

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during February 2020, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved, and description of ruling sought as reflected by said applications, or amendments, are as follows:

**CASE NO. 2018CW3072; LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION (“LAWMA”) c/o DONALD F HIGBEE, MANAGER, 310 South 6<sup>th</sup> Street, P.O. Box 1161, Lamar, CO 81052.** (Please address all pleadings and inquiries regarding this matter to Applicants’ 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)

Second Amended Application for Plan for Augmentation

**BENT COUNTY**

2. Purpose of application. The purposes of the Application are to include additional structures in LAWMA’s plan for augmentation (“Augmentation Plan”), which was decreed on March 8, 2007, in Case No. 02CW181 (“02CW181 Decree”), and to adjudicate consumptive use factors for indoor irrigation, and commercial and industrial uses associated with an agricultural product processing operation. Consistent with paragraphs 43 and 44 of the 02CW181 Decree, LAWMA may add new augmented structures to the Augmentation Plan and may adjudicate consumptive use factors for new uses under the Augmentation Plan. LAWMA filed the original application on December 27, 2018, and the first amended application on July 30, 2019. The purposes of this second amendment are to adjudicate a consumptive use factor for indoor irrigation uses, to replace the consumptive use factor for greenhouse irrigation uses sought in the original application; and to adjudicate a consumptive use factor for commercial and industrial uses associated with an agricultural product processing operation. All references to the “Application” herein are to this Second Amended Application, which amends, restates, and replaces in their entirety the original application and the first amendment.

3. Description of structures to be augmented. The four wells described in **Exhibit A** (“Additional LAWMA Structures”). As more particularly shown on the map attached to application as **Exhibit B**, the Additional LAWMA Structures are generally located north of the Arkansas River in Bent County, between Limestone Creek and the Town of McClave. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

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, and 15CW3067 (“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 to application as **Exhibit C**, and maps showing the decreed locations of the Existing Augmentation Supplies attached to application as **Exhibits D-1** and **D-2**. 4.1 Use of Fryingpan-Arkansas Project water and return flows as augmentation source. The Additional LAWMA Structures are located within the boundaries of the Southeastern Colorado Water Conservancy District, and water pumped from the Additional LAWMA Structures will be used within such boundaries. Accordingly, LAWMA will use Fryingpan-Arkansas Project water, including return flows, to replace depletions caused by pumping the Additional LAWMA Structures under the Augmentation Plan. 5. Statement of plan for augmentation. The amount, timing, and location of depletions from the Additional LAWMA Structures will be determined in accordance with the methodologies approved in the 02CW181 Decree and the decree to be entered in this case. Under the Augmentation Plan, LAWMA shall account for and fully replace all out-of-priority depletions caused by the Additional LAWMA Structures. LAWMA shall replace such depletions with fully consumable water in accordance with the terms and conditions of the 02CW181 Decree and the decree to be entered in this case, in a manner that protects Colorado senior surface water rights from injury and ensures compliance with the Arkansas River Compact. 5.1 Integration into Case No. 02CW181 accounting and projection. The accounting for operation of the Additional LAWMA Structures will be incorporated into the accounting and projection required by paragraphs 47.E and 47.I of the 02CW181 Decree. Such accounting will include, without limitation, monthly diversions, monthly unlagged depletions, and monthly lagged depletions for each Additional LAWMA Structure, as well as the fully consumable water sources available for replacement of such depletions. Additionally, in accounting for operation of the Additional LAWMA Structures, LAWMA shall use the integrated accounting forms approved in the decree entered in Case No. 14CW3004 on August 1, 2017. 6. Adjudication of new consumptive use factors. For use under the Augmentation Plan, LAWMA seeks to adjudicate a 100% consumptive use factor for indoor irrigation and a 100% consumptive use factor for commercial and industrial uses associated with an agricultural product processing operation, including but not limited to processing crops and derived products, cleaning, cooling, equipment washdown, fire protection, and domestic and sanitary uses. 7. No additional modification of 02CW181 Decree. This Application does not seek to modify any provision of the 02CW181 Decree except to include the Additional LAWMA Structures and to adjudicate the consumptive use factors described in paragraph 6 above. This Application also does not seek a change of water right for any of the water rights identified in paragraph 4 above, or any change to decreed terms and conditions applicable to augmented structures previously included in the Augmentation Plan. 8. Operation of Additional LAWMA Structures under LAWMA's Rule 14 Plan. The Additional LAWMA Structures also operate under LAWMA's Rule 14 Plan as annually approved by the Colorado State Engineer. Depletions resulting from pumping of the Additional LAWMA Structures under the Rule 14 Plan will be determined and replaced under the terms and conditions of the Rule 14 Plan as annually approved by the Colorado State Engineer. Depletions resulting from pumping of the Additional LAWMA Structures under the Augmentation Plan will be determined and replaced under the terms and conditions of the 02CW181 Decree and the decree to be entered in this case. WHEREFORE, LAWMA respectfully requests that the Court enter a decree (i) approving the inclusion of the Additional LAWMA Structures

in the Augmentation Plan; (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 pumping of the Additional LAWMA Structures under the Augmentation Plan; and (iii) finding and concluding that a 100% consumptive use factor for indoor irrigation and a 100% consumptive use factor for commercial and industrial uses associated with an agricultural product processing operation are sufficient to prevent injury to Colorado senior surface water rights and ensure compliance with the Arkansas River Compact.

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**CASE NO. 2019CW8; WILLIAMS and HAMM DITCH COMPANY, c/o MARK BOYLE, 8875 County Road 150, Salida, CO 81201, 303-503-8506**

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

**CHAFFEE COUNTY**

**A. Name of Structure:** Williams Ditch, **B. Date of original and all relevant subsequent decrees:** June 19, 1890, **Case No.** CA1127, Chaffee County. **D. Legal Description:** The headgate is located on the east bank of the Arkansas River, at a point where section line between sections 30 and 31 crosses the river, Chaffee County, CO (this is the erroneous location). **D. Decreed source of water:** Arkansas River. **E. Appropriation Date:** April 13, 1877. **F. Amount:** 1 CFS. **G. USE:** Irrigation. **3. Detailed description of proposed correction to an established but erroneously described point of diversion: A. Complete statement of change:** We believe the Williams Ditch priority (1.0 cfs) has been diverted into the Williams and Hamm Ditch for over 100 years. This application is to correct this erroneously described point of diversion to the official diversion point of the Williams Ditch to be the Williams and Hamm Ditch. Diversion records, confirmed by the District 11 Water commissioner, show that the last time a diversion record was recorded by the Williams ditch individually was 1914. Inspection of the official location recorded for the Williams Ditch diversion shows no sign of any past diversion and therefore we believe this location has always been in error. It is our belief that in 1915 the Williams Ditch was diverted by the Williams and Hamm Ditch. The first time the diversion record shows the Williams Ditch combined with the Williams and Hamm Ditch was in 1927. The diversion record goes on to show that the Williams priority has been recorded as diverted by the Williams and Hamm most every year since 1955. We believe this long history of diversion record proves that the Williams Ditch Priority has a right to be diverted in to the Williams and Hamm Ditch. **B. Legal Description of the corrected point of diversion: UTM Coordinates:** Easting: 406616; Northing 4272883, Zone 13. See map on file with the Application and available for inspection at the office of the Clerk of this Court. **4. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Steve Tait, 12250 County Road 195, Salida, CO 81201.

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**CASE NO. 2020CW2; Previous Case Nos. 98CW87, 06CW58, and 13CW27 – T. KEITH WIGGINS, 7 Royal County Court, Pueblo, CO 81001, (719) 251-0626**

Application to Make Absolute in whole or in Part

## HUERFANO COUNTY

**Name of Structure:** Wiggins Spring #1, **Date of original decree:** 07/31/2000, **Case No:** 1998CW87, Water Div 2. **Subsequent decrees:** 07/17/2007, **Case No:** 2006CW58, Water Div 2. **Legal Description:** NW ¼ NW ¼ Section 29, Township 25S, Range 67W of the 6<sup>th</sup> P.M., Huerfano County, CO, approximately 600 FT East of the West line and 90 FT South of the North line of said section 29. **Source of water:** Natural Springs. **Appropriation Date:** August 10, 1999. **Amount:** .75 gpm, conditional. **Use:** Domestic use inside one residential dwelling and the irrigation of up to one acre of home lawns and gardens and rock and wildlife watering. **Detailed description of what has been done toward completion of conditional decree:** In addition to the installation of a “T” supply line installed in previous diligence period, I installed a storage tank to store water for domestic use. **Claim to make absolute in whole or in part:** Date water applied to beneficial use: 12/31/1892, Amount: .75 gpm, Use: Stock watering tank and wildlife watering. **UTM Coordinates:** Easting: 51.067; Northing 55.157, Zone 13, Garmin GPS, accurate to within 30 feet. See map on file with the Application and available for inspection at the office of the Clerk of this Court. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant

