

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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

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 July 2017, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 2015CW3072 – UNITED STATES OF AMERICA - Department of the Interior Bureau of Land Management, Royal Gorge Field Office 3028 E. Main St., Canon City, CO 81212 (Please address all correspondence and inquiries regarding this matter to Applicant's attorney: Kristen C. Guerriero, Office of the Regional Solicitor, 755 Parfet Street, Suite 151, Lakewood, CO 80215; (303) 445-0614)
Amended Application for Water Rights (Surface)

HUERFANO COUNTY

Name of structures: Disert High Ridge Spring, Disert Little Tank Spring, Sergio Spring, Abila #2 Spring, White Fur Spring **Legal description of each point of diversion:** All UTM data are from Zone 13 and use the NAD83 (Conus) Datum. **Disert High Ridge Spring:** Located on public lands in the NE/4 SW/4, Section 18, T28S R69W, Sixth P.M., approximately 2050 feet from the north section line and 2075 feet from the west section line. 486448mE 4162712mN **Disert Little Tank Spring:** Located on public lands in the SE/4 NW/4, Section 7, T28S R69W, Sixth P.M., approximately 2725 feet from the south section line and 2200 feet from the west section line. 486526mE 4164538mN **Sergio Spring:** Located on public lands in the NE/4 SW/4, Section 22, T27S R71W, Sixth P.M., approximately 1850 feet from the south section line and 2650 feet from the east section line. 471987mE 4170769mN **Abila #2 Spring:** Located on public lands in the SW/4 SW/4, Section 23, T27S R71W, Sixth P.M., approximately 50 feet from the south section line and 150 feet from the west section line. 472853mE 4170217mN **White Fur Spring:** Located on public lands in the SW/4 NE/4, Section 27, T27S R71W, Sixth P.M., approximately 2175 feet from the north section line and 1900 feet from the east section line. 472336mE 4169583mN **Sources:** **Disert High Ridge Spring:** Unnamed tributary to Yellowstone Creek/ Huerfano River/Arkansas River **Disert Little Tank Spring:** Unnamed tributary to South Oak Creek/Huerfano River/ Arkansas River **Sergio Spring:** Unnamed tributary to Martin Creek/Huerfano River/Arkansas River **Abila #2 Spring:** Unnamed tributary to Martin Creek/Huerfano River/Arkansas River **White Fur Spring:** Unnamed tributary to Manzanares Creek/Huerfano River/Arkansas River **Date of appropriation:** 12/31/2015. **How appropriation was initiated:** BLM inventoried the springs during 2014 to determine the quantity and quality of water available for livestock and wildlife use. Subsequently, the BLM filed this water right application and provided public notice of the water right application. **Date water applied to beneficial use:** 12/31/2015 **Amount claimed:** **Disert High Ridge Spring:** 0.0044 cfs absolute **Disert Little Tank Spring:** 0.0006 cfs, absolute **Sergio Spring:** 0.0012 cfs, absolute **Abila #2 Spring:** 0.0022 cfs, absolute **White Fur Spring:** 0.0011 cfs, absolute **Use:** Wildlife use is claimed for all

of the springs in this application. All springs provide water, forage and cover for elk, mule deer, bear, raptors, and small mammals. The springs also provide water for livestock as follows: Disert High Ridge Spring: No livestock use. Disert Little Tank Spring: The spring provides water for one cow-calf pair on the Rough Mountain Allotment. Sergio Spring: The spring provides water for a herd of up to nine cattle on the Martin Ridge Allotment. Abila #2 Spring: No livestock use. White Fur Spring: The spring provides water for a herd of up to nine cattle on the Martin Ridge Allotment. **Names and addresses of owners of land on which points of diversion, places of use, and structures referenced in this application are located:** All springs are located on lands owned and managed by the United States of America - Department of the Interior, Bureau of Land Management, Royal Gorge Field Office, 3028 E. Main St., Canon City, CO 81212. Accordingly, no certificate of landowner notification is required.

