

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING DECEMBER 2020 and Invitation to Join State Engineer's Substitute Water Supply Plan Notification List and/or The State Engineer's Produced Nontributary Ground Water Notification List. (This publication can be viewed in its entirety on the state court website at: [www.courts.state.co.us](http://www.courts.state.co.us)).  
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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 2020, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved, and description of ruling sought as reflected by said applications, or amendments, are as follows:

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**CASE NO. 2020CW3013; PUEBLO EAST PHASE III, LLC, c/o Jodi Schreiber, 839 Mackenzie Avenue, Canon City, CO 81212** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Mark D. Detsky, Atty. Reg. No. 35276. K.C. Cunilio, Atty. Reg. No. 51378. Dietze and Davis, P.C., 2060 Broadway, Suite 400, Boulder, CO 80302, (303) 447-1375)  
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**PUEBLO COUNTY**

Amended Application for Approval of Plan for Augmentation

2. Background. This application concerns lands, wells, and water storage rights that were formerly part of the plan of augmentation decreed in Case No. 16CW3094. The Applicant, Pueblo East Phase III, LLC ("PEPIII"), purchased property described below from the applicant in Case No. 16CW3094 as set forth in that certain deed dated November 26, 2018 and recorded in the real property records of Pueblo County at Reception No. 2123672. Applicant owns 403.4 acres located in portions of Sections 35 and 36, Township 20 South, and Sections 1 and 2, Township 21 South, Range 63 West of the 6th P.M., which is depicted 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.) As a result of the purchase by PEPIII, two wells and the "North Reservoir" (here renamed as "PEPIII Reservoir") were removed from Case No. 16CW3094 during its pendency. The instant application was required by the Division of Water Resources (DWR) to develop a plan for augmentation for those wells and reservoir. In addition, the Applicant is adding a third well to irrigate a third crop circle as shown in **Exhibit A**. The PEPIII Wells are part of an interconnected irrigation system serving the property. The PEPIII Wells will also be used to truck water for industrial uses associated with gravel mining operations on parcels that it owns or has the legal right to use within Pueblo County, including for dust suppression and sand and gravel washing. This Application does not seek to confirm new water rights or establish new priority dates for the PEPIII Wells. Each of the PEPIII Wells shall be permitted consistent with the terms and conditions of this plan for augmentation upon entry of a Decree in this matter. Applicant does not claim pre-compact diversions regardless of the original priority dates of any of the PEPIII Wells described below, and all diversions and uses of water from the PEPIII Wells following entry of this Decree shall be pursuant to the augmentation plan decreed herein, without regard to the decreed priority

dates for the augmented structures. Concurrently, a companion application to this plan for augmentation is being filed to adjudicate a 2020 priority conditional water storage right for the PEP III Reservoir. 3. Prior Depletions Replaced in Case No. 16CW3094. The decree in Case No. 16CW3094 includes a term and condition that the two existing wells subject to the instant plan for augmentation will have their depletions prior to approval of this application or an interim Substitute Water Supply Plan (SWSP) replaced in time, location, and amount by the plan for augmentation decreed in that case. As a result, this application is limited to augmenting, on a going forward basis, the lagged wellhead depletions from the two existing wells and a proposed new well described in Paragraph 4, below, both during and post pumping, in time, location, and amount. Further, this plan for augmentation is intended to replace depletions related to a proposed lined reservoir, called the "PEP III Reservoir", to be constructed based on gravel mining operations on the Applicant's property, either after mining has ceased or in smaller cells constructed in phases. Depletions related to the reservoir will be replaced as necessary to prevent injury to vested absolute or decreed conditional water rights. 4. Structure(s) to be Augmented. The location of each structure to be augmented is shown on a USGS topographic map on a legible 8 ½ x 11 inch copy of the applicable portion of the map, attached to this application as **Exhibit A**. A. Existing Pueblo East Phase III Wells: The following wells are decreed and permitted irrigation wells located on the Applicant's property. 1. PEP III Well No. 1: a. Permit and Decree information: Well Permit Number 11367-R, WDID 1405136 (a/k/a Phelps Well No. 1), originally decreed in Case No. W-244 (1972), District Court, Water Division 2; b. Location: SE/4 NW/4, Section 35, T20S, R63W, 6th PM, Pueblo County; UTM coordinates (NAD83 datum, Zone 13) 551104.0 Easting, 4235867.0 Northing; c. Uses: Irrigation, domestic, commercial, industrial, fire protection, stock watering, and fill of PEP III Reservoir. d. Priority Date: January 1948; e. Amount: 2.33 cfs or 1050 gpm, but not to exceed more than 1,600 acre feet (AF) in combination with the other wells included herein in any calendar year; f. Source: alluvial groundwater tributary to the Arkansas River. 2. PEP III Well No. 2: a. Permit and Decree information: Well Permit Number 5234-F, WDID 1405139, originally decreed in Case No. W-743 (1971), District Court, Water Division 2; b. Location: NE/4 SE/4, Section 35, T20S, R63W, 6th PM, Pueblo County; UTM coordinates (NAD83 datum, Zone 13) 551821.0 Easting, 4235284.0 Northing; c. Uses: Irrigation, domestic, commercial, industrial, fire protection, stock watering, and fill of PEP III Reservoir; d. Priority Date: March 5, 1964; e. Amount: 3.34 cfs or 1500 gpm, but not to exceed more than 1,600 AF in combination with the other wells included herein in any calendar year; f. Source: alluvial groundwater tributary to the Arkansas River. B. PEP III Well No. 3: 1. Permit and Decree Information: N/A; 2. Location: NW/4 NW/4, Section 1, T21S, R63W, 6th PM, Pueblo County; UTM coordinates (NAD83 datum, Zone 13) 552228.0 Easting, 4234736.0 Northing; 3. Uses: irrigation, domestic, commercial, industrial, fire protection, stock watering, and fill of PEP III Reservoir; 4. Appropriation date: March 31, 2020. 5. Amount: 3.34 cfs or 1500 gpm, but not to exceed more than 1,600 AF in combination with the other wells included herein in any calendar year, CONDITIONAL; 6. Source: alluvial groundwater tributary to the Arkansas River. C. PEP III Reservoir. This reservoir is the subject of the application in pending Case No. 20CW3012, Water Division No. 2 and may consist of one single or multiple cells. The PEP III Reservoir is a conditional water storage right located in Sections 35 and 36, Township 20 South, Range 63 West; Section 2, Township 21 South, Range 63 West, all

in the 6<sup>th</sup> P.M., as depicted in the attached **Exhibit B**. The PEPIII Reservoir will have a maximum storage capacity of 6,400 acre feet, and maximum surface acreage of 230 acres. Water stored in PEPIII Reservoir may be used for augmentation, commercial, domestic, fire protection, industrial (including gravel mining), irrigation, recreational, piscatorial, and stock watering.

5. Water Rights to Be Used for Augmentation: A. Arkansas Groundwater Users Association Sources: Any and all water, water rights, and water supplies owned, leased or otherwise available to AGUA for provision of augmentation supplies to its members and leases, pursuant to the Applicant's shareholder membership in AGUA. i. AGUA owns water rights and leases water rights, including temporary fully consumable supplies that are available to AGUA, from time to time, including leases from the Pueblo Board of Water Works, Triview Metropolitan District, and Colorado Springs Utilities. ii. AGUA owns consumptive use credits from AGUA's Excelsior Ditch water rights changed in Case No. 04CW62, which credits may be delivered through AGUA's augmentation facilities or recharge ponds, as they now exist or may exist in the future. AGUA's credits may also be stored in Pueblo Reservoir prior to release pursuant to the decree in Case No. 03CW119. AGUA's augmentation station returns water to the Arkansas River at the following location: SW ¼ Section 34, Township 20 South, Range 63 West of the 6<sup>th</sup> P.M. The recharge ponds are located at the following location: NE ¼ Section 6, Township 21 South, Range 63 West of the 6<sup>th</sup> P.M. AGUA owns 1,782 and Stonewall Water, LLC owns 1,541 of the 3,333 shares in the Excelsior Irrigating Company. AGUA may lease shares owned by Stonewall Water, LLC. B. PEPIII Reservoir (Pending Case No. 20CW3012): Applicant has applied for junior conditional water storage rights for augmentation uses in the PEPIII Reservoir, a storage facility being developed on land owned by the Applicant as shown in **Exhibit B**. C. Additional Augmentation Supply. Applicant may in the future also use as substitute supplies for the plan for augmentation and exchanges claimed herein any sources of water not described in this application that Applicant then owns or controls, provided that they are decreed for augmentation use and can be made legally and physically available at the replacement points decreed herein by direct flow, by substitution, or by exchange. Procedures to allow use of these additional sources of substitute supply shall be included in the decree that provide for notice, appropriate evidence, opportunities for comment and objection.

6. Statement of plan for augmentation. Applicant's plan for augmentation will replace out-of-priority depletions caused by the combined pumping of the PEPIII Wells and depletions caused by the PEPIII Reservoir with out-of-priority storage of precipitation and other out-of-priority inflows into the Reservoir. Applicant will replace all out-of-priority depletions at or above the location of the calling water right. Applicant will utilize augmentation supplies available to it as a shareholder in AGUA and any additional leases it enters into with AGUA, water decreed for augmentation to be stored in PEPIII Reservoir pursuant to pending Case 20CW3012, or contracted/leased augmentation water available to Applicant and lawfully added to this application by a notice, comment, and objection process to be set forth in the decree in this matter as a term and condition. No changes of water rights or appropriative rights of exchange are requested for this plan for augmentation. A. Wells: PEPIII Well No. 1 and PEPIII Well No. 2, Applicant's two existing wells described in Paragraph 4(A), above, have continuously operated since appropriation and will continue to operate during this adjudicatory process. The two existing wells formerly operated under AGUA's Rule 14 plan, and since 2016, operated under a SWSP approved under C.R.S. §37-92-308.

Applicant's wells operated via an approved SWSP through 2019, and going forward will divert under the authority sought herein. Applicant intends to operate pursuant to annual SWSPs approved under C.R.S. §37-92-308(4). PEPIII Well No. 3 has not yet been constructed, but if constructed may be added to Applicant's SWSP.

**B. Property.** Applicant owns approximately 403.4 acres, located in portions of Sections 35 and 36, Township 20 South, Range 63 West of the 6<sup>th</sup> P.M., and Sections 1 and 2, Township 21 South, Range 63 West of the 6<sup>th</sup> P.M. as depicted on the attached **Exhibit A**. Applicant also owns or has the legal right to uses certain parcels located in Pueblo County where it conducts or will conduct gravel mining operations.

**1. Irrigated Property.** The total maximum potentially irrigated acreage on PEPIII's property is approximately 340 acres of which, approximately 285 acres of land was formerly irrigated by the Excelsior Ditch, and subject to dry-up under the change of water rights for the Excelsior Ditch as described in the Case No. 04CW62 decree. Of the balance of the irrigable lands, eighteen (18) acres are located on the north side of the Excelsior Ditch, above the ditch, and won't be irrigated, and forty-five and 4/10 (45.4) acres is an existing gravel pit on the southwest side of the property. See, **Exhibit A**.

**2. Industrial property.** In addition to the subject irrigated property that the Applicant intends to eventually mine, the Applicant will use water from the subject structures for industrial uses at gravel mining properties it owns or has the legal right to use on parcels located in Pueblo County. Applicant's industrial uses of water will be for dust suppression and sand and gravel mining, and ancillary industrial or commercial uses. Applicant will truck water pumped from the subject wells to its gravel mining operations, as they exist or may exist in the future within Pueblo County, including the following sites shown on **Exhibit C**:

a. M1990112 / State Pit, the mine permit is located in portions of Section 21, NW1/4 of Section 22 and the N1/2 of Section 28, Township 21 South, Range 63 West of the 6<sup>th</sup> P.M.

b. M2016009 / Pueblo County Aggregate Project, the mine permit is located portions of Section 24 and Section 25, Township 21 South, Range 63 West of the 6<sup>th</sup> P.M. and portions of Section 19 and Section 30, Township 21 South, Range 62 West of the 6<sup>th</sup> P.M.

**C. Depletions:** The PEPIII Wells will be primarily used for irrigation of fields on the PEPIII Property by varying irrigation methods, including sprinkler, flood/furrow and drip irrigation, as well as for non-irrigation purposes including domestic, commercial, industrial, fire protection and stock watering. The PEPIII Wells may be used to fill the PEPIII Reservoir for its decreed uses, which are the same as those of the PEPIII Wells with the addition of piscatorial and recreational uses.

**1.** Standard sprinkler irrigation is considered 85% consumptive, LEPA sprinkler irrigation is considered 95% consumptive, and flood/furrow irrigation 65% consumptive. Drip irrigation shall be considered 100% consumptive, as shall domestic, commercial, industrial, fire protection and stockwater, excepting indoor domestic and sanitation uses, which shall be considered 10% consumptive provided wastewater is treated through on-site septic leach field systems. Wellhead depletions will be determined by multiplying well use times the consumptive use percentages described above.

**2.** Stream depletions resulting from pumping of the Stonewall Wells will occur within Reach 1 of the Arkansas River, defined as the reach between the confluence of the Arkansas River and Fountain Creek and the Avondale Gage, and will be determined by applying a monthly unit response function (URF) to Applicant's wellhead depletions. The URF is derived from the H-I Model groundwater response function for the Excelsior Ditch user group, as shown in the following table:

Month	1	2	3	4	5	6	7	8	9	10	11	12
Fraction of Stream Depletion from Pumping in Month 1	0.03	0.08	0.11	0.11	0.10	0.08	0.07	0.06	0.05	0.05	0.04	0.03
Month	13	14	15	16	17	18	19	20	21	22	23	24
Fraction of Stream Depletion from Pumping in Month 1	0.03	0.03	0.02	0.02	0.02	0.01	0.01	0.01	0.01	0.01	0.01	0.01

3. Wellhead depletions related to the industrial uses described 6(B)(2), above, shall be considered 100% consumptive. All diversions trucked to parcels not located adjacent to the structures proposed for augmentation above shall be replaced on a one-to-one basis. D. Replacements: Replacement of stream depletions resulting from the pumping of the PEPIII Wells will utilize such water rights as physically and legally available to AGUA including the sources described in Paragraph 5, above, and/or through Applicant's water rights as may be stored for timed release in the PEPIII Reservoir, as described in the application in the as described in the application in Case No. 20CW3012, and additional augmentation and replacement rights made available to Applicant and added to this plan pursuant to decreed due process, including notice, comment, and objection procedures. E. AGUA Membership: Applicant is a shareholder member of AGUA. Applicant may enter additional leases with AGUA. AGUA allocates augmentation water to its members and lessees each year based on available supplies, members' usage, usage of water by its approved Rule 14 plan, ongoing obligations from pumping in prior years, and other factors determined by AGUA. F. Terms and Conditions. Applicant proposes the following terms and conditions to its plan for augmentation: 1. All wells shall be metered and shall be installed, constructed, operated, maintained, tested, and verified in accordance with the Amended Rules Governing the Measurement of Ground Water Diversions Located in the Arkansas River Basin, Case No. 05CW88, or a successor rule adopted by the State Engineer; 2. Accounting acceptable to the Court shall be recorded daily and provided monthly to DWR; 3. An annual maximum volumetric limit on pumping from the existing PEPIII Well No. 1 and PEPIII Well No. 2, and new PEPIII Well No. 3 described in Paragraph 4, above, of 1,600 annual acre feet individually or in combination; 4. Applicant's pumping from the PEPIII Wells will be adjusted so as not to exceed such volumes for which all resulting out-of-priority depletions can be replaced by AGUA or Applicant's other available augmentation supply. 5. Any water trucked to gravel mining operations shall be limited to properties owned or operated by the Applicant and shall be further limited to Pueblo County. 7. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be

stored, including any modification to the existing storage pool. The PEPIII Property includes all land upon which well structures to be augmented are or will be located, and the PEPIII Reservoir, and is owned by Applicant.

