

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING FEBRUARY 2004

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 during February 2004, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 04CW10 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 04CW11 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 04CW12(96CW53) – RTV LLC, 5540 Highway 12, La Veta, CO 81055 (Brian M. Nazarenus, Friedlob Sanderson Paulson & Tourtillott, LLC, Attorneys for Applicant, 1775 Sherman Street, 21st Floor, Denver, CO 80203)
Application for Finding of Reasonable Diligence and To Make Absolute
Huerfano County

2. Name of Structure: The Coler-Grandote Exchange; **3. Describe conditional water right:** **A. Date of Original Decree:** February 23, 1998, **Case No.** 96CW053; **B. The facilities involved in the Coler-Grandote Exchange are as follows:** **1. Coler Ditch and Reservoir System.** The source of substitute supply for the Coler-Grandote Exchange is water attributable to RTV's ten percent (10%) interest in the Coler Ditch and Reservoir System and that System's appurtenant water rights, which are described as follows: a. Lake Miriam Ditch. i. The headgate of the Lake Miriam Ditch, which diverts from the Cucharas River, is located in the Northwest quarter of the Southeast quarter of Section 32, Township 28 South, Range 67 West of the 6th P.M., Huerfano County, Colorado. The Lake Miriam Ditch is the feeder canal for Lake Miriam Reservoir, Lake Oehm Reservoir, and the Coler Seepage Reservoir. ii. Lake Miriam Ditch was awarded a decree for a 20 cfs direct flow water right from the Cucharas River, with an appropriation date of March 1, 1884, Priority No. 61, by the District Court of the Third Judicial District, Huerfano County, on June 12, 1889. b. Lake Miriam Reservoir (a.k.a. Horseshoe Reservoir). i. Lake Miriam Reservoir is located in the West half of Section 13 and the Northwest quarter of Section 24, Township 28 South, Range 67 West of the 6th P.M., Huerfano County, Colorado. ii. Lake Miriam Reservoir was awarded a storage decree for 50,000,000 cubic feet (1,148 acre-feet) of water from the Cucharas River with an appropriation date of April 14, 1901 by the Huerfano County District Court, Water District 16, on October 3, 1921. c. Lake Oehm Reservoir (a.k.a. Martin Lake). i. Lake Oehm Reservoir is located in the East half of Section 13, Township 28

South, Range 67 West of the 6th P.M. and the West half of Section 18, Township 28 South, Range 66 West of the 6th P.M., Huerfano County, Colorado. ii. Lake Oehm Reservoir was awarded a storage decree for 100,000,000 cubic feet (2,296 acre-feet) of water from the Cucharas River with an appropriation date of April 30, 1901 by the Huerfano County District Court, Water District 16, on October 3, 1921. In addition, the Lake Oehm Reservoir Enlargement was decreed for 12,070,000 cubic feet (277 acre-feet) with an appropriation date of November 25, 1905 by the Huerfano County District Court, Water District 16, on October 3, 1921. d. The Coler Reservoir System Cucharas Delivery Flume. Water released to the Cucharas River from storage in the above-described reservoirs is delivered through the Coler Reservoir System Cucharas Delivery Flume (the “Cucharas Delivery Flume”), which is located in the Northeast quarter of the Southwest quarter of Section 17, Township 28 South, Range 66 West of the 6th P.M., Huerfano County, Colorado at a point approximately 1,600 feet from the West line and 2,150 feet from the South line of said Section 17. **2. The Grandote Pipeline Headgate**. The Coler System water described above is exchanged to the Grandote Pipeline Headgate, which is located in the Southwest quarter of Southwest quarter of Section 28, Township 29 South, Range 68 West of the 6th P.M., Huerfano County, Colorado at a point approximately 100 feet from the West line and 400 feet from the South line of said Section 28. Water diverted from the Cucharas River at the headgate is delivered to a regulating storage pond on the Golf Course which serves as the forebay for the irrigation pump and distribution system. **C. Source:** Cucharas River **D. Appropriation Date:** August 18, 1995 **Amount:** 4.0 cfs **E. Use:** Irrigation of the Grandote Golf Course, including replacement of evaporative losses attributable to the Golf Course regulatory pond. **4. Diligence Activities:** Applicant has paid its assessments to the City of Walsenburg for its interest in the Coler System, and has regularly consulted with Walsenburg about the amount of water in Applicant’s account. Applicant has filed objections to various applications involving water rights on the Cucharas River. Applicant has operated and paid taxes for the Grandote Golf Course. Applicant has diligently monitored stream conditions for the opportunity to maximize its exchange. **5. Amount of water applied to beneficial use:** 2.01 cfs, via exchange, on August 22, 1999, and used to irrigate the Grandote Golf Course **6. Name(s) of owner(s) of the land on which structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** RTV LLC and The City of Walsenburg.
(Application, 5 pages)