CASE NO. 2017CW8 – JOE D. and CECELIA J. RUTHERFORD, 510 Maple Street, Walsenburg, CO 81089; (719) 782-0123

Amended Application for Absolute Surface Water Right
HUERFANO COUNTY

Name of Structure: Cody Camp Spring. **Legal description of each point of diversion: UTM Coordinates (Zone 13; Meters; NAD83):** Easting 0513564; Northing 4164231. **Source of UTM:** Hand-held Garmin GPS; **Accuracy of location displayed on GPS device:** 60 ft. **PLSS Description:** NW ¼ SW ¼ Sec. 12, T28S, R67W, 6th P.M., Huerfano County, 2675 feet from South line and 1187 feet from West line. **Source of PLSS information:** USGS. **Street Address:** 54 Cody Drive, Walsenburg, CO 81089; **Subdivision and Lot:** Greenhorn Village Tract #1, Lot 278. **Source:** Natural spring in un-named arroyo. **Date of appropriation:** April 7, 2017; **How appropriation was initiated:** Spring surface after heavy rain. **Date water applied to beneficial use:** May 2017. **Amount claimed:** +/- 5 gpm seasonal. **Use:** Irrigation – small livestock. **If irrigation—Number of acres historically irrigated:** 0; **proposed to be irrigated:** 1 to 2 acres (seasonal). **Does Applicant intend to use this water right to supplement irrigation on an area of land already irrigated under another water right?** No. **Legal description of irrigated acreage:** Greenhorn Village – Tract #1, Lot 257 (Attachments to the application identify Lot 287 as the irrigated area); Irrigated Fields = UTM (Zone 13; Meters; NAD83) Easting 0513626; Northing 4164126. **If non-irrigation, describe purpose fully:** Small livestock water (chickens, goats). **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:** Applicants.

CASE NO. 2017CW10 – WHISPERING MEADOWS, LLC, 4131 NE 22nd AVENUE, PORTLAND, OR 97211; 970-390-1776. The Water Judge ordered that this application not be published in the July resume but is listed to account for the case number in consecutive order.

CASE NO. 2017CW3036 – FONTANA ENTERPRISES, INC., c/o Mark Fontana, 6865 Galley Road, Colorado Springs, CO 80915 (Please direct all correspondence and inquiries regarding this matter to Applicant’s attorney: Paul G. Anderson, P. O. Box 50631, Colorado Springs, CO 80949-0631; (719) 510-9420)

Application for Change of Water Rights and Approval of Plan for Augmentation

EL PASO COUNTY

INTRODUCTION.

By this Application, Fontana Enterprises Inc. ("Applicant" or "Fontana") seeks to change the use of ten (10) shares of Fountain Mutual Irrigation Company ("FMIC") stock, represented by Certificate No. 1680 (see copy attached to the Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court), to include augmentation and exchange in addition to irrigation for augmenting irrigation well use at World Golf/Sand Creek Golf Course (hereafter "the golf course"). **CHANGE OF WATER RIGHTS – FMIC SHARES. Change of Use of Water Rights.** Fontana seeks to change the water available under the ten (10) FMIC shares represented by Certificate No. 1680 to include augmentation and exchange in addition to irrigation use. Augmentation use of the water associated with FMIC shares has a long-established record of approvals by this Court in numerous, previously decreed cases. The underlying water rights associated with FMIC shares are described as follows:

FMIC Direct Flow Water Rights			
<u>Fountain Creek</u>	<u>Priority Date</u>	<u>Decree Date</u>	<u>Total Decree (cfs)</u>
<u>Priority No.</u>			
4	9/21/1861	3/6/1882	9.84 (5.38) ¹
7	4/1/1862	3/6/1882	1.125
11	2/1/1863	3/6/1882	16.69
17	12/31/1863	3/6/1882	4.25 (2.125) ²
21	12/31/1864	3/6/1882	4.65
28	12/31/1866	3/6/1882	8.48
29	12/31/1867	3/6/1882	9.68
41	9/21/1874	3/6/1882	17.05
168	1/31/1903	6/2/1919	343.20