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**CASE NO. 2020CW3072; RONALD MORELAND AND LAZY J QUARTER CIRCLE RANCH, 17690 W. Alameda Parkway, Golden, CO 80401** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David Kueter, Esq., Kent Holsinger, Esq., HOLSINGER LAW, LLC, 1800 Glenarm Place, Suite 500, Denver, Colorado 80202, Telephone: (303)722-2828)

Application for Absolute Water Storage Rights

**LAS ANIMAS COUNTY**

**2. Name of Reservoir: Crossing Pond.** a. Legal description: Crossing Pond is located in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 12, Township 34 South, Range 53 West of the 6<sup>th</sup> P.M. UTM: Zone 13, Easting: 650491.1 Northing: 4107861.8. See Point A on **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). b. Source: Middle Water Creek. c. If filled from a ditch: N/A. Crossing Pond is an on-channel reservoir. d. Date of Appropriation: May 20, 1862. i. How appropriation was initiated: By using the pond for stockwatering purposes. ii. Date water applied to beneficial use: May 20, 1862. e. Amount Claimed: 1.0 acre-feet. f. List All Uses or Proposed Uses: Stockwatering. g. Surface Area of High Water Line: 0.22 acres. h. Vertical height of dam: 9.0 feet. i. Total Capacity of Reservoir in Acre Feet: 1.0 acre-feet. **3. Name of Reservoir: Deep Hole Pond.** a. Legal description: Deep Hole Pond is located in the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 12, Township 34 South, Range 53 West of the 6<sup>th</sup> P.M. UTM: Zone 13, Easting: 650175.1, Northing: 4107382.3. See Point B on **Exhibit A** hereto. b. Source: Middle Water Creek. c. If filled from a ditch: N/A. Deep Hole Pond is an on-channel reservoir. d. Date of Appropriation: May 20, 1862. i. How appropriation was initiated: By using the pond for stockwatering purposes. ii. Date water applied to beneficial use: May 20, 1862. e. Amount Claimed: 0.2 acre-feet. f. List All Uses or Proposed Uses: Stockwatering. g. Surface Area of High Water Line: 0.1 acres. h. Vertical height of dam: 5.0 feet. i. Total Capacity of Reservoir in Acre Feet: 0.2 acre-feet. **4. Name of Reservoir: Divider Pond.** a. Legal description: Divider Pond is located in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 12, Township 34 South, Range 53 West of the 6<sup>th</sup> P.M. UTM: Zone 13, Easting: 651055, Northing: 4107837. See Point C on **Exhibit A** hereto. b. Source: Middle Water Creek. c. If filled from a ditch: N/A. Divider Pond is an on-channel reservoir. d. Date of Appropriation: May 20, 1862. i. How appropriation was initiated: By using the pond for stockwatering purposes. ii. Date water applied to beneficial use: May 20, 1862. e. Amount Claimed: 1.0 acre-feet. f. List All Uses or Proposed Uses: Stockwatering. g. Surface Area of High Water Line: 0.28 acres. h. Vertical height of dam: 7.0 feet. i. Total Capacity of Reservoir in Acre Feet: 1.0 acre-feet. **5. Name of Reservoir: Vengeance Pond.** a. Legal description: Vengeance Pond is located in the NW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 12, Township 34 South, Range 53 West of the 6<sup>th</sup> P.M. UTM: Zone 13, Easting: 649800.3, Northing: 4107815.1. See Point D on **Exhibit A** hereto. b. Source: Middle Water Creek. c. If filled from a ditch: N/A. Vengeance Pond is an on-channel reservoir. d. Date of Appropriation: May 20, 1862. i. How appropriation was initiated: By using the pond for stockwatering purposes. ii. Date water applied to beneficial use: May 20, 1862. e. Amount Claimed: 0.5 acre-feet. f. List

All Uses or Proposed Uses: Stockwatering. g. Surface Area of High Water Line: 0.13 acres. h. Vertical height of dam: 5.0 feet. i. Total Capacity of Reservoir in Acre Feet: 0.5 acre-feet. **6. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new or existing diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:**  
Applicant.

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**CASE NO. 2020CW3073; STATE ENGINEER AND WATER DIV 2 ENGINEER vs. Ralph Spinuzzi, an individual and Ladean Spinuzzi, an individual** – Verified Complaint for Injunctive Relief, Civil Penalties, and Costs. This case is being listed in the resume to account for the case number in consecutive order.

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**CASE NO. 2020CW3074; UNITED STATES OF AMERICA, Department of the Interior, Bureau of Land Management, Royal Gorge Field Office 3028 E. Main St., Canon City, CO 81212** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Adam Eckman, Kristen Guerriero, Office of the Regional Solicitor, 755 Parfet Street, Suite 151, Lakewood, Colorado 80215, (303) 445-0614)

Application for Absolute Water Rights (Surface)

**PARK, FREMONT, AND CHAFFEE COUNTIES**

**2. Name of structures:** Leopard Frog Spring, Round Rock Spring, Box Canyon Spring

**3. Legal description of each point of diversion:** All UTM data are from Zone 13 and use the NAD83 (Conus) Datum. Leopard Frog Spring: Located on public lands in the SW/4 SW/4, Section 2, T16S R73W, Sixth P.M., approximately 816 feet from the south section line and 425 feet from the west section line. 453897mE 4281390mN; See attachment to Application for a general location map. (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

Round Rock Spring: Located on public lands in the SW/4 NE/4, Section 33, T15S R74W, Sixth P.M., approximately 2630 feet from the north section line and 2474 feet from the east section line. 441275mE 4283940mN

Box Canyon Spring: Located on public lands in the SE/4 NE/4, Section 17, T49N R8E, New Mexico P.M., approximately 2410 feet from the north section line and 538 feet from the east section line. 404065mE 4261887mN

**4. Sources:** Leopard Frog Spring: Unnamed tributary to Mill Gulch/Currant Creek/Cottonwood Creek/Tallahassee Creek/Arkansas River Round Rock Spring: Unnamed tributary to Cottonwood Creek/Tallahassee Creek/Arkansas River Box Canyon Spring: Unnamed tributary to South Fork Arkansas River/Arkansas River

**5. A. Date of appropriation:** 12/31/2020 **B. How appropriation was initiated:** BLM inventoried the springs to determine the quantity and quality of water available for livestock and wildlife use. Subsequently, the BLM filed this water right application and provided public notice of the water right application.

**C. Date water applied to beneficial use:** 12/31/2020 **6. Amount claimed:** Leopard Frog Spring: 0.0066 cfs, absolute, Round Rock Spring: 0.0013 cfs, absolute

Box Canyon Spring: 0.0022 cfs, absolute **7. Use:** Wildlife use is claimed for all springs in this application. All springs provide water, forage and cover for elk, mule deer, bear, raptors, and small mammals. The springs also provide water for livestock as follows:

Leopard Frog Spring: up to 30 cattle on the Asher Gulch Allotment

Round Rock Spring: up to 404 cattle on the Poncha Park Allotment Box Canyon Spring:

up to 2 cattle on the Cleveland Mountain Allotment **8. Names and addresses of owners of land on which points of diversion, places of use, and structures referenced in this application are located:** All springs are located on lands owned and managed by United States of America, Department of the Interior, Bureau of Land Management, Royal Gorge Field Office, 3028 E. Main St., Canon City, CO 81212. Accordingly, no certificate of landowner notification is required.

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**CASE NO. 2020CW3075; WINSTON H. CONKLING, 5310 DTC Parkway, Suite F, Greenwood Village, CO 80111-3010** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David M. Shohet, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, CO 80921, (719) 471-1212)

Amended Application for Surface Water Rights and Storage Rights

**FREMONT COUNTY**

**II. SUMMARY OF APPLICATION.** By a decree entered in Case No. 11CW87, District Court, Water Division 2, dated April 23, 2012, the Applicant was granted three conditional surface water rights and five conditional storage rights for the irrigation of eight acres. In Case No. 15CW3077, decreed on May 26, 2016, the Applicant was awarded an additional seven acres of irrigation to the conditional irrigation water rights decreed in Case No. 11CW87, along with one new conditional storage right for the irrigation of 15 acres. Applicant files this Application seeking to add an additional 12 acres of new irrigated fields to the conditional water rights previously decreed in Case Nos. 11CW87 & 15CW3077. Accordingly, Applicant seeks the right to irrigate a total 27 acres with the conditional water rights. **III. APPLICATION FOR SURFACE WATER RIGHTS.** A. Name of Structures: i. Conkling Spring No. 1. ii. Conkling Spring No. 2. iii. Conkling Spring No. 3 and Seep. B. Legal Description of Each Point of Diversion: i. Conkling Spring No. 1: Located in the SW 1/4 Section 11, Township 20 South, Range 70 West of the 6th P.M., in a spring of water at a point whence the southwest corner of said Section 11, bears south two degrees and five minutes (2° 5') west eighteen hundred ninety (1890) feet. ii. Conkling Spring No. 2: Located in the SW 1/4 Section 11, Township 20 South, Range 70 West of the 6th P.M., in and near the channel of South Oak Creek at a point whence the southwest corner of said Section 11 bears south forty-eight degrees seven minutes (48° 7') west, a distance of fifteen hundred fifty-eight (1558) feet. iii. Conkling Spring No. 3 and Seep: Located in the SW 1/4 Section 11, Township 20 South, Range 70 West of the 6th P.M. from whence the southwest corner of said Section 11 bears south 56° 3' 30" west a distance of 572 feet. The approximate locations of the Conkling Springs are shown on the attached Exhibit A map. C. Source: All spring structures sought to be adjudicated herein are sourced from spring water tributary to South Oak Creek, tributary of Oak Creek, tributary to the Arkansas River. D. Date of Initiation of Appropriation: Applicant claims a date of appropriation of December 21, 2020, for surface water rights sought to be adjudicated herein by formation of intent to appropriate, field location and measurement of the nature and extent of the appropriation, and the filing of this application. E. Amount Claimed: i. Conkling Spring No. 1: 5 g.p.m., conditional. ii. Conkling Spring No. 2: 3 g.p.m., conditional. iii. Conkling Spring No. 3: 5 g.p.m., conditional. F. Use or Proposed Uses: All of the springs will be used for irrigation of 12 additional acres lying in the NW ¼ of Section 11, Township 20 South, Range 70 West 6th P.M. A USGS topographic map is



attached as Exhibit B identifying the location of the 12 acres to be irrigated. **IV. APPLICATION FOR WATER STORAGE RIGHT.** A. Name of Reservoir: i. Conkling Reservoir No. 1. ii. Conkling Reservoir No. 2. iii. Conkling Reservoir No. 3. iv. Conkling Reservoir No. 4. v. Conkling Reservoir No. 5. vi. Conkling Reservoir No. 6. B. Legal Descriptions for Location of Each Reservoir's Dam: i. Conkling Reservoir No. 1: Conkling Reservoir No. 1 in the SW 1/4, Section 11, Township 20 South, Range 70 West of the 6th P.M., Fremont County, Colorado, lying 300 feet north of the south section line and 500 feet east of the west section line of said Section 11. ii. Conkling Reservoir No. 2: Conkling Reservoir No. 1 in the SW 1/4, Section 11, Township 20 South, Range 70 West of the 6th P.M., Fremont County, Colorado, lying 1000 feet north of the south section line and 1300 feet east of the west section line of said Section 11. iii. Conkling Reservoir No. 3: Conkling Reservoir No. 1 in the SW 1/4, Section 11, Township 20 South, Range 70 West of the 6th P.M., Fremont County, Colorado, lying 2500 feet north of the south section line and 2000 feet east of the west section line of said Section 11. iv. Conkling Reservoir No. 4: In the SW 1/4, Section 11, Township 20 South, Range 70 West of the 6th P.M., Fremont County, Colorado, lying 2890 feet south of the north section line and 1990 feet east of the west section line of said Section 11. v. Conkling Reservoir No. 5: In the NW 1/4, Section 11, Township 20 South, Range 70 West of the 6th P.M., Fremont County, Colorado, lying 400 feet south of the north section line and 1850 feet east of the west section line of said Section 11. vi. Conkling Reservoir No. 6: Conkling Reservoir No. 6 in the SW 1/4, Section 11, Township 20 South, Range 70 West of the 6th P.M., Fremont County, Colorado, lying approximately 1920 feet north of the south section line and 1240 feet east of the west section line of said Section 11. The approximate locations of the Conkling Reservoirs are shown on the attached Exhibit A map. C. Source: Conkling Reservoir Nos. 1-5 are on stream reservoirs on South Oak Creek tributary to Oak Creek tributary to the Arkansas River, and can also be filled by Conkling Springs 1 through 3. Conkling Reservoir No. 6, is an off-channel reservoir filled by Conkling Reservoir Nos. 1 through 5, Conkling Springs 1 through 3, and natural precipitation. D. Date of Appropriation: For all reservoirs the date of appropriation is December 21, 2020, by formation of the intent to appropriate water field location and measurement of the proposed structures and the filing of this application. E. Amounts Claimed: i. Conkling Reservoir No. 1: 9.2 acre feet, conditional. ii. Conkling Reservoir No. 2: 8.6 acre feet, conditional. iii. Conkling Reservoir No. 3: 8.0 acre feet, conditional. vi. Conkling Reservoir No. 4: 1.8 acre feet, conditional. v. Conkling Reservoir No. 5: 21 acre feet, conditional. iv. Conkling Reservoir No. 6: 10 acre feet, conditional. F. Use: All of the reservoirs will be used for irrigation of 12 additional acres lying in the NW ¼ of Section 11, Township 20 South, Range 70 West 6th P.M., identified on the **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.) **V. REMARKS.** A. Applicant is the owner of 298.5 acres in the W 1/2 of Section 11, and NW 1/4 of Section 14, Township 20 South, Range 70 West of the 6th P.M., upon which all of the structures sought to be adjudicated herein are located and upon which the place of use of the water from all of the structures is intended. Applicant will irrigate a total of 27 acres between the water rights decreed in Case Nos. 11CW87 & 15CW3077, and any water rights decreed herein. B. All irrigation will occur by hand watering, drip irrigation or other efficient means. Diversions may be placed in lined or piped ditches to the irrigated fields. Applicant may line, cover or otherwise take all steps to reduce the loss of water

stored in the reservoirs. C. Water will be diverted year-round for direct irrigation or to be stored in either the reservoirs sought to be adjudicated herein or in non-adjudicated structures or cisterns for subsequent irrigation. D. Applicant will obtain Water Commissioner approval for diversions pursuant to C.R.S. § 37-92-502(2)(a). E. Each of the reservoirs sought herein will be constructed with a suitable spillway to pass high water flows and an outlet pipe located such that each reservoir is capable of being drained and no dead storage will remain. F. In addition to the Conkling Reservoirs named above, Applicant may store water in off-channel reservoirs or cisterns located in the in NW ¼ of Section 11, Township 20 South, Range 70 West 6th P.M., near the irrigated fields for subsequent irrigation. G. The amounts sought in this application for the Conkling Springs are within the flow rates decree in Case Nos. 98CW175, 11CW87 & 15CW3077. Additionally, the decreed storage amounts for Conkling Reservoir Nos. 1 through 6 are likewise within the same amounts as decreed in Case Nos. 98CW175, 11CW87 & 15CW3077, are not in addition to any previously decreed amounts. H. All of the structures subject of this Application are located in Section 11, Township 20 South, Range 70 West of the 6th P.M., Fremont County, and are further located as follows (the source of all UTM coordinates (UTM Zone 13, NAD 83) are from the CDSS):

