan. Instead, this application seeks (i) the Court's approval of LAWMA's inclusion of the structures described above in the Augmentation Plan in accordance with the terms and conditions of the 02CW181 Decree; and (ii) accordingly, the Court's confirmation that LAWMA will fully replace under LAWMA's Augmentation Plan, 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 Structures. 6. **Name and address of owner of land upon which new diversion structures will be constructed:**

Owner	Structures	Address	City	State	ZIP
Bobby and Vickie B. Denton	Bent Dairy Well Nos. 1, 2, 3, & 4	34515 Road 15	Las Animas	CO	81054

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

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**CASE NO. 2017CW3070 - XAVIER PROPERTIES, LLC, a Colorado limited liability company, Jesus Felipe, 33930 Sanborn Road, Yoder, CO 80864** (Please direct all correspondence and inquiries regarding this matter to Applicant's attorneys: David M. Shohet and Brian G. Sheldon, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921; (719) 471-1212)

Application for Plan for Augmentation  
**EL PASO COUNTY, COLORADO**

**II. Application for Adjudication of Denver Basin. A. Legal Description.** Applicant seeks to adjudicate the Denver Basin groundwater underlying a property consisting of 40 acres, more or less, located in the Southwest 1/4 of the Southwest 1/4 of Section 26, Township 14 South, Range 61 West of the 6th P.M., El Paso County, Colorado (the "Property"). The address of the Property is 33930 Sanborn Road, Yoder, Colorado 80864, and is generally shown on the Exhibit A map attached to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **B. Water Source. 1. Not Nontributary.** The Dawson and Denver aquifers do not exist under the Property. Withdrawal of groundwater from the Laramie-Fox Hills aquifer underlying the Property is not nontributary. Pursuant to C.R.S. 37-90-137(9)(c), the augmentation requirements for wells in the Laramie-Fox Hills aquifer will require the replacement of stream depletions to the extent necessary to prevent any injurious effect. **2. Nontributary.** The groundwater that will be withdrawn from the Arapahoe aquifer of the Denver Basin aquifers underlying the Property is nontributary. **C. Estimated Rates of Withdrawal and Groundwater Available. 1. Estimated Rates of Withdrawal.** The actual pumping rates will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw



groundwater at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. **2. Estimated Average Annual Amounts of Groundwater Available.** Applicant requests an absolute water right for the withdrawal of all legally available groundwater in the Denver Basin aquifers underlying the Property. Said amounts may be withdrawn as set forth in C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying the Property:

<u>Aquifer</u>	<u>Saturated Thickness (Feet)</u>	<u>Depth (Feet)</u>	<u>Total Water Adjudicated (Acre Feet)</u>	<u>Annual Average Withdrawal (Acre Feet)</u>
Arapahoe	18.2	77	124	1.24
Laramie Fox Hills	177.2	477	1063	10.63

Decreed amounts may vary based upon the State’s Determination of Facts. Pursuant to C.R.S. §37-92-305(11), Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **D. Requested Uses.** The Applicant requests the right to use the groundwater for beneficial uses upon the Property consisting of domestic, commercial, irrigation, greenhouse, washing, industrial, stock water, recreation, wildlife, fire protection, 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, as well as central water supply for such uses, and also for exchange, recharge and augmentation purposes. The Applicant also requests that the nontributary groundwater may be used, reused, and successively used to extinction, both on and off the Property. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. **E. Well Diversions.** Information regarding the location of the wells will be provided when the Applicant submits a well permit application. Well permit applications for any wells to be drilled pursuant to this application and subsequent decree will be applied for prior to drilling into the Denver Basin aquifers. Applicant further requests that it be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed from the Denver Basin aquifer underlying the Property, so long as the sum of the total withdrawals from all wells do not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever occurs first, multiplied by the average annual volume of water which Applicant is entitled to withdraw from the aquifer underlying the Property. **F. Name and Address of Owner of Land Upon Which Wells are to Be Located.** The property is owned by Xavier Properties, LLC, 33930 Sanborn Road, Yoder, Colorado 80864. **III. Plan for Augmentation** **A. Structures to be Augmented.** The structures to be augmented consists of up to two wells in the not nontributary Laramie-Fox Hills aquifer, including any replacement wells. One well to the Laramie-Fox Hills aquifer is currently drilled and exists as an exempt well (Permit No. 183702). No exact location is requested for the proposed wells and the Applicant may utilize the existing well structure or abandon the existing well and construct a new well. **B. Water Rights to be Used for Augmentation.** The water rights to be used for augmentation during

pumping are the return flows of the Laramie-Fox Hills well, together with water rights from the nontributary Arapahoe aquifer for post pumping depletions. **C. Statement of Plan for Augmentation.** **1. Diversions.** Up to two augmented wells to be used for domestic purposes and for the purposes as stated herein upon the Property, including, but not limited to domestic, commercial, irrigation, greenhouse, washing, industrial, stock water, recreation, wildlife, fire protection, indoor and outdoor cultivation and irrigation of a crop, 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. Total annual pumping for these uses shall be approximately 2.0 annual acre feet. The diversion and depletions numbers are approximate and may vary based on final water availability. **2. Depletions.** Based on the State Engineer's Denver Basin Ground Water Flow Model for the determination of stream depletions from Laramie-Fox Hills aquifer well pumping, Applicants are required to replace an amount equal to 4% of the annual amount withdrawn annually. Total actual stream depletions will therefore be a maximum of approximately 0.08 annual acre feet. **3. Replacement.** Applicant's augmentation water during the plan pumping will consist of septic return flows from in-house uses. Wastewater from the in-house residential uses will be disposed of through non-evaporative septic systems that are determined to have return flows to the tributary stream system of 100 percent of the in-house residential pumping of 0.3 annual acre feet per residence. Therefore, return flows equal 0.27 annual acre feet. These return flows during pumping will augment the tributary stream system in an amount greater than the maximum actual stream depletion amount from the Laramie-Fox Hills aquifer of 0.27 annual acre feet. Therefore, Applicant's return flows prevent material injury to other vested water rights during plan pumping. Applicant may claim irrigation return flows as part of this augmentation plan. **D. Post-Pumping Depletions.** For the replacement of post-pumping depletions, Applicant will reserve water from the nontributary Arapahoe aquifer underlying the Property, less the amount of actual stream depletions replaced during the plan pumping period. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Applicant claims that post pumping depletions will be noninjurious and does not need to be replaced, and under the Court's retained jurisdiction, Applicant reserves the right in the future to so prove that post pumping depletions will be noninjurious. The reserved nontributary water will be used, as so necessary, to replace any injurious post pumping depletions. Upon entry of a decree augmentation plan in this case, the Applicant will be entitled to file for and receive well permits for the uses in accordance with this Application. **IV. REMARKS.** Additional remarks are as follows: 1. Applicant requests a finding that it has complied with C.R.S. §37-90-137(4), and that the groundwater requested herein is legally available for withdrawal by the requested nontributary wells and by the requested not nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). 2. The term of this augmentation plan is for 100 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions will be determined as the average annual withdrawals for all wells through cessation of pumping and accrue only to the extent of actual pumping. 3.

Applicant will comply with C.R.S. §37-90-137(9)(b) for the withdrawal of nontributary groundwater. 4. The Court will retain jurisdiction over this matter for those who object to the application to provide for the adjustment of the annual amount of groundwater withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. 5. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater and the proposed plan for augmentation. 6. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required to demonstrate compliance with the plan of augmentation. WHEREFORE, the Applicant requests this Application for Plan for Augmentation be granted as requested herein and for such other and further relief as the Court deems appropriate.

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**CASE NO. 2017CW3071, Water Division 2 and CASE NO. 2017CW3209, Water Division 1 - PRI #2, LLC, 6385 Corporate Drive, Ste. 200, Colorado Springs, CO 80919**

(Please forward all correspondence or inquiries regarding this matter to Applicant's attorneys: Alan G. Hill and Ashley N. Pollock, Hill & Pollock, LLC, 1528 Wazee Street, Denver, CO 80202; (303) 993-4452)

Application for Approval of Amendment to Plan for Augmentation Decreed in Case No. 16CW3180, Division 1 for Use of Not Nontributary Groundwater

**EL PASO COUNTY**

Applicant, PRI #2, LLC, by and through its attorneys, Hill & Pollock, LLC, for its Application for Approval of Amendment to Plan for Augmentation Decreed in Case No. 16CW3180, Division 1 for Use of Not Nontributary Groundwater, states as follows: Applicant owns certain groundwater rights underlying approximately 701 acres, more or less, located generally in Sections 30 and 31, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M., in El Paso County ("701-acre parcel"), which were decreed in Case No. 94CW023(B), Water Division No. 1 (entered June 12, 1996), which amended an original decree in Case No. 85CW446, Water Division No. 1. A map depicting the 701 acres is attached to the Application as Exhibit A, and the legal description is attached to the Application as Exhibit B. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) No part of the 701 acres lies within a designated groundwater basin. The Applicant also owns approximately 640 acres, more or less, located generally in Section 36, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., in El Paso County ("640-acre parcel"). Applicant's predecessor-in-interest entered into a Groundwater Production Lease, No. OT-109328, with the State Board of Land Commissioners, pursuant to which Applicant leased the not nontributary and nontributary groundwater underlying the 640 acres, decreed in Case No. 04CW098, Water Division No. 1 (entered May 24, 2005) through February 27, 2048. On that date, all of the groundwater rights revert to the Applicant. A map depicting the 640 acres is attached to the Application as Exhibit C, and the legal description is attached to the Application as Exhibit D. No part of the 640 acres lies within a designated groundwater basin. Applicant seeks, in this application, to amend the decree entered in Case No.

16CW3180, Water Division No. 1 (which was combined with Case No. 16CW3097, Water Division No. 2 by order of the Panel on Consolidated Multidistrict Litigation dated April 4, 2017) (“Augmentation Decree”). Applicant seeks to add to the uses for the Dawson aquifer not nontributary groundwater underlying the 701-acre parcel and the 640-acre parcel to include stock watering of up to 300 horses on certain residential lots. There will not be any additional pumping over the 198 acre-feet of Dawson aquifer not nontributary groundwater approved in the Augmentation Decree. Applicant will augment the depletions associated with the operation of not nontributary Dawson aquifer wells located on the 701-acre parcel and the 640-acre parcel for this new purpose through septic return flows, lawngrass irrigation return flows, and reservation of nontributary groundwater to augment post-pumping depletions. The Water Court has jurisdiction over this application pursuant to sections 37-90-137(4) and -137(9), C.R.S.