CASE NO. 04CW13(96CW55) – RTV LLC, 5540 Highway 12, La Veta, CO 81055 (Brian M. Nazarenius, Friedlob Sanderson Paulson & Tourtillott, Attorneys for Applicant, 1775 Sherman Street, 21st Floor, Denver, CO 80203)
Application for Finding of Reasonable Diligence and To Make Absolute Huerfano County

2. Name of Structure: The Grandote Pipeline Headgate **3. Describe conditional water right:** **A. Date of Original Decree:** February 23, 1998,

Case No. 96CW055 B. Legal Description: The Grandote Pipeline Headgate is located in the Southwest quarter of the Southwest quarter of Section 28, Township 29 South, Range 68 West of the 6th P.M., Huerfano County. **C. Source:** Cucharas River. **D. Appropriation Date:** July 13, 1995. **Amount:** 1.0 cfs absolute; 3.0 cfs conditional **E. Use:** Irrigation, piscatorial, recreation, fish and wildlife habitat, replacement of evaporation from golf course ponds, fire fighting, dust suppression, and storage in golf course ponds for subsequent irrigation. **4. Diligence Activities:** Applicant has filed objections to various water rights applications involving water rights on the Cucharas River. Applicant has operated and paid taxes for the Grandote Golf Course. Applicant has diligently monitored stream conditions for the opportunity to divert the full amount of this water right. **5. Amount of water applied to beneficial use:** 0.95 cfs diverted on July 7, 1999, and used to irrigate the Grandote Golf Course. **6. Name and address of owner of the land on which structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use.** RTV LLC, 5540 Highway 12, La Veta, Colorado 81055.

(Application, 3 pages)

CASE NO. 04CW14(93CW86) – BOARD OF WATER WORKS OF PUEBLO, COLORADO, c/o Alan C. Hamel, Executive Director, 319 West Fourth Street, P. O. Box 400, Pueblo, CO 81002

(William A. Paddock and Karl D. Ohlsen, Carlson, Hammond & Paddock, Attorneys for Applicant, 1700 Lincoln Street, Suite 3900, Denver, CO 80203)

Application for Finding of Reasonable Diligence and to Make Conditional Water Rights Absolute, in Part

Pueblo County, Colorado

The Board of Water Works of Pueblo, Colorado, seeks a sexennial finding of reasonable diligence for conditional rights decreed on February 19, 1998, in Case No. 93CW86, Water Division No. 2, and seeks to make conditional water rights absolute, in part. That decree adjudicated claims for conditional rights for beneficial use as part of the Historical Arkansas River Project (“HARP”), as well as approval of a plan for augmentation for out-of-priority diversions from evaporation.

I. APPLICATION FOR FINDING OF REASONABLE DILIGENCE

1. Name of Structures: A. The Historic Arkansas River Project: (1) HARP Water Right: **a. Legal Description of Point of Diversion and Physical Reach:**

i. Point of Diversion: A point located approximately whence the West quarter corner of Section 36, Township 20 South, Range 65 West of the 6th P.M., bears South 65 degrees, 30 minutes West, a distance of 1,090 feet. The point of diversion is the same as or near to the present point in the flood control levee of the Arkansas River where the Southern Colorado Power Company water right is diverted through the levee into the historical Arkansas River channel (the “HARP” Water Right Diversion”). **ii. Physical Reach:** The Board will control the HARP Water Right from the HARP Water Right Diversion to the lower terminus of the HARP Project Area by the construction and placement of facilities in the historical