WDID	Structure Name	Q40	Q160	UTM X	UTM Y	Latitude	Longitude
1203357	CONKLING RESERVOIR NO 1	SW	SW	482744	4240879	38.31586	-105.197403
1203358	CONKLING RESERVOIR NO 2	SW	SW	482991	4241180	38.31858	-105.194585
1203359	CONKLING RESERVOIR NO 3	NE	SW	483116	4241479	38.32127	-105.193162
1203360	CONKLING RESERVOIR NO 4	SE	NW	483196	4241734	38.32357	-105.192253
1203361	CONKLING RESERVOIR NO 5	NE	NW	483161	4242342	38.32905	-105.192668
1203398	CONKLING RESERVOIR NO 6	NW	SW	482878	4241425	38.32078	-105.195884
1202672	CONKLING SPRING NO 1	NW	SW	482611	4241456	38.32106	-105.198939
1202673	CONKLING SPRING NO 2	SW	SW	482938	4241151	38.31832	-105.195191
1202674	CONKLING SPRING NO 3	SW	SW	482753	4240982	38.31679	-105.197303

**CASE NO. 2020CW3076; Previous Case Nos. 14CW3036; 87CW74 – Triview Metropolitan District, C/O: James McGrady, District Manager, 16055 Old Forest Point, Ste. 300, Monument, CO 80132** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Chris D. Cummins, #35154, Emilie B. Polley, #51296, Monson, Cummins & Shoheit, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for Finding of Reasonable Diligence

**EL PASO COUNTY**

**II. Summary of Application:** Applicant, a political subdivision and quasi-municipal corporation of the State of Colorado, applied for and was approved for several conditional appropriative rights of exchange in Case No. 87CW74, including the Monument Creek Exchange and the Jackson Creek Exchange. The lower terminus of the both Exchanges is Applicant’s wastewater treatment facility, and the upper termini of the Exchanges are certain alluvial wells adjudicated for Applicant’s use in the alluvium of Monument Creek, Teachout Creek and Jackson Creek. Applicant seeks a finding of reasonable diligence for the conditional surface water rights of the Monument Creek Exchange and the Jackson Creek Exchange adjudicated in Case No. 87CW74, for which diligence has previously been granted in Case No. 14CW3036. **III. Conditional Surface Water Rights:** 1. Monument Creek Exchange. A. Description of Location: 1. Outfall Structure/Lower

Terminus: The Waste Water Treatment Facility ("WWTF") which is shared by Applicant, the Donala Water and Sanitation District ("Donala"), and the Forest Lakes Metropolitan District ("Forest Lakes"), is located in the SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of Section 35, Township 11 South, Range 67 West of the 6<sup>th</sup> P.M., at a point approximately 500 feet west of the East section line and on the South section line of said Section 35, in El Paso County, Colorado. 2. Intake Structures/Upper Termini: Triview will withdraw water from four wells located in the alluvium of Monument Creek and Teachout Creek, and such wells are anticipated to be approximately 50 feet in depth, more particularly described as follows: a. Well No. M-1: The well location is on the East bank of Monument Creek in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, at a point 2,500 feet from the South section line and 50 feet from the West section line of said Section 26, Township 11 South, Range 67 West of the 6<sup>th</sup> P.M. The well capacity is 200 g.p.m. b. Well No. M-2: The well location is on Teachout Creek at its confluence with Monument Creek in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, at a point 2,200 feet from the South section line and 1,000 feet from the West section line of said Section 26, Township 11 South, Range 67 West of the 6<sup>th</sup> P.M. The well capacity is 200 g.p.m. c. Well No. M-3: The well location is on an unnamed tributary of Monument Creek at the confluence of said tributary with Monument Creek in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, at a point 1,800 feet from the South section line and 1,300 feet from the West section line of said Section 26, Township 11 South, Range 67 West of the 6<sup>th</sup> P.M. The well capacity is 200 g.p.m. d. Well No. M-4: The well location is on the East bank of Monument Creek in the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, at a point 300 feet from the South section line and 1,500 feet from the West section line of said Section 26, Township 11 South, Range 67 West of the 6<sup>th</sup> P.M. The well capacity is 200 g.p.m. B. Exchange Reach: The maximum reach of Monument Creek affected by the Monument Creek Exchange is that reach between the WWTF and Well No. M-1, described above, being a maximum distance of approximately 2.5 miles. C. Source of Substitute Water: The source of substitute supply decreed to Triview's use in Case No. 87CW74 is domestic wastewater returns directly discharged from the WWTF. At buildout, it is anticipated that Triview's allocation of treated effluent from the WWTF will be approximately 3.0 c.f.s. of water treated at the WWTF, the amount being a pro-rata allocation between Triview, Donala, and Forest Lakes. The specific source of water decreed to Triview's use by exchange in Case No. 87CW74 is nontributary and not-nontributary groundwater of the Denver Basin aquifers, as quantified and decreed in Case Nos. 81CW173, 82CW22, 85CW13, and 87CW40. Effluent attributable to pumping from not-nontributary aquifers is only available to the extent such pumping is authorized through a plan for augmentation approved by this Court. D. Amount of Water Exchanged: 800 g.p.m. (1.78 cfs), conditional. The amount exchanged is in combination with Well Nos. M-1, M-2, M-3, and M-4. E. Date of Original Decree: August 7, 2008, Case No. 87CW74, District Court, Water Division 2. F. Subsequent Decrees Awarding Finding of Diligence: December 16, 2014, Case No. 14CW3036, District Court, Water Division 2. G. Date and Initiation of Appropriation: December 31, 1987, by application filed with the Water Court, Water Division 2. H. Uses of Exchanged Water: Water diverted by Triview from Monument Creek pursuant to the Monument Creek Exchange will be treated as necessary and placed to beneficial use, either directly or through storage, within Triview's municipal water supply system and subsequently used and reused, successively to extinction pursuant to Triview's decrees for underground water in the Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers (Case Nos.

81CW173, 82CW22, 85CW13, 87CW40) and augmentation plan decrees (88CW23(A), 95CW153 and 98CW134). 2. Jackson Creek Exchange. A. Description of Location: 1. Outfall Structure/Lower Terminus: The WWTF shared by Applicant, Donala, and Forest Lakes, is located in the SE ¼ SE ¼ of Section 35, Township 11 South, Range 67 West of the 6<sup>th</sup> P.M., at a point approximately 500 feet west of the East section line and on the South section line of said Section 35, in El Paso County, Colorado. 2. Intake Structures/Upper Termini: Triview will withdraw water from one well located in the alluvium of Jackson Creek, tributary to Monument Creek, tributary to Fountain Creek, tributary to the Arkansas River. Such well will be approximately 50 feet in depth, more particularly described as follows: a. Well No. J-1: The well location is on Jackson Creek in the SW¼ SW¼ of Section 25, at a point 1,000 feet from the West section line and 100 feet from the South section line of said Section 25, Township 11 South, Range 67 West of the 6<sup>th</sup> P.M. The well capacity is 100 g.p.m. B. Exchange Reach: The maximum reach of Monument and Jackson Creeks affected by the Jackson Creek Exchange is that reach between the WWTF and Well No. J-1, described above, being a maximum distance of approximately 1 mile. C. Source of Substitute Water: The source of substitute supply decreed to Triview's use in the Jackson Creek exchange is the same as that described in Paragraph III.1.C., above. D. Amount of Water Exchanged: 100 g.p.m. (0.22 cfs), conditional. E. Date of Original Decree: August 7, 2008, Case No. 87CW74, District Court, Water Division 2. F. Subsequent Decrees Awarding Finding of Diligence: December 16, 2014, Case No. 14CW3036, District Court, Water Division 2. G. Date and Initiation of Appropriation: December 31, 1987, by application filed with the Water Court, Water Division 2. H. Uses of Exchanged Water: Water diverted by Triview from Jackson Creek pursuant to the Jackson Creek Exchange will be treated as necessary and placed to beneficial use, either directly or through storage, within Triview's municipal water supply system and subsequently used and reused, successively to extinction pursuant to Triview's decrees for underground water in the Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers (Case Nos. 81CW173, 82CW22, 85CW13, 87CW40) and augmentation plan decrees (88CW23(A), 95CW153 and 98CW134). **IV. Outline of Work Done Towards Completion of Appropriation and Application of Water to Beneficial Use**: In Case No. 87CW74, the Court decreed to Applicant the conditional use of the Monument Creek Exchange and the Jackson Creek Exchange for the beneficial use of Applicant's municipal water supply system. The Monument Creek Exchange and the Jackson Creek Exchange (collectively the "Exchange Rights"), are a part of a single integrated municipal water supply system, and by decree entered in Case No. 14CW3036, the Applicant was awarded a finding of diligence towards the Exchange Rights and the Exchange Rights were continued in good standing. The Exchange Rights are part of Applicant's integrated water supply system. Pursuant to C.R.S. § 37-92-301(4)(b), work on one component of an integrated system shall be considered in finding that reasonable diligence has been shown for all components of the integrated system. During this diligence period, Applicant has outlaid the following expenditures and completed the following work related to the Exchange Rights in their integrated water system: A. The Applicant has undertaken extensive engineering analysis to increase and enhance re-usable effluent during this diligence period, including through the Monument Creek Exchange and the Jackson Creek Exchange. B. The Applicant has accumulated over \$31,236 in costs related to drilling test wells for its integrated water supply system in

order to operate the Exchange Rights. C. The Applicant has incurred extensive legal fees associated with drafting and filing of documents pertaining to the Water Rights, including previous related applications and decrees as well as the present filing, obtaining legal advice as to the use and development of Applicant's integrated water system, and acquiring additional water rights and augmentation plans. D. Additionally, the Applicant has expended significant time and resources building and maintaining infrastructure necessary to place the Water Rights to beneficial use. Based on the expenditures and efforts described herein, and the improvement and maintenance of other water rights integrated into the use of the subject conditional appropriative rights of exchange, the Applicant has established that it can and will complete the development of the adjudicated conditional water rights and place them to beneficial use within a reasonable period of time. **V. Name of the Owners of the Land on Which Structure is Located Upon Which Water Is or Will Be Stored or Upon Which Water is or Will Be Placed to Beneficial Use:** All lands within the service area of the Triview Metropolitan District, as concerns the place of beneficial use. As concerns alluvial well structures, such lands are currently owned by Willow Springs Ranch, LLC and GKT Monument Two, LLC.

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**CASE NO. 2020CW3077; Previous Case No. 06CW124 – SNOWY RANGE RESERVOIR COMPANY, c/o Bruce Cantrell, 11411 Highway 12, La Veta, CO 81055**

(Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Steven P. Jeffers, No. 17825, Madoline Wallace-Gross, No. 32255, Lyons Gaddis Kahn Hall Jeffers Dworak & Grant, PC, 950 Spruce Street, Suite 1B, Louisville, CO 80027, (720) 726-3671)

Application for Finding of Reasonable Diligence.

**HUERFANO COUNTY**

**2. Name of structures:** Snowy Range Reservoir Company Pond Nos. 1, 2, and 3, a/k/a SRRRC Pond No. 1, SRRRC Pond No. 2, SRRRC Pond No. 3 ("SRRRC Ponds") **3. Describe conditional water right from previous decree: A) Date of original decree, case no. and court:** The original decree was entered in Case No. 06CW124, District Court, Water Division 2, on December 11, 2014. **B) Subsequent diligence decrees:** N/A. **C) Legal descriptions of reservoirs:** The locations of the SRRRC Ponds are shown on the map attached to application as **EXHIBIT A**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The decreed locations are as follows: i) SRRRC Pond No. 1: A point on the center of the dam in the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 19, Township 30 South, Range 68 West, 6th P.M., Huerfano County, Colorado, being 1,430 feet from the North section line and 1,070 feet from the West section line of said Section 19. ii) SRRRC Pond No. 2: A point on the center of the dam in the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 19, Township 30 South, Range 68 West, 6th P.M., Huerfano County, Colorado, being 1,620 feet from the North section line and 700 feet from the West section line of said Section 19. iii) SRRRC Pond No. 3: A point on the center of the dam in the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 19, Township 30 South, Range 68 West, 6th P.M., Huerfano County, Colorado, being 1,975 feet from the North section line and 550 feet from the West section line of said Section 19. **D) Filling Structures:** The SRRRC Ponds will be filled by one or both of the following structures: i) By diversions through the John G. Cozad Ditch ("Cozad Ditch"), which has a capacity of approximately 5.5 cfs. The decreed location of the Cozad Ditch is at a point on the right bank of the

Cucharas River whence the West quarter corner of Section 19, Township 30 South, Range 68 West, 6th P.M., bears South 88°32' West, a distance of 278 feet more or less, which equates to the SW¼ of the NW¼ of Section 19, Township 30 South, Range 68 West, 6th P.M., Huerfano County, Colorado, being 2,635 feet from the North section line and 275 feet from the West section line of said Section 19. The location of the Cozad Ditch is shown on **Exhibit A.** ii) By diversions through the Snowy Range Reservoir Company Pump and Pipeline ("SRRC P&PL"), which will have a capacity of 2.0 cfs. The SRRC P&PL will be located in the SW¼ of the NW¼ of Section 19, Township 30 South, Range 68 West, 6th P.M., Huerfano County, 1,430 feet from the North section line and 880 feet from West section line. The location of the SRRC P&PL is shown on **Exhibit A.** **E. Source:** Cucharas River. **F) Appropriation Date:** July 7, 2006. **G) Decreed Amount:** 29.0 acre-feet per year, cumulative for all three ponds, and one annual refill in the amount of 29.0 acre-feet, CONDITIONAL. The filling rate is 2.0 cfs cumulative from both structures. **H) Uses:** Storage for recreation, piscatorial, fire suppression, wildlife habitat, aesthetics, replacement, exchange and augmentation. Applicant's use of the water right for augmentation, replacement and exchange purposes shall occur only pursuant to this decree, a decree in Case No. 01CW96, a substitute water supply plan administratively approved by the State Engineer, or a subsequent decree entered by the Division No. 2 Water Court. **4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** During the subject diligence period, Applicant conducted and paid for the following work on the ponds and intake structures, at a cost of approximately \$215,102: A) 2015 Applicant installed 200 feet of 14-inch round drainage pipe on south end of Pond No.1 to prevent water from draining from south acreage into pond; installed new aeration system in Pond No. 1 to prevent algae build-up and for fish and wildlife enhancement; and installed new electronic measuring station on inlet to Cozad ditch, complete with solar collector and battery backup. B) 2016 Applicant installed new drainage lines to dry up sites for future ponds. And installed new SRRC Pump and Pipeline with electrical wiring to deliver water into Pond No. 1 from Cuchara River. C) 2017 Applicant installed new electronic measuring stations for inlet and bypass to deliver water from Cozad Ditch to Pond No. 1; and regraded sites for all future ponds. D) 2018 Applicant rebuild 400 feet of Cozad Ditch used to deliver water to Pond No. 1. **5. If a claim to make absolute, water applied to beneficial use:** None. **6. Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool. The applicant must notify these persons that the applicant is applying for this water right, and certify to the Court that the applicant has done so by no later than 14 days after filing this Application:** Escalera Ranch Trust dated May 20, 2020, 11411 Highway 12, La Veta, CO 81055 owns the land upon which the storage structures and intake structures are located.