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**CASE NO. 2020CW3001; LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION, (LAWMA), c/o DONALD F HIGBEE, MANAGER, 310 South 6th Street, P. O. Box 1161, Lamar, CO 81052** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Richard J. Mehren, Jennifer M. DiLalla, John E. Peckler, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Blvd., Suite 300, Boulder, CO 80302, 303-443-8782)

Application for Plan for Augmentation

## PROWERS COUNTY

2. Purpose of application. LAWMA is a non-profit corporation organized for the purpose of, among other things, providing a means for its members to continue to make ground water diversions from wells and other structures with junior priorities and to continue to make surface water diversions from structures with junior priorities in the Arkansas River water rights regime. The purpose of this application is to include additional structures in LAWMA’s plan for augmentation (“Augmentation Plan”), which was decreed on March 8, 2007 in Case No. 02CW181, Water Division No. 2 (“02CW181 Decree”). Under paragraph 43 of the 02CW181 Decree, LAWMA may add wells or other structures to the Augmentation Plan by filing an application with the Water Court. 3. Description of structures to be augmented. The two structures described in **Exhibit A** (“Additional LAWMA Structures”). A map showing the locations of the Additional LAWMA Structures attached to application as **Exhibit B**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). The Additional LAWMA Structures are a pond owned by Santa Fe Trail River Ranch, Ltd. (“Boggs Creek Pond”), and a proposed well owned by Granada Feeders, LLC (“Granada Feeders Well”). Boggs Creek Pond is an on-channel pond located northwest of the Town of Granada and north of the Arkansas River on Boggs Creek, and the Granada Feeders Well is located

southwest of the Town of Granada, both within Prowers County. 4. Water rights and other sources of water to be used for augmentation. Those water rights and other sources of water identified in paragraph 40 of the 02CW181 Decree and in the decrees entered in Case Nos. 05CW52, 10CW85, and 15CW3067 (“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 a map showing the decreed locations of the Existing Augmentation Supplies is attached as **Exhibit D**. 4.1 No use of Fryingpan-Arkansas Project water and return flows as an augmentation source. The Additional LAWMA Structures are not located within the boundaries of the Southeastern Colorado Water Conservancy District, and water pumped from or stored by the Additional LAWMA Structures will not be used within such boundaries. Thus, LAWMA will not use Fryingpan-Arkansas Project water, including return flows, to replace depletions caused by the Additional LAWMA Structures. 5. Statement of plan for augmentation. The amount, timing, and location of depletions from the Additional LAWMA Structures will be determined in accordance with the methodologies approved in the 02CW181 Decree. Under the Augmentation Plan, LAWMA shall account for and fully replace all out-of-priority depletions caused by the Additional LAWMA Structures. LAWMA shall replace such depletions with fully consumable water in accordance with the terms and conditions of the 02CW181 Decree and the decree to be entered in this case, in a manner that protects Colorado senior surface water rights from injury and ensures compliance with the Arkansas River Compact. 5.1 Integration into Case No. 02CW181 accounting and projection. The accounting for operation of the Additional LAWMA Structures will be incorporated into the accounting and projection required by paragraphs 47.E and 47.I of the 02CW181 Decree. Such accounting will include, without limitation, monthly diversions, monthly unlagged depletions, and monthly lagged depletions, if any, 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. This Application does not seek a change of water right for any of the Existing Augmentation Supplies, nor any change to decreed terms and conditions applicable to augmented structures previously included in the Augmentation Plan. 6. Name and address of owner of land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure, is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: 6.1 Boggs Creek Pond: Santa Fe Trail River Ranch, Ltd., 333 West Hampden Ave., Suite 770, Englewood, CO 80110. 6.2 Granada Feeders Well: Granada Feeders, LLC, P.O. Box 40, Granada, CO 81041. 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. 2020CW3002; Water Division 2 and CASE NO. 2020CW3021, Water Division 1 – BLACK FOREST RANCH, LLC, c/o DONALD AND SYLVIA MCGRATH, 8129 Foxtail Pine Place, Colorado Springs, CO 80927.** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Ryan W. Farr and Emilie B. Polley of Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921, 719-471-1212).

Application for Adjudication of Denver Basin Groundwater and Plan for Augmentation  
**EL PASO COUNTY**

Applicant seeks to construct or utilize up to two (2) non-exempt wells (including existing well) to the not-nontributary Dawson aquifer to provide water service to one 9.77 acre lot. Applicant therefore seeks to quantify the Denver Basin groundwater underlying the Applicant’s Property, and approval of a plan for augmentation for the use thereof. Application for Underground Water Rights. Legal Description of Wells. Property Description. The Applicant’s approximately 10-acre property (“Applicant’s Property”) is located at 11420 and 11424 Black Forest Road, Colorado Springs, in El Paso County, Colorado, and more specifically described as the S ½ N ½ NE ¼ NE ¼ of Section 19, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M. 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.). Existing Wells. There is an existing well on the Property. Well with Permit No. 309577 (“Black Forest Ranch Well No. 1”) is located approximately 173 feet from the east section line and 550 feet from the north section line, UTM x being 525890.0 and UTM y being 4316464.0, based on CDSS data, permit attached as **Exhibit B**. Applicant intends for the well to be re-permitted for non-exempt uses upon entry of a decree approving the plan for augmentation requested herein. Proposed Wells. Applicant proposes that an additional well will be located on the Applicant’s Property (“Black Forest Ranch Well No. 2”), to be constructed to the Dawson aquifer, for a total of up to two wells for the lot. Water Source. Not-Nontributary. The ground water to be withdrawn from the Dawson aquifer underlying the Applicant’s Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. Nontributary. The groundwater that will be withdrawn from the Denver, Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant’s Property is nontributary. Estimated Rates of Withdrawal. Pumping from the well will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of any well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. Estimated Average Annual Amounts of Ground Water Available. Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant’s Property. Said amounts may be withdrawn over the 100-year aquifer life pursuant to C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant’s Property:

<b>Groundwater Quantification</b>			
Acres: 9.77		NE¼ NE ¼ Sec 19 T12S R65W 6th P.M.	
<b>Denver Basin Aquifer</b>	<b>Net Sand (ft)</b>	<b>Total (AF)</b>	<b>100 Year (AF)</b>
Dawson (NNT)	491.60	960.59	9.61
Denver (NNT)	514.30	854.20	8.54
Arapahoe (NNT)	238.70	396.46	3.96
Laramie Fox Hills (NT)	197.60	289.58	2.90

Decreed amounts may vary based upon the State’s Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. Requested Uses. The Applicant requests the right to use the ground water for beneficial uses upon the Applicant’s Property consisting of domestic, irrigation, greenhouse, stock water, commercial, industrial, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant’s Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct a well or use water from the not-nontributary Dawson aquifer pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifer in accordance with C.R.S. §37-90-137(9)(c.5). Well Fields. Applicant requests that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant’s Property through any combination of wells. Applicant requests that these wells be treated as a well field. Averaging of Withdrawals. Applicant requests that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant’s Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant’s Property. Owner of Land Upon Which Wells are to Be Located. The land and underlying groundwater upon which the wells are and will be located is owned by the Applicant. Application for Approval of Plan for Augmentation. Structures to be Augmented. The structures to be augmented are the Black Forest Ranch Wells Nos. 1 and 2, one of which is currently constructed to the not-nontributary Dawson aquifer underlying the Applicant’s Property, and as will be re-permitted pursuant to this plan for augmentation, as requested and described herein along with any replacement or additional wells associated therewith. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Dawson aquifer from the Black Forest Ranch Wells Nos. 1 and 2, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. Statement of Plan for Augmentation.

Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by two wells proposed herein. Water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: Use. The Black Forest Ranch Wells Nos. 1 and 2, will pump a maximum total of 2.0 acre feet of water, 1.0 acre feet per well, from the Dawson aquifer annually. Such use shall be a combination of household use, irrigation of lawn and garden, commercial, shed, and the watering of poultry or equivalent livestock. An example breakdown of this combination of use is household use at 0.50 acre feet, for two residences utilizing 0.25 acre feet annually, plus outdoor use including the watering of up to 16 chickens or equivalent livestock with a water use of 0.50 acre feet per year; irrigation of greenhouse, lawn, and garden of 0.65 acre feet per year (0.05 annual acre feet per 1000 sq. ft.), indoor commercial use of 0.25 acre feet per year, and a bathroom shed of 0.10 acre feet per year. Depletions. It is estimated that maximum stream depletions over the 100 year pumping period for the Dawson aquifer amounts to approximately 11.55% percent of pumping. Maximum annual depletions for total residential pumping from all wells is therefore 0.231 acre feet, in year 100. Should Applicant's pumping be less than the 2.0 acre feet described herein, resulting depletions will be correspondingly reduced. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of augmented wells to the Dawson aquifer. Depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems, and depletions from irrigation will be adequately replaced by irrigation return flows. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.25 acre feet per residence per year, for a total of two residences or 0.50 acre feet annually, 0.45 acre-feet is replaced to the stream system per year, assuming the use of a non-evaporative septic systems. Thus, during pumping, stream depletions will be adequately augmented. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Black Forest Ranch Wells Nos. 1 and 2, Applicant will reserve water from the nontributary Laramie-Fox Hills aquifer, less the amount of actual stream depletions replaced during the plan pumping period. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicants reserve the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicants will be entitled to apply for and receive a new well permit for the Black Forest Ranch Well Nos. 1 and 2, for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137.