¹ FMIC’s interest in Priority No. 4 is 5.38 cfs. The amount of 1.73 cfs was changed by Security Water District in Case No. 90CW28, Water Division 2, in addition to the 5.38 cfs. FMIC claims the right to divert any of the remaining 2.73 cfs decreed to this priority which is not used by the other owners thereof. Diversions under this priority in excess of the 5.38 cfs are not included in calculations of consumptive use for purposes of this Application. This Application does not seek to decide what historical use of place of use is attributable to diversions in excess of 5.38 cfs under Priority No. 4. The relief requested in this Application is without prejudice to any future claim for diversions in excess of 5.38 cfs under Priority No. 4.

² Priority No. 17 is referred to as the Janitell’s right and FMIC has used one-half of the water, or 2.125 cfs, in return for carriage of the other 2.125 cfs to its owner through the FMIC ditch. By Decree Authorizing Change in Point of Diversion in Civil Action No. 38180, El Paso County District Court, entered July 29, 1959, the point of diversion for the 4.25 cfs of Priority No. 17 of the Laughlin Ditch was changed to the headgate of the Fountain Mutual Ditch. The diversions under this Priority No. 17 are not included in the calculations of consumptive use for purposes of this Application. This Application does not seek to decide what historical use of place of use is attributable to diversions under Priority No. 17. The relief requested in this Application is without prejudice to any future claim for diversions under Priority No. 17.

<u>Fountain Creek</u>	<u>Storage</u>	<u>Decree Date</u>	<u>Total Decree (AF)</u>
<u>Priority No.</u>	<u>Priority Date</u>		
Fountain	3/18/1903	6/2/1919	10,000

FMIC shares have been approved for augmentation use in numerous prior Water Division 2 court cases. In those cases, the Court previously determined that a share of FMIC historically yields 0.7 acre-foot of consumptive use water which represents a portion of farm headgate delivery. Augmentation credit allowed for FMIC shares, as determined in previous water decrees, is a percentage of actual water deliveries to FMIC shareholders computed on the following basis:

FMIC Replacement Credit

<u>Month</u>	<u>Replacement Credit as a Percentage of Farm Headgate Delivery</u>	<u>Return Flow as a Percent of Farm Headgate Delivery</u>
January	47	53
February	58	42
March	70	30
April	70	30
May	70	30
June	70	30
July	72	28
August	72	28
September	74	26
October	66	34
November	40	60
December	49	51

The 0.7 acre-foot consumptive use quantity for FMIC water was affirmed in Case No. 95CW3, Water Division 2 and is binding as *res judicata*. See *Williams v. Midway Ranches Property Owners Association, Inc.*, 938 P.2d 515 (Colo. 1997). **APPROVAL OF PLAN FOR AUGMENTATION. Description of the Plan.** Fontana seeks to use the ten (10) FMIC shares per the requested change of water rights to replace depletions associated with irrigation use at the golf course as described herein. Currently the entire golf course facility operates under the augmentation plan approved in Case No. 09CW115, and this plan is intended to mirror the 09CW115 augmentation plan as appropriate. Pursuant to the 09CW115 decree and for the purposes described below, Fontana is preparing to construct a new ground water well at the golf course property identified as Cherokee Sand Creek Well No. 7 under 09CW115 decree (“Well No. 7”). A well permit application submitted by Fontana for constructing Well No. 7 remains pending with the State Engineer. Once constructed, Fontana shall use Well No. 7 consistent with the terms and conditions of the 09CW115 augmentation plan and the plan described below. Fontana currently leases 40 FMIC shares which are dedicated to the 09CW115 plan to augment Fontana’s irrigation use. The ten (10) shares for which a change of use is requested herein will allow Fontana to provide supplemental irrigation of the golf course when and where such is needed. Additional irrigation under this plan will be limited to a maximum of 8.24 acre-feet (“AF”) per year to ensure full augmentation of depletions associated with the additional irrigation when crediting lawn