Arkansas River channel and the Convention Center Connection to divert, direct, control, and store flows therein. **b. Date of Original Decree:** February 19, 1998, Case No. 93CW86, District Court, Water Division No. 2, State of Colorado. **c. Source:** The Arkansas River. **d. Appropriation Date:** August 17, 1993. **e. Amount:** 30 cubic feet per second conditional. (2) HARP Tailwater Right: **a. Legal Description of Point of Diversion and Physical Reach:** **i. Point of Diversion:** A point located where the tailwater (unconsumed cooling water) discharged from the Southern Colorado Power Company water right, now used in the Aquila Energy Company Power Plant or discharged into the historical Arkansas River channel at or near the point where Victoria Street in the City of Pueblo crosses the historical Arkansas River channel in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, Township 20 South, Range 65 West of the 6th P.M. **ii. Physical Reach:** The Board will control the HARP Tailwater Right from its point of diversion to the lower terminus of the HARP Project Area by the construction and placement of facilities in the historical Arkansas River channel and the Convention Center Connection to divert, direct, control, and store flows therein. **b. Date of Original Decree:** February 19, 1998, Case No. 93CW86, District Court, Water Division No. 2, State of Colorado. **c. Source:** The tailwater and/or wastewater flows discharged into the historical Arkansas River channel at the point of discharge of the Aquila Energy Company Power Plant at or near the point where Victoria Street crosses the historical Arkansas River channel and any other water entering the historical Arkansas River channel below the point of diversion and above the lower terminus of the HARP Project Area. **d. Appropriation Date:** August 17, 1993. **e. Amount:** 200 cubic feet per second conditional. **B. Beneficial Use:** All beneficial uses in connection with HARP, a development of a portion of the historical Arkansas River channel as a scenic, aesthetic, recreational, economic development, and park amenity in downtown Pueblo. **2. Provide a detailed outline of what has been done toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures.** A. The construction of the water channel and sewer elements of HARP has been completed. The channel and the sewer constitute the conveyance facilities for the conditional water rights decreed in Case No. 93CW86. The cost for construction of these elements was \$12 million. During the diligence period, the boat operations began on the HARP channel, additional drains were installed within the channel, metering equipment on the diversion structures was installed and placed into service, and artistic elements, landscaping, and other fixtures were installed throughout the Project Area. The construction of these elements cost \$8.6 million. Operation and maintenance of these elements cost \$1.76 million. B. HARP is a single, integrated project of water diversion, control, and beneficial use. For purposes of showing diligence in completing the conditional water rights decreed in Case No. 93CW86, work on one feature of the Project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project system, pursuant to C.R.S. § 37-92-307(4)(b). The work performed and actions taken during the Diligence Period demonstrate the Applicant's continuing intent to develop the conditional direct

diversion and storage rights described in this Application. The Applicant has shown that it can and will divert, store, or otherwise capture, possess, or control and beneficially use the conditional rights and that the subject rights can and will be completed with diligence and within a reasonable time.

II. APPLICATION TO MAKE CONDITIONAL RIGHT ABSOLUTE, IN PART

3. Describe Applicant's use of conditional water right sought to be made absolute: **A. HARP Water Right:** (1) During the Diligence Period, water has been diverted through the HARP Water Right Diversion at times when the Aquila Power Plant (successor in interest to the Southern Colorado Power Company) has not been using its water right for the purpose of power production. The water so diverted has been used in the HARP Project features and all depletions have been augmented so that no injury has occurred to other water rights users as a result of the diversion. Between February 20, 2004, and February 25, 2004, water has been diverted at the HARP Water Right Point of Diversion at a rate of 30 c.f.s. (2) The Applicant hereby requests the court to enter a decree making the conditional HARP Water Right decreed in Case No. 93CW86 absolute at a rate of 30 c.f.s. based on the diversion described in Paragraph A(1). **B. HARP Tailwater Right:** (1) Since October 6, 2000, the Applicant has diverted water in priority under the HARP Tailwater Right to be used for the decreed purposes within the reach of the HARP Project as described in Paragraph 2, above. The maximum rate of diversion was 33.75 c.f.s. on November 5, 2003. (2) The Applicant requests the court to enter a decree making the conditional HARP Tailwater Right decreed in Case No. 93CW86 absolute, in part, in the amount of 33.75 c.f.s, with 166.25 c.f.s. remaining conditional.

III. RELIEF REQUESTED

4. Except to the extent the conditional water rights are claimed to be and are made absolute in this proceeding, the Applicant seeks a finding of reasonable diligence for the full amount of all remaining conditional water rights decreed in Case No. 93CW86. The Applicant seeks to make the amounts set forth in Paragraphs 3.A. and 3.B. absolute. **5. The Applicant requests the court to enter a decree:** A. Finding that the Applicant has shown reasonable diligence in development of the conditional rights decreed in Case No. 93CW86 and finding, to the extent that such rights are not made absolute, that the Applicant has met all applicable legal requirements and is entitled to a decree continuing the conditional rights in good standing and fixing a date when the next application for a finding of reasonable diligence is required; B. Confirming that the Applicant maintains a single unified and integrated water supply system and that diligence on any feature of that system shall be considered in finding reasonable diligence in the development of all conditional features of the system, including the conditional water rights that are the subject of this Application; C. Making absolute, in part, the HARP Tailwater Right diverted through HARP in the amount of 33.75 c.f.s.; D. Making absolute the HARP Water Right diverted through HARP in an amount of 30 c.f.s.; and E. Granting such other relief as the court deems proper.

(Application, 7 pages)

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 April 2004, (forms available at Clerk's office, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$70.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 3rd day of March, 2004.

Mardell R. DiDomenico, Clerk
District Court Water Div. 2
203 Judicial Bldg., 320 W. 10th Street
Pueblo, CO 81003 Tel. 583-7048

(Court seal)
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