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**CASE NO. 2020CW3078; PETRA CONSTRUCTION COMPANY, c/o Norman Lewis, 26624 North Turkey Creek Road, Evergreen, CO 80439** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Aaron Ladd, Esq. and Andrea

Kehrl, Esq., Vranesh and Raisch, LLP, 5303 Spine Road, Suite 202, Boulder, CO 80301; Telephone: (303) 443-6151)

First Amended Application for Approval of Plan for Augmentation, Including Water Exchange Project Right

**LAKE COUNTY**

2. **Description of Application:** The Applicant owns the real property that is being developed into the Half Moon Estates subdivision in central Lake County, Colorado, in the SW1/4 SW1/4 of Section 5, the SE1/4 of Section 6, and the NW1/4 NW1/4 of Section 8, Township 10 South, Range 80 West of the 6<sup>th</sup> P.M. (“Half Moon Estates”), as depicted 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 the Court.) The Applicant intends to subdivide Half Moon Estates into fourteen (14) five-acre lots, located along Halfmoon Creek and depicted on **Exhibit A**. The water supply for Half Moon Estates will be obtained from fourteen (14) wells, with one (1) well on each lot; the well water will provide in-house domestic use as well as limited watering of horses/livestock or equivalent domestic animals and outdoor irrigation for the 14 lots at Half Moon Estates. By this Application, the Applicant seeks approval of a plan for augmentation, including water exchange project, to replace the out-of-priority depletions from the 14 wells using the fully consumptive, transmountain portion of one share of capital stock in the Twin Lakes Reservoir and Canal Company (“Twin Lakes Company” or the “Company”) as replacement water. This Application is amended primarily to provide additional location information for the wells, the associated point of depletions for the wells, and the water exchange project. **CLAIM FOR APPROVAL OF A PLAN FOR AUGMENTATION, INCLUDING WATER EXCHANGE PROJECT** 3. **Structures to be Augmented:** The Applicant seeks to augment out-of-priority depletions from the 14 wells that will be located on the 14 lots in Half Moon Estates, which are referred to herein as the “Half Moon Estates Wells” or the “Wells.” a. The Half Moon Estates Wells are not decreed structures. Prior to constructing the Half Moon Estates Wells and following the adjudication of this plan for augmentation, the Applicant will apply to the State Engineer’s Office for well permits for the Half Moon Estates Wells. b. The Half Moon Estates Wells will withdraw groundwater that is tributary to Halfmoon Creek at a maximum rate of 15 gallons per minute each. c. Water pumped from the Half Moon Estates Wells will be used for in-house domestic purposes, watering of horses/livestock or equivalent domestic animals, and outdoor irrigation, as further specified below in Paragraphs 5(b) and (c). d. Half Moon Estates is located in Lake County, Colorado and is depicted, with the locations of the 14 lots, on the map attached hereto as **Exhibit A**. The lot lines depicted on Exhibit A represent the current development concept; Applicant reserves the right to modify individual lot lines at its own request or as required by the Lake County development approval process. As allowed by Policy Memo No. 99-1 of the State Engineer’s Office, the exact locations of the Wells will not be confirmed until the subdivision of Half Moon Estates is approved by Lake County and the individual Wells are drilled. However, Applicant intends to construct one Well on each lot, at the locations specified in the table below, with reasonable variation (< 200’) within each lot as may be dictated by local conditions at the time of drilling, and to construct all 14 Wells at least 600 feet from any existing well:

Lot/Well	Township, Range	Section, 1/4, 1/4 (Lot Location)	Well Location UTM x, y
Lot 1 Well	T 10S, R 80W, 6th P.M.	Sec. 6, SW1/4, SE1/4	381,430.0, 4,340,304.3
Lot 2 Well	T 10S, R 80W, 6th P.M.	Sec. 6, SW1/4, SE1/4 and Sec. 6, SE1/4 SE1/4	381,548.8, 4,340,330.3
Lot 3 Well	T 10S, R 80W, 6th P.M.	Sec. 6, SW1/4, SE1/4	381,559.9, 4,340,170.1
Lot 4 Well	T 10S, R 80W, 6th P.M.	Sec. 6, SW1/4, SE1/4 and Sec. 6, SE1/4 SE1/4	381,653.8, 4,340,239.8
Lot 5 Well	T 10S, R 80W, 6th P.M.	Sec. 6, SE1/4, SE1/4	381,766.4, 4,340,331.2
Lot 6 Well	T 10S, R 80W, 6th P.M.	Sec. 6, SE1/4, SE1/4 and Sec. 5, SW1/4, SW1/4	381,960.1, 4,340,320.8
Lot 7 Well	T 10S, R 80W, 6th P.M.	Sec. 5, SW1/4, SW1/4	382,228.1, 4,340,314.2
Lot 8 Well	T 10S, R 80W, 6th P.M.	Sec. 5, SW1/4, SW1/4	382,168.4, 4,340,192.8
Lot 9 Well	T 10S, R 80W, 6th P.M.	Sec. 5, SW1/4, SW1/4	382,239.1, 4,340,100.2
Lot 10 Well	T 10S, R 80W, 6th P.M.	Sec. 5, SW1/4, SW1/4	382,339.4, 4,340,175.8
Lot 11 Well	T 10S, R 80W, 6th P.M.	Sec. 5, SW1/4, SW1/4 and Sec. 8, NW1/4 NW1/4	382,337.5, 4,339,990.9
Lot 12 Well	T 10S, R 80W, 6th P.M.	Sec. 8, NW1/4, NW1/4	382,371.8, 4,339,850.2
Lot 13 Well	T 10S, R 80W, 6th P.M.	Sec. 5, SW1/4, SW1/4 and Sec. 8, NW1/4 NW1/4	382,210.4, 4,339,931.2
Lot 14 Well	T 10S, R 80W, 6th P.M.	Sec. 8, NW1/4, NW1/4	382,247.9, 4,339,776.7

e. Based on the locations of the Wells as described above in Paragraph 3.d, the Applicant's engineer has identified the following point of depletions from the Wells ("Point of Depletions"): the SW1/4 SE1/4 of Section 6, Township 10 South, Range 80 West, 6th P.M., at a location 228 feet north of the south section line and 1,330 feet west of the east section line; provided, however, while no depletions from the Wells will occur upstream of the Point of Depletions, due to local surface and groundwater conditions, some or all of the depletions from the Wells may occur downstream of it. 4. **Water Rights to be Used for Augmentation:** a. Applicant proposes to augment depletions from the Half Moon Estates Wells utilizing the fully consumptive, transmountain portion of the water available to one (1.0) share of capital stock in Twin Lakes Reservoir and Canal Company ("Twin Lakes"). The Applicant does not request a change of the fully consumptive, transmountain



portion of the Twin Lakes water by this Application. b. The Twin Lakes water rights are more particularly described as follows: i. **Colorado River Water Rights:** The Independence Pass Transmountain Diversion System (the "System") diverts water from the headwaters of Roaring Fork Creek and its tributaries in Pitkin County. The System was decreed by the District Court for Garfield County in Civil Action No. 3082, on August 25, 1936, with a date of appropriation of August 23, 1930, for direct irrigation and storage in Twin Lakes Reservoir. The original Decree for the System was modified by the Decree entered by the District Court for Water Division 5 in Case No. W-1901, on May 12, 1976, which provides that water gathered and collected from the System is decreed for the following purposes: direct flow and storage for irrigation, domestic, commercial, industrial, municipal, and all beneficial uses. Water is carried through the Continental Divide for delivery to Lake Creek, a tributary of the Arkansas River, at a decreed rate of 625 cubic feet per second ("cfs"), with an annual limit of 68,000 acre-feet, a running ten-year limit of 570,000 acre-feet, and other limitations set forth in the aforementioned Decrees. ii. **Arkansas River Water Rights:** Water in Lake Creek, a tributary of the Arkansas River, is stored in Twin Lakes Reservoir pursuant to the Decree entered by the District Court for Chaffee County in Civil Action No. 2346, on July 14, 1913, with dates of appropriation of December 15, 1896, for 20,645.3 acre-feet, and March 29, 1897, for 33,806.7 acre-feet. The original Decree was modified by the District Court for Water Division 2 in Case No. W-3965, dated April 19, 1974. Twin Lakes Reservoir is an on-stream reservoir, comprised of Lower Twin Lake and Upper Twin Lake, located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 of Township 11 South, Range 80 West, 6th P.M. The water is decreed for storage for irrigation, domestic, commercial, industrial, and municipal purposes on any sites in the Arkansas River basin of Colorado below Twin Lakes Reservoir which are capable of being served water by diversions from said Arkansas River. c. Twin Lakes Reservoir is depicted on the map attached hereto as **Exhibit B**. d. A Twin Lakes share represents a pro-rata interest in native Arkansas River diversions and the Independence Pass Transmountain Diversion System. Based on current information from the Division Engineer's Office, each Twin Lakes share yields approximately one (1) acre-foot per year, with the fully consumptive, transmountain portion of the share conservatively yielding 0.73 acre-feet per year and the native portion of the share yielding approximately 0.27 acre-feet per year. The water associated with the transmountain portion of a Twin Lakes share is available for one-hundred percent consumptive use and reuse, including augmentation purposes. The Applicant seeks to utilize the 0.73 acre-foot conservative annual yield associated with the transmountain portion of its Twin Lakes share in the plan for augmentation claimed herein. However, the Applicant intends to maintain, utilize, own, and control the native portion of its Twin Lakes share, and the Applicant seeks a Decree in this matter reserving the right to utilize the native portion of its Twin Lakes share for augmentation or other purposes, *inter alia*, to increase the allowable outdoor uses associated with this augmentation plan in the future, whether by separate Water Court Application or otherwise. 5. **Complete Statement of Plan for Augmentation, Covering all Applicable Matters under C.R.S. § 37-92-103(9), § 302(1), § 305(5), § 305(8)**: a. **Location of Use:** As described above, water withdrawn from the Half Moon Estates Wells will be used in the Half Moon Estates subdivision, as described in Paragraphs 2 and 3.d., and which is depicted on **Exhibit A**. b. **In-house Domestic Water Usage and Depletions:** In-house domestic water usage

is not anticipated to exceed 80 gallons per person per day. With 3.5 persons per single-family dwelling and 14 single-family dwellings, the in-house domestic water demands equal 4.392 acre-feet per year. Because wastewater from the dwellings will be treated utilizing non-evaporative individual sewage disposal systems, a ten percent (10%) consumption factor is appropriate, and the annual depletions associated with the in-house domestic use are 0.439 acre-feet per year. Return flows will accrue to Halfmoon Creek.

c. **Outdoor Water Uses and Depletions:** In addition to in-house domestic use, the augmentation plan will also replace the out-of-priority depletions associated with outdoor irrigation and watering of horses/livestock or equivalent domestic animals. The total outdoor irrigation depletions are based on 1.574 acre-feet per acre of annual consumptive use, applying an 80% irrigation efficiency. Water requirements for horses/livestock or equivalent domestic animals are assumed to be 11 gallons per animal per day, with such use being 100% consumptive. In order to provide flexibility in the outdoor uses ultimately selected by the residents of Half Moon Estates, the Applicant has evaluated a combination of outdoor irrigation and horse/livestock or equivalent domestic animal watering uses, ranging from (i) 580 square feet of irrigated area per lot (8,120 square feet total) and zero horses/livestock or equivalent domestic animals to (ii) 235 square feet of irrigated area per lot (3,290 square feet total) and 14 total horses/livestock or equivalent domestic animals in Half Moon Estates. For each combination of outdoor uses, the total net depletions from outdoor water usage will not exceed 0.290 acre-feet per year. Every contemplated combination of outdoor uses maintains enough yield available under the Twin Lakes share to replace the in-house domestic depletions. The Applicant will install, maintain, and operate such water measurement and recording devices as necessary for administration of this plan for augmentation. Irrigation return flows will accrue to Halfmoon Creek.

d. **Maximum Stream Depletions:** Maximum stream depletions associated with use of the Half Moon Estates Wells will not exceed 0.73 acre-feet per year.

e. **Augmentation Water:** The required volume of augmentation water will be provided from the sources described in Paragraph 4, above. Applicant reserves the right to retain and exclude from this augmentation plan any portion of a Twin Lakes share not needed to replace depletions from the Half Moon Estates Wells should a portion of the share go unutilized. Due to the small volume of annual stream depletions projected to occur under this plan, instantaneous stream depletions may be aggregated and replaced by one or more releases from storage of short duration.

f. **Water Exchange Project:** Because the Point of Depletions is on Halfmoon Creek, a side tributary of the Arkansas River, and Applicant's substitute supply water will be provided downstream to the Arkansas River, Applicant asserts a water exchange project right pursuant to C.R.S. §§ 37-92-103(9), 37-92-302(5), 37-92-305(3)(a), and 37-92-305(5). The water exchange project reach is depicted on the map attached hereto as **Exhibit B** and is described as follows: The reach of the stream dewatered by depletions from pumping of the Wells extends from the Point of Depletions, as described in paragraph 3.e., above, which is the upstream terminus of the depletion reach for the exchange project, down Halfmoon Creek to its confluence with Lake Fork Creek in the SW1/4 SE1/4 of Section 5, Township 10 South, Range 80 West, 6th P.M., down Lake Fork Creek to its confluence with the Arkansas River in the SW1/4 SE1/4 of Section 5, Township 10 South, Range 80 West, 6th P.M., and down the Arkansas River to its confluence with Lake Creek in the NE1/4 SE1/4 of Section 24, Township 11 South, Range 80 West, 6th P.M., Lake County, at a location 2,630 feet north

of the south section line and 1,775 feet west of the east section line, which point is the downstream terminus of the depletion reach for the exchange project. At this location, replacement of the Wells' upstream depletions to the stream will occur under the exchange project with water released from Twin Lakes Reservoir carried in Lake Creek to the confluence of Lake Creek and the Arkansas River at the downstream terminus of the exchange project. The exchange project will operate to replace depletions to the flow of water in Halfmoon Creek, tributary to Lake Fork, tributary to the Arkansas River, as the depletions occur. The water exchange project right will be administered with a priority date of the date of the filing of this Application, December 23, 2020, at a maximum flow rate of 0.001 cfs, conditional. g. **No Injury and On-Site Storage:** It is not anticipated that any water right located on Halfmoon Creek, Lake Fork, or the Arkansas River upstream of the confluence of Lake Creek and the Arkansas River will be injured by the operation of the Half Moon Estates Wells. Should that turn out not to be the case, the Applicant reserves the right to include on-site storage as part of the plan for augmentation and to exchange Twin Lakes water into the on-site storage as needed. h. **Twin Lakes Company Requirements:** The Applicant will comply with the applicable Bylaws of the Twin Lakes Company requiring the Applicant to submit the stock certificate for the share committed to this plan for augmentation, in order to allow the Company to legend the certificate with a notation regarding this plan for augmentation and directing that no transfer of the share shall be made by the Company, except as otherwise allowed under its Bylaws, without the prior approval of the Water Court. In addition, in any proposed Decree in this case, the Applicant will include the terms and conditions required by the Twin Lakes Company's Bylaws. i. **Colorado Water Conservation Board Instream Flow Rights:** The Colorado Water Conservation Board ("CWCB") holds an instream flow water right on Halfmoon Creek in the amount of 7.0 cfs, decreed in Case No. W-4645-77, and an instream flow water right on Lake Fork in the amount of 15.0 cfs, decreed in Case No. W-4654. Applicant believes and asserts that depletions associated with the Half Moon Estates Wells will result in less than a one percent depletive effect on the aforementioned instream flow water rights on Halfmoon Creek and Lake Fork, and the maximum depletion rate of 0.001 cfs qualifies as a de minimis impact to the aforementioned in-stream flow water rights, under the CWCB's Instream Flow De Minimis Rule, 2 C.C.R. § 408-2-8e. Factoring in delayed pumping effects and lagged return flows, the maximum, steady-state depletion rate to Halfmoon Creek and Lake Fork will not exceed 0.001 cfs. j. **Additional Sources of Augmentation Water:** The Applicant reserves the right to add additional sources of augmentation water to the plan for augmentation in the future, pursuant to the Decree ultimately entered in this matter. 6. **Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** The Applicant owns the land where the new structures, the Half Moon Estates Wells, will be located. WHEREFORE, Applicant requests the entry of a Decree approving this Application, specifically granting the claims described in this Application, including but not limited to determining that the source and location of delivery of augmentation water are sufficient to prevent material injury to vested water rights. Applicant also requests a determination that the Half Moon Estates Wells described herein can be operated without curtailment so long as out-of-priority stream depletions

are replaced as proposed herein. Applicant further requests the entry of an Order directing the State Engineer's Office to issue well permits for the construction and use of the Half Moon Estates Wells.