irrigation return flows at 15% of the total irrigation quantity. Fontana shall abide by the same terms and conditions from the 09CW115 decree, as appropriate, concerning use of the ten (10) FMIC shares and Well No. 7, accounting for and reporting well diversions, and augmenting depletions associated with the irrigation use as described above. Presuming approval of the change of use and the plan for augmentation herein, Fontana may pledge the FMIC shares and this augmentation plan to Cherokee Metropolitan District (“Cherokee”) for accounting and administration consistent with the 09CW115 decree terms. In that event, Fontana will retain the ability to add or change the number of FMIC shares pledged in the future based on actual augmentation requirements for its golf course operations so long as Fontana’s irrigation use is within the parameters described above. Under all circumstances, Fontana shall ensure replacement of all actual depletions associated with its irrigation use pursuant to this augmentation plan. **Name(s) and address(es) of owner(s) of land on which well is located:** Same as Applicant.

CASE NUMBER 2017CW3037 – UPPER ARKANSAS WATER CONSERVANCY DISTRICT, acting through the Upper Arkansas Water Activity Enterprise (“UAWCD”), P. O. Box 1090, Salida, CO 81201

(Direct correspondence to Applicant’s attorneys: Law of the Rockies, Marcus J. Lock, Atty. Reg. #33048, Kendall K. Burgemeister, Atty. Reg. #41593, 525 North Main Street, Gunnison, CO 81230, Phone: 970-641-1903, E-mail: mlock@lawoftherockies.com, kburgemeister@lawoftherockies.com)

Application for a Change of Water Rights

CHAFFEE COUNTY

Description of Changed Rights. In this case, UAWCD seeks to change the water rights that were previously quantified and changed by the Town of Poncha Springs in Case No. 07CW111, which are as follows: **Name of structure:** Huntzicker Ditch. **Legal description of structure as described in most recent decree that adjudicated the location:** About one-half mile from the junction of Cochetopa Creek with the South Arkansas River in Section 8, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. A more modern description of the actual location of the headgate is a point in the NE1/4SE1/4, Section 7, Township 49 North, Range 8 East, N.M.P.M., at a point 2,500 feet from the south line and 100 feet from the east line of said Section 7. See Exhibit A to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Under the 07CW111 Decree, the Huntzicker Ditch water right is to be administered for the changed uses at the Hensie Ditch No. 1 point of diversion, described below. **Decreed source of water:** Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. **Appropriation Date:** December 31, 1870. **Total amount decreed to structure:** 0.7 cubic feet per second (cfs). **Amount of water that applicant intends to change:** 0.5 cfs. **Name of structure:** Hensie Ditch No. 1. **Legal description of structure as described in most recent decree that adjudicated the location:** About 20 rods below the mouth of Pass Creek in Section 7, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. A more modern description of the actual location of the headgate is in the SW1/4 SE1/4, Section 7, Township 49 North, Range 8 East, N.M.P.M., at a point 90 feet from the south line and 2,280 feet