**Names of Structures to be Augmented:** A. The structures to be augmented are the same as those decreed in the Augmentation Decree, which include individual Dawson aquifer wells within the 701-acre parcel and 640-acre parcel described in Exhibits B and C to the Application (Applicant’s Property), with a maximum of 283 residential lots. In addition, open space and other landscape features utilize Dawson aquifer groundwater. A well into the Dawson aquifer will be completed on each lot to serve the domestic and irrigation demands of that lot; Applicant seeks to add stock watering of 300 horses, with certain residential lots allocated a limited number of horses. B. Well permit applications have not been submitted at the time of this application for amendment of the Augmentation Plan. Applicant has not determined the specific locations for all the wells required to withdraw groundwater from the Dawson aquifer; however, each well will be constructed within the Applicant’s Property and each well will be designed so that it withdraws water from the Dawson aquifer. Applicant requests the right to locate the wells required to withdraw its entitlement from the Dawson aquifer at any point within the Applicant’s Property without the necessity of republishing or petitioning the Court for the reopening of any decree. See 2 CCR 402-7, Rule 11. C. Applicant owns Applicant’s Property described herein. To the extent Applicant’s Property is not free and clear of all liens or encumbrances, Applicant shall provide certification of its compliance with the lienholder notice provisions set forth in C.R.S. § 37-92-302(2)(b) and § 37-90-137(4)(b.5)(I). **Previous Decrees for Water Rights To Be Used for**

**Augmentation Source:** A. The decree in Case No. 94-CW-023(B), Water Division 1, adjudicating rights in nontributary and not nontributary ground water including the 701-acre parcel which are to be used as a sources of replacement water in this augmentation plan, is summarized as follows: (1) Decree Entered: June 12, 1996. (2) Court: District Court, Water Division 1. (3) Type of Water Right: Vested property right to withdraw all groundwater underlying the property in specified aquifers, pursuant to §§ 37-90-137(4) and -137(9), C.R.S. (4) Legal Description: The decreed ground water rights underlie parts of Sections 30 and 31, Township 11 South, Range 65 West of the 6th P.M., El Paso County, consisting of 701 acres, more or less. (5) Sources and Amounts of Ground Water Decreed:

<u>Aquifer</u>	<u>Type</u>	<u>Annual Ave. Amount</u>
Dawson	NNT	201 AF
Laramie-Fox Hills	NT	204AF

(6) Decreed Uses: Reuse and successive uses for all beneficial purposes including

municipal, domestic, industrial, commercial. irrigation, stock watering, recreation, fish and wildlife, fire protection, and sanitary purposes, including the right to use, reuse, and successively use such water to extinction. Further, such water may be stored for subsequent use and may be used for augmentation, exchange, and replacement purposes. **B.** The decree in Case No. 04-CW-098, Water Division 1, adjudicating rights in nontributary and not nontributary ground water including the 640-acre parcel which are to be used as a sources of replacement water in this augmentation plan, is summarized as follows: (1) Decree Entered: May 24, 2005. (2) Court: District Court, Water Division 1. (3) Type of Water Right: Vested property right to withdraw all groundwater underlying the property in specified aquifers, pursuant to §§ 37-90-137(4) and -137(9), C.R.S. (4) Legal Description: The decreed ground water rights underlie Section 36, Township 11 South, Range 66 West of the 6th P.M., El Paso County, consisting of 640 acres, more or less. (5) Sources and Amounts of Ground Water Decreed:

<u>Aquifer</u>	<u>Type</u>	<u>Annual Ave. Amount</u>
Dawson	NNT	515 AF
Denver	NNT	577 AF
Arapahoe	NT	239 AF
Laramie-Fox Hills	NT	182 AF

(6) Decreed Uses: Reuse and successive uses for all beneficial purposes including municipal, domestic, industrial, commercial. irrigation, stock watering, recreation, fish and wildlife, fire protection, and sanitary purposes, including the right to use, reuse, and successively use such water to extinction. Further, such water may be stored for subsequent use and may be used for augmentation, exchange, and replacement purposes. **Statement and Description of Plan for Augmentation: A. Source of Augmentation Water.**

(1) The augmentation sources for this plan will be the fully augmented not nontributary groundwater in the Dawson aquifer and the nontributary groundwater in the nontributary Laramie-Fox Hills aquifer, including such nontributary groundwater underlying Applicant's Property, described in Exhibits B and D to the Application, all as provided in the Augmentation Decree. Such sources may be available by direct discharge to the stream system, by percolation and return to the stream system after domestic use, irrigation, land application, and by rapid infiltration. All of the terms and conditions of the Augmentation Decree shall remain in full force and effect, and shall not be modified by this application, other than to add the additional uses claimed herein. (2) The average amounts of groundwater available for augmentation purposes are those amounts decreed in the above-referenced decree, Case No. 94-CW-023(B), Water Division No. 1 and Case No. 04-CW-098, Water Division No. 1. **B. Use and Estimated Demand.** (1) The use for stock watering claimed herein is for 300 horses, and the estimated demand will not exceed 4.0 acre-feet per year. This additional demand is included in the 198 acre-feet of Dawson aquifer not nontributary groundwater decreed in the Augmentation Decree. (2) Total average Dawson aquifer amounts available for the development, and decreed in the Augmentation Decree, are 198 acre-feet per year, based on a projected 300-year life of the Dawson aquifer (716 acre-feet per year from the Dawson aquifer based on a 100-year aquifer life, 238.7 acre-feet per year based on a 300-year aquifer life). **C. Augmentation and Replacement of Depletions.** (1) Stream Systems Affected:

Cherry Creek, tributary to the South Platte River, and Monument Creek, tributary to the Arkansas River. (2) Replacement of Depletions During Pumping Period. (a) Assuming that the development will achieve return flows of 90% of the water used in-house and a minimum of 10% of the water used for irrigation purposes, the total combined return flows at full build-out will exceed the required augmentation amount, including the amounts claimed herein for stock watering. (b) The domestic and lawngrass return flows will be adequate in quantity to replace depletions caused by the withdrawals of not nontributary ground water from the Dawson aquifer. For the period addressed by this plan, stream depletions caused by the withdrawal of all not nontributary ground water will be adequately augmented by return flows of fully augmented not nontributary groundwater sources. (c) Excess Return Flows: To the extent that lawn irrigation and domestic effluent returns exceed the quantities needed to fully augment all projected stream depletions, Applicant reserves the right to apply for alluvial wells in the Cherry Creek and Monument Creek basins to recapture and reuse such excess returns. (3) Replacement of Depletions During the Post-Pumping Period. (a) Applicant reserves the right to claim and demonstrate that the impact of post-pumping depletions are wholly de minimis and non-injurious and need not be replaced under the law. § 37-90-137(9), C.R.S. (b) Assuming that such additional depletions may be determined to be injurious and replacement is required, Applicant will reserve for such purpose the nontributary groundwater in the Laramie-Fox Hills aquifer underlying the property, as such ground water is decreed in Case No. 94-CW-023(B), Water Division No. 1 and Case No. 04-CW-098, Water Division No. 1. Such quantity is sufficient to fully replace all water withdrawn under this plan for augmentation. (4) Summary of Augmentation Plan. (1) The planned development will require up to 198 acre-feet per year to be produced from the Dawson aquifer. Return flows from uses of such ground water will exceed the annual depletions and will, therefore, adequately replace all projected depletions. (2) To the extent that a "short fall" in actual return flows occurs in any given time period during the first 300 years of operation, adequate nontributary ground water reserves exist to compensate for such short fall. **Administration of Plan for Augmentation:** The Applicant or any successor in interest shall install and maintain such measuring devices and maintain such accounting forms as necessary to demonstrate the adequacy of Applicant's augmentation efforts as a minimum requirement for administration of its augmentation obligations hereunder. Applicant shall make reports to the Division Engineer as required. **Application Filed in Water Divisions 1 and 2:** This Application is being filed in Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the South Platte River system where the majority of stream depletions will occur. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient. **Retained Jurisdiction:** A. Applicant requests the Court to retain jurisdiction for a period to be determined after the entry of the decree to protect against injury to other water rights. Applicant requests that any party or entity invoking such retained jurisdiction must make a prima facie case that injury to its water rights has been actually caused by Applicant's withdrawals or operation of this plan for augmentation. B. Further, Applicant requests that the Court

retain jurisdiction to resolve any controversy which may arise with respect to well construction, well location(s), and amount, timing, and location of replacements hereunder. C. Finally, Applicant requests the Court to retain jurisdiction to allow Applicant to file a separate application for the recapture and reuse of the excess return flows. WHEREFORE, Applicant asks the Court to enter a decree in this matter: (1) Granting the application sought herein. (2) Specifically determining that (a) Applicant's Dawson aquifer ground water withdrawals for stock watering may be augmented with return flows from domestic and lawn irrigation uses of such ground water; (b) Return flows from such uses will be adequate to replace any and all injurious stream depletions caused by pumping of such ground water; (c) Granting this application will not injuriously affect the owners or persons entitled to use water under vested water rights or decreed conditional water rights; (e) Jurisdiction will be retained on the question of injury and as further requested herein; and (f) this Court grant this and such other relief as it deems proper and necessary.