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**CASE NO. 2020CW3079; Previous Case No. 2010CW99 – CITY OF FOUNTAIN, COLORADO, c/o Dan Blankenship, Utilities Director, 116 South Main Street, Fountain, CO 80817** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Cynthia F. Covell, Andrea L. Benson, and Gilbert Y. Marchand, Jr., Alperstein & Covell P.C., 1600 Broadway, Suite 1070, Denver, CO 80202, (303) 861-0420)

Application for Finding of Reasonable Diligence

**EL PASO AND PUEBLO COUNTIES**

**2. Names of water rights:** Chilcott Exchange to Pueblo Reservoir and Chilcott Exchange to Augment Well Depletions. **3. Description of conditional water rights, with required information from the prior decree:** A. Date of original decree: December 10, 2014; Case No.: 2010CW99 ("Original Decree"); Court: Water Court, Water Division No. 2. B. Subsequent decrees awarding diligence for all structures: This is the first diligence proceeding. C. Decreed Locations: The exchange reaches decreed in the Original Decree are as follows: Chilcott Exchange to Pueblo Reservoir: The downstream terminus of the exchange reach is the confluence of Fountain Creek and the Arkansas River, in the NE 1/4 of Section 6, Township 21 South, Range 64 West of the 6th P.M. in Pueblo County, Colorado. The upstream terminus of the exchange reach is located on the Arkansas River at Pueblo Reservoir in the S1/2 of Section 36, Township 20 South, Range 66 West of the 6th P.M. in Pueblo County, Colorado. Chilcott Exchange to Augment Well Depletions: The downstream terminus of the exchange reach is the Fountain Regional Wastewater Treatment Plant, located in the NW 1/4 of Section 10, Township 17 South, Range 65 West of the 6th P.M. in El Paso County. The upstream termini of the exchange reach are (1) the point at which depletions from the Venetucci Wells reach Fountain Creek, generally in Section 11, Township 15 South, Range 66 West of the 6th P.M. and (2) the point of depletion of the Cumberland Green Well, located on Jimmy Camp Creek generally in Section 33, Township 15 South, Range 65 West of the 6th P.M. in El Paso County. The exchange reaches are 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.) D. Source of water: Arkansas River, Fountain Creek and Jimmy Camp Creek, tributary to the Arkansas River. E. Appropriation date: December 28, 2006. F. Exchange rates: Chilcott Exchange to Pueblo Reservoir: 19 cfs, conditional, provided, however, that the exchange rate decreed in the Original Decree is included within the 19 cfs exchange rate decreed in Case No. 2001CW108; Chilcott Exchange to Augment Well Depletions: 2.8 cfs conditional. G. Uses: Chilcott Exchange to Pueblo Reservoir: Water from the Fountain Chilcott Depletion Credits that is exchanged to storage in Pueblo Reservoir pursuant to this decree may be released if required for augmentation to the Arkansas River, or delivered from storage in Pueblo Reservoir back to Fountain via the Fountain Valley Conduit and/or the Southern Delivery Pipeline system to be used for all municipal purposes, including domestic, irrigation, recreation, storage, piscatorial, commercial, industrial, replacement, substitution, augmentation, and further reuse and exchange to extinction, storage and release from storage for all of the foregoing

purposes, as provided in the Original Decree. Chilcott Exchange to Augment Well Depletions: Water may be exchanged to the Wells located within the exchange reaches to augment depletions from those Wells. **4. Detailed outline of what has been done toward completion or for completion of the appropriations and application of water to beneficial use as conditionally decreed, including expenditures**: During this diligence period, Fountain has continued to improve, operate and maintain its integrated water supply system, of which the exchanges decreed in the Original Decree are a part. To enable Fountain to more effectively provide water service to its existing and future customers, it has expended approximately \$32,000,000 during this diligence period for capital infrastructure investment to construct, repair and improve its wells, water system infrastructure and related infrastructure and projects that are part of the efficiency, operation and maintenance of its integrated water supply system and has undertaken costly and extensive efforts to decontaminate wells that were found to contain perfluoralkyl and polyfluoroalkyl substances (PFAS) and has actively participated in legislative hearings regarding regulation of PFAS. The exchanges decreed in the Original Decree are important components of Fountain's integrated water supply system. Fountain has in place infrastructure as well as measuring, accounting, recordkeeping and reporting systems required to operate the exchanges subject to the terms and conditions of the Original Decree. Fountain has agreed to forego operation of the Chilcott Exchange to Pueblo Reservoir under certain circumstances as provided in the *Intergovernmental Agreement among the Cities of Pueblo, Fountain, Colorado Springs and Aurora, Southeastern, and the Board of Water Works of Pueblo, effective May 27, 2004*, as such agreement may be amended from time to time ("Regional IGA"). The Regional IGA allows Fountain to recover as "Foregone Diversions" water that is not exchanged when exchange is foregone pursuant to the Regional IGA. Fountain, together with other parties to the Regional IGA, filed and prosecuted Case No. 06CW120, whereby Foregone Diversions can be captured for later exchange consistent with the Regional IGA. Case No. 06CW120 was decreed during this diligence period, on August 17, 2016, and a corrected decree was entered on April 20, 2017. The decree in Case No. 06CW120 will provide Fountain with greater opportunity to realize the benefit of exchanges to Pueblo Reservoir. Fountain has defended its water rights, including the exchanges decreed in the Original Decree, against applications filed by others in cases in which Fountain determined that injury to its water rights could occur in the absence of appropriate protective terms and conditions. During this diligence period, Fountain has expended in excess of \$360,000 for representation by water counsel in opposition to water court applications filed by others, in order to protect and defend its water rights, and in other matters related to the development and utilization of Fountain's water rights and water system infrastructure. During this diligence period, Fountain has also expended approximately \$85,000 in water resource engineering fees. **5. Names and addresses of owners of the land upon which any new diversion structure 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**. Fountain has not constructed any new diversion structure or storage structure, or modification to any existing diversion or storage structure in connection with the exchanges decreed herein. Pueblo Reservoir is located on land or easements owned by the United States Department of Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18-E,

Loveland CO 80537-9711. The wells to which water may be exchanged pursuant to the Original Decree are located on land, easements or rights of way owned by Fountain, or on land available to Fountain pursuant to other agreement.

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**CASE NO. 2020CW3080; Previous Case No. 00CW153 – MR. RAYMOND A. WHITMIRE, TRUSTEE OF THE RAYMOND A. WHITMIRE REVOCABLE TRUST, 107991 S. 4690 ROAD, SALLISAW, OK 74955** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Lee Johnson, Katrina Fiscella, CARLSON, HAMMOND & PADDOCK, LLC, 1900 Grant Street, suite 1200, Denver, CO 80203, (303) 861-9000)

Application for a Finding of Reasonable Diligence and to Make Conditional Water Rights Absolute.

**HUERFANO COUNTY**

**2. Names of structures:** Cattail Pond, Waterfall Pond, Roadrunner Pond No.1, Wright and Brink Reservoir, Silver Mountain Preserve Well No. 1, Silver Mountain Preserve Well No. 2, and Equestrian Center Well. A map setting forth the general locations of the relevant structures is attached to the application as **Exhibit A**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **3. Description of conditional water rights: Conditional Water Storage Rights A. Cattail Pond** 1. Date of original decree: December 1, 2014, Case No. 00CW153, District Court, Water Division No. 2. 2. Subsequent decrees awarding findings of diligence: N/A. 3. Location: In the NW1/4 NW1/4 of Section 2, Township 29 South, Range 68 West P.M., lying S 59° 30’ 27” E a distance of 444 feet from the NW corner of said Section 2, Huerfano County, Colorado. 4. Source of water: North Abeyta Creek, tributary to the Cucharas River, tributary to the Huerfano River, tributary to the Arkansas River. 5. Appropriation date: July 18, 2000. 6. Amount: 4.28 acre feet (conditional), with the right to an annual fill and two annual refills of the capacity of the reservoir. 7. Use: Stock water, fish propagation, recreation, wildlife habitat and fire protection. 8. Other: Pursuant to the decree in Case No. 00CW153, Cattail Pond is an onstream storage structure; the surface area is 0.86 acres; the maximum height of the dam is 15 feet; the length of the dam is 64 feet; the depth of water at spillway is 10 feet; and the total capacity of the reservoir is 4.28 acre feet of active storage with no dead storage. **B. Waterfall Pond** 1. Date of original decree: December 1, 2014, Case No. 00CW153, District Court, Water Division No. 2. 2. Subsequent decrees awarding findings of diligence: N/A. 3. Location: In the NW1/4 NW1/4 of Section 3, Township 29 South, Range 68 West P.M., being located S 67° 39’ 8” E a distance of 415 feet from the NW corner of Section 3, Huerfano County, Colorado. 4. Source of water: North Abeyta Creek, tributary to the Cucharas River, tributary to the Huerfano River, tributary to the Arkansas River. 5. Appropriation date: October 31, 2000. 6. Amount: 2.84 acre feet (conditional), with the right to fill and one annual refill of the capacity of the reservoir. 7. Use: Stock water, fish propagation, recreation, wildlife habitat and fire protection. 8. Other: Pursuant to the decree in Case No. 00CW153, Waterfall Pond is an onstream storage structure; the surface area is 0.57 acres; the maximum height of the dam is 15 feet; the length of the dam is 104 feet; the depth of water at spillway is 10 feet; and the total capacity of the reservoir is 2.84 acre feet of active storage with no dead storage. **C. Roadrunner Pond No. 1.** 1. Date of original decree: December 1, 2014, Case No. 00CW153, District Court,

Water Division No. 2. 2. Subsequent decrees awarding findings of diligence: N/A. 3. Location: In the NE1/4 NE1/4 of Section 35, Township 28 South, Range 68 West P.M., the NE section corner of said Section 35 lying N 55° 26' 45" E a distance of 1,532 feet from the center of the dam, Huerfano County, Colorado. 4. Source of water: Natural runoff within the water course in which the pond is located, and Roadrunner Spring, as described in Case No. 00CW153. Natural runoff and Roadrunner Spring are both on unnamed tributaries to North Abeyta Creek, tributary to the Cucharas River, tributary to the Huerfano River, tributary to the Arkansas River. 5. Appropriation date: July 19, 2000. 6. Amount: 0.75 acre feet (conditional) with the right to one annual fill and one annual refill of the capacity of the reservoir. 7. Use: Stock water, fish propagation, recreation, wildlife habitat and fire protection. 8. Other: Pursuant to the decree in Case No. 00CW153, Roadrunner Pond No. 1 is a lined structure; the surface area is 0.43 acres; the maximum height of the dam is 19.56 feet; the length of the dam is 205 feet; the depth of water at spillway is 4.8 feet; and the total capacity of the reservoir is 0.75 acre feet of active storage with no dead storage. **D. Wright and Brink Reservoir.** 1. Date of original decree: December 1, 2014, Case No. 00CW153, District Court, Water Division No. 2. 2. Subsequent decrees awarding findings of diligence: N/A. 3. Location: In the SE1/4 NE1/4 of Section 35, Township 28 South, Range 69 West P.M., the E ¼ corner of said Section 35 lying S 71°13'29" E a distance of 1,054 feet from the center of the dam, Huerfano County, Colorado. 4. Source of water: a. Surface water runoff from the water course in which the pond is located; and b. North Abeyta Creek as diverted at the North Veta Canon Ditch. As described in paragraph 12.A.(5) of the decree in Case No. 00CW153, the headgate of North Veta Canon Ditch is located on North Veta Creek (a/k/a North Abeyta Creek), a tributary of the Huerfano River through the Cucharas River, at a point in the NW ¼ SW ¼ of Section 26, Township 28 South, Range 69 West of the 6th P.M., 724 feet from the west section line and 1,856 feet from the south section line. 5. Appropriation date: December 29, 2000. 6. Amount: 49.21 acre feet, with the right to one annual fill and up to two annual refills of the capacity of the reservoir, not to exceed 147.83 annual acre feet of in-priority diversions. a. In Case No. 00CW153, 49.21 acre feet (the first fill of this structure) was decreed absolute as to the beneficial uses of stock water, irrigation, fish propagation, and wildlife habitat and 98.62 acre feet (or the first and second refills of this structure) were decreed conditional as to such uses. In addition, 147.83 acre feet (or the first fill, first refill, and second refill of this structure) were decreed conditional as to the beneficial uses of recreation, firefighting, and augmentation. Pursuant to section 37-92-301(4)(e), C.R.S., Applicant seeks a finding that the first fill of this structure (49.21 acre feet) is absolute as to all decreed beneficial uses, subject to the limitations contained in the decree in Case No. 00CW153. 7. Use: Stock water, irrigation, fish propagation, and wildlife habitat, recreation, fire protection and augmentation. Irrigation is for up to 290 acres in Section 32, T 28 S, R 68 W and Section 5 in T 29 S, R 68 W, 6th P.M. 8. Other: Pursuant to the decree in Case No. 00CW153, Wright and Brink Reservoir has a surface area of 9.06 acres; the maximum height of the dam is 35.6 feet; the length of the dam is 628 feet; the depth of water at spillway is 15 feet; and the total capacity of the reservoir is 49.21 acre feet of active storage with no dead storage. **Conditional Ground Water Rights.** **E. Silver Mountain Preserve Well No. 1.** 1. Date of original decree: December 1, 2014. 2. Subsequent decrees awarding findings of diligence: N/A. 3. Decreed location: In the SE1/4 SE1/4 of Section 26, Township 28 South, Range 68 West, 6th P.M., being

935 feet from the south section line and 1,183 feet from the east section line of said Section 26, Huerfano County, Colorado. 4. Decreed source of water: Poison Canon Formation. 5. Appropriation date: December 29, 2000. 6. Amount: 200 g.p.m. (conditional). Gross pumping from Silver Mountain Preserve Well No. 1 in combination with Silver Mountain Preserve Well No. 2 and Equestrian Center Well shall have a total annual volumetric limit of 69.6 acre feet of diversions. 7. Use: Domestic use for both the Pinon Hills Subdivision pursuant to any decree entered in Water Division 2, Case No. 97CW108(A) and Silver Mountain Preserve, commercial stock water, and fire protection, subject to permitting, and as set forth in the decree in Case No. 00CW153. 8. Decreed depth: 764 feet. 9. Other: All diversions from Silver Mountain Preserve Well No. 1 will be augmented. Silver Mountain Preserve Well No. 1 was originally permitted under Well Permit No. 56756-F, issued October 25, 2001. In accordance with the decree in Case No. 00CW153, Silver Mountain Preserve Well No. 1 was re-permitted pursuant to section 37-90-137(2), C.R.S., under Permit No. 79460-F, issued November 5, 2015, for an increase in pumping rate and correction in the well location. Pursuant to Permit No. 79460-F, Silver Mountain Preserve Well No. 1 is located in the SE1/4 SE1/4 of Section 26, Township 28 South, Range 68 West, 6th P.M., 1,019 feet from the south section line and 1,106 feet from the east section line, Huerfano County, Colorado. UTM Coordinates (Meters, Zone 13, NAD 83): 503249 Easting; 4159107 Northing. **F. Silver Mountain Preserve Well No. 2.** 1. Date of original decree: December 1, 2014. 2. Subsequent decrees awarding findings of diligence: N/A. 3. Decreed location: In the SE1/4 NW1/4 of Section 28, Township 28 South, Range 68 West, 6th P.M., being 2,684 feet from the south section line and 2,233 feet from the west section line of said Section 28, Huerfano County, Colorado. 4. Decreed source of water: Poison Canon Formation. 5. Appropriation date: December 29, 2000. 6. Amount: 10 g.p.m. (conditional). Gross pumping from Silver Mountain Preserve Well No. 2 in combination with Silver Mountain Preserve Well No. 1 and Equestrian Center Well shall have a total annual volumetric limit of 69.6 acre feet of diversions. 7. Use: Domestic, stock water, irrigation for landscaping, lawns and gardens, and fire protection, including diversions of up to 16.44 acre feet per year for the Pinon Hills Estates Subdivision pursuant to any decree entered in Water Division 2, Case No. 97CW108(A). 8. Decreed depth: 600 feet. 9. Other: Pursuant to the decree in Case No. 00CW153, all diversions from Silver Mountain Preserve Well No. 2 will be augmented. **G. Equestrian Center Well.** 1. Date of original decree: December 1, 2014. 2. Subsequent decrees awarding findings of diligence: N/A. 3. Decreed location: In the NE1/4 SE1/4 of Section 34, Township 28 South, Range 68 West, 6th P.M., being 1,795 feet from the south section line and 844 feet from the east section line of said Section 34, Huerfano County, Colorado. 4. Decreed source of water: Poison Canon Formation. 5. Appropriation date: December 29, 2000. 6. Amount: 6 g.p.m. (conditional). Gross pumping from Equestrian Center Well in combination with Silver Mountain Preserve Well No. 1 and Silver Mountain Preserve Well No. 2 shall have a total annual volumetric limit of 69.6 acre feet of diversions. 7. Use: Domestic, commercial, and fire protection. 8. Decreed depth: 786 feet. 9. Other: All diversions from Equestrian Center Well will be augmented. Equestrian Center Well was originally constructed pursuant to Well Permit No. 227845. Permit No. 227845-A was issued on June 5, 2012, pursuant to section 37-92-602(3)(c), C.R.S., for the replacement (deepening of an existing hole) of Permit No. 227845. A well construction report was filed on August 16, 2012, stating that construction pursuant to