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**CASE NO. 2020CW3003; Previous Case Nos. 13CW3008 and 97CW83 – EMPIRE LODGE HOMEOWNER'S ASSOCIATION, INC., 585 Empire Valley Drive, Leadville, CO 80461** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: David M. Shohet of Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921 (719) 471-1212).



Application to Make Conditional Water Right Partial Absolute and for Continuing Diligence  
**CHAFFEE AND LAKE COUNTIES**

Empire Lodge HOA Exchange. Description of Conditional Exchange: Original Decree. The original decree was entered on April 17, 2007, in Case No. 97CW83, Water Division 2. Subsequent Decrees Awarding Findings of Diligence. One subsequent decree awarding diligence was entered on February 10, 2014, in Case No. 13CW3008, Water Division 2. Amount of Conditional Exchange. The Decree entered in Case No. 97CW83 awarded the Applicant a conditional appropriative right exchange for 50 annual acre feet, at a maximum exchange rate of 2.5 c.f.s. Applicant, in Case No. 13CW3008, made 25 acre feet, at a rate of 1.32 c.f.s., absolute. Accordingly, 25 annual acre feet and 1.18 c.f.s., remain conditional. Sources of Exchange Water. Fully consumable water rights owned by the Board of Water Works of Pueblo ("Board"), leased to the Applicant under a Water Lease Agreement dated July 21, 2000. The Applicant's lease with the Board is a long term lease for thirty years ("Leased Water Rights"). The Leased Water Rights consist of, without limitation, the Board's transmountain water, fully consumable water, or other water reusable under Colorado law including, but not limited to, return flows of transmountain water and water reusable by exchange, all under the Board's decrees. Such leased water rights are of a legal nature that, upon delivery to Applicant, are fully consumable. The Board may make actual delivery of water from the Board's stored water at Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, and Pueblo Reservoir, and/or from direct flow transmountain water or from any other location from which the Board may legally deliver water from storage, return flows or by exchange, all according to the Board's water rights decrees. Water leased from the Board does not include any right to use, lease, purchase or receive an allocation of Frying Pan Arkansas Project water or return flows therefrom. Priority Date of the Conditional Exchange. September 29, 2000. Uses of the Exchange Water. Augmentation purposes in accordance with the Applicant's decreed plan for augmentation in Case No. 97CW83. Exchange Reach. The exchange reaches are from the confluence of Clear Creek and the Arkansas River in Section 8, Township 12 South, Range 79 West, 6th P.M., and from the confluence of the Lake Creek and the Arkansas River located in Section 24, Township 11 South, Range 80 West, 6th P.M., up the mainstem of the Arkansas River to an initial terminus at the confluence of the Arkansas River and Empire Creek located in Section 22, Township 10 South, Range 80 West, 6th P.M., and from the confluence of the Empire Creek and the Arkansas River up Empire Creek to the terminus of the exchange at the headgate of the Beaver Lakes Ditch in Section 7, Township 10 South, Range 79 West, 6th P.M. Outline of Work Done for Completion of Appropriation and Application of Water to Beneficial Use. In Case No. 97CW83, Applicant was awarded a plan for augmentation to replace Applicant's out of priority depletions to the Arkansas River and Empire Creek caused by Beaver Lakes Ditch, Beaver Lake No. 1 and Beaver Lake No. 2. The water rights used for augmentation are the Leased Water Rights. In order to implement the plan for augmentation, Applicant was awarded an exchange of the Leased Water Rights from the confluence of Clear Creek and the Arkansas and from the confluence of the Lake Creek and the Arkansas River up the Arkansas River to the confluence of the Arkansas River and Empire Creek, and up Empire Creek to the headgate of the Beaver Lakes Ditch. During this diligence period, the Applicant has continued to operate the Empire Lodge HOA Exchange for the purposes of fill, refill and augmentation of out of priority depletions

caused by the Beaver Lakes Ditch, Beaver Lake No. 1 and Beaver Lake No. 2. During this diligence period, the Applicant has also spent considerable time and effort in repairing and constructing the HOA's water infrastructure and system for diversion of the exchanged water. Such work includes the rebuilding the outflow devices and installation of new drain valves for both Beaver Lake No. 1 and Beaver Lake No. 2, rebuilding of a new headgate for the Beaver Lakes Ditch, repair and lining of ditches, and removal of old pipeline from United States Forest Service land. Applicant has also incurred engineering fees as a result of its repair and reconstruction of Beaver Lake No. 1 and Beaver Lake No. 2. Applicant has also spent considerable time and effort in performing annual maintenance of its water infrastructure and system, including annual ditch cleaning and removal of debris from the headgate structure and ditch, dredging bi-annually the settling ponds upstream of the headgate and flume, operation of the headgate and drain valve annually, culvert replacement and upgrades for efficient operation of the ditch, and maintenance, inspection, and upkeep of both spillways and outlets for the Beaver Lakes No. 1 and No. 2. Applicant has spent over \$11,360 during this diligence period on the construction and maintenance of its water infrastructure and system for the future diversion of the Empire Lodge HOA Exchange. During this diligence period, the Applicant has, therefore, devoted substantial efforts toward the development of the Empire Lodge HOA Exchange. Claim to Make Absolute. Applicant seeks to make an additional 25 acre feet and 0.08 c.f.s, of the conditional Empire Lodge HOA Exchange absolute exchanged during the 2019 water year. See **Exhibit A** attached to the application, an email showing the release of 25.82 Af in June 2019 for the initial fill of the Beaver Lake No. 1 and Beaver Lake No. 2 after they had been drained at a rate of 1.4 c.f.s. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). Applicant continued to replace its out of priority depletions associated with the Beaver Lakes Ditch, Beaver Lake No. 1 and Beaver Lake No. 2 during the remainder of the 2019 irrigation year via Empire Lodge HOA Exchange in accordance with the terms of the decree and the intent of the appropriation of the Empire Lodge HOA Exchange. Names And Address of Owner or Reputed Owners of the Land Upon Which Any Structures are Located. The headgate for Beaver Lakes Ditch, and the Beaver Lake No. 1 and Beaver Lake No. 2, are all located on the lands owned by the US Forest Service, Washington, DC 81623. Applicant requests approval of this Application an additional 25 acre feet and 0.08 c.f.s., of the conditional Empire Lodge HOA Exchange water right, be made final and absolute, that the Court continuing diligence on the remaining conditional water right not requested to be made absolute herein and for such other and further relief as the Court deems appropriate.

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**CASE NO. 2020CW3004; Previous Case Nos. 13CW3043, 01CW80, 84CW177(B) (Non-Sewered Phase) and 86CW111(B) (Non-Sewered Phase) - BOARD OF WATER WORKS OF PUEBLO, COLORADO, Attention: Executive Director, 319 West Fourth Street, Pueblo, CO 81003.** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Karl D. Ohlsen and Katrina B. Fiscella, Carlson, Hammond & Paddock, LLC, 1900 Grant Street, Suite 1200, Denver, CO 80203, Phone: (303) 861-9000.)

Application to Make Conditional Water Rights Absolute and for Sexennial Finding of Reasonable Diligence in the Arkansas River and its Tributaries in

## LAKE, CHAFFEE AND PUEBLO COUNTIES

This is an Application for a Sexennial Finding of Reasonable Diligence involving certain exchange and reuse rights of Pueblo Water of Water Works of Pueblo, Colorado ("Pueblo Water" or the "Applicant") previously decreed on August 3, 1995, in Consolidated Cases No. 84CW177(B) (Non-Sewered Phase), and 86CW111(B) (Non-Sewered Phase), Water Division No. 2. That decree adjudicated all issues and claims of use, reuse, and successive use by exchange of water derived from Pueblo Water's Transmountain Sources, described in Paragraph III(D), below, and delivered to the Arkansas River or its tributaries as diffuse return flows from the irrigation of lawns, gardens, parks, landscaping, and all other uses of water within the area served by Pueblo Water (the "Non-Sewered Return Flows"). The decree of August 3, 1995, in Consolidated Cases No. 84CW177(B) and 86CW111(B) excluded all issues and claims of use, reuse, and successive use by exchange of water derived from Pueblo Water's Transmountain Sources that are delivered to the Arkansas River or its tributaries from points of discharge (the "Sewered Return Flows"). All issues and claims regarding exchange of Pueblo Water's Sewered Return Flows are the subject of the decree entered February 24, 1988, in Case No. 84CW177 ("Sewered Phase"), and December 4, 1992, in Case No. 86CW111 ("Sewered Phase").