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**CASE NO. 2017CW3072 - WIDEFIELD WATER AND SANITATION DISTRICT**  
**(“Widefield” or “Applicant”), c/o Steven R. Wilson, General Manager, 8495**  
**Fontaine Blvd., Colorado Springs, CO 80925** (Please direct  
communications/pleadings to Applicant's attorneys: Sarah A. Klahn and/or Michael W.  
Daugherty, WHITE & JANKOWSKI LLP, 511 Sixteenth Street, #500, Denver, CO  
80202; (303) 595-9441)

Application for Change of Water Rights

**EL PASO COUNTY**

**2. Background:** Widefield maintains a municipal water and utility system for the benefit of its customers as well as extra-territorial water users that may be within its defined service area or consistent with contractual commitments and/or agency relationships. A map of Widefield's water service area is attached to the Application as Exhibit 1 (hereinafter “Widefield's Service Area”). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Widefield supplies its water users with treated water from wells tributary to Fountain Creek and Jimmy Camp Creek, in El Paso County, Colorado. Widefield also has a contractual interest in Fryingpan-Arkansas Project water (“Project Water”) purchased from the Southeastern Colorado Water Conservancy District that is treated and delivered by the Fountain Valley Authority to Widefield's Service Area or to other entities with whom Widefield has contracts. Widefield's groundwater rights are operated pursuant to decreed plans for augmentation, recharge, and exchange (Case Nos. 81CW229, 86CW116, 02CW39) (“Prior Decrees”) that rely on the use of previously changed Fountain Mutual Irrigation Company (“FMIC”) shares and Project Water for augmentation, exchange, and recharge. This Application does not seek to reopen or add augmentation, exchange, or recharge sources to any of the Prior Decrees. Instead, as detailed within this Application, Widefield seeks a decree to change the consumptive use portion of 241 recently acquired FMIC shares (“241 FMIC Shares”) for additional purposes and on lands in addition to those for which the 241 FMIC Shares were originally decreed. **3. Decreed water right for which change is sought:** **a. Name of structure:** Fountain Mutual Ditch. **b. Priority Date, decree date, case and court of original and all relevant subsequent decrees:** FMIC's water rights were originally

decreed for irrigation purposes in El Paso County District Court in the general adjudication for Fountain Creek. FMIC's water rights were originally decreed as follows:

**DIRECT FLOW**

Priority No.	Priority Date	Decree Date	Total Decree (c.f.s.)
4	09/21/1861	3/6/1882	9.84 (5.38)
7	04/01/1862	3/6/1882	1.125
11	02/01/1863	3/6/1882	16.69
17	12/31/1863	3/6/1882	4.25 (2.125)
21	12/31/1864	3/6/1882	4.65
28	12/31/1866	3/6/1882	8.48
29	12/31/1867	3/6/1882	9.68
41	09/21/1874	3/6/1882	17.05
168	01/31/1903	6/2/1919	343.2

**STORAGE**

Priority No.	Priority Date	Decree Date	Total Decree (AF)
39	3/18/1903	6/02/1919	10,000

**c. Legal description of structure:** The point of diversion of the Fountain Mutual Ditch is located in the SW¼ of Section 20, Township 14 South, Range 66 West of the 6th P.M., El Paso County, Colorado. The location of the point of diversion of the Fountain Mutual Ditch is shown on the general location map attached to the Application as Exhibit 2. **d. Decreed source of water:** Fountain Creek, tributary to the Arkansas River. **e. Decreed use or uses:** FMIC's water rights were originally decreed for irrigation purposes. Portions of FMIC's water rights have been decreed in numerous other changes of water rights and plans of augmentation in Water Court, Division 2, including: Case Nos. 81CW229, 85CW110, 86CW031, 90CW28, 90CW7, 95CW3, 99CW146, 00CW152, 01CW149, 01CW153, 02CW112, 03CW81, 04CW55, 04CW118, 05CW33, 06CW66, 07CW51, 09CW6, 09CW92, 09CW105, 09CW115, 10CW43, and 12CW99 ("Previous Change Cases"). In addition, there is one pending change of FMIC water rights in Case No. 15CW3002. **f. Amount of water that Applicant intends to change:** Widefield intends to change the consumptive use portion of Widefield's 241 FMIC Shares. **4. Detailed description of proposed changes:** **a. Change in type and manner of use:** Widefield seeks to change the irrigation place of use of the consumptive use portion of its 241 FMIC Shares for a planned nonpotable raw water system to irrigate certain areas of Widefield's Service Area ("Raw Water System") as shown on Exhibit 1 to the Application. In addition, Widefield seeks to change the type of use of the consumptive use portion of the 241 FMIC Shares to include, in addition to the existing irrigation use, all municipal uses, including, without limitation, domestic, agricultural, industrial, commercial, irrigation, stock watering, fire protection, uses in Widefield's potable water system, and augmentation purposes that may include augmentation via ground water recharge ("Changed Uses"). The consumptive use portion of Widefield's 241 FMIC Shares may be used for augmentation purposes including, without limitation, the incorporation of the 241 FMIC Shares into a future augmentation plan application or recharge application, or leasing to the extent authorized by statute and the State and Division Engineer's rules and regulations. Widefield reserves the right to add the



consumptive use portion of the 241 FMIC shares as augmentation sources to serve the Venetucci Wells augmentation plan in the manner contemplated in paragraph 12 of Case No. 07CW54. However, Widefield will not use the consumptive use portion of the 241 FMIC Shares for augmentation under any of its Prior Decrees. Widefield seeks the right to use the consumptive use portion of its 241 FMIC Shares directly or after the consumptive use credits are stored in Big Johnson Reservoir and to reuse, successively use, and use to extinction all return flows from such consumptive use portion (including, but not limited to, lawn irrigation return flows to be quantified pursuant to a future application, and sewered return flows) after initial use of the 241 FMIC Shares. **b. Change in place of use:** Widefield seeks to change the place of use of the consumptive use portion of the 241 FMIC Shares to include Widefield's Service Area, as it exists now or may exist in the future, and any areas served by Widefield by extraterritorial agreement or other contract or lease. **5. Historical Use of Fountain Mutual Ditch water rights:** This Court has determined that each FMIC share has historically yielded, on average, the equivalent of 0.7 acre-foot of net replacement or consumptive use water each year, which number represents a portion of the farm headgate delivery. The consumptive use credit allowed to FMIC water rights is a percentage of the FMIC actual delivery to its shareholders computed on the basis of the following table:

**FMIC REPLACEMENT/CONSUMPTIVE USE CREDIT**

<b>Month</b>	<b>Replacement/Consumptive Use Credit as a percentage of farm headgate delivery</b>	<b>Return Flow as a percentage of farm headgate delivery</b>
January	47	53
February	58	42
March	70	30
April	70	30
May	70	30
June	70	30
July	72	28
August	72	28
September	74	26
October	66	34
November	40	60
December	49	51

The historical consumptive use of FMIC shares was determined in Case No. 95CW3, and was affirmed by the Colorado Supreme Court, which findings are binding as a matter of *res judicata*. *Williams v. Midway Ranches Property Owners Association, Inc.*, 938 P.2d 515 (Colo. 1997). This same historical consumptive use determination was affirmed in Case Nos. 99CW146, 00CW152, 01CW149, 01CW153, 02CW112, 03CW81, 04CW55, 04CW118, 05CW33, 06CW66, 07CW51, 09CW6, 09CW92, 09CW105, 09CW115, 10CW43, and 12CW99. There have been no material changed circumstances since entry of decrees in the Previous Change Cases to modify these historical consumptive use determinations. The Fountain Mutual system is a water short system, and the withdrawal of water deliveries under the Fountain Mutual Ditch to lands under the FMIC system results in naturally reduced irrigation and the dry up of property. No dry up covenant for Fountain Mutual lands is therefore required for the 241

FMIC Shares. *Williams v. Midway Ranches Property Owners Association, Inc.*, 938 P.2d 515 (Colo. 1997); and Case Nos. 07CW54, 07CW47, 09CW119, and 10CW43. **6. Return flows:** Return flows from the historical use of the 241 FMIC Shares have accrued to Fountain Creek and will be replaced by Widefield consistent with the terms of the Previous Change Cases. The sources of water for replacement of historical return flows will be the historical return flow portion of the 241 FMIC Shares or as an alternative any other water owned or leased by Widefield that is decreed for replacement and/or augmentation purposes and available at the required time, location, and amount to prevent injury to other water rights. Historical return flows will be replaced only to calling water rights senior to the date of the filing of this Application. **7. Effect of ditch-wide historical use determined for the FMIC water rights:** Widefield's consumptive use credits available from the 241 FMIC Shares will be determined as set forth in the decrees for the Previous Change Cases. In the Previous Change Cases, the average annual historical consumptive use of the Fountain Mutual Ditch water rights was quantified at 0.7 acre-foot per share for all shares of FMIC, based on a ditch-wide consumptive use analysis. The total average annual historical consumptive use for the 241 FMIC Shares is 168.7 acre-feet. The total amount of consumptive use pursuant to the FMIC water rights varies from year to year based upon the amount of water available for diversion under those rights. Therefore, the actual consumptive use available from the 241 FMIC Shares shall be based on actual in-priority diversions applied to the monthly replacement/consumptive use credit schedule set forth in paragraph 5, above. Consumptive use credits will be limited to a maximum of one acre-foot per share per year, and to an average of 0.7 acre-foot per year over a 20 year running average. The historical consumptive use of the FMIC water rights, as determined in the Previous Change Cases, is res judicata in future proceedings, such as this case involving the FMIC water rights, pursuant to *Williams v. Midway Ranches Property Owners Ass'n., Inc.*, 938 P.2d 515, 521 (Colo. 1997). **8. Plan of Operation:**  
**a.** Widefield shall be entitled to use the consumptive use portion of its 241 FMIC Shares in the follow manner: **i. Storage of consumptive use portion.** Widefield may store the consumptive use portion of the 241 FMIC Shares in FMIC's Big Johnson Reservoir, and deliver to Fountain Creek the return flow portion of the 241 FMIC Shares out of the Cruse Gulch augmentation station located in the NE1/4 of the NE1/4 of Section 19, Township 15 South, Range 65 West of the 6th P.M., or any other augmentation station that Widefield has a legal right to use. **ii.** Widefield may release at any time its share of water stored in Big Johnson Reservoir under the FMIC water storage right for the Changed Uses sought herein. The monthly FMIC replacement/consumptive use credit and return flow schedule set forth in the schedule in paragraph 5, above, will be applied to such storage releases at the time of and in the amount of its delivery through the Cruse Gulch augmentation station or any other augmentation station that Widefield has a legal right to use. **iii. For irrigation uses in the Raw Water System:** **(1)** After storage in Big Johnson Reservoir, Widefield may pump the consumptive use portion of the 241 FMIC Shares directly from Big Johnson Reservoir for irrigation of lands under the Raw Water System. Widefield shall place a meter on the pump in Big Johnson Reservoir to quantify the water Widefield is pumping directly out of Big Johnson Reservoir. **(2)** To the extent Widefield's changed FMIC shares are not stored in the manner described above, Widefield may contemporaneously divert directly from the Fountain Mutual ditch