Permit No. 227845-A was completed on July 26, 2012, to a total well depth of 1,185 feet. The conditional water rights described in this paragraph 3 are hereinafter referred to as the "Subject Water Rights." **4. Detailed outline of what has been done toward completion of the appropriation and application to a beneficial use.** A. Applicant purchased the Citadel Ranch, including the Subject Water Rights and related structures, in September of 2017. On January 3, 2018, Applicant filed an Entry of Appearance and Notice of Change of Ownership of the Subject Water Rights in Case No. 00CW153, the proceeding in which the Subject Water Rights were originally decreed. B. Prior to Applicant's purchase of the Citadel Ranch and the Subject Water Rights, Applicant's predecessors-in-interest constructed and maintained the Cattail Pond, Waterfall Pond, Roadrunner Pond No. 1, Wright and Brink Reservoir, Silver Mountain Preserve Well No. 1, Silver Mountain Preserve Well No. 2, and Equestrian Center Well. These are all existing structures. Expenses associated with these activities were incurred during the diligence period. C. The Subject Water Rights were adjudicated in Case No. 00CW153 (decree entered December 1, 2014). The decree in Case No. 00CW153 also approved a plan for augmentation that provides for replacement of out-of-priority depletions, if any, resulting from exercise of the Subject Water Rights. During the diligence period, Applicant continued to operate the plan for augmentation approved in Case No. 00CW153, including, but not limited to, augmentation of depletions associated with the Subject Water Rights, when required. Expenses associated with these activities were incurred during the diligence period. D. Cattail Pond is an onstream structure located in a historically boggy area with existing standing water within the channel of North Abeyta Creek. During the diligence period, Cattail Pond has been operated on a flow-through basis and filled with natural flows of North Abeyta Creek for decreed beneficial uses. Although water has been periodically stored in this structure during the diligence period, this Application does not include a claim to make absolute any portion of the conditional water right for Cattail Pond. Applicant merely seeks a finding of reasonable diligence for Cattail Pond in this proceeding. E. Waterfall Pond is an onstream structure located within the alluvium of North Abeyta Creek. During the diligence period, Waterfall Pond has been operated on a flow-through basis and filled with natural flows of North Abeyta Creek for decreed beneficial uses. Although water has been periodically stored in this structure during the diligence period, this Application does not include a claim to make absolute any portion of the conditional water right for Waterfall Pond. Applicant merely seeks a finding of reasonable diligence for Waterfall Pond in this proceeding. F. Roadrunner Pond No. 1 is a springfed structure located adjacent to an unnamed tributary to North Abeyta Creek. It is filled with natural runoff and spring flows from the Roadrunner Spring (also adjudicated in Case No. 00CW153). It can also be fed by water routed by pipeline from Wright and Brink Reservoir. During the diligence period this structure was filled to its decreed capacity of 0.75 acre feet for decreed beneficial uses. The depletions associated with storage of water in this structure were augmented under the terms of the decree in Case No. 00CW153. Expenses associated with these activities were incurred during the diligence period. G. Wright and Brink Reservoir is an off-channel structure that is filled by surface runoff and diversions through the North Veta Canyon Ditch. Wright and Brink Reservoir has been filled and refilled in priority or pursuant to a futile call determination during the diligence period in accordance with the decree in Case No. 00CW153. Said water has been applied to beneficial use during the diligence period. Expenses

associated with these activities were incurred during the diligence period. H. During the diligence period, Silver Mountain Preserve Well No. 1 has been used to supply water for domestic use in the Pinon Hills Estates Subdivision and the Citadel Ranch pursuant to the decrees in Cases No. 00CW153 and 97CW108(A). All pumping from Silver Mountain Preserve Well No. 1 during the diligence period has been augmented pursuant to the decrees in Cases No. 00CW153 and 97CW108(A). Expenses associated with these activities were incurred during the diligence period. I. Silver Mountain Preserve Well No. 2 and Equestrian Center Well are existing structures on the Citadel Ranch. On information and belief, Applicant's predecessors-in-interest diverted water at a maximum rate of 10 g.p.m. using Silver Mountain Preserve Well No. 2 for the decreed beneficial use of stock watering during the diligence period in 2017. Such diversions were augmented in accordance with the decree in Case No. 00CW153. Expenses associated with these activities were incurred during the diligence period. J. During the diligence period, the Citadel Ranch was impacted by a significant fire event in connection with what was known as the "Spring Creek Fire." This was a large fire event in both Costilla and Huerfano Counties. This fire event generated a need for significant repair and cleaning of measuring flumes, ditches, diversion structures, and storage structures located on the Citadel Ranch. Expenses associated with these activities were incurred during the diligence period. K. During the diligence period, Applicant negotiated and entered into a Purchase and Sale Agreement to sell the Citadel Ranch, including the Subject Water Rights and related structures. Such sale has yet to close as of the date of this Application, but expenses related to these activities were incurred during the diligence period. **5. Claim to make absolute; (See supportive accounting, Exhibit B):** A. Roadrunner Pond No. 1. As noted in paragraph 4(F) of this Application, Applicant filled Roadrunner Pond No. 1 to its decreed capacity of 0.75 acre feet for decreed beneficial uses pursuant to the augmentation plan decreed in Case No. 00CW153 during the diligence period. In accordance with the Division of Water Resources Written Instruction No. 2020-01 and pursuant to § 37-92-301(4)(e), C.R.S., Applicant requests a finding that the first fill of the Roadrunner Pond No. 1 conditional water right has been made absolute for all decreed beneficial uses in the amount of 0.75 acre feet. B. Wright and Brink Reservoir. 1. First Fill. As noted in paragraph 3(D)(6)(a) of this Application, in Case No. 00CW153, 49.21 acre feet (the first fill of this structure) was decreed absolute as to the beneficial uses of stock water, irrigation, fish propagation, and wildlife habitat, and 98.62 acre feet (the first and second refills of this structure) were decreed conditional as to such uses. In addition, 147.83 acre feet (or the first fill, first refill, and second refill of this structure) were decreed conditional as to the beneficial uses of recreation, firefighting, and augmentation. Pursuant to section 37-92-301(4)(e), C.R.S., Applicant requests a finding that the first fill of this structure (49.21 acre feet) is absolute as to all decreed beneficial uses, subject to the limitations contained in the decree in Case No. 00CW153. 2. First and Second Refills. As noted in paragraph 4(G) of this Application, during the diligence period Applicant has stored in-priority or otherwise Commissioner approved diversions of water in this structure for decreed beneficial uses. Accordingly, Applicant requests a finding that the first and second refills of this structure have been made absolute for all decreed beneficial uses in the amount of 147.63, subject to the limitations contained in the decree in Case No. 00CW153. C. Silver Mountain Preserve Well No. 1. As noted in paragraph 4(H) of this Application, Silver Mountain Preserve Well No. 1 has been used to supply water for

domestic use in the Pinon Hills Estates Subdivision and the Citadel Ranch during the diligence period, with all diversions augmented pursuant to the decrees in Cases No. 00CW153 and 97CW108(A). Specifically, Silver Mountain Preserve Well No. 1 has been pumped at an average rate of 14 g.p.m. during the diligence period for decreed beneficial uses, with all diversions augmented pursuant to the decrees in Cases No. 00CW153 and 97CW108(A). In accordance with the Division of Water Resources Written Instruction No. 2020-01, Applicant requests a finding that the conditional water right for the Silver Mountain Preserve Well No. 1 has been made absolute in the amount of 14 g.p.m. for all decreed beneficial uses. Applicant seeks a finding of reasonable diligence for any portions of the conditional right not made absolute herein. D. Silver Mountain Preserve Well No. 2. As noted in paragraph 4 (I), Silver Mountain Preserve Well No. 2 has been used for decreed purposes during the diligence period at a rate of flow of 10 g.p.m. Applicant therefore requests a finding that the conditional water right for the Silver Mountain Preserve Well No. 2 has been made absolute in the amount of 10 g.p.m. **6. 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:** The diversion and storage structures associated with the Subject Water Rights are all located on lands owned by the Applicant. As a result, additional notice requirements by certified or registered mail, as set forth in § 37-92-302(2)(b), C.R.S., do not apply in this instance. **WHEREFORE**, Applicant requests the Court to enter a ruling and decree: A. Finding reasonable diligence in the development of the conditional water rights for the Cattail Pond, Waterfall Pond, Silver Mountain Preserve Well No. 1, Silver Mountain Preserve Well No. 2, and Equestrian Center Well; B. Confirming that the first fill of the Roadrunner Pond No. 1 water storage right has been made absolute in whole (0.75 acre feet); C. Confirming that the conditional amount (fill, first refill, and second refill) of 147.63 of the Wright and Brink Reservoir water storage right has been made absolute in whole; D. Confirming that the Silver Mountain Preserve Well No. 1 conditional water right has been made absolute in the amount of 14 g.p.m.; E. Confirming that Silver Mountain Preserve Well No. 2 conditional water right has been made absolute in the amount of 10 g.p.m.; F. Making absolute any additional portions of the Subject Water Rights that are diverted either in priority or pursuant to a decreed augmentation plan and applied to beneficial use during the pendency of this proceeding; G. In the alternative, for a finding of reasonable diligence as to any portion of the Subject Water Rights not made absolute herein.

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**CASE NO. 2020CW3081; RANDALL T. RUSK and WENDY RUSK, 3473 County Road 170, Westcliffe, CO 81252** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Steven T. Monson #11329, David M. Shohet # 36675, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Suite 250, Colorado Springs, CO 80921, Phone Number: (719) 471-1212)

Application for Termination of Plan for Augmentation and Reinstatement of Water Right for Irrigation Use

**CUSTER COUNTY**

**III. Summary of Application.** Randall T. Rusk and Wendy Rusk ("Applicants") are the owners of the Custer County property known as the historical Beckwith Ranch that is

described in **Exhibit A** (“Beckwith Ranch”) 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 Beckwith Ranch has been historically irrigated with the Freer, Beckwith, and Kennicott Ditch. A portion of the water rights decreed to the Freer, Beckwith, and Kennicott Ditch was changed in Case No. 99CW172, District Court for Water Division 2, State of Colorado, for augmentation to replace evaporative depletions to a series of ponds on the Beckwith Ranch (“Augmentation Plan”). A copy of the Decree in the Augmentation Plan is attached as **Exhibit B**. As part of the Augmentation Plan a portion of the irrigated acreage on the Beckwith Ranch under the senior water right of the Freer, Beckwith, and Kennicott Ditch was dried up and removed from irrigation. The Applicant’s now seek to vacate and terminate the Augmentation Plan and reirrigate the historical dried up irrigation upon the Beckwith Ranch with their Freer, Beckwith, and Kennicott Ditch water right. **IV. Water Rights.** The following water rights are subject of this Application: A. Freer, Beckwith, and Kennicott Ditch. The Applicants are the owners of an undivided four-ninths interest in and to the Freer, Beckwith, and Kennicott Ditch that was originally adjudicated by the District Court of Fremont County, State of Colorado, In the Matter of the Priority of Water Rights, and Adjudication Thereof, in Water District No. 13, entered March 12, 1896, that awarded a total of 9.99 cfs for irrigation purposes from Swift Creek under priority No. 118 with an appropriation date of May 10, 1875 (“Applicants’ FBK Ditch Water Right”). A copy of the 1896 Decree is attached as Exhibit C. Swift Creek is tributary to Grape Creek, tributary to the Arkansas River. The Applicants’ FBK Ditch Water Right equates to 4.44 cfs. The Decree in Case No. 96CW77 changed the point of the diversion for the headgate of the FBK Ditch to at a point on the south bank of Swift Creek, which headgate is located at a point from which the center 1/4 corner Section 33, Township 21 South, Range 73 West, 6th P.M., bears north 12° 32’22” east for a distance of 2,274.21 feet, in Custer County, Colorado. B. Clevenger Flowing Well No. 1. The Clevenger Flowing Well No. 1 was adjudicated by this Court by Decree dated May 25, 1971, in Case No. W-123. (“Clevenger Flowing Well No. 1”). Its decreed point of diversion is at a point in the Northwest Quarter of the Southeast Quarter of Section 34 Township 21 South, Range 73 West of the 6th P.M. whence the East quarter corner of said Section 34 bears North 86° 58’ East a distance of 2515 feet, as shown on the attached Exhibit D map. Its source of supply is groundwater tributary to Swift Creek and Grape Creek, tributaries of the Arkansas River. Its appropriation date is June 20, 1947, for 0.45 cfs for irrigation and stock watering use. C. Beckwith Rangeland Habitat Ponds A-E. In the Augmentation Plan, conditional water storage rights were awarded to the Beckwith Rangeland Ponds A, B, C, D, and E having a total storage capacity of 22.11 acre feet and total surface area of 22.73 acres, with an appropriation date of June 2, 1999. (“Beckwith Habitat Ponds”). The Beckwith Habitat Ponds are located on the Beckwith Ranch in Section 34, Township 21 South, Range 73 West, and a portion of the NE ¼ of Section 3, Township 22 South, Range 73 West of the 6th P.M. in Custer County, Colorado, the locations of which are shown on the attached **Exhibit D** map. The source of the Beckwith Habitat Ponds is ground water tributary to Swift Creek and Grape Creek, tributaries of the Arkansas River, and ground water deliveries from the Clevenger Flowing Well No. 1 described above. The Beckwith Habitat Ponds were constructed to a smaller capacity and surface area that the decreed limits. In Case No. 16CW3061 Beckwith Habitat Ponds A, B, and E were decree as absolute water rights and conditional rights

were maintained on Beckwith Habitat Ponds C and D. D. Amelia Ponds. The Augmentation Plan also included the replacement of evaporative depletions from structures known as the Amelia Ponds whose location is also shown on Exhibit D ("Amelia Ponds"). The Amelia Ponds have a combined surface area of 0.62 acres. The Amelia Ponds were decreed in Case No.85CW69 for 1.8 acre feet of water for fish propagation and stock water with a priority date of May 15, 1985 being located in the SE ¼ of Section 34, Township 21 South, Range 73 West, 6th P.M. in Custer County, Colorado. **V. Relinquishment of Augmentation Plan and Reinstatement of Historical Irrigation.**

A. Augmentation Plan Decree. In the Augmentation Plan the Applicants' predecessor in title changed 0.7 cfs of the Applicants' FBK Ditch Water Rights ("Changed FBK Ditch Water Right") and the Clevenger Flowing Well No. 1 for purposes of augmenting the stream to replace the total 48.63 maximum annual acre feet of depletions from the Beckwith Habitat Ponds and the Amelia Ponds. The Clevenger Flowing Well No. 1 was changed as a source of supply and augmentation for the Beckwith Habitat Ponds A, B, and E, however due to its junior decree its new use for the ponds was also augmented with the Changed FBK Ditch Water Right. Under the Augmentation Plan the depletions from all seven ponds as supplied from the Clevenger Flowing Well No. 1 and seeping groundwater are replaced by the Changed FBK Ditch Water Right committed to augmentation purposes under the Augmentation Plan. Applicants seek to vacate and terminate the Augmentation Plan. B. Reinstating Flow Rate and Dried Up Acreage. As part of the Augmentation Plan, the Changed FBK Ditch Water Right is called to its headgate during the irrigation season and is then returned to Swift Creek by means of an augmentation station and left in Swift Creek to replace pond depletions. In addition, 37.7 acres of irrigation attributable to the Changed FBK Ditch Water Right has been dried up and removed from its historical irrigation ("Dry Up Land") to also provide for the replacement of pond depletions. The Dry Up Land is located in the SE ¼ of Section 34, Township 21 South, Range 73 West, 6th P.M. in Custer County, Colorado, and is shown on the attached Exhibit E map. The Applicants seek to vacate and terminate the Augmentation Plan and to thereby reinstate (i) historical use of the 0.7 cfs of the Changed FBK Ditch Water Right for division under the ditch for historical irrigation purposes, and (ii) the historical irrigation of the 37.7 acres of the Dry Up Property with the Applicants' FBK Ditch Water Right. With the vacation and termination of the Augmentation Plan, the diversions of the 0.7 cfs to the augmentation station and commitment of the Dry Up Land is no longer necessary to prevent any injury to other water users and the historical use of the Changed FBK Ditch Water Rights can be restored. C. Administration. The Applicants will breach the five Habitat Ponds and the Amelia Ponds so that the area is returned to a condition without the artificial impoundment of water. The reinstated flow rate and dried up acreage under the Changed FBK Ditch Water Right will be available to Applicants as proposed herein when and to the extent the Division Engineer's Office determines that the Beckwith Habitat Ponds and the Amelia Ponds have been breached and the subject area no longer artificially retain or store water. **VI. Ownership of Structures.** The headgate of the FBK Ditch is located upon property owned by Comstock and Rogers Corporation, whose address is Marcia Drager, President, 7601 Morrow Avenue, Albuquerque, NM 87110. The augmentation station under the Augmentation Plan is located upon property owned by Samuelson Ranch, L.L.C., whose address is % Kirk Samuelson, P.O. Box 1457, Westcliffe, CO 81252. A very small portion Beckwith Habitat

Pond D is located upon property owned by Samuelson Ranch, L.L.C. These owners will receive the statutorily required notice of this Application. All other structures are located upon land owned by the Applicants.