II. Name of Structures (Utilized for Exchange and Reuse):

A. Diversion Facilities:

1. Pueblo Reservoir. The point of diversion of Pueblo Reservoir is at a point at the intersection of the Pueblo Dam axis and the Arkansas River whence the Northeast corner of Section 36, Township 20 South, Range 66 West of the 6<sup>th</sup> P.M., bears North 61°21'20" East a distance of 2,511.05 feet. Said reservoir inundates all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 20 South, Range 66 West of the 6<sup>th</sup> P.M., Sections 1, 2, 3, 4, 5, 9, 10, and 11, Township 21 South, Range 66 West of the 6<sup>th</sup> P.M.; and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, Township 20 South, Range 67 West of the 6<sup>th</sup> P.M.
2. Clear Creek Reservoir. Clear Creek Reservoir is located on Clear Creek in Sections 7 and 8, Township 12 South, Range 79 West of the 6<sup>th</sup> P.M., and Section 12, Township 12 South, Range 80 West of the 6<sup>th</sup> P.M., in Chaffee County.
3. Twin Lakes Reservoir. Twin Lakes Reservoir is formed by a dam across Lake Creek in Lake County in Section 23, Township 11 South, Range 80 West of the 6<sup>th</sup> P.M., as described in the decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980.
4. Turquoise Lake. Turquoise Lake is formed by a dam across Lake Fork Creek in Lake County in Section 19, Township 9 South, Range 80 West of the 6<sup>th</sup> P.M., as described in the decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980.
5. Northside Intake. Pueblo Water's Northside Intake headgate is situate on the North bank of the Arkansas River in Pueblo County, Colorado, in the Northwest quarter of the Northeast quarter of Section 33, Township 20 South, Range 65 West of the 6<sup>th</sup> P.M., at or near a point which lies South 74°14'30" West, 2673.9 feet from the Northeast corner of said Section 33.
6. Southside Intake. Pueblo Water's Southside Intake headgate is located on the right bank of the Arkansas River at a point whence the west quarter corner of Section 34, Township 20 South, Range 65 West of the 6<sup>th</sup> P.M. bears south 69°35' West 1478 feet.
7. Comanche Pump Station. Comanche Pump Station is located as follows: Considering the south line of the SE ¼ of Section 31, Township 20 South, Range 65 West of the 6<sup>th</sup> P.M., to bear N. 89 degs. 24'53" E with all bearings contained herein being relative thereto: Beginning at a point on the northerly right-of-way lie of the Denver and Rio Grande Western Railroad from which the

Southwest ¼ corner of the Southeast ¼ of said Section 31 bears S 00 degs. 39'25" E. a distance of 660.62 feet; thence N 47 degs. 12'21" E, a distance of 58.61 feet; thence N 02 degs. 29'30" W, a distance of 80.47 feet; thence N 87 degs. 30'30" E, a distance of 132.5 feet; thence N 02 degs. 29'30" W, a distance of 92.5 feet to the point of diversion.

III. Describe Conditional Exchange and Reuse Water Rights as decreed in Consolidated Cases No. 84CW177(B) and 86CW111(B): A. Date of Original Decree: Consolidated Cases No. 84CW177(B) and 86CW111(B), August 3, 1995, District Court, Water Division No. 2, State of Colorado. Date of Subsequent Decrees: Case No. 01CW81, September 10, 2007, District Court, Water Division No. 2, State of Colorado; Case No. 13CW3043, February 21, 2014, District Court, Water Division No. 2, State of Colorado. B. Exchange Priority Date: Case No. 84CW177(B), May 18, 1976. Case No. 86CW111(B), July 1, 1985. C. Use: All beneficial uses for which the waters to be exchanged and reused are decreed, including the uses set forth in the decree in Consolidated Cases No. 84CW177(B) and 86CW111(B). D. Source of Water for Exchange and Reuse: The water rights that are to be utilized in the exchange and reuse programs described herein are return flows derived from sources of supply that are not native or tributary to the Arkansas River. Said waters include return flows, after use in Pueblo Water's municipal water system and return flows from other water users supplied by Pueblo Water, derived from Pueblo Water's ownership interests in or rights to use water derived from the following sources of supply: 1. The Ewing Placer Ditch. Ewing Placer Ditch diverts water from Piney Creek, a tributary of the Eagle River, and carries the water across the Continental Divide into Tennessee Creek for delivery to the Arkansas River. The Ewing Placer Ditch was decreed on November 13, 1911, with appropriation date of June 1, 1906, by the District Court, Eagle County, Civil Action No. 507. 2. The Columbine Ditch. Columbine Ditch diverts water from three branches of the East Fork of the Eagle River and carries such water across the Continental Divide for delivery into the West Branch of Chalk Creek, into the East Fork of the Arkansas River, and then into the Arkansas River. The Columbine Ditch was decreed on October 3, 1936, with an appropriation date of June 21, 1930, by the District Court, Eagle County, Civil Action No. 963. Pueblo Water controls the right to utilize a portion of the waters described herein by virtue of an agreement with the owner. 3. The Warren E. Wurtz Ditch (also known as the Warren E. Wurts Ditch). Warren E. Wurtz Ditch diverts water from Bennett Creek, Mitchell Creek, and side tributaries of those creeks, all of which are tributaries of the Eagle River. The ditch carries water across the Continental Divide into West Tennessee Creek for delivery to the Arkansas River. The Warren E. Wurtz Ditch was decreed on October 3, 1936, with an appropriation date of June 8, 1929, by the District Court, Eagle County, Civil Action No. 963. 4. The Wurtz Extension Ditch. Wurtz Extension Ditch diverts water from Yoder Creek, East Fork of Yoder Creek, and Rule Creek, tributaries of the Eagle River. The ditch connects to the Warren E. Wurtz Ditch, which then carries water across the Continental Divide into West Tennessee Creek for delivery to the Arkansas River. The Wurtz Extension Ditch was decreed on October 21, 1982, with an appropriation date of October 26, 1953, by the District Court, Water Division No. 5, Case No. 80CW505. 5. The Busk-Ivanhoe System. Busk-Ivanhoe System diverts water from Hidden Lake Creek, Pan Creek, Lyle Creek, and Ivanhoe Creek, all tributaries of the Frying Pan and Roaring Fork Rivers, and carries such water through the Continental Divide for delivery into Busk Creek on the headwaters of the Arkansas River. The System was decreed by absolute decree of the District Court,

Garfield County, in Case No. 2621 dated January 9, 1928, with appropriation dates differing for various components of the system as more fully set forth in the referenced decree. Other absolute decrees were entered in Civil Actions No. 3082 and 4033. The decrees were entered by the District Court, Garfield County. Pueblo Water owns an undivided one-half interest in these water rights. 6. The Homestake Project diverts water from the headwaters of tributaries of the Eagle River in Eagle County. The water rights were conditionally adjudicated by the decree in Civil Action No. 1193 (District Court, Eagle County) dated June 8, 1962. These water rights have an appropriation date of September 22, 1952. By an assignment of interest from the City of Aurora, Pueblo Water has the annual right to receive 2500 acre-feet of Homestake Project Water delivered at Turquoise Lake. 7. The Independence Pass Transmountain Diversion System diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County. The water rights were adjudicated by a decree in Civil Action No. 3082 (District Court, Garfield County) dated August 25, 1936, and were modified by a decree in Case No. W-1901 (District Court, Water Division No. 5), dated May 12, 1976. These water rights have an appropriation date of August 23, 1930. Pueblo Water has the right to utilize a portion of such waters and the return flows therefrom by virtue of its ownership of shares of the Twin Lakes Reservoir and Canal Company. 8. The Fryingpan-Arkansas Project diverts water from the headwaters of Hunter Creek and the Fryingpan River and its tributaries in Pitkin County. The water rights were adjudicated by the decrees in Civil Action No. 4613 (District Court, Garfield County) dated June 20, 1958, and August 3, 1959, and were modified by the decree in Case No. W-829-76 (District Court, Water Division No. 5) dated November 27, 1979. These water rights have an appropriation date of July 29, 1957. By this Application, Pueblo Water does not seek any rights of use of Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocation of Fryingpan-Arkansas Project water or return flows from Fryingpan-Arkansas Project water, but this does not alter any existing rights Pueblo Water may otherwise have. Return flows from the Fryingpan-Arkansas Project will be utilized for exchanges and reuse only after they are purchased from the Southeastern Colorado Water Conservancy District. All of the sources of supply described in Paragraph No. III(D) are waters not native and not naturally tributary to the Arkansas River Basin and are referred to as "the Transmountain Sources." All of the Transmountain Sources have been decreed to include municipal purposes. E. Location and Amounts of Decreed Exchange Reaches: 1. The return flows resulting from use of the water derived from the Transmountain Sources are quantified and accounted for pursuant to the decree in Consolidated Cases No. 84CW177(B) and 86CW111(B) and accrue to the Arkansas River or its tributaries above the Avondale Gage and then are exchanged upstream to the Diversion Facilities identified in Paragraph II(A), pursuant to the terms and conditions of the decrees entered in Cases No. 84CW177, 86CW111, and Consolidated Cases No. 84CW177(B) and 86CW111(B). In addition, the return flows stored by exchange in the Diversion Facilities identified in Paragraph II(A)(1-4) can be exchanged into storage in a different Diversion Facility identified in Paragraph II(A)(1-4). 2. The Non-Sewered Transmountain Return Flow is part of the same appropriative rights of exchange and reuse program decreed in the sewered phases of Cases No. 84CW177 and 86CW111. The Non-Sewered Transmountain Return Flow provides up to 5.30 c.f.s. of water in addition to the measured discharges decreed in Cases No. 84CW177 and 86CW111. This additional quantity of water is included within,