to irrigate lands under the Raw Water System. **iv.** Use of Widefield’s changed 241 FMIC shares for augmentation or recharge will not be made until Widefield obtains decrees or future water court approvals (such as that required under Case No. 07CW54.) **v.** Widefield delivers its 241 FMIC Shares to an augmentation station upstream from the Big Johnson Reservoir by means of an intraditch exchange during any month in which deliveries of water from FMIC direct flow rights to Widefield may be inadequate. The intraditch exchange from Big Johnson Reservoir to an upstream augmentation station can operate at any time FMIC is diverting water except when both (a) Big Johnson Reservoir is full; and (b) the date is between November 15 and March 15. **vi.** To operate pursuant to the changed water rights sought herein, Widefield will deliver to Fountain Creek the return flow portion of the 241 FMIC Shares through the Cruse Gulch augmentation station or any other augmentation station that Widefield has a legal right to use. **9. Names and address of owners or reputed owners of land upon which any new diversion or storage structure, or modification to any exiting 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:** The Fountain Mutual Ditch headgate and Big Johnson Reservoir are located upon land or easements owned by FMIC, c/o Gary Steen, 487 Anaconda Drive, Colorado Spring, Colorado 80919; and Cruse Gulch augmentation station is owned by Widefield and City of Fountain, c/o Curtis Mitchell, 116 South Main Street, Fountain, Colorado 80817.

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**CASE NO. 2017CW3073 - CITY OF TRINIDAD, c/o Mike Valentine, 135 N. Las Animas Street, Trinidad, CO 81082** (Please direct all correspondence and inquiries regarding this matter to Applicant’s attorneys: Jeffrey J. Kahn, Madoline Wallace-Gross and Kara N. Godbehere, Lyons Gaddis Kahn Hall Jeffers Dworak & Grant, P.C., P. O. Box 978, Longmont, CO 80502-0978; (303) 776-9900)

Application for Changes of Water Rights

**LAS ANIMAS COUNTY**

**2. Background:** Applicant owns 0.7125 cfs of the Lewelling-McCormick Ditch water right (Priority No. 13) and 1.14 cfs of the Hoehne Ditch water right (Priority No. 20), which are collectively referred to as the “Subject Water Rights.” The Subject Water Rights are diverted in the John Flood Ditch. Applicant seeks to change the place of use, the type of use and add an alternate point of diversion/storage for Applicant’s interest in the Subject Water Rights. **3. Decreed water rights for which change is sought:** a)

Description of original decrees for the Subject Water Rights:

Ditch	District 19 Priority Number	Appropriation Date	Original Decree Date	Civil Action Number (District Court, Las Animas County)	Decreed Use	Amount Decreed Absolute (cfs)	Trinidad Ownership Claimed in this Application (cfs)
Lewelling -McCormick	13	1/1/1864	8/10/1903	Original Adjudication	Irrigation	5.0	<b>0.7125</b>
Hoehne	20	10/07/1865	8/10/1903	Original Adjudication	Irrigation	24.0	<b>1.14</b>
						<b>Total</b>	<b>1.8525</b>

b) Description of supplemental decrees for the Subject Water Rights: The Subject Water Rights are diverted from the Johns Flood Ditch. i) *Priority 13, Lewelling-McCormick Ditch.* The point of diversion for 1.25 cfs of Priority No. 13 was transferred to the John Flood Ditch by decree of the District Court, Las Animas County, on March 21, 1911. ii) *Priority No. 20, Hoehne Ditch.* The point of diversion for 4.95 cfs and 1.20 cfs of Priority No. 20 was transferred to the John Flood Ditch by decree of the District Court, Las Animas County on March 9, 1909. The point of diversion for an additional 1.20 cfs of Priority No. 20 was transferred to the John Flood Ditch by decree of the District Court, Las Animas County, on March 21, 1911. c) Decreed point of diversion for Subject Water Rights: The Subject Water Rights are diverted from the John Flood Ditch. Pursuant to Civil Action No. 15960, District Court, Las Animas County, the John Flood Ditch diverts at the Model Canal headgate, which is located on the north bank of the Purgatoire River at a point which is North 53° West 5,780 feet from the Southeast Corner of Section 33, Township 32 South, Range 63 West, of the 6<sup>th</sup> P.M., The UTM coordinates are NAD 83, Zone 13, Easting 547522, Northing 4118950. d) Source of Subject Water Rights: Purgatoire River, also known as the Las Animas River. e) Historic use of Subject Water Rights: The Subject Water Rights were historically used to flood irrigate 112 acres located in Section 7, Township 32 South, Range 62 West of the 6<sup>th</sup> P.M., Las Animas County, Colorado as depicted on the map attached to the Application as Exhibit A. A copy of the CDSS diversion records summary for the John Flood Ditch from 1913 through 2016 is attached to the Application as Exhibit B. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) In addition, the Subject Water Rights have been usable for winter storage as part of the water rights controlled by the Purgatoire River Water Conservancy District. Such water rights are governed by the following: 1) the ruling in Civil Action No. 19793, District Court, Las Animas County; 2) the Operating Principles and Criteria, as amended for the Trinidad Project; and 3) the ruling in *Purgatoire River Water Conservancy District v. Kuiper*, 593 P.2d 333 (1979). **4. Proposed changes of the Subject Water Rights:** Applicant seeks to change the Subject Water Rights as follows: a) Change of use: Applicant seeks to add the following uses to the previously decreed irrigation use for the Subject Water Rights: municipal, industrial, maintenance of the Trinidad Reservoir permanent fishery pool, recreation and fish propagation uses. Municipal includes all municipal uses, such as, but not by way of limitation, domestic, commercial, manufacturing, industrial, fire protection, generation of electric power and power generally, recreation, fish and wildlife propagation, sewage treatment, street sprinkling, maintenance of adequate storage reserves, replacement and substitution, augmentation and exchange. Applicant also seeks to change the Subject Water Rights from direct use to storage in Trinidad Reservoir, described in ¶ 4.c., for later application to beneficial use either in Trinidad Reservoir or after release. Applicant seeks to use, reuse, successively use the Subject Water Rights to extinction and to dispose of the Subject Water Rights by sale, contract, exchange or otherwise. b) Change of place of use: Applicant seeks a change of the place of use of the Subject Water Rights to all areas within Applicant's service area boundaries and outside such boundaries by contract. c) Alternate point of diversion/storage. In addition to the existing point of diversion of the Subject Water Rights, Applicant seeks an alternate point of diversion/storage at Trinidad Reservoir. Trinidad Reservoir's dam is located in Section

27, Township 33 South, Range 64 West of the 6<sup>th</sup> P.M. The UTM coordinates are NAD 83, Zone 13, Easting 539939, Northing 4110693. **5. Remarks.** a) Applicant will maintain dominion and control of all return flows after initial use of the Subject Water Rights, including but not limited to lawn irrigation return flows and sewer return flows. b) Applicant will replace historical return flows in amount, time and location as necessary to prevent injury to other water rights. Applicant is appropriating its return flows. Applicant shall only replace historical return flows when the downstream call is senior to December 28, 2017. c) Article V, Section B.4.a.1. of the Operating Principles for the Trinidad Dam and Reservoir Project, as amended in 2004 (“Operating Principles”), limit the water available to be diverted under Applicant’s interest in the John Flood Ditch to that amount of historic consumptive use attributable to 948 acres of historically irrigated land. The historic consumptive use claimed in this application, when combined with the historic consumptive use decreed in Case Nos. 88CW061, 06CW78 and 08CW101 will exceed the limits imposed by the Operating Principles. Before Applicant takes credit for all of the dry-up in the same year under those decrees and this application, Applicant will obtain an amendment of the Operating Principles. d) A map of the structures described in this application is attached to the Application as Exhibit C. **6. Names and addresses of owners of the land upon which the diversion and/or storage structures are located:** a) The Bureau of Reclamation owns the land upon which the Trinidad Reservoir diversion and storage structures are located. Its address is United States Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18E, Loveland, Colorado 80537-9711. b) The Model Land & Irrigation Company owns the land upon which the point of diversion of the John Flood Ditch is located. Its legal address is the Model Land & Irrigation Company, P.O. Box 57, Model, CO 81059. Notice was also sent to Model Land & Irrigation Company, c/o Topar Racing, 13747 US-350, Trinidad, CO 81082.

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**CASE NO. 2017CW3074 - FUTURE DREAMS II, LLC, 2656 McCormick Avenue, Pueblo, CO 81001** (Please direct all pleadings and correspondence to Applicant’s attorneys: David M. Shohet and Brian G. Sheldon of Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921; (719) 471-1212)  
Application for Plan for Augmentation