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**CASE NO. 2020CW3082; Previous Case No. 05CW103 – TOWN OF AUGILAR 101 W. MIAN STREET, TRINIDAD, CO 81020**

(Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Gerald B. McDaniel, P.C., 1280 Painted Rocks Road, Woodland Park, CO 80863, Telephone: 719-260-9304)

Application for Absolute Water Storage Rights

**LAS ANIMAS COUNTY**

**2. NAME OF STRUCTURE: Wells:** Well #3; Well #5; Well #6; Well #7 (Described in para. 7 of Decree : 05CW103) **Reservoir:** Aguilar Reservoir #1 (Described in para. 9 of Decree) **Appropriative Right of Exchange:** (Described in para. 16 of Decree) **3.** Describe conditional water right (as to each structure) including the following information from previous decree: **Well #3: A.** Date of Original Decree: 12-1-2014 Case No.2005CW103 Court: District Court Water Div. 2 Pueblo County, CO **B.** List all subsequent decrees awarding findings of diligence: NONE **C.** Legal description: In the SE/4 SE/4, Sec. 33, T30S, R65W, 6<sup>th</sup> P.M. at a point 1280 ft. from the South section line and 560 ft. from the East section line of said Sec. 33. See Addendum C attached to the application for a general location map. (All addendums/attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **D.** Source of water: Groundwater tributary to the Apishapa River **E.** Appropriation Date: August 20, 1967 Amount: 05 CW 103 decreed 78gpm ABSOLUTE and 15gpm CONDITIONAL. **F.** Use: All municipal uses including without limitation. domestic, industrial, commercial, fire protection, irrigation, stock water, recreational, fish and wildlife preservation and propagation. **G.** Depth: (of well) 38 feet. **Well #5: A.** Date of Original Decree: 12-1-2014 Case No. 2005CW103 Court: District Court Water Div. 2 Pueblo County, CO **B.** List all subsequent decrees awarding findings of diligence: NONE. **C.** Legal description: In the NE/4 SE/4, Sec. 33, T30S, R65W, 6<sup>th</sup> P.M. at a point 1,520 ft. from the South section line and 330 ft. from the East section line of said Sec. 33. **D.** Source of water: Groundwater tributary to Apishapa River **E.** Appropriation Date: May 14, 1966 Amount: 05CW103 decreed 40gpm ABSOLUTE and 60gpm CONDITIONAL **F.** Use: All municipal uses including without limitation. domestic, industrial, commercial, fire protection, irrigation, stock water, recreational, fish and wildlife preservation and propagation. **G.** Depth: (if well) Approximately 24 ft. **Well #6: A.** Date of Original Decree: 12-1-2014 Case No.2005CW103, Court: District Court Water Div. 2, Pueblo County, CO **B.** List all subsequent decrees awarding findings of diligence: NONE **C.** Legal description: In the NW/4 SW/4, Sec. 5, T31S, R65W, 6<sup>th</sup> P.M. at a point 1,350 ft. from the South section line and 800 ft. from the West section line of Sec. 5. **D.** Source of water: Groundwater tributary to Apishapa River **E.** Appropriation Date: June 1, 1967 Amount: 05CW103 decreed 70gpm ABSOLUTE and 90gpm CONDITIONAL **F.** Use: All municipal uses including without limitation. domestic, industrial, commercial, fire protection, irrigation, stock water, recreational, fish and wildlife preservation and propagation. **H.** Depth: (if well) Approximately 80 ft. **Well #7: A.** Date of Original Decree: 12-1-2014 Case No. 2005CW103 Court: District Court Water Div. 2 Pueblo County, CO **B.** List all subsequent decrees awarding findings of diligence: NONE **C.** Legal description: In the NE/4 SE/4,

Sec. 18, T31S, R65W, 6<sup>th</sup> P.M. at a point approximately 650 ft. from the East section line and 3,000 ft. from the North section line of Sec. 18. **D.** Source of water: Groundwater tributary to Apishapa River **E.** Appropriation Date: June 1949 Amount: 05CW103 decreed 45 gpm ABSOLUTE and 85 gpm CONDITIONAL **F.** Use: All municipal uses including without limitation. domestic, industrial, commercial, fire protection, irrigation, stock water, recreational, fish and wildlife preservation and propagation. **G.** Depth: (if well) Approximately 65 ft. **Aguilar Reservoir #1:** **A.** Date of Original Decree: 12-1-2014 Case No. 2005CW103 Court: District Court Water Div. 2 Pueblo County, CO **B.** List all subsequent decrees awarding findings of diligence: NONE. **C.** Legal description: Part of the SW/4 NE/4; part of the E/2 NW/4; part of the NW/4 NE/4 and part of the NE/4 NW/4, Sec. 34, T30S, R65W, 6<sup>th</sup> P.M. **B.** Source of water: Apishapa River **D.** Appropriation Date: June 1, 2005 Amount: (1) 100 AF for Aguilar Reservoir #1 with up to one refill per year for a total of 200 AF per year CONDITIONAL; **E.** Rate of Diversion for filling reservoir: 45cfs. **F.** Use: Augmentation, exchange, municipal, commercial, irrigation, stock watering, industrial, fire protection, recreation and fish and wildlife preservation and propagation, including both immediate application for such purposes and storage for subsequent application for such purposes within Aguilar's existing and future water service area. Any use of Aguilar Reservoir No. 1 outside of Aguilar's service area, as it currently exists or as it may be modified in the future, shall be in conformity with the terms and conditions of the Decree in 05 CW 103 and shall be limited to: (i) property owned or managed by Aguilar (including property co-owned or co-managed by Aguilar); (ii) water supply contracts in existence at the time the Decree in 05 CW 103 was entered; (iii) metered treated water taps; (iv) contracts of limited duration and pursuant to decreed augmentation plans, substitute water supply plans approved by the State Engineer pursuant to C.R.S. 37-92-306 or successor statutes, or interruptible water supply agreements approved by the State Engineer pursuant to C.R.S. 37-92-309 or successor statutes; and (v) any area in which Aguilar has augmentation or water replacement obligations pursuant to Aguilar's current and future water court decrees. **G.** Depth: (if well) NA. **Appropriative Rights of Exchange:** **A.** Date of Original Decree: 12-1-2014 Case No. 2005CW103 Court: District Court Water Div. 2 Pueblo County, CO **B.** List all subsequent decrees awarding findings of diligence: NONE **C.** Legal description: **i.** Downstream Extent of Stream Segments: Point where water stored at the Aguilar Reservoir No. 1, described in paragraph 9.a., is released to the Apishapa River which shall generally be within the reach of the Apishapa River from the headgate of the Gonzales Ditch, described in paragraph 10.b. above, downstream to the point where the Apishapa River crosses the East section line of Section 26, Township 30 South, Range 65 West of the 6th P.M. **ii.** Upstream Extent of Stream Segments: One arm of the exchange shall extend from the point on the Apishapa River described in paragraph 16 a , up the Town of Aguilar Case No. 05CW103 Page 32 Apishapa River to the confluence of the Apishapa River and Trujillo Creek in the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 18, Township 31 South, Range 65 West of the 6th P.M.; thence up the Apishapa River and Trujillo Creek to the point where depletions from Well No. 7 impact Trujillo Creek in the SE $\frac{1}{4}$  of said Section 18. Another arm of the exchange shall extend from the point on the Apishapa River described in paragraph 16.a., above, up the Apishapa River to the confluence of the Apishapa River and Mauricio Canyon Creek in the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$ , Section 8, Township 31 South, Range 65 West of the 6th P.M.; thence up Mauricio Canyon Creek to the point where depletions from the Mauricio Well

and/or Mauricio Gallery impact Mauricio Canyon Creek in the NW¼ of Section 2, Township 31 South, Range 66 West of the 6th P.M. **D. Source of water:** Augmentation Water **E. Appropriation Date:** June 1, 2005 **Amount:** Maximum exchange rate 2.1 c.f.s **F. Terms and Conditions for Appropriative Rights of Exchange:** **i. Season of Use:** The appropriative rights of exchange decreed herein may operate only from October 16 through the end of February. **ii. Live Stream:** The appropriative rights of exchange may operate only at such times as and to the extent that a live stream would exist between the downstream extent to the upstream extent absent the operation of the exchange. **4.** Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the previous diligence period: (add additional sheets if necessary). If irrigation use, mark the location of proposed area to be irrigated on a USGS topographic map and attach to this application a legible 8 ½ x 11 inch copy of the applicable portion of the map. See “Remarks” attached as a supplement to the application filed with the court. In the first diligence period Applicant has expended approximately \$57,777 to date with \$48,000 of that amount for engineering plans, studies and various reports required for funding applications. **6. Names(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.

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**CASE NO. 2020CW3083; STATE ENGINEER AND WATER DIV 2 ENGINEER vs. Robert Trojanowski, an individual** – Verified Complaint for Injunctive Relief, Civil Penalties, and Costs. This case is being listed in the resume to account for the case number in consecutive order.

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**CASE NO. 2020CW3084; LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION, c/o Donald Higbee, Manager, 310 South 6<sup>th</sup> Street, P.O. Box 1161, Lamar, Colorado 81052** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Richard J. Mehren, Jennifer M. DiLalla, John E. Peckler, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Blvd., Suite 300, Boulder, CO 80302, (303) 443-8782)

First Amended Application to Add Structures to Existing Decreed Plan for Augmentation  
**BENT COUNTY**

**2. Purpose of application:** LAWMA is a non-profit corporation organized for the purpose of, among other things, providing a means for its members to make ground water and surface water diversions from structures with junior priorities in the Arkansas River basin. The purpose of this application is to include 2 wells in LAWMA’s plan for augmentation, which was decreed on March 8, 2007 in Case No. 02CW181, Water Division No. 2 (“Augmentation Plan”). Under paragraph 43 of the decree entered in that case (“02CW181 Decree”), LAWMA may add wells to the Augmentation Plan by filing an application with the Water Court. **3. Description of structures to be augmented:** Two wells owned by Arkansas River Farms, LLC, and described below (“Additional LAWMA Structures”). See **Exhibit A** attached to the application for supplemental information about the Additional LAWMA Structures. (All exhibits mentioned herein are incorporated



by reference and may be inspected at the office of the clerk of this Court.) A map showing the location of the Additional LAWMA Structures is attached as **Exhibit B**. 3.1 Blackburn Well 11456-R (WDID 1705662): 3.1.1 Original decree: October 18, 1972, in Case No. W-612, Water Division No. 2. 3.1.2 Location: SE 1/4 SE 1/4 of Section 36, T22S, R53W, of the 6th P.M. in Bent County, Colorado. 3.1.3 Appropriation date: April 15, 1956. 3.1.4 Amount: 0.81 cubic feet per second (“cfs”), but not to exceed more than 239 acre-feet in any year. 3.1.5 Source: Ground water tributary to the Arkansas River. 3.1.6 Use: Irrigation. 3.2 Shaw Gallup Well 1978 (WDID 6705085): 3.2.1 Original decree: May 19, 1972, in Case No. W-478, Water Division No. 2. 3.2.2 Location: In the Northwest corner of Section 31, T22S, R51W, of the 6th P.M. in Bent County, Colorado. 3.2.3 Appropriation date: December 31, 1932. 3.2.4 Amount: 2.19 cfs, but not to exceed more than 700 acre-feet in any year. 3.2.5 Source: Ground water tributary to the Arkansas River. 3.2.6 Use: Irrigation. 4. **Water rights and other sources of water to be used for augmentation**: Those water rights and other sources of water identified in paragraph 40 of the 02CW181 Decree and in the decrees entered in Case Nos. 05CW52, 10CW85, 15CW3067, and 17CW3068 (“Existing Augmentation Supplies”); and those water rights and other sources of water that are added to the Augmentation Plan consistent with paragraph 41 of the 02CW181 Decree. A table identifying the Existing Augmentation Supplies by name, decree(s), location, source, appropriation date, amount, and decreed use(s) is attached as **Exhibit C**, and maps showing the decreed locations of the Existing Augmentation Supplies are attached as **Exhibits D-1** and **D-2**. 4.1 Fryingpan-Arkansas Project water and return flows: The Additional LAWMA Structures are located within the boundaries of the Southeastern Colorado Water Conservancy District, and water pumped by the Additional LAWMA Structures will be used within such boundaries. Thus, LAWMA will use Fryingpan-Arkansas Project water, including return flows, to replace depletions caused by the Additional LAWMA Structures. 5. **Statement of plan for augmentation**: Under the Augmentation Plan, the Additional LAWMA Structures will be pumped initially for agricultural irrigation of lands not decreed to be irrigated under the water rights described in paragraphs 3.1 and 3.2 above. The amount of depletions attributable to that pumping will be determined by applying a consumptive use factor of 68% for flood-irrigated acres, 85% for sprinkler-irrigated acres, 95% for LEPA sprinkler-irrigated acres, and 100% for drip-irrigated acres, as set forth in paragraph 47.B of and Exhibit R to the 02CW181 Decree. The timing and location of depletions from pumping of the Additional LAWMA Structures under the Augmentation Plan will be determined in accordance with the methodologies approved in the 02CW181 Decree, as set forth in its paragraph 47.C. LAWMA shall account for and fully replace all such Augmentation Plan depletions that are out of priority 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 under the Augmentation Plan will be incorporated into the accounting and projection required by paragraphs 47.E and 47.I of the 02CW181 Decree. Such accounting for operation under the Augmentation Plan 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 in the Augmentation Plan. This Application does not seek a change of water right for any of the Existing Augmentation Supplies, nor any change to decreed terms and conditions applicable to augmented structures previously included in the Augmentation Plan. 5.3 Concurrent operation under annual Rule 14 Plans: The Additional LAWMA Structures also will operate under LAWMA's Arkansas River Replacement Plan under 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"), as annually approved by the State Engineer. In accordance with the Court's Order Regarding State and Division Engineers' Motion for Determination of Questions of Law in Case No. 17CW3069, the issuance and approval of Rule 14 Plans falls under the exclusive jurisdiction of the State and Division Engineers, and any review of such plan must occur as described in the Colorado Administrative Procedure Act. 6. Name and address of owner of land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure, is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: 6.1 Arkansas River Farms, LLC, Aaron Patsch, 1400 16<sup>th</sup> Street, Suite 320, Denver, Colorado 80202. WHEREFORE, LAWMA respectfully requests that this Court enter a decree (i) approving the inclusion of the Additional LAWMA Structures in the Augmentation Plan; and (ii) finding and concluding that LAWMA will fully replace, so as to prevent injury to Colorado senior surface water rights and ensure compliance with the Arkansas River Compact, all out-of-priority depletions caused by the Additional LAWMA Structures under the Augmentation Plan.