from the east line of said Section 7. See Exhibit A to the Application. **Decreed source of water:** Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. **Appropriation Date:** December 31, 1873. **Total amount decreed to structure:** 0.3 cfs. **Amount of water that applicant intends to change:** 0.3 cfs. **Name of structure:** Boon Ditch No. 2. **Legal description of structure as described in most recent decree that adjudicated the location:** North Bank of Pass Creek, about 200 feet from the junction of Pass Creek with Cochetopa Creek, Chaffee County, Colorado. A more modern description of the actual location of the headgate is the NW1/4 NE1/4, Section 18, Township 49 North, Range 8 East, N.M.P.M., at a point 200 feet from the north line and 2,450 feet from the east line of said Section 18. See Exhibit A to the Application. Under the 07CW111 Decree, the Boon Ditch No. 2 water right is to be administered for the changed uses at the Velotta Ditch No. 1 point of diversion, described as a point on the north bank of Pass Creek, whence the East Quarter Corner of Section 13, Township 49 North, Range 7 East, N.M.P.M., bears South 74°45' East, 1760 feet. **Decreed source of water:** Pass Creek, tributary to Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. **Appropriation Date:** November 30, 1871. **Total amount decreed to structure:** 1.4 cfs. **Amount of water that applicant intends to change:** 1.4 cfs. **Name of structure:** Hensie Ditch No. 2. **Legal description of structure as described in most recent decree that adjudicated the location:** About one-half mile from Pass Creek's junction with Cochetopa, in Section 7, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. A more modern description of the actual location of the headgate is the SE1/4 NE1/4, Section 13, Township 49 North, Range 7 East, N.M.P.M., at a point 1,680 feet from the north line of said Section 13, and 90 feet from the east line of said Section 13. See Exhibit A to the Application. Under the 07CW111 Decree, the Hensie Ditch No. 2 water right is to be administered for the changed uses at the Velotta Ditch No. 1 point of diversion, described as a point on the north bank of Pass Creek, whence the East Quarter Corner of Section 13, Township 49 North, Range 7 East, N.M.P.M., bears South 74°45' East, 1760 feet. **Decreed source of water:** Pass Creek, tributary to Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. **Appropriation Date:** December 31, 1873. **Total amount decreed to structure:** 0.2 cfs. **Amount of water that applicant intends to change:** 0.2 cfs. **Name of structure:** Mundlein Ditch No. 2. **Legal description of structure as described in most recent decree that adjudicated the location:** The original decree for the Mundlein Ditch No. 2 Water Right describes the location of its headgate at a point on the East bank of Green Creek, whence the South Quarter Corner of Section 1, Township 49 North, Range 8 [sic] East of the N.M.P.M., bears South 67° 46' East, 3784 feet. The correct Range is 7 East. See Exhibit A to the Application. **Decreed source of water:** Green Creek, tributary to the South Arkansas River, tributary to the Arkansas River. **Appropriation Date:** March 1, 1873. **Total amount decreed to structure:** 1.74 cfs. **Amount of water that applicant intends to change:** 0.58 cfs. **Original and all relevant subsequent decrees for all of the above water rights:** Civil Action No. 1127, District Court, Chaffee County (6/19/1890); W-294, District Court, Water Division 2 (October 18, 1978); 07CW111, District Court, Water Division 2 (June 13, 2012). The portion of the above-described rights that Applicant intends to change are referred to herein as the "Changed Rights." **Decreed uses of the Changed Rights:** In Case No. 07CW111, the Changed