**PUEBLO COUNTY, COLORADO**

Applicant is the owner of approximately 7.18 acres located in the SW ¼ of the NE ¼ of Section 33, Township 20 South, Range 64 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado (“Property”). The Property is shown on the Exhibit A map attached to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Property’s address is 2656 McCormick Ave., Pueblo, CO 81001. 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. **Structures to be Augmented.** The structures to be augmented consist of up to two wells to be constructed on Applicant’s Property. One well, Well Permit No. 78950-F-R, may be used under this plan for augmentation. **Water Rights to be Used for Augmentation.** Water rights to be used for augmentation consists of fully consumable water provided based on Applicant’s

status as a member of the Arkansas Groundwater Users Association (“AGUA”). AGUA is a not for profit, member owned association organized to protect and develop surface and underground waters in the Arkansas River Basin. Its stated purposes include to “develop, obtain, adjudicate, and deliver to and otherwise provide protection for its members by augmentation or other water supplies.” Excelsior Ditch. AGUA’s primary source of replacement water is consumptive use credits from AGUA’s Excelsior Ditch shares changed in District Court, Water Division 2, Case No. 04CW62, which may be delivered through AGUA’s augmentation station or recharge ponds.. AGUA owns 1,792 and Stonewall Water, LLC owns 1,541 of the 3,333 shares in the Excelsior Irrigating Company. AGUA may lease some or all of the 1,541 shares owned by Stonewall Water, LLC. Fully Consumable Water. AGUA also leases fully consumable water from the water providers. Fully consumable water that may be leased include, without limitation, the following: Pueblo Board of Water Works. Fully consumable water from the Board of Water Works of Pueblo, Colorado (“PBWW”) decreed or legally available for augmentation use under this plan including such stored water, direct flow water, reusable municipal effluent, reusable irrigation return flows and reusable lawn irrigation return flows delivered to the Arkansas River. Reusable effluent may be released from Pueblo Municipal Wastewater Treatment Plant. This plant currently discharges treated wastewater to the Arkansas River at a point in the Northeast quarter of Section 5, Township 21 South, Range 64 West of the 6th P.M. The approximate latitude of said point is 38°15'22" North and the approximate longitude is 104°34'20" West. PBWW’s reusable irrigation return flows accrue to the Arkansas River in the reach from Fountain Creek to John Martin Reservoir following the lease of PBWW’s fully consumable water to irrigation ditch companies for irrigation use. PBWW’s reusable lawn irrigation return flows accrue to the Arkansas River upstream of the confluence of the Arkansas River and St. Charles River. Triview Metropolitan District. Fully consumable water from the Triview Metropolitan District. Triview Metropolitan District water is treated and discharged to Monument Creek from the Upper Monument Creek Regional Wastewater Treatment Facility located in the SW ¼ Section 35, Township 11 South, Range 67 West of the 6th P.M. The return flows are derived from Triview’s Denver Basin not nontributary groundwater water rights, which are described in the Decrees in Case Nos. 95CW153, 98CW134 and 88CW23(A). Colorado Springs Utilities. Fully consumable water from Colorado Springs Utilities under the agreement between Colorado Springs Utilities and AGUA dated May 16, 2014, and released to one of the following points: Fountain Creek at the Las Vegas Street Wastewater Treatment Facility Outfall on Fountain Creek located in El Paso County in the SW¼ SW¼ Section 20, Township 14 South, Range 66 West, 6<sup>th</sup> P.M. and at the J.D. Phillips Water Reclamation Facility outfall on Monument Creek in Section 30, Township 13 South, Range 66 West, 6<sup>th</sup> P.M. or at the confluence of Fountain Creek and the Arkansas River. **Diversions and Depletions**. Uses. Indoor and outdoor cultivation and irrigation of a crop, including cannabis (hemp and marijuana), and the associated commercial, processing, industrial, domestic, drinking and sanitary needs for the grow facility. Diversions. Applicant’s grow facility will operate year-round, with all uses generally increasing during the summer months. The anticipated maximum well diversions under this plan is 10 annual acre feet. Depletions. Water diverted for all uses will be considered to be one-hundred percent consumptive. Return Flows. As all uses are being considered one hundred

percent consumptive Applicant is not claiming any return flows from diversions from the wells. However, Applicant reserves the right to claim such return flows in the future through amendment of the decree. Location and Timing of Depletions. Well pumping by all wells on Applicant's Property will be entitled to occur on a year-round basis, resulting in year-round lagged depletions to the Arkansas River. Depletions from pumping wells located on the Property occur to the Arkansas River in either the the SW ¼ of the NE ¼ of Section 33, Township 20 South, Range 64 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado. Applicant's water resource engineer has generated a Unit Response Function (URF) for the wells. The lagging analysis shows that at least 95 percent of the depletions are expected to occur within at least 11 months of pumping, as described below:

**Future Dreams Well – Unit Response Function**

Month	1	2	3	4	5	6	7	8	9	10	11
Fraction of Stream Depletion from Pumping in Month 1	0.068	0.220	0.207	0.147	0.110	0.078	0.059	0.042	0.030	0.023	0.016

Replacement Water. Replacement water to augment the Applicant's well depletions currently totals 10 are-feet from the Lease. Accordingly, total annual depletions, including lagged depletions, shall not exceed 10 annual acre feet. Current replacement water provided by AGUA from Pueblo Board of Water Works, Triview Metropolitan District, and Colorado Springs Utilities is fully consumable and is available to the Applicant at the point of depletion on the Arkansas River caused by the pumping of any well under this plan. **Name and Address of Owners of Land Upon Which Structures are Located**. All structures, wells, and operations covered by this Application occur on property owned by the Applicant.

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**CASE NO. 2017CW3075 - CUCHARAS SANITATION AND WATER DISTRICT ("Cucharas"), 16925 Highway 12, Cuchara, CO 81055; HUERFANO COUNTY WATER CONSERVANCY DISTRICT ("Huerfano"), P. O. Box 442, La Veta, CO 81055; and TOWN OF LA VETA ("La Veta"), P. O. Box 174, La Veta, CO 81055**

(Please address all correspondence and inquiries regarding this matter to Applicants' attorneys: For Cucharas: Stuart B. Corbridge and Geoffrey M. Williamson, Vranesh & Raisch, LLP, 1720 - 14<sup>th</sup> Street, Suite 200, Boulder, CO 80302; (303) 443-6151; For Huerfano: Steven T. Monson and Ryan W. Farr, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, CO 80921; (719) 471-1212; For La Veta: John J. Cyran, Hoskin Farina & Kampf, P.C., 3570 E. 12<sup>th</sup> Avenue, Suite 314, Denver, CO 80206; (720) 459-5760

Application for Conditional Water Storage Rights and Conditional Appropriative Rights of Exchange

**HUERFANO AND PUEBLO COUNTIES, COLORADO**

Cucharas, Huerfano, and La Veta are referenced herein either individually, or collectively as "Applicants." **II. Summary of Application**. The Applicants seek joint conditional water storage rights for the structures listed below and joint conditional appropriative rights of exchange through portions of the Huerfano River and Cucharas River basins using water rights listed in Paragraph IV, below, as the sources of substitute supply. The Application seeks in part to implement the findings and recommendations of the Cucharas Basin Collaborative Storage Study ("Storage Study")

commissioned by the Applicants and other interested parties. **III. Water Storage Rights.** **A. Name of Structure: Maria Stevens Reservoir – Existing Storage Space and Enlargement.** 1. Legal Description of Structure. The center of the dam is located in the SW1/4 of the NW1/4 of Section 28, Township 27 South, Range 65 West of the 6<sup>th</sup> P.M. UTM coordinates NAD83 13 S; Easting: 528333, Northing: 4169042. 2. Source. The source for the filling of Maria Stevens Reservoir Existing Storage Space and Enlargement is the Cucharas River by means of the Duran Ditch, tributary to the Huerfano River, tributary to the Arkansas River. 3. Appropriation. The appropriation date is July 18, 2017, the date of the meeting between the Applicants to pursue an application for the herein claimed exchanges and water storage rights to effectuate the findings of the Storage Study after public notices of the meetings concerning the Storage Study were published and after the final portion of the Storage Study was completed in June of 2017 thereby confirming, implementing, and demonstrating the Applicants' intent and actions to initiate and appropriate the water right for the beneficial uses as set forth herein. 4. Amount of Water Claimed. 602 acre-feet with the right to fill and refill, conditional for the existing storage space, and 642 acre-feet with the right to fill and refill, conditional for the enlargement. 5. Uses. Municipal, augmentation, domestic, industrial, commercial, irrigation, stock watering, recreation, fish and wildlife preservation and propagation, wetlands, fire protection and suppression, aquifer recharge, substitution, exchange, and replacement, including use, reuse, successive use, and full consumption and disposition to extinction. 6. Reservoir Specifications. Maria Stevens Reservoir Enlargement will result in a maximum surface area at high water line of 227 acres. The maximum height of the dam will be approximately 19.5 feet. Maria Stevens Reservoir as currently exists has a maximum surface area at high water line of 202 acres with a maximum dam height of approximately 16.5 feet. 7. Total Capacity. Total capacity of the reservoir after the Maria Stevens Enlargement will be approximately 2,743 acre-feet with 642 acre-feet constituting the enlargement with 1,101 acre-feet of dead storage with the entirety of the enlargement being active capacity. 8. Date Water Applied to Beneficial Use. Water has not yet been put to beneficial use. 9. Places of Use. Within the service area boundaries of the Applicants as they presently exist or as may be modified in the future. 10. Ownership. The owner of the land containing Maria Stevens Reservoir is the Maria Lake Grazing Association, LLC, 7343 South Alton Way, Suite 100, Centennial, Colorado 80112-2342. **B. Name of Structure: La Veta Town Reservoir Enlargement.** 1. Legal Description of Structure. The center of the dam is located in the NW1/4 of the SE1/4 of Section 28, Township 29 South, Range 68 West of the 6<sup>th</sup> P.M. UTM coordinates NAD83 13 S; Easting: 499522, Northing: 4149667. 2. Source. The source for the filling of La Veta Town Reservoir Enlargement is the Cucharas River, tributary to the Huerfano River, tributary to the Arkansas River. 3. Appropriation. The appropriation date is July 18, 2017, the date of the meeting between the Applicants to pursue an application for the herein claimed exchanges and water storage rights to effectuate the findings of the Storage Study after public notices of the meetings concerning the Storage Study were published and after the final portion of the Storage Study was completed in June of 2017 thereby confirming, implementing, and demonstrating the Applicants' intent and actions to initiate and appropriate the water right for the beneficial uses as set forth herein. 4. Amount of Water Claimed. 150 acre-feet with the right to fill and refill,



conditional. 5. Uses. Municipal, augmentation, domestic, industrial, commercial, irrigation, stock watering, recreation, fish and wildlife preservation and propagation, wetlands, fire protection and suppression, aquifer recharge, substitution, exchange, and replacement, including use, reuse, successive use, and full consumption and disposition to extinction. 6. Reservoir Specifications. La Veta Town Reservoir Enlargement will result in a maximum surface area at high water line of 39 acres. Maximum height of the dam will be approximately 10 feet. La Veta Town Reservoir as currently exists has a maximum surface area at high water line of 32 acres with a maximum dam height of approximately 10 feet. 7. Total Capacity. Total capacity after the La Veta Town Reservoir Enlargement will be approximately 416 acre-feet with 150 acre-feet constituting the enlargement with 27 acre-feet of dead storage with the entirety of the enlargement being active capacity. 8. Date Water Applied to Beneficial Use. Water has not yet been put to beneficial use. 9. Places of Use. Within the service area boundaries of the Applicants as they presently exist or as may be modified in the future. 10. Ownership. The owner of the property where the La Veta Town Reservoir is located is the Town of La Veta, P.O. Box 174, La Veta, Colorado 81055. 11. Comments. The water right herein claimed for the La Veta Town Reservoir Enlargement is to be stored in the same enlargement space as set forth in Case No. 00CW149, District Court, Water Division 2.