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**CASE NO. 2020CW3085; VERHOEFF FARMS, INC., P.O. Box 130, Hasty, CO 81044**

(Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Jeffrey J. Kahn, Anthony J. Basile, Lyons Gaddis, P.O. Box 978, Longmont, CO 80502-0978, Telephone: (303) 776-9900)

Application for Correction for an Established but Erroneously Described Point of Diversion Pursuant to § 37-92-305 (3.6), C.R.S.

**BENT COUNTY**

**2. Decreed Water Right for Which Correction is Sought:** **A.** Name of Structure: Swallow Seepage Ditch ("Ditch"). **B.** Date of Original and Subsequent Decrees: The case number listed in the State tabulation on CDSS is the date the decree was entered by the Bent County District Court: 06/03/1922. The decree does not have a case number that can be identified. **C.** Legal Description of Structure as Described in the Most Recent Decree: The decree entered by the Bent County District Court identifies the point of diversion as "a point on the East bank of the West Fork of Prowers Arroya North 61°30' West 1,675 feet from the North quarter corner of Section 33, Township 22 South, Range 49 West of the 6<sup>th</sup> P.M. in Bent County, Colorado." See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **D.** Decreed

Source of Water: Prowers Arroya, a natural stream of the State of Colorado, and a tributary of the Arkansas River. **E.** Appropriation Date: April 15, 1915. **F.** Total Decreed Amount: 2 cubic feet per second, absolute. **G.** Decreed Use: Irrigation. **3. Detailed Description of Proposed Correction to Point of Diversion:** **A.** The original decreed location was measured to a division box within the Ditch, rather than the actual point of diversion. The point of diversion has been at the present point on West Prowers Arroya as described below since at least the enactment of the Adjudication Act of 1943. See § 37-92-305(3,6)(a)(II)(A) C.R.S. **B.** Legal Description of the Corrected Point of Diversion: **1.** Public Land Survey System per CDSS MapViewer: In the NE ¼ of the SE ¼ of Section 29, Township 22 South, Range 49 West of the 6<sup>th</sup> P.M. in Bent County, Colorado. **2.** Location in UTM format per CDSS MapViewer: Northing 4219573.751, Easting 681886.937, Zone 13. See map attached as **Exhibit A.** **4. Name and Address of Landowner:** Lance O. Verhoeff, P.O. Box 130, Hasty, CO 81044. DATED: December 30, 2020.

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**CASE NO. 2020CW3086; DAVID SMITH AND MAI-LAN HUYNH, 200 S. WASHINGTON ST., DENVER, CO 80209** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Peter D. Nichols, Esq., Megan Gutwein, Esq., Berg Hill Greenleaf Ruscitti LLP, 1712 Pearl Street, Boulder, Colorado 80302, (303) 402-1600)

First Amended Application for Conditional Water Storage Rights and Plan for Augmentation

ON BARTLETT GULCH, TRIBUTARY TO LAKE CREEK, TRIBUTARY TO ARKANSAS RIVER

**LAKE COUNTY**

**2. Description of Application:** Applicants own property in Lake County near Twin Lakes with existing natural beaver ponds that were constructed on the East Fork of Bartlett Gulch, which also runs through their property. Applicants intend to enlarge and make permanent a beaver pond located in Gordon Acres on Tract 66 by constructing an engineering earthwork dam with an outlet that will increase the storage capacity and surface area. Applicants are thus applying for a water storage right for the pond as well as approval of an augmentation plan to replace out of priority depletions caused by the expansion of the pond. Applicants file this amendment to their Application filed in December 2020 to include a table of estimated depletions. **FIRST CLAIM: CONDITIONAL WATER STORAGE RIGHT** **3. Name of structure:** Caden & Elysa's Pond **4. Legal description of location of dam centerline:** SE1/4 SW1/4 of Section 18, Township 11 South, Range 80 West of the 6th PM, at a point 1270 feet north of the south section line and 2460 feet east of the west section line. Latitude 39°05'20.17" North, Longitude 106°22'39.45" West. See **Exhibit 1** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **5. Source:** East Fork of Bartlett Gulch, tributary to Lake Creek, tributary to Arkansas River. **6. Appropriation:** **A. Date of initial appropriation:** December 30, 2020. **B. How appropriation was initiated:** formulation of intent to apply water to beneficial use and filing of this Application. **7. Amount claimed:** 0.07 acre-feet, conditional, with flow-through and/or continuous refill. **8. How pond is filled:** Caden & Elysa's Pond is an on-channel structure that is filled from the East Fork

of Bartlett Gulch. The Pond will be filled and refilled when in priority or pursuant to the augmentation plan decreed herein. **9. Uses or proposed uses:** piscatorial, wildlife habitat, recreation, and aesthetic purposes. **10. Description of Pond:** A. The existing surface area is approximately 0.036 acres. The surface area at the high water line with improvements will not exceed 0.05 surface acres. B. The maximum height of the dam will not exceed 6 feet. C. The existing capacity of Caden & Elysa's Pond is 0.05 acre-feet. The total capacity with improvements will not exceed 0.07 acre-feet. **11. The landowner upon which these structures are located:** Applicants. **SECOND CLAIM: PLAN FOR AUGMENTATION** **12. Names of structures to be augmented:** Caden & Elysa's Pond as described above. **13. Water rights to be used for augmentation:** Applicants will lease or purchase augmentation supplies from available sources. Applicants have initiated discussions with Pueblo Board of Water Works and Lake County regarding leasing augmentation water that would satisfy downstream calling water rights at or below Twin Lakes. **14. Statement of plan for augmentation:** The plan for augmentation is designed to keep Caden & Elysa's Pond full, provide a continuous water supply to the Pond, and replace out of priority depletions during times when there is a valid senior call. Because Caden & Elysa's Pond is an on-channel reservoir, out of priority depletions will consist of evaporative depletions from the surface of the pond when the subject water right is not in priority. In addition, the existing pond is a natural pond, so augmentation will only be required of out of priority evaporative depletions caused by the expanded portion of the Pond, or no more than 0.014 surface acres. The location of such depletions will be at the location of the Pond as described above. Applicants estimate that total evaporative depletions will be 0.035 acre-feet annually. See table attached as Table 2. All out of priority stream depletions will be replaced with legally available augmentation water that Applicants will acquire or obtain the right to use prior to causing such depletions. To the extent that Applicants lack sufficient augmentation supplies to replace out of priority depletions, Applicants will release any water stored out of priority in the Pond. WHEREFORE, the Applicants pray this Court enter a decree: a) Granting the subject water right as applied for herein; and b) Granting such other and further relief as the Court deems proper.

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**CASE NO. 2020CW3087; CHRIS AND DALE VAN AELSTYN, 14200 County Road 21.6, Weston, CO 81091-9504** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Marjorie L. Sant, PANORAMA LAW PRACTICE, LLC, P.O. Box 4986, Boulder, Colorado, 80306, (303) 323-1931)

Application for Absolute Storage Right, Absolute Underground Water Right, and Approval of Augmentation Plan including Appropriative Right of Exchange

**LAS ANIMAS COUNTY**

**ABSOLUTE STORAGE RIGHT** 1. Name of Reservoir: Van Aelstyn Pond 2. Legal Description of Location of Dam Centerline: UTM Coordinates: 502248 Easting, 4116890 Northing (Zone 13, NAD83) PLSS: In the NE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 3, T. 33 S., R. 68 W. of the 6<sup>th</sup> P.M. at a point 2,210 feet from the south line and 220 feet from the east line 3. Source: North fork of the Purgatoire River, tributary to the Purgatoire River, tributary to the Arkansas River. 4. Points of Diversion: A. Van Aelstyn Pond Headgate, approximately 750' upstream from centerline of dam UTM Coordinates: 502129 Easting, 4117081 Northing (Zone 13, NAD83) PLSS: In the SE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 3, T. 33 S., R. 68 W. of the 6<sup>th</sup> P.M. at

a point 2,850 feet from the south line and 580 feet from the east line B. Beaver Dam, approximately 440' upstream from centerline of dam UTM Coordinates: 502235 Easting, 4116997 Northing (Zone 13, NAD83) PLSS: In the SE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 3, T. 33 S., R. 68 W. of the 6<sup>th</sup> P.M. at a point 2,860 feet from the south line and 260 feet from the east line C. Van Aelstyn Pond Spring (intermittent spring) UTM Coordinates: 502186 Easting, 4116858 Northing (Zone 13, NAD83) PLSS: In the NE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 3, T. 33 S., R. 68 W. of the 6<sup>th</sup> P.M. at a point 410 feet from the south line and 2,110 feet from the east line 5. Appropriation Date: January 1, 1947 A. How appropriation was initiated: diversion and storage of water B. Date applied to beneficial use: January 1, 1947 6. Amount: A. Total Capacity: 1.7 acre-feet, with the right to fill and refill i. Current Active Capacity: 0.0 acre-feet (The Applicants intend to install a new outlet to restore the historical 1.7 acre-feet active capacity of the pond.) ii. Dead Storage: 1.7 acre-feet B. Filling Rate: 2.0 cfs i. 1.0 cfs Van Aelstyn Pond Headgate ii. 1.0 cfs Beaver Dam iii. 0.004 cfs (2 gpm) Van Aelstyn Pond Spring 7. Surface Area of High Water Line: A. Height of Dam: 8-10' B. Length of Dam: 150' 8. Uses: Storage for irrigation, recreation, wildlife, and aesthetic uses **ABSOLUTE UNDERGROUND WATER RIGHT** Van Aelstyn Exempt Well A. Permit No.: 222184 B. Depth: 300' C. Location: UTM Coordinates (field verified): 502580 Easting, 4116758 Northing (Zone 13, NAD83) PLSS (permitted location): In the NW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 2, T. 33 S., R. 68 W. of the 6<sup>th</sup> P.M. at a point 1,625 feet from the south line and 875 feet from the west line. D. Source: Groundwater tributary to the North Fork of the Purgatoire River, tributary to the Purgatoire River, tributary to the Arkansas River E. Appropriation Date: October 20, 1999 i. How appropriation was initiated: By filing well permit application ii. Date water first applied to beneficial use: January 26, 2000 F. Amount: 15 gpm G. Uses: Domestic, in-house uses in up to three residences; watering domestic animals, livestock, and poultry; irrigation of up to 1 acre; and fire protection. **PLAN FOR AUGMENTATION** 1. Structure to be Augmented: Van Aelstyn Pond, described above 2. Water Rights to be Used for Augmentation: John Flood Ditch and Model Canal and Model Reservoir water rights as changed by the City of Trinidad in Cases 1988CW61, 2006CW78, 2008CW101, and as pending for change in Case 2017CW3073. A. Original Decrees: Original Adjudication, August 10, 1903; and C.A. 6118 B. Location: i. The decreed location of the headgate of the John Flood Ditch is on the north bank of the Las Animas River, also known as the Purgatoire River, at a point which is South 63° West 967 feet from the northwest corner of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  Section 27, T. 32 S., R. 63 W. of the 6<sup>th</sup> P.M. The actual point of diversion is at the headgate of the Model Canal. ii. The change decrees listed in above changed or will change the point of diversion to Trinidad Reservoir. C. Source: Purgatoire River, also known as the Las Animas River D. Appropriation Dates: i. March 20, 1862 (Leitensdorfer Irrigating Ditch, Priority No. 5) ii. January 1, 1863 (Hoehn Ditch, Priority No. 9) iii. January 1, 1864 (Lewelling-McCormick Ditch, Priority No. 13) iv. April 10, 1864 (Salas North Ditch, Priority No. 15) v. October 7, 1865 (Hoehne Ditch, Priority No. 20) vi. May 31, 1866 (Salas North Ditch, Priority No. 27) vii. October 20, 1902 (Johns Flood Ditch, Priority No. 145) viii. January 22, 1908 (Model Canal and Reservoir, Priority No. 168) E. Amount: 2.0 acre-feet annually F. Uses: Irrigation, municipal, industrial, recreation, fish propagation, augmentation, and replacement G. Remarks: As a result of various changes of water rights, the John Flood Ditch diverts water rights decreed to the Hoehne Ditch, the Lewelling-McCormick Ditch, and the Salas North Ditch, in addition to water rights originally decreed for diversion through the John Flood Ditch

and the Model Canal. 3. Statement of Plan for Augmentation: The Applicants will replace out-of-priority evaporative depletions resulting from "in pond" uses associated with the Van Aelstyn Pond, i.e., recreation, wildlife, and aesthetic uses. Irrigation uses from the Van Aelstyn Pond will only be used in priority. The Applicants will account for in-priority diversions to the Van Aelstyn Pond and will limit irrigation uses to in-priority amounts of storage. The Van Aelstyn Pond currently has a surface area of approximately 0.64 acre, which results in 1.98 acre-feet of evaporative losses annually. Applicants will seek releases of 2.0 acre-feet of water leased from the City of Trinidad on a monthly basis to replace out-of-priority evaporative depletions from the Pond. **APPROPRIATIVE RIGHT OF EXCHANGE** 1. Name: Van Aelstyn Pond Exchange 2. Location: A. Downstream terminus/exchange from location: Trinidad Reservoir UTM Coordinates: 539920 Easting, 4110690 Northing (Zone 13, NAD83) PLSS: In the NE¼SW¼ Section 27, T. 33 S., R. 64 W. of the 6<sup>th</sup> P.M. at a point 2,470 feet from the south line and 2,500 feet from the west line. B. Upstream terminus/exchange to location: Van Aelstyn Pond 3. Appropriation date: December 31, 2020 4. Amount: A. Exchange Rate: 0.18 cfs B. Volume: 2.0 acre-feet

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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 2021, (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 \$192.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

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Witness my hand and the seal of this Court this 13<sup>th</sup> day of January 2021.

*Michele Santistevan*



Michele M. Santistevan, Clerk  
District Court, Water Div. 2  
Pueblo Judicial Building  
501 N. Elizabeth Street, Suite 116  
Pueblo, CO 81003; (719) 404-8749

(Court seal)  
Published:

## **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., notice of applications for fallowing-leasing pilot projects under section 37-60-115(8)(e)(II), C.R.S., and notice of storm water detention and infiltration facilities under section 37-92-602(8)(d), C.R.S.

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), or sign up at: <https://dwr.colorado.gov/public-information/notification-lists>. Additional information regarding Substitute Water Supply Plans is available on the Division of Water Resources' website at: <https://dwr.colorado.gov/>.

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

Pursuant to Rule 17.5(B)(2) of the Rules and Regulations for the Determination of the Nontributary Nature of Ground Water Produced Through Wells in Conjunction with the Mining of Minerals, at 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 this invitation to be included on the Produced Nontributary Ground Water Notification List for the applicable water division.

To receive this information, provide your name, daytime telephone number, the water division(s) of interest, and mailing address for first-class mail service. You may elect to receive this information by e-mail. If you would like to elect electronic service, please provide your name, daytime telephone number, water division(s) of interest, and e-mail 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), or sign up at: <https://dwr.colorado.gov/public-information/notification-lists>.

Any additional information regarding the Produced Nontributary Ground Water Rules can be found on the Division of Water Resources website at: <https://dwr.colorado.gov/>.