but does not limit or reduce, the exchanges decreed in the amount of 60.0 c.f.s. in each Case No. 84CW177 and Case No. 86CW111. The Non-Sewered Transmountain Return Flow is exchanged under the priority of the appropriative right of exchange with appropriation date of May 18, 1976, decreed in Case No. 84CW177 and/or under the appropriative right of exchange with appropriation date of July 1, 1985, as decreed in Case No. 86CW111. The Non-Sewered Transmountain Return Flow accrues to the Arkansas River above the Avondale Gage and is exchanged upstream to the same facilities and same points of diversion and storage as identified in the decrees in Cases No. 84CW177 and 86CW111. 3. In Cases No. 01CW80 and 13CW3043, the Water Court made the following exchanges absolute in the amounts set forth below: 3.1. 84CW177(B) Exchanges: 3.1.1. 1.58 c.f.s. from the Arkansas River at or above the Avondale Gage upstream to Pueblo Reservoir; and 3.1.2. 0.28 c.f.s. from the Arkansas River at or above the Avondale Gage upstream to Clear Creek Reservoir. 3.2. 86CW111(B) Exchanges: 3.2.1. 0.75 c.f.s. from the Arkansas River at or above the Avondale Gage upstream to the Northside Intake. 3.2.2. 0.17 c.f.s. from the Arkansas River at or above the Avondale Gage upstream to the Southside Intake. 3.2.3. 0.25 c.f.s. from the Arkansas River at or above the Avondale Gage upstream to the Comanche Pump Station. IV. Provide a Detailed Outline of What Has Been Done Toward Completion or for Completion of the Appropriation and Application of Water to Beneficial Use as Conditionally Decree, Including Expenditures: The Applicant operates a unified and integrated municipal water supply system consisting of numerous individual components. Those components include, but are not limited to, the many individual water rights, sources of supply and points of diversion described in this Application, and the absolute and conditional exchange and reuse rights that are the subject of this Application. During the period from September 30, 2013 (the date the Application was filed in Case No. 01CW80), through February 29, 2020 (the "Diligence Period"), Pueblo Water carried out exchanges as contemplated and authorized by the decree in Consolidated Cases No. 84CW177(B) and 86CW111(B). In addition, Pueblo Water spent substantial sums of money and devoted many thousands of man hours to operation, maintenance, development, and protection of its unified and integrated municipal water supply and treatment system, including work by engineering consultants and attorneys. During the Diligence Period, the total amount spent by Pueblo Water for all of these purposes exceeded \$220 million. The principal activities undertaken by Pueblo Water during the Diligence Period related to the operation of the exchange and reuse rights decreed in Consolidated Cases No. 84CW177(B) and 86CW111(B), included the following: (1) for Pueblo Reservoir, Pueblo Water made annual payments to the United States Bureau of Reclamation for its storage contract; (2) for Clear Creek Reservoir, Pueblo Water patched and recoated the steel portion of the outlet works, added piezometers for monitoring seepage, performed a bathymetric survey of the reservoir, performed geophysical testing of the dam and its foundation, created a dam breach inundation map, repaired concrete in the spillway, performed routine maintenance, operation and monitoring, and obtained a decree in Case No. 04CW130 for the enlargement of the reservoir; (3) for Twin Lakes Reservoir, Pueblo Water paid annual assessments to the Twin Lakes Reservoir and Canal Company; (4) for Turquoise Lake, Pueblo Water made annual payments to Reclamation for its storage contract; (5) for the Northside Intake, Pueblo Water performed routine maintenance, operation and monitoring; (6) for the Southside Intake, Pueblo Water undertook a feasibility study

looking at options for making the diversion dam passable by boat, performed routine maintenance, operation and monitoring; and (7) for the Comanche Pump Station, Pueblo Water rebuilt 2 pumps, rebuilt 1 pump motor, replaced 2 motor control units, performed routine maintenance, operation and monitoring. Pueblo Water performed the following actions related to the sources of water for exchange and reuse: (1) for the Ewing Ditch, Pueblo Water performed routine maintenance, operation and monitoring, and participated in the System Conservation Pilot Project in the summer of 2016; (2) for the Columbine Ditch, Pueblo Water retained the right to receive water from the ditch under specific circumstances and continued to operate pursuant to that agreement; (3) for the Warren E. Wurtz Ditch, Pueblo Water performed routine maintenance, operation and monitoring; (4) for the Wurtz Extension Ditch, Pueblo Water performed routine maintenance, operation and monitoring, and obtained a decree finding reasonable diligence in Case No. 13CW3042 (Water Division No. 5); (5) for the Busk-Ivanhoe System, Pueblo Water completed dam repairs in 2014, replaced the gate from Ivanhoe Lake to the tunnel, widened sections of the Lyle Ditch, and performed routine maintenance, operation and monitoring; (6) For the Homestake Project, Pueblo Water made annual payments to the City of Aurora pursuant to the 1967 Agreement; (7) for the Independence Pass Transmountain Diversion System, Pueblo Water paid annual assessments to the Twin Lakes Reservoir and Canal Company; and (8) for the Fryingpan-Arkansas Project, Pueblo Water purchased Project water and return flow from Project water. Pueblo Water has monitored and recorded ground water levels in its network of groundwater monitoring wells located throughout its service area. Pueblo Water has also annually compared irrigation vs. non-irrigation season use and adjusted its calculations of non-sewered return flow accordingly. In addition, Pueblo Water implemented major improvements to its water supply transmission, treatment, and distribution systems necessary to supply customers with water within its water service area. This work included completing conversion of all meters to automated reading, instituting a service line replacement program, rehabilitation of 3 treated water storage tanks, replacement of the roofs of 4 other tanks, replacement of a generator allowing the Whitlock Treatment Plant to continue treating up to 20 MGD during a power outage, replacement of motor controls at the Gardner Pump Station, rehabilitation of 2 filters at the Whitlock Treatment Plant, and replacement of 15 miles of mains. Pueblo Water continued its practice of making improvements related to collection system facilities, storage reservoirs, water transmission pipelines, water treatment plants and distribution system mains, meters, and reservoirs. The water delivered through these systems includes the water made available to Pueblo Water by the exchange rights that are the subject of this Application. Pueblo Water also continued its long-standing partnership with the Pueblo Economic Development Corporation to attract new business and industry to the City of Pueblo and Pueblo Water's service area. The transmountain component of the water treated by those facilities and supplied to Pueblo Water's customers becomes available to Pueblo Water for exchange as contemplated by the decree in Consolidated Cases No. 84CW177(B) and 86CW111(B). In addition, during the Diligence Period Pueblo Water filed applications for and completed a number of adjudications of water rights that are part of Pueblo Water's unified and integrated water supply system. This includes but is not limited to: (1) obtaining a finding of reasonable diligence in Case No. 17CW3020 (formerly Cases No. 93CW86, 04CW14 and 10CW79) (HARP), Water Division No. 2; (2) obtaining a finding of reasonable diligence and making

conditional rights absolute, in part, for the exchanges decreed in Case No. 13CW3044 (formerly Cases No. 01CW68, 94CW9 and 84CW178), Water Division No. 2; (3) filing an application for and obtaining a finding of reasonable diligence in the sewered portion of the exchange and reuse plans in Case No. 19CW3005 (formerly Cases No. 12CW87 and 86CW111A), Water Division No. 2; (4) obtaining a decree for enlargement of Clear Creek Reservoir in Case No. 04CW130, Water Division No. 2; (5) obtaining a finding of reasonable diligence in Case No. 14CW3022 (formerly Cases No. 01CW67 and 84CW177), Water Division No. 2; (6) obtaining a decree for a finding of reasonable diligence for the Wurtz Extension Ditch in Case No. 13CW3042, Water Division No. 5; and (7) obtaining a decree for a change of water rights in Case No. 12CW102, Water Division No. 2. Pueblo Water also has acted to preserve and protect all of its water rights by filing statements of opposition to and participating in a number of other judicial proceedings in Water Division 2 and Water Division No. 5. Finally, during the Diligence Period, in Cases No. 16CW3103 and 17CW3050, Pueblo Water filed applications and obtained decrees for a change of water right and for exchange related to 5,488.368 shares of Bessemer Irrigating Ditch Company, which water rights Pueblo Water intends to include in Pueblo Water's unified and integrated water supply system. The work performed and actions taken by Pueblo Water during the Diligence Period demonstrate Pueblo Water's continuing intent to develop the conditional exchange and reuse rights that are the subject of this Application and further demonstrate that the subject water can be and will be diverted, stored, or otherwise captured, possessed, and controlled and will be beneficially used and that the project can and will be completed with diligence and within a reasonable time. Except to the extent the exchange and reuse rights are claimed to be and are made absolute in this proceeding, Pueblo Water seeks a Finding of Reasonable Diligence for the full amount of all remaining conditional exchange and reuse rights decreed in Consolidated Cases No. 84CW177(B) and 866CW111(B). **WHEREFORE**, Pueblo Water requests the Court to enter a decree: 1. Confirming that Pueblo Water maintains a single unified and integrated water 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 exchange and reuse rights that are the subject of this Application; and 2. Finding that Pueblo Water has exercised reasonable diligence and met all applicable standards on all the conditional exchange and reuse rights decreed in Consolidated Cases No. 84CW177(B) and 86CW111(B), to the extent not made absolute, continuing those conditional rights in good standing, and fixing a date when a further application for a finding of reasonable diligence is required.