**C. Name of Structure: Bruce Canyon Reservoir.** 1. Legal Description of Structure. The center of the dam is located in the SE1/4 of the NW1/4 of Section 5, Township 30 South, Range 68 West of the 6<sup>th</sup> P.M. UTM coordinates NAD83 13 S; Easting: 497394, Northing: 4147036. 2. Source. The source for the filling of Bruce Canyon Reservoir is the Cucharas River, tributary to the Huerfano River, tributary to the Arkansas River. 3. Appropriation. The appropriation date is July 18, 2017, the date of the meeting between the Applicants to pursue an application for the herein claimed exchanges and water storage rights to effectuate the findings of the Storage Study after public notices of the meetings concerning the Storage Study were published and after the final portion of the Storage Study was completed in June of 2017 thereby confirming, implementing, and demonstrating the Applicants' intent and actions to initiate and appropriate the water right for the beneficial uses as set forth herein. 4. Amount of Water Claimed. 1,406 acre-feet with the right to fill and refill, conditional. 5. Uses. Municipal, augmentation, domestic, industrial, commercial, irrigation, stock watering, recreation, fish and wildlife preservation and propagation, wetlands, fire protection and suppression, aquifer recharge, substitution, exchange, and replacement, including use, reuse, successive use, and full consumption and disposition to extinction. 6. Reservoir Specifications. Bruce Canyon Reservoir will have a maximum surface area at high water line of 62 acres. The maximum height of the dam will be approximately 77 feet. 7. Total Capacity. Total capacity of Bruce Canyon Reservoir will be approximately 1,406 acre-feet with 189 acre-feet of dead storage. 8. Date Water Applied to Beneficial Use. Water has not yet been put to beneficial use. 9. Places of Use. Within the service area boundaries of the Applicants as they presently exist or as may be modified in the future. 10. Ownership. The owner of the property whereby the Bruce Canyon Reservoir is to be constructed is Lon Otto Goemmer, P.O. Box 165, La Veta, Colorado 81055.

**D. Name of Structure: South Baker Creek Reservoir.** 1. Legal Description of Structure. The center of the dam is located in the SW1/4 of the NE1/4 of Section 16, Township 31 South, Range 69 West of the 6<sup>th</sup> P.M. UTM coordinates NAD83 13 S; Easting: 490452,

Northings: 4133683. 2. Source. The sources for the filling of South Baker Creek Reservoir are South Baker Creek and Baker Creek, tributary to the Cucharas River, tributary to the Huerfano River, tributary to the Arkansas River. 3. Appropriation. The appropriation date is July 18, 2017, the date of the meeting between the Applicants to pursue an application for the herein claimed exchanges and water storage rights to effectuate the findings of the Storage Study after public notices of the meetings concerning the Storage Study were published and after the final portion of the Storage Study was completed in June of 2017 thereby confirming, implementing, and demonstrating the Applicants' intent and actions to initiate and appropriate the water right for the beneficial uses as set forth herein. 4. Amount of Water Claimed. 122 acre-feet with the right to fill and refill, conditional. 5. Uses. Municipal, augmentation, domestic, industrial, commercial, irrigation, stock watering, recreation, fish and wildlife preservation and propagation, wetlands, fire protection and suppression, aquifer recharge, substitution, exchange, and replacement, including use, reuse, successive use, and full consumption and disposition to extinction. 6. Reservoir Specifications. South Baker Creek will have a maximum surface area at high water line of 5 acres. The maximum height of the dam will be approximately 66 feet. 7. Total Capacity. Total capacity of South Baker Creek Reservoir will be approximately 122 acre-feet with 29 acre-feet of dead storage. 8. Date Water Applied to Beneficial Use. Water has not yet been put to beneficial use. 9. Places of Use. Within the service area boundaries of the Applicants as they presently exist or as may be modified in the future. 10. Ownership. The owner of the property where the South Baker Creek Reservoir is to be located is Marshall M. Moore, 144 Aspen Road, Cuchara, CO 81055. **E. Name of Structure: Britton Reservoirs Enlargement.** 1. Legal Description of Structure. The center of the dam is located in the SW1/4 of the NE1/4 of Section 22, Township 31 South, Range 69 West of the 6<sup>th</sup> P.M. UTM coordinates NAD83 13 S; Easting: 491938, Northing: 4131986. 2. Source. The source for the filling of Britton Reservoirs Enlargement is the South Fork of the Cucharas River, tributary to the Cucharas River, tributary to the Huerfano River, tributary to the Arkansas River. 3. Appropriation. The appropriation date is July 18, 2017, the date of the meeting between the Applicants to pursue an application for the herein claimed exchanges and water storage rights to effectuate the findings of the Storage Study after public notices of the meetings concerning the Storage Study were published and after the final portion of the Storage Study was completed in June of 2017 thereby confirming, implementing, and demonstrating the Applicants' intent and actions to initiate and appropriate the water right for the beneficial uses as set forth herein. 4. Amount of Water Claimed. 42 acre-feet with the right to fill and refill, conditional. 5. Uses. Municipal, augmentation, domestic, industrial, commercial, irrigation, stock watering, recreation, fish and wildlife preservation and propagation, wetlands, fire protection and suppression, aquifer recharge, substitution, exchange, and replacement, including use, reuse, successive use, and full consumption and disposition to extinction. 6. Reservoir Specifications. The Britton Reservoir Enlargement will result in a maximum surface area at high water line of 2.2 acres. The maximum height of the dam will be approximately 48 feet. 7. Total Capacity. Total capacity of the Britton Reservoir Enlargement will be approximately 42 acre-feet with 5 acre-feet of dead storage. 8. Date Water Applied to Beneficial Use. Water has not yet been put to beneficial use. 9. Places of Use. Within the service area boundaries of the

Applicants as they presently exist or as may be modified in the future. 10. Ownership. The owners of the property where the Britton Ponds are located and where the Britton Reservoirs Enlargement is to be located is Cucharas Sanitation & Water District, 16925 Highway 12, Cuchara, Colorado 81055, and Robert P. Beck and Kathy L. Beck, 555 Community Road, La Veta, CO 81055. **F. Approximations**. The dimensions, capacities, and locations of the above listed reservoir structures are approximations and may change. Applicants reserve the right to modify the dimensions, capacities, and locations. **G. Locations**. The approximate locations of all of the above listed structures are as shown on Exhibit A 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.) **IV. Sources of Substitute Supply for the Exchanges**. **A. Cucharas' Water Rights**. **1. Ballejos Ditch – Priority Nos. 8 and 13**. a. Decree Information: Priority No. 8 and Priority No. 13 on the Cucharas River were originally decreed for diversion at the Ballejos Ditch by the Huerfano County District Court on June 12, 1889, in what is commonly known as the “Read” decree for former Water District No. 16. Cucharas is the owner of 0.375 c.f.s. of Priority No. 8 and 0.375 c.f.s. of Priority No. 13. The point of diversion and type and place of use of Cucharas' interest in the Priority No. 8 and Priority No. 13 water rights were changed in Water Division 2 Case No. 82CW215, entered September 29, 1984, and Water Division 2 Case No. 85CW136, entered June 19, 1987. b. Decreed Points of Diversion: i. the headgate of the Ballejos Ditch is located approximately two miles east of the Town of Walsenburg on the north bank of the Cucharas River in the SE1/4 of the NE1/4 of Section 2, Township 28 South, Range 66 West, 6<sup>th</sup> P.M. ii. Based on the changes of water rights decreed in Case No. 82CW215 and Case No. 85CW136, Cucharas' interest in Priority No. 8 and Priority No. 13 can also be diverted at the following locations: (a) The intake to the Cucharas Sanitation & Water District's treatment facilities on the Cucharas River at a point in Section 22, Township 31 South, Range 69 West, 6<sup>th</sup> P.M., from which the west quarter corner of Section 15, Township 31 South, Range 69 West, 6<sup>th</sup> P.M. bears north 14°25' west a distance of 5,770 feet. (b) The White Creek Reservoir storage facility decreed for Sections 14, 15, 22, and 23, Township 31 South, Range 69 West, 6<sup>th</sup> P.M. (c) The Goemmer Reservoir storage facility decreed for Sections 5 and 6, Township 30 South, Range 68 West, 6<sup>th</sup> P.M.; filled by diversions through the Butte Ditch, which diverts from the Cucharas River in the NW1/4 of the NW1/4 of Section 8, Township 30 South, Range 68 West, 6<sup>th</sup> P.M. (d) Britton Reservoir No. 1, located in the SW1/4 of the NE1/4 of Section 22, Township 31 South, Range 69 West, 6<sup>th</sup> P.M., at a point approximately 1,608 feet west and 2,730 feet south of the NE corner of Section 22. (e) Britton Reservoir No. 2, located in the SW1/4 of the NE1/4 of Section 22, Township 31 South, Range 69 West, 6<sup>th</sup> P.M., at a point approximately 175 feet north and 1,979 feet west from the east quarter corner of Section 22; filled by diversions through the Deadman Creek Feeder, located in the NW1/4 of the SE1/4 of Section 22, Township 31 South, Range 69 West, 6<sup>th</sup> P.M., approximately 2,200 feet west of the east section line and 2,500 feet north of the south section line of Section 22, and the South Fork Feeder, located in the SW1/4 of the NE1/4 of Section 22, Township 31 South, Range 69 West, approximately 1,700 feet west of the east quarter corner of Section 22. (f) Britton Reservoir No. 3, located in the SW1/4 of the NE1/4 of Section 22, Township 31 South, Range 69 West, 6<sup>th</sup> P.M., at a point approximately 300 feet north and 1,999 feet west