Rights were changed from irrigation use to direct flow and storage for the Town of Poncha Springs's municipal uses in its existing and future service areas including the Friend Ranch, including, without limitation, domestic, commercial, industrial, irrigation, recreational, fire protection, augmentation, exchange and replacement purposes as provided in the 07CW111 Decree. **Detailed description of proposed change:** UAWCD operates existing plans for augmentation that augment out-of-priority depletions from structures located within portions of UAWCD's territory (See, e.g., 92CW84, 94CW5, 06CW32). UAWCD also operates a Rule 14 replacement plan to replace depletions from wells located within UAWCD's boundaries. UAWCD may also obtain approval of additional plans for augmentation and/or substitute water supply plans (or similar administratively approved plans that may be authorized by statute in the future) to replace out-of-priority depletions from structures located within UAWCD's boundaries. In this case, UAWCD seeks to change the Changed Rights to allow their use as a source of augmentation or replacement water in all such plans, in addition to the existing decreed uses. UAWCD's use of the Changed Rights may occur by applying stream depletion credits from the Changed Rights as they accrue to the stream, or through storage in and subsequent release from any structure where UAWCD has the right to store water, including Pueblo Reservoir, O'Haver Reservoir, North Fork Reservoir, Boss Lake Reservoir, Cottonwood Lake, Rainbow Lake, DeWeese Reservoir, Friend Ranch Reservoir, Twin Lakes Reservoir, and Conquistador Reservoir which structures are located as follows: Pueblo Reservoir: The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section bears North 61° 21'20" East, a distance of 2,511.05 feet, in Pueblo County; O'Haver Reservoir: Near the center of Section 12, Township 48 North, Range 7 East, NMPM., in Chaffee County; North Fork Reservoir: In Section 5, Township 50 North, Range 6 East, NMPM, more particularly described as: The northeasterly point of contact of the dam axis with the existing ground is at a point whence the Northwest corner of Section 21, T.50N., R.7E, NMPM, in Chaffee, County, Colorado bears South 68°50' East a distance of 31,920 feet; said point being further described by bearing on the Peak of Granite Mountain of North 23°28' West and by bearing on the Peak of Calico Mountain of North 37°03' East, in Chaffee County; Boss Lake Reservoir: E½ of Sec. 25 and NE¼ Sec. 29, T. 50 N., R. 6 E. NMPM, in Chaffee County; Cottonwood Lake: Section 36, Township 14 South, Range 80 West, 6th P.M., in Chaffee County; Rainbow Lake: S½ Section 19 and N½ Section 30, T.14S., R.79W., 6th P.M. in Chaffee County; DeWeese Reservoir: The southeasterly corner of the dam of said reservoir is North 41°37' East, and is distant 758.7 feet from the Northeast Corner of Section 20, T. 21 S., R. 72 W., 6th P.M., in Custer County; Friend Ranch Reservoir: NE1/4 of Section 7, Township 49 North, Range 8 East, NMPM, in Chaffee County; Twin Lakes Reservoir: The Twin Lakes dam axis and the centerline of Lake Creek intersect at a point whence the SE corner of Section 23, Township 11 South, Range 80 West of the 6th P.M. bears south 54 degrees, 13 minutes, 8 seconds East, a distance of 3,803.10 feet, in Lake County; and Conquistador Reservoir: SE1/4 of Section 21, Township 22 South, Range 73 West of the 6th P.M., in Custer County. The above-described uses may be accomplished directly or by exchange, including by exchange pursuant to UAWCD's exchange decreed in Case No. 04CW96. The

Changed Rights will continue to be administered in accordance with the 07CW111 Decree. They will be diverted and measured at their respective Points of Administration identified in the 07CW111 Decree, the depletion credits will be calculated in accordance with the depletion percentages identified in the 07CW111 Decree, and the rights will be subject to the volumetric limits imposed by the 07CW111 Decree. The return flow obligations will be calculated and satisfied in accordance with the 07CW111 Decree. The historical consumptive use of the Changed Rights was determined in Case No. 07CW111 and is not subject to re-litigation in this case. C.R.S. § 37-92-305(3)(e) (“If an application is for a change of that portion of a water right for which a previous change of water right has been judicially approved and for which the historical consumptive use was previously quantified, the water judge shall not reconsider or requantify the historical consumptive use.”). A map showing the location of UAWCD’s boundaries, and the proposed places of storage, are attached to the Application as Exhibit B.