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**CASE NO. 2020CW3005; Previous Case Nos. 13CW3044, 01CW68 and 84CW178 – BOARD OF WATER WORKS OF PUEBLO, COLORADO Attention: Executive Director, 319 West Fourth Street, Pueblo, CO 81003.** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Karl D. Ohlsen and Katrina B. Fiscella, Carlson, Hammond & Paddock, LLC, 1900 Grant Street, Suite 1200, Denver, CO 80203, Phone: (303) 861-9000).

Application to Make Conditional Water Rights Absolute and for Sexennial Finding of Reasonable Diligence in the Arkansas River and its Tributaries

**LAKE AND CHAFFEE COUNTIES**



This is an Application to Make Conditional Water Rights Absolute and for a Sexennial Finding of Reasonable Diligence involving the conditional exchange rights of Pueblo Water of Water Works of Pueblo, Colorado ("Pueblo Water" or "Applicant") originally decreed on February 19, 1988, in Case No. 84CW178, Water Division No. 2. The exchange rights that are the subject of this action involve both water rights diverted from transmountain sources of supply that are not native or tributary to the Arkansas River, and water rights diverted and stored from sources native to the Arkansas River. II. Name of Diversion (Storage) Facilities to Which and Between Which Water is Exchanged. A. Clear Creek Reservoir. Clear Creek Reservoir is located on Clear Creek in Sections 7 and 8, Township 12 South, Range 79 West of the 6<sup>th</sup> Principal Meridian, and Section 12, Township 12 South, Range 80 West of the Principal Meridian, in Chaffee County. B. Twin Lakes Reservoir. Twin Lakes Reservoir is formed by a dam across Lake Creek in Lake County in Section 23, Township 11 South, Range 80 West of the 6<sup>th</sup> Principal Meridian, as described in the decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980. C. Turquoise Lake. Turquoise Lake is formed by a dam across Lake Fork Creek in Lake County in Section 19, Township 9 South, Range 80 West of the 6<sup>th</sup> Principal Meridian as described in the decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980. III. Source of Water for Exchanges: A. The Ewing Placer Ditch. Ewing Placer Ditch diverts water from Piney Creek, a tributary of the Eagle River, and carries the water across the Continental Divide into Tennessee Creek for delivery to the Arkansas River. The Ewing Placer Ditch was decreed 18.5 c.f.s. of water by decree dated November 13, 1911, with an appropriation date of June 1, 1906, by the District Court, Eagle County, Civil Action No. 507. B. The Warren E. Wurtz Ditch (also known as the Warren E. Wurts Ditch). Warren E. Wurtz Ditch diverts water from Bennett Creek, Mitchell Creek, and side tributaries of those creeks, all of which are tributaries of the Eagle River. The ditch carries water across the Continental Divide into West Tennessee Creek for delivery to the Arkansas River. The Warren E. Wurtz Ditch was decreed 85 c.f.s. of water by decree dated October 3, 1936, with an appropriation date of June 8, 1929, by the District Court, Eagle County, Civil Action No. 963. C. The Wurtz Extension Ditch. Wurtz Extension Ditch diverts water from Yoder Creek, East Fork of Yoder Creek, and Rule Creek, tributaries of the Eagle River. The ditch connects to the Warren E. Wurtz Ditch, which then carries water across the Continental Divide into West Tennessee Creek for delivery to the Arkansas River. The Wurtz Extension Ditch was decreed 24 c.f.s. absolute and 76 c.f.s. conditional by decree dated October 21, 1982, with an appropriation date of October 26, 1953, by the District Court, Water Division No. 5, Case No. 80CW505. The Wurtz Extension Ditch was made absolute in the additional amount of 20 c.f.s. by decree dated July 7, 1987, in Case No. 86CW275 for a total of 44 c.f.s. absolute and 56 c.f.s. conditional. Pueblo Water owns the entirety of water rights (A) through (C). D. The Columbine Ditch. Columbine Ditch diverts water from three branches of the East Fork of the Eagle River, and carries such water across the Continental Divide for delivery into the West Branch of Chalk Creek, a tributary of the Arkansas River. The Columbine Ditch was decreed 60 c.f.s. of water by decree dated October 3, 1936, with an appropriation date of June 21, 1930, by the District Court, Eagle County, Civil Action No. 963. Pueblo Water controls the right to utilize a portion of the waters described herein by virtue of an agreement with the owner. E. The Busk-Ivanhoe System. Busk-Ivanhoe System diverts water from Hidden Lake Creek, Pan Creek, Lyle

Creek, and Ivanhoe Creek, all tributaries of the Fryingpan and Roaring Fork Rivers, and carries such water through the Continental Divide for delivery into Busk Creek on the headwaters of the Arkansas River. The System was decreed 85 c.f.s. of water by absolute decree of the District Court, Garfield County in Case No. 2621, dated January 9, 1928, with appropriation dates differing for various components of the system as more fully set forth in the referenced decree. Several additional amounts were decreed conditional by the same decree. Other absolute decrees in the amounts of 25 c.f.s. and 70 c.f.s. of water were entered in Civil Action Nos. 3082 and 4033 by the District Court, Garfield County. Pueblo Water owns an undivided one-half interest in these water rights. F. The Homestake Project diverts water from the headwaters of tributaries of the Eagle River in Eagle County. The water rights were conditionally adjudicated by the decree in Civil Action No. 1193 (District Court, Eagle County), dated June 8, 1962. These water rights have an appropriation date of September 22, 1952. By an assignment of interest from the City of Aurora, Pueblo Water has the annual right to receive 2,500 acre-feet of Homestake Project Water delivered at Turquoise Lake. G. The Independence Pass Transmountain Diversion System diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County. The water rights were adjudicated by a decree in Civil Action No. 3082 (District Court, Garfield County), dated August 25, 1936, and were modified by a decree in Case No. W-1901 (District Court, Water Division No. 5), dated May 12, 1976. These water rights have an appropriation date of August 23, 1930. Pueblo Water has the right to utilize a portion of such waters by virtue of its ownership of shares of the Twin Lakes Reservoir and Canal Company. H. The Fryingpan-Arkansas Project diverts water from the headwaters of Hunter Creek and the Fryingpan River and its tributaries in Pitkin County. The water rights were adjudicated by the decrees in Civil Action No. 4613 (District Court, Garfield County), dated June 20, 1958, and August 3, 1959, and were modified by the decree in Case No. W-829-76 (District Court, Garfield County), dated June 20, 1958, and August 3, 1959, and were modified by the decree in Case No. W-829-76 (District Court, Water Division No. 5), dated November 27, 1979. These water rights have an appropriation date of July 29, 1957. Pueblo Water has the right to purchase a portion of such waters by virtue of the Allocation Principles adopted by the Southeastern Colorado Water Conservancy District on November 29, 1979. The decree in this case does not, however, give Pueblo Water any rights of use of Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocation of Fryingpan-Arkansas Project water, but does not alter any existing rights Pueblo Water may otherwise have. The above water rights, (A) through (H), are referred to as "the Transmountain Sources." I. The Twin Lakes Reservoir impounds water from Lake Creek, a tributary of the Arkansas River, as well as from the Independence Pass Transmountain Diversion System. The Lake Creek decrees for native water were adjudicated in Civil Action No. 2346 (District Court, Chaffee County) on July 14, 1913, with an appropriation date of December 15, 1896, for 20,645.3 acre-feet, and March 29, 1897, for 33,806.7 acre-feet. Pueblo Water has the right to utilize a portion of these water rights by virtue of ownership of shares of the Twin Lakes Reservoir and Canal Company. J. Clear Creek Reservoir impounds water from Clear Creek, a tributary of the Arkansas River. The reservoir's water rights were adjudicated on July 14, 1913, in Civil Action No. 2346 (District Court, Chaffee County), with an appropriation date of June 12, 1902, for 9,401 acre-feet, and with an August 20, 1910, appropriation date for 2,038 acre-feet. Pueblo