from the east quarter corner of Section 22; filled by diversions through the Deadman Creek Feeder, located in the NW1/4 of the SE1/4 of Section 22, Township 31 South, Range 69 West, 6<sup>th</sup> P.M., approximately 2,200 feet west of the east section line and 2,500 feet north of the south section line of Section 22, and the South Fork Feeder, located in the SW1/4 of the NE1/4 of Section 22, Township 31 South, Range 69 West, approximately 1,700 feet west of the east quarter corner of Section 22. (g) The intake for the Cucharas Sanitation & Water District located on Baker Creek at a point on the north bank of Baker Creek, which is 850 feet easterly of the center of Section 17, Township 31 South, Range 69 West, 6<sup>th</sup> P.M. (h) The intake for the Cucharas Sanitation & Water District located on Dotson Creek (aka Dodgeton Creek and Dodston Creek) from whence the east quarter corner of Section 4, Township 31 South, Range 69 West bears south 52°10' east, a distance of 3,245 feet more or less. c. Source: The source of water for the Ballejos Ditch is the Cucharas River, tributary to the Huerfano River, tributary to the Arkansas River. d. Appropriation Date: i. Priority No. 8: April 1, 1868. ii. Priority No. 13: April 1, 1869. e. Comments: In Case Nos. 82CW215 and 85CW136, the Cucharas interest in the Priority No. 8 and Priority No. 13 water rights was decreed for diversion at the points of diversion described in Paragraph IV.A.1.b.ii in the combined maximum amount of 0.525 c.f.s. This amount may be used, reused, successively used, and fully consumed and disposed of to extinction. **B. Huerfano's Water Rights. 1. William Craig Ditch.** a. Decree Information: The William Craig Ditch ("Wm. Craig Ditch") was decreed on June 12, 1889 by the original adjudication of the District Court of Huerfano County for irrigation as local Priority No. 7. Huerfano owns a 6/7<sup>th</sup> interest in the Wm. Craig Ditch, which interest was changed in Case No. 13CW3062, District Court, Water Division 2 ("Wm. Craig Ditch Water Right"). b. Decreed Point of Diversion: The decreed point of diversion for the Wm. Craig Ditch is located in Section 31, Township 26 South, Range 67 West, 6<sup>th</sup> P.M. c. Source: The source of water for the Wm. Craig Ditch is the Huerfano River, tributary to the Arkansas River. d. Appropriation Date: The appropriation date for the Wm. Craig Ditch is May 1, 1864 for 2.4 c.f.s., 2.06 c.f.s. of which is Huerfano's Water Right. e. Comments: Huerfano adjudicated a change of water right of the Wm. Craig Ditch Water Right in Case No. 13CW3062, District Court, Water Division 2. Huerfano changed the use of the Wm. Craig Ditch Water Right from direct flow irrigation to direct flow and storage for irrigation, domestic, municipal, commercial, industrial, and recreations uses, and other beneficial uses including augmentation, exchange, recharge, and replacement. The place of use was changed from the historically irrigated property to use within the boundaries of Huerfano's service area. **2. Jose Maria Ditch.** a. Decree Information: The Jose Maria Ditch was decreed on June 12, 1889 by the original adjudication of the District Court of Huerfano County for irrigation as local Priority No. 51. Huerfano owns a one-third (1/3<sup>rd</sup>) interest in the Jose Maria Ditch ("Jose Maria Ditch Water Right"). b. Decreed Point of Diversion: The decreed point of diversion for the Jose Maria Ditch is in the NW1/4 of the SE1/4 of Section 3, Township 27 South, Range 68 West, 6<sup>th</sup> P.M. c. Source: The source for the Jose Maria Ditch is the Huerfano River, tributary to the Arkansas River. d. Appropriation Date: The appropriation date for the Jose Maria Ditch is May 1, 1873 for 0.24 c.f.s., 0.08 c.f.s. of which is the Jose Maria Ditch Water Right. **C. La Veta's Water Rights. 1. Mexican Ditch.** a. Decree Information: The Mexican Ditch water right was originally decreed on June 12, 1889 by the original adjudication of the District Court

of Huerfano County for irrigation as local Priority No. 14. b. Decreed Point of Diversion: the decreed point of diversion for the Mexican Ditch is in the NE1/4 of the NW1/4 of Section 31, Township 27 South, Range 65 West, 6<sup>th</sup> P.M. c. Source: The source for the Mexican Ditch is the Cucharas River, tributary to the Huerfano River, tributary to the Arkansas River. d. Appropriation Date: the appropriation date for the Mexican Ditch is April 8, 1869 for 4.9 c.f.s. e. Comments: The historical consumptive use of La Veta's 2.0 c.f.s. interest in the Mexican Ditch was quantified in Case No. 00CW130, District Court, Water Division 2, on July 19, 2010; its decreed uses were changed to include municipal uses including exchange, and the place of use was changed to include La Veta's municipal service area as it existed in 2010, or may exist in the future. **D. Other Water Rights**. **1. Pueblo Board of Water Works**. Pueblo Board of Water Works ("PBWW") leases direct source and augmentation water from its water rights to water users. Applicants intend to lease such water rights for exchange hereunder. Water available for lease by PBWW includes PBWW'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 PBWW may deliver water, the sources of which are at the option of PBWW, as long as they are legally available for their requested purposes. Water deliveries may include, without limitation, water stored in Twin Lakes Reservoir (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, 6<sup>th</sup> P.M., in Lake County), Turquoise Reservoir (located on Lake Fork Creek in Sections 7, 8, 17, 18, 19, and 20, Township 9 South, Range 80 West, 6<sup>th</sup> P.M. and Sections 10, 11, 12, 13, 14, and 15, Township 9 South, Range 81 West, 6<sup>th</sup> P.M., in Lake County), Clear Creek Reservoir (located in Sections 7 and 8, Township 12 South, Range 79 West, and Section 12, Township 12 South, Range 80 West, 6<sup>th</sup> 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. **2. Water Storage Rights**. The water storage rights identified in Section III of this Application. **E. Additional Water Rights**. Other water rights may be included in the below requested exchanges by amendment to any decree entered in this case identifying the additional substitute water supply, and allowing for the addition of any terms and conditions to the extent necessary to prevent material injury to other water rights from the inclusion and use of the additional exchange source. **V. Appropriative Rights of Exchange**. The Applicants seek a decree confirming and approving the following described joint appropriative rights of exchange. The lower terminus of the exchange reaches is the confluence of the Huerfano River and the Arkansas River. The upper termini of the exchange reaches is either the points of diversion for the existing Britton Reservoirs or the intake for Cucharas wastewater treatment plant on Cucharas River. Within this total reach are a number of exchange-from and exchange-to points, as described below. Applicants will jointly utilize the decreed exchange potential and the exchange-from and exchange-to points to separately and jointly move and manage the sources of substitute supply described in Section IV. **A. Exchange-from and Exchange-to Points**. (See Exhibit B map attached to the Application). **Exchange-from Points (approx.**

**locations):**

<b>Name</b>	<b>Q40</b>	<b>Q160</b>	<b>Sec.</b>	<b>Town</b>	<b>Range</b>	<b>UTM Coordinates</b>
Confluence of Huerfano River and Arkansas River	NW	SW	8	21S	61W	565196 Easting 4231892 Northing
Confluence of Huerfano River and Cucharas River	SW	NW	35	24S	64W	541152 Easting 4196790 Northing
Confluence of Cucharas River and Maria Stevens Reservoir outlet	SW	NW	28	27S	65W	528381 Easting 4168906 Northing
La Veta Mexican Ditch Augmentation Station #1 at Cucharas River	NE	SW	31	27S	65W	525288 Easting 4167307 Northing
La Veta Augmentation Station #2 at Cucharas River	SE	SW	29	27S	65W	526926 Easting 4168354 Northing
Confluence of Cucharas River and Ballejos Ditch Headgate	SE	NE	2	28S	66W	522894 Easting 4165877 Northing
Lake Miriam Ditch Outlet Outfall to Cucharas River	SE	NW	17	28S	66W	517240 Easting 4162743 Northing
Coler Reservoir Ditch Outlet Ditch Outfall	NE	SW	17	28S	66W	516904 Easting 4162387 Northing
Town of La Veta Lagoons Discharge at Cucharas River	NW	SW	15	29S	68W	500406 Easting 4152742 Northing
Town of La Veta WWTP Discharge at Cucharas River	NE	SE	16	29S	68W	500230 Easting 4152716 Northing
Confluence of Cucharas River and La Veta Town Lakes outlet	NE	SE	29	29S	68W	498537 Easting 4149756 Northing
Confluence of Cucharas River and Bruce Canyon Reservoir outlet	NW	NE	5	30S	68W	497898 Easting 4147272 Northing
Confluence of Cucharas River and Baker Creek	NE	NE	16	31S	69W	490690 Easting 4134049 Northing
Confluence of Cucharas River and White Creek	NW	NE	35	30S	69W	493220 Easting 4139438 Northing
Confluence of Cucharas River and Dotson Creek		L12	3	31S	69W	491228 Easting 4136957 Northing

Confluence of Cucharas River and South Fork of Cucharas River	NE	NW	22	31S	69W	491716 Easting 4132525 Northing
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**Exchange-to Points (approx. locations):**

Cucharas River at Duran Ditch, inlet to Maria Stevens Reservoir	SW	SW	29	27S	65W	526471 Easting 4168271 Northing
Cucharas River at City Lake Inlet			25, 26, 27, 28, 32, 33	28S	67W	
Cucharas River at Lake Miriam Ditch	NW	SE	32	28S	67W	508061 Easting 4157924 Northing
Cucharas River at Walsenburg Pipeline	SW	SW	28	29S	68W	498652 Easting 4149169 Northing
Cucharas River at Pipeline Inlet to La Veta Town Lake	SW	NE	5	30S	68W	497771 Easting 4146702 Northing
Cucharas River at Butte Ditch, inlet to Bruce Canyon Reservoir	NW	NW	8	30S	68W	497151 Easting 4145723 Northing
Intake to Cucharas Sanitation & Water District WTP on Dotson Creek (aka Dodgeton Creek and Dodston Creek)	SW	NE	4	31S	69W	490280 Easting 4137319 Northing
Baker Creek at inlet to South Baker Creek Reservoir	SE	NE	17	31S	69W	489410 Easting 4133609 Northing
South Baker Creek at South Baker Creek Dam	SW	NE	16	31S	69W	490398 Easting 4133630 Northing
Intake to Cucharas Sanitation & Water District WTP on Cucharas River	NW	SW	22	31S	69W	491335 Easting 4131546 Northing
Intake to Cucharas Sanitation & Water District WTP on Baker Creek	SW	NE	17	31S	69W	488983 Easting 4133625 Northing
White Creek Reservoir Storage Facility	N/A	N/A	14, 15 22, 23	31S	69W	492424 Easting 4132536 Northing
South Fork of Cucharas River at Britton Reservoirs Enlargement Dam	SW	NE	22	31S	69W	492000 Easting 4131842 Northing
Britton Reservoir No. 1	SW	NE	22	31S	69W	492000 Easting 4131842 Northing

Britton Reservoir No. 2 and Britton Reservoir No. 3 – Deadman Creek Feeder	NW	SE	22	31S	69W	491943 Easting 4131621 Northing
Britton Reservoir No. 2 and Britton Reservoir No. 3 – South Fork Feeder	SW	NE	22	31S	69W	492147 Easting 4131670 Northing

**B. Exchange Rates.** The exchange rates for the above Exchange-From and Exchange-To points are as set forth in Exhibit C attached to the Application and range up to 97 c.f.s. **C. Operation of Exchanges.** The decreed sources of supply will be exchanged from the exchange-from points up the exchange reaches to the exchange-to points. Water may be exchanged from and to points within the exchange reaches listed consisting of portions of the entire exchange reaches. **D. Operations between the Applicants.** Applicants will enter into an intergovernmental agreement (“IGA”) that establishes the joint and shared use of the requested water storage rights, substitute water supplies, and appropriative rights of exchange and the shared priority dates of the storage rights and exchanges. Nothing in this Application or requested decree operates to transfer water rights from or between the Applicants. Cucharas, Huerfano, and La Veta maintain full ownership and control over their respective water rights. The IGA will set forth any agreements that excess water and water rights, as determined by the owner of that water right, may be leased to the other Applicants who may thereafter utilize the leased water pursuant to the decreed exchanges for their respective uses. The lessor of any such leased water rights is responsible for leasing the fully consumable water and fulfilling all terms and conditions of the applicable decree. Additionally, the IGA will set forth the terms and conditions for the utilization of the herein requested exchanges and water storage rights between the Applicants. **E. Uses.** The Applicants will use the water diverted by exchange for all types of beneficial uses under their respective existing and future decrees, including, without limitation, direct use and storage and subsequent release for municipal, irrigation, stock watering, fire protection and suppression, domestic, commercial, industrial, and recreational uses, fish and wildlife preservation and propagation, wetlands, augmentation, replacement, substitution, exchange, and recharge, including use, reuse, successive use, and full consumption and disposition to extinction. **F. Appropriation Date.** The appropriation date claimed for the exchange rate for any of the requested appropriative rights of exchange located: between the confluence of the Huerfano River and the Arkansas River to the Duran Ditch of up to 50.1 c.f.s.; between the Duran Ditch and the confluence of Wahatoya Creek and the Cucharas River (located at UTM 502304 Easting, 4153728 Northing) of up to 43 c.f.s.; between the confluence of Wahatoya Creek and the Cucharas River and the confluence of Middle Creek and the Cucharas River (located at UTM 498966 Easting, 4152123 Northing) of up to 11.8 c.f.s.; between the confluence of Middle Creek and the Cucharas River and Boyd Ranch (located at UTM 495313 Easting, 4141473 Northing) of up to 31.1 c.f.s.; between Boyd Ranch and White Creek at the inlet to White Creek Reservoir of up to 5.7 c.f.s.; between Boyd Ranch and the Dotson Creek intake of Cucharas water treatment plant of up to 4.8 c.f.s.; between Boyd Ranch and the Baker Creek intake of Cucharas’ water treatment plant of up to 5.1 c.f.s.; between Boyd Ranch and Baker Creek at the inlet to South



Baker Creek Reservoir of up to 2.3 c.f.s.; between Boyd Ranch and the inlet to Britton Reservoirs from the South Fork of the Cucharas River of up to 1.1 c.f.s.; and between Boyd Ranch and the Cucharas River at the intake of Cucharas' water treatment plant up to 11.2 c.f.s., is July 18, 2017, the date of the meeting between the Applicants to pursue an application for the herein claimed exchanges and water storage rights to effectuate the findings of the Storage Study after public notices of the meetings concerning the Storage Study were published and after the final portion of the Storage Study was completed in June of 2017 thereby confirming, implementing, and demonstrating the Applicants' intent and actions to initiate and appropriate the water rights for the beneficial uses as set forth herein. These exchange rates from the Storage Study are average flow rates of exchange, and the Applicants' also claim the higher peak flow rates of exchange that are associated with and correspond with the above average flow rates of exchange. For all exchange rates herein claimed that are greater than the rates listed above for a corresponding exchange reach, the appropriation date is December 28, 2017, which is the date of filing of this Application with Water Court, thereby confirming, implementing, and demonstrating the Applicants' intent and actions to initiate and appropriate the water rights for the beneficial uses as set forth herein.

**G. Names and Addresses of Owners of Land Upon Which Structures are Located.**

1. All owners as referenced in Paragraphs III.A.10, III.B.10, III.C.10, III.D.10, and III.E.10.
2. Cucharas. Cucharas structures identified herein owned by Cucharas, 16925 Highway 12, Cuchara, Colorado 81055.
3. Huerfano. The owners of land upon which the structures used to administer the Wm. Craig Ditch Water Right are: a) headgate, augmentation station, and recharge facility – the Huerfano County Water Conservancy District, P.O. Box 442, La Veta, Colorado 81055; b) Red Wing Augmentation Facility and Wilson Ditch – Growing Roots, LLC, P.O. Box 874, Ft. Collins, Colorado 80522; c) Sheep Mountain Augmentation Facility – Rialm, LLC, a California limited liability company, 205 S. Broadway, Suite 800, Los Angeles, California 90012.
4. La Veta. The owners of the land upon which the La Veta Town Pipeline point of diversion is located and the Town of La Veta Pipeline No. 2 will be located is Ewing Homestead, L.L.C., 9035 Ladue Road, St. Louis, Missouri 63124. Other owners of land upon which La Veta structures are located are Kreutzer Family, LLC, 3322 County Road 450, La Veta, Colorado 81055, Corsentino Dairy Farms, Inc., 2689 Hwy 10 East, Walsenburg, Colorado 81089, and Davis Family Land, LLC, 5239 County Road 230, Walsenburg, Colorado 81089.

**H. Terms and Conditions.**

1. Live Stream. The exchanges will only be operated at times and to the extent that there is a live stream between the exchange-from point and the exchange-to point to be used.
2. Intervening Water Rights. An exchange cannot operate at times when there is a valid call, senior to the exchange, within the exchange reach that is diverting the entire available stream flow.
3. Accounting. Applicants will develop and utilize accounting acceptable to the Division Engineer for Division 2 to account for the water right usage pursuant to any decree entered in this case. WHEREFORE, the Applicants request that this Application for Conditional Water Storage Rights and Conditional Appropriative Rights of Exchange be granted as requested herein and for such other and further relief as the Court deems appropriate.

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

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of February 2018, (forms available at Clerk's office or at [www.courts.state.co.us](http://www.courts.state.co.us), after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

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Witness my hand and the seal of this Court this 4th day of January, 2018.

*Mardell R. DiDomenico*



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

(Court seal)  
Published: January \_\_\_\_, 2018

## **SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST**

Section 37-92-308(6), C.R.S. directs the State Engineer to establish a notification list for each water division for the purpose of notifying interested parties of requests for the State Engineer's approval of substitute water supply plans ("SWSP") filed in that water division pursuant to section 37-92-308, C.R.S. The SWSP notification list is also used to provide notice of proposed water right loans to the Colorado Water Conservation Board for use as instream flows under section 37-83-105(2)(b)(II), C.R.S., notice of applications for the State Engineer's approval of interruptible water supply agreements under section 37-92-309(3)(a), C.R.S., and notice of applications for following-leasing pilot projects under section 37-60-115(8)(e)(II).

This notice is an invitation to be included on the SWSP notification list. To receive this information by e-mail, provide your name, e-mail address, daytime telephone number, and the water divisions of interest. If you prefer to be noticed by first-class mail, specify that preference and provide your mailing address. Submit the information to: Substitute Water Supply Plan Notification List (c/o Laura Kalafus, Program Assistant), Colorado Division of Water Resources, 1313 Sherman Street, Room 818, Denver, Colorado 80203, Phone: (303) 866-3581, or e-mail to: [Laura.kalafus@state.co.us](mailto:Laura.kalafus@state.co.us). Additional information regarding Substitute Water Supply Plans is available on the Division of Water Resources' website at <http://water.state.co.us>.

## **PRODUCED NONTRIBUTARY GROUND WATER NOTIFICATION LIST**

Pursuant to Rule 17.5.B.2 of the Produced Nontributary Ground Water Rules, 2 CCR 402-17 (“Rules”), the State Engineer is publishing this invitation to persons to be included on the Produced Nontributary Ground Water Notification List. According to Rule 17.5.B.2 of the Rules, the State Engineer must establish a Produced Nontributary Ground Water Notification List for each water division within the State of Colorado for the purposes of ensuring that water users within each water division receive adequate notice of proceedings held pursuant to the Rules. In order to establish such notification list, the State Engineer is directed, in January of each year, to cause to have published in the water court resume for each water division an invitation to be included on such notification list for the applicable water division.

To receive this information by e-mail, provide your name, e-mail address, daytime telephone number, and the water divisions of interest. If you prefer to be noticed by first-class mail, specify that preference and provide your mailing address. Submit the information to: Produced Nontributary Ground Water Notification List (c/o Laura Kalafus, Program Assistant), Colorado Division of Water Resources, 1313 Sherman Street, Room 818, Denver, Colorado 80203, Phone: (303) 866-3581, or e-mail to: [Laura.kalafus@state.co.us](mailto:Laura.kalafus@state.co.us).

Any additional information regarding the Produced Nontributary Ground Water Rules can be found on the Division of Water Resources website at: [www.water.state.co.us](http://www.water.state.co.us).