Water owns the entirety of these water rights. The above water rights (I) and (J) are referred to as the "Arkansas River Sources." All of the Transmountain Sources and all of the Arkansas River Sources have been decreed to include municipal uses. IV. Describe Conditional Water Rights of Exchange as Decreed in Case No. 84CW178, and subsequent diligence proceedings. A. Date of Original Decree and Uses: February 19, 1988, Case No. 84CW178, District Court, Water Division No. 2, Colorado. All beneficial uses for which the water to be exchanged is decreed, including the uses set forth in the decree in Case No. 84CW178. Date of Subsequent Decrees: September 10, 2007, Case No. 01CW68, District Court, Water Division No. 2, Colorado, finding application of reasonable diligence and making exchanges absolute, in part; February 24, 2014, Case No. 13CW3044, District Court, Water Division No. 2, Colorado, finding application of reasonable diligence and making exchanges absolute, in part. B. Location and Description of Exchange Reaches: 1. Ewing Ditch Exchanges: From the discharge of the Ewing Ditch into Tennessee Creek, then into the Arkansas River, downstream in the Arkansas River and then (a) upstream in Lake Fork Creek into Turquoise Reservoir; (b) upstream in Lake Creek into Twin Lakes Reservoir; and (c) upstream in Clear Creek into Clear Creek Reservoir. 2. Wurtz and Wurtz Extension Ditch Exchanges: From the combined discharge point of the Wurtz Ditch and the Wurtz Extension Ditch into West Tennessee Creek then into Tennessee Creek, then into the Arkansas River, downstream in the Arkansas River and then (a) upstream in Lake Fork Creek into Turquoise Reservoir; (b) upstream on Lake Creek into Twin Lakes Reservoir; and (c) upstream in Clear Creek into Clear Creek Reservoir. 3. Columbine Ditch Exchanges: From the discharge of the Columbine Ditch into Chalk Creek, then into the East Fork of the Arkansas River, then into the Arkansas River, downstream in the Arkansas River and then (a) upstream in Lake Fork Creek into Turquoise Reservoir; (b) upstream in Lake Creek into Twin Lakes Reservoir; and (c) upstream in Clear Creek into Clear Creek Reservoir. 4. Busk-Ivanhoe System Exchanges: From the discharge of the Busk-Ivanhoe System into Busk Creek, downstream in Lake Fork Creek to the Arkansas River, then downstream in the Arkansas River and then (a) upstream in Lake Creek into Twin Lakes Reservoir; and (b) upstream in Clear Creek into Clear Creek Reservoir. 5. Independence Pass Diversion System Exchanges: From the outlet of Twin Lakes Tunnel, downstream in Lake Creek to its confluence with the Arkansas River, then (a) upstream in the Arkansas River to its confluence with Lake Fork Creek, and then upstream in Lake Fork Creek into Turquoise Reservoir; and (b) downstream in the Arkansas River to its confluence with Clear Creek and then upstream in Clear Creek into Clear Creek Reservoir. 6. Homestake Project Exchange: From the discharge of the Homestake Project Tunnel into Lake Fork Creek, then downstream in Lake Fork Creek to the Arkansas River, then (a) downstream in the Arkansas River to Lake Creek, then upstream in Lake Creek into Twin Lakes Reservoir; and (b) downstream in the Arkansas River to Clear Creek, then upstream in Clear Creek into Clear Creek Reservoir. 7. Fryingpan-Arkansas Project Exchanges: From the discharge of the Boustead Tunnel into Lake Fork Creek, then (a) downstream in the Arkansas River to Clear Creek, then upstream in Clear Creek into Clear Creek Reservoir. 8. Twin Lakes Reservoir Exchanges: From the outlet of Twin Lakes Reservoir into Lake Creek then downstream in Lake Creek to the Arkansas River, then (a) upstream in the Arkansas River to Lake Fork Creek, then upstream in Lake Fork Creek into Turquoise Reservoir; and (b) downstream in the Arkansas River to Clear Creek then upstream in

Clear Creek into Clear Creek Reservoir. 9. Turquoise Reservoir Exchanges: From the outlet of Turquoise Reservoir into Lake Fork Creek, then downstream in Lake Fork Creek to the Arkansas River, then (a) downstream in the Arkansas River into Lake Creek, then upstream in Lake Creek into Twin Lakes Reservoir; and (b) downstream in the Arkansas River to Clear Creek, then upstream in Clear Creek into Clear Creek Reservoir. 10. Clear Creek Reservoir Exchanges: From the outlet of Clear Creek Reservoir into Clear Creek, then downstream to the Arkansas River, then (a) upstream in the Arkansas River into Lake Creek then upstream in Lake Creek into Twin Lakes Reservoir; and (b) upstream in the Arkansas River to Lake Fork Creek, then upstream in Lake Fork Creek into Turquoise Reservoir. 11. The Turquoise Reservoir Exchanges, the Twin Lakes Reservoir Exchanges, and the Clear Creek Reservoir Exchanges may involve the release of either water from the Transmountain Sources or the Arkansas River Sources stored in one of the reservoirs, and an equivalent amount of such water may be stored or diverted by exchange in one or more of the other reservoirs, subject to the conditions of the decree in Case No. 84CW178. 12. The above-described exchanges of water may be accomplished in several ways. An actual upstream flow may be diverted while the water to be exchanged is discharged or, if already reduced to storage in another reservoir, released therefrom (a “River Flow Exchange”). Or, a volume of water already in storage in an upstream reservoir, which would otherwise be conveyed downstream, may be exchanged, with the consent of the owners of that stored water, for Pueblo Water’s water then being discharged or already reduced to storage in another reservoir (a “Contract Exchange”). 13. The exchanges that are the subject of this Application use water derived from the Transmountain Sources and the Arkansas River Sources and are all located in the reaches of the Arkansas River drainage at or above the confluence of Clear Creek and the Arkansas River. C. Priority Dates and Currently-Decreed Amounts of Exchanges:

<u>From</u>	<u>To</u>	<u>Type of Decree</u>	<u>Approp. Date</u>	<u>Amount (c.f.s.)</u>
Ewing Placer Ditch	Clear Creek Reservoir	Absolute	5/21/26	18.5
Wurtz Ditch	Clear Creek Reservoir	Absolute	1/14/55	59.61
		Conditional	1/14/55	25.39
Wurtz Extension Ditch	Clear Creek Reservoir	Absolute	1/14/55	24.0
		Conditional	1/14/55	76.0
Independence Pass Diversion System	Clear Creek Reservoir	Absolute	3/12/57	200.0
Busk-Ivanhoe System	Clear Creek Reservoir	Absolute	5/21/26	70.51
		Conditional	5/21/26	19.49
Columbine Ditch	Clear Creek Reservoir	Absolute	12/3/53	58.75
		Conditional	12/3/53	1.25
Homestake Project	Clear Creek Reservoir	Absolute	3/19/73	49.17
		Conditional	3/19/73	150.83

Fryingpan-Arkansas Project	Clear Creek Reservoir	Conditional	11/27/79	Flow <sup>1</sup>
Ewing Placer Ditch	Twin Lakes Reservoir	Absolute	4/6/65	8.3
		Conditional	4/6/65	10.2
Wurtz Ditch	Twin Lakes Reservoir	Absolute	4/6/65	13.7
		Conditional	4/6/65	71.3
Wurtz Extension Ditch	Twin Lakes Reservoir	Absolute	4/6/65	5.1
		Conditional	4/6/65	94.9
Busk-Ivanhoe System	Twin Lakes Reservoir	Absolute	4/6/65	54.31
		Conditional	4/6/65	35.69
Columbine Ditch	Twin Lakes Reservoir	Absolute	4/6/65	23.0
		Conditional	4/6/65	37.0
Homestake Project	Twin Lakes Reservoir	Absolute	4/6/65	10.1
		Conditional	4/6/65	189.9
Ewing Placer Ditch	Turquoise Lake	Absolute	6/28/54	16.0
		Conditional	6/28/54	2.5
Wurtz Ditch	Turquoise Lake	Absolute	6/28/54	41.53
		Conditional	6/28/54	43.47
Wurtz Extension Ditch	Turquoise Lake	Absolute	6/28/54	22.0
		Conditional	6/28/54	78.0
Columbine Ditch	Turquoise Lake	Absolute	6/28/54	37.92
		Conditional	6/28/54	22.08
Independence Pass Diversion System	Turquoise Lake	Absolute	6/28/54	200.0
Clear Creek Reservoir	Twin Lakes Reservoir	Absolute	11/22/54	302.5
		Conditional	11/22/54	Flow <sup>1</sup>
Clear Creek Reservoir	Turquoise Lake	Absolute	11/22/54	135.75
		Conditional	11/22/54	Flow <sup>1</sup>
Twin Lakes Reservoir	Clear Creek Reservoir	Absolute	11/22/54	250.87
		Conditional	11/22/54	Flow <sup>1</sup>
Twin Lakes Reservoir	Turquoise Lake	Absolute	11/22/54	200.0
		Conditional	11/22/54	Flow <sup>1</sup>
Turquoise Lake	Twin Lakes Reservoir	Absolute	11/22/54	200.0
		Conditional	11/22/54	Flow <sup>1</sup>
Turquoise Lake	Clear Creek Reservoir	Absolute	11/22/54	197.25
		Conditional	11/22/54	Flow <sup>1</sup>

<sup>1</sup> For exchanges against the inflow to the receiving reservoir, the maximum rate of such inflow and for exchanges against releases of water previously reduced to storage in the receiving reservoir, the maximum rate of flow of such releases. Contract Exchanges shall have no rate of flow limitation. V. Provide a Detailed Outline of What Has Been Done Toward Completion or for Completion of the Appropriation and Application of Water to Beneficial Use as Conditionally Decreed, Including Expenditures: The Applicant operates a unified and integrated municipal water supply system consisting of numerous individual components. Those components include, but are not limited to, the many individual water rights, sources of supply and points of diversion described in this Application, and the absolute and conditional exchange and reuse rights that are the subject of this Application. During the period from September 30, 2013 (the date the Application in Case No. 13CW3044 was filed), through February 29, 2020 (the "Diligence Period"), Pueblo Water carried out exchanges as contemplated and authorized by the decree in Case No. 84CW178. In addition, Pueblo Water spent substantial sums of money and devoted many thousands of man hours to the operation, maintenance, and development of its unified and integrated municipal water supply and treatment system. As a part of this overall effort, Pueblo Water found it necessary to retain engineering consultants and attorneys to assist it in the acquisition, operation, maintenance, and protection of this system. During the Diligence Period, the total costs for all of these efforts exceeded \$220 million. The principal activities undertaken by Pueblo Water during the Diligence Period related to the operation of the exchange rights decreed in Case No. 84CW178 included the following: (1) refinement and operation of accounting programs to track the operation of the exchanges; (2) water quality monitoring; and (3) exercise and operation of the exchanges decreed herein, including exercising the exchanges of water available from the discharge of the Ewing Ditch and the Wurtz Ditch into the Arkansas River and then upstream in Lake Fork Creek into Turquoise Reservoir in amounts greater than previously decreed absolute, as further described below. Further, Pueblo Water performed the following actions related to the diversion and storage facilities utilized for the exchanges decreed in Case No. 84CW178: (1) for Clear Creek Reservoir, Pueblo Water patched and recoated the steel portion of the outlet works, added piezometers for monitoring seepage, performed a bathymetric survey of the reservoir, performed geophysical testing of the dam and its foundation, created a dam breach inundation map, repaired concrete in the spillway and performed routine maintenance, operation and monitoring. Pueblo Water also finalized the adjudication of an application for the enlargement of the reservoir in Case No. 04CW130, District Court, Water Division No. 2; (2) for Twin Lakes Reservoir, Pueblo Water paid annual assessments to the Twin Lakes Reservoir and Canal Company; and (3) for Turquoise Lake, Pueblo Water made annual payments to the United States Bureau of Reclamation for its storage contract. Pueblo Water performed the following actions related to the sources of water utilized in the exchange: (1) For the Ewing Ditch, Pueblo Water performed routine maintenance, operation and monitoring, and participated in the System Conservation Pilot Project in the summer of 2016; (2) for the Columbine Ditch, Pueblo Water retained the right to receive water from the ditch under specific circumstances and continued to operate pursuant to that agreement; (3) for the Warren E. Wurtz Ditch, Pueblo Water performed routine maintenance, operation and monitoring; (4) for the Wurtz Extension Ditch, Pueblo Water performed routine maintenance, operation and monitoring, and obtained a decree finding reasonable

diligence in Case No. 13CW3042 (Water Division No. 5); (5) for the Busk-Ivanhoe System, Pueblo Water completed repairs to Ivanhoe Dam in 2014, replaced the gate from Ivanhoe Lake to the tunnel, widened sections of the Lyle Ditch and performed routine maintenance, operation and monitoring; (6) for the Homestake Project, Pueblo Water made annual payments to City of Aurora pursuant to the 1967 Agreement; (7) for the Independence Pass Transmountain Diversion System, Pueblo Water paid annual assessments to the Twin Lakes Reservoir and Canal Company; and (8) for the Fryingpan-Arkansas Project, Pueblo Water purchased Project water and return flow from Project water. Pueblo Water also implemented major improvements to its water supply transmission, treatment, and distribution systems necessary to supply customers with water within its water service area. This work included completing conversion of all meters to automated reading, instituting a service line replacement program, rehabilitation of 3 treated water storage tanks, replacement of the roofs of 4 other tanks, replacement of a generator allowing the Whitlock Treatment Plant to continue treating up to 20 MGD during a power outage, replacement of motor controls at the Gardner Pump Station, rehabilitation of 2 filters at the Whitlock Treatment Plant, and replacement of 15 miles of mains. Pueblo Water continued its practice of making improvements related to collection system facilities, storage reservoirs, water transmission pipelines, water treatment plants and distribution system mains, meters, and reservoirs. The water delivered through these systems includes the water made available to Pueblo Water by the exchange rights that are the subject of this Application. Pueblo Water also continued its long-standing partnership with the Pueblo Economic Development Corporation to attract new business and industry to the City of Pueblo and Pueblo Water's service area. In addition, during the Diligence Period, Pueblo Water filed applications for and completed a number of adjudications of water rights that are part of Pueblo Water's unified and integrated water supply system. This includes, but is not limited to: (1) obtaining a finding of reasonable diligence in Case No. 17CW3020 (formerly Cases No. 93CW86, 04CW14 and 10CW79) (HARP), Water Division No. 2; (2) obtaining a finding of reasonable diligence in the non-sewered portion of the exchange and reuse plans in Case No. 13CW3043 (formerly Consolidated Cases No. 84CW177(B) and 86CW111(B)), Water Division No. 2; (3) filing an application for and obtaining a finding of reasonable diligence in the sewered portion of the exchange and reuse plans in Case No. 19CW3005 (formerly Cases No. 12CW87 and 86CW111A), Water Division No. 2; (4) obtaining a decree for enlargement of Clear Creek Reservoir in Case No. 04CW130, Water Division No. 2; (5) obtaining a finding of reasonable diligence in Case No. 01CW67 (formerly Case No. 84CW177), Water Division No. 2; (6) obtaining a decree for a finding of reasonable diligence for the Wurtz Extension Ditch in Case No. 13CW3042 (formerly Cases No. 06CW211, 99CW271, 93CW159, 86CW275, and 80CW505), Water Division No. 5; and (7) obtaining a decree for a change of water rights in Case No. 12CW102, Water Division No. 2. Pueblo Water also has acted to preserve and protect all of its water rights by filing statements of opposition to and participating in a number of other judicial proceedings in Water Division 2 and Water Division No. 5. Finally, during the Diligence Period, in Cases No. 16CW3103 and 17CW3050, Pueblo Water filed applications and obtained decrees for a change of water right and for exchange related to 5,488,368 shares of Bessemer Irrigating Ditch Company, which water rights Pueblo Water intends to include in Pueblo Water's unified and integrated water supply system. The work performed and actions taken by Pueblo

Water during the Diligence Period demonstrate Pueblo Water's continuing intent to develop the conditional exchange rights that are the subject of this Application and further demonstrate that the subject water can be and will be diverted, stored, or otherwise captured, possessed, and controlled and will be beneficially used and that the project can and will be completed with diligence and within a reasonable time. Except to the extent the exchange rights are claimed to be and are made absolute in this proceeding, Pueblo Water seeks a Finding of Reasonable Diligence for the full amount of all remaining conditional exchange rights decreed in Case No. 84CW178. VI. If Claim to Make Absolute, Water Applied to Beneficial Use: Pueblo Water has exchanged, placed to beneficial use, requests and is entitled to have made absolute over and above the amounts previously decreed absolute the following exchanges: A. An additional 2.5 c.f.s. absolute from the discharge of the Ewing Ditch into the Arkansas River, downstream in the Arkansas River, and then upstream in Lake Fork Creek into Turquoise Reservoir, for a total of 18.5 c.f.s. absolute, 0 c.f.s. remaining conditional. The maximum rate of flow for the exchange of 18.5 c.f.s. occurred from June 17, 2019 through June 24, 2019, and again from June 28, 2019, through July 6, 2019. B. An additional 8.71 c.f.s. absolute from the discharge of the Wurtz Ditch into the Arkansas River, downstream in the Arkansas River, and then upstream in Lake Fork Creek into Turquoise Reservoir, for a total of 50.24 c.f.s. absolute, 37.76 c.f.s. remaining conditional. The maximum rate of flow for the exchange of 50.24 c.f.s. occurred on July 1, 2019. **WHEREFORE**, Pueblo Water requests the Court to enter a decree: A. Making absolute the conditional exchange rights to the extent requested in this Application; B. Confirming that Pueblo Water maintains a single unified and integrated water 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 exchange rights that are the subject of this Application; and C. Determining that Pueblo Water has demonstrated reasonable diligence in the development of the remaining conditional exchange rights decreed in Case No. 84CW178, continuing those rights in good standing, and fixing a date when a further application for a finding of reasonable diligence is required.

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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 April 2020, (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.



Witness my hand and the seal of this Court this 5<sup>th</sup> day of March 2020.

*Michele Santistevan*



Michele M. Santistevan, Clerk  
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(Court seal)  
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