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: Pueblo Reservoir: U.S. Dep’t of Interior, Bureau of Reclamation, 11056 West County Rd., 18-E, Loveland, CO, 80537-9711 (“Bureau of Reclamation”). O’Haver Reservoir, North Fork Reservoir: United States Department of Agricultural, Forest Service, 5575 Cleora Road, Salida, CO 81201 (“Forest Service”). Boss Lake Reservoir: SALCO ASSOCIATES, L.L.P., 225 G Street, Salida, CO 81201; and the Forest Service. Cottonwood Lake: Forest Service. Rainbow Lake: Rainbow Lake Resort, Inc., P.O. Box 17450, Oklahoma City, OK, 73136. DeWeese Reservoir: DeWeese-Dye Ditch and Reservoir Company, 1631 Chestnut Street, Canon City, CO 81212. Friend Ranch Reservoir: Bent Tree LLC, PO Box 60421, Colorado Springs, CO 80960-0421. Twin Lakes Reservoir: Bureau of Reclamation. UAWCD holds the right to store water in the lower bay of Conquistador Reservoir, which is on land owned by C. Jean Zeller, PO Box 25, Westcliffe, CO 81252.

CASE NO. 2017CW3038 – THE PEOPLE OF THE STATE OF COLORADO, ex rel. KEVIN G. REIN, State Engineer, and STEVEN J. WITTE, Division Engineer for Water Division 2 v. STEVEN J. JACOBS, JR., in his individual capacity, CASAS LIMITED PARTNERSHIP #4, a Colorado limited partnership, and IQ INVESTORS, LLC, a Colorado limited liability company. This case is a Verified Complaint for Injunctive Relief, Penalties, and Costs and is listed in the resume to account for the case number in consecutive order.

CASE NO. 2017CW3039 (Prior Case Nos. 10CW81, 03CW79, 93CW17 & 18 (consolidated) and 84CW181) - PUEBLO SPRINGS, LLC (An Arizona Limited Liability Company, 4915 E. Baseline Rd., Ste. 105, Gilbert, AZ and PUEBLO SPRINGS RANCH, LLC (A Delaware Limited Liability Company, 3600 N. Capital of Texas Hwy, Bldg B, Ste 230, Austin, TX 78746 (Please send all pleadings and correspondence to their attorney, David M. Shoheit of Monson, Cummins & Shoheit, LLC, 319 N. Weber Street, Colorado Springs, CO 80903, (719) 471-1212)

Application for Finding of Reasonable Diligence

PUEBLO COUNTY

Names of Structure. Newbery Water Intake. **Description of Conditional Water Right. Date of Original Decree.** The original decree was entered on March 26, 1987, in Case No. 84CW181, Water Division 2. **Legal Description of Point of Diversion.** The initial point of gathering of the underflow or subterranean waters is located in the valley of Fountain Creek on the westerly side thereof whence the South quarter corner of Section 19, Township 18 South, Range 64 West of the 6th P.M. bears North 10° 22' East 1,280 feet; from said point submerged pipelines are extended up across the valley of said river a distance of about one mile, and thereby the subterranean or underflow waters of said river are brought to said initial point; from said initial point the said pipeline runs in a general southerly and southwesterly direction to a point where it has been plugged with concrete at the furthest downstream point of withdrawal of water from said pipeline approximately 2,000 feet North of the South line of Section 31, Township 18 South, Range 64 West of the 6th P.M. **Source.** The source of the Newbery Water Intake is Fountain Creek, a tributary of the Arkansas River. **Appropriation Date.** The appropriation date for the Newbery Water Intake is August 31, 1984. **Amount and Use.** 13.8 c.f.s., conditional, for domestic, irrigation, municipal, commercial, industrial, fire protection, fish and wildlife, recreational, stock watering and any other beneficial purposes. The water claimed may be produced for immediate application to beneficial use, for storage and subsequent application to beneficial use. **Depth of Intake Galleries.** The intake galleries for the Newbery Water Intake is approximately up to 10 feet below the bed of Fountain Creek. **Outline of Work Done Towards Completion of Appropriation and Application of Water to Beneficial Use.** In Case No. 84CW79, the Court decreed the use of Newbery Water Intake for domestic, irrigation, municipal, commercial, industrial, fire protection, fish and wildlife, recreational, stock watering and any other beneficial purposes. The Newbery Water Intake is a junior water right diverting from the structure also commonly known as the Fountain Valley Underflow and diverts groundwater tributary to Fountain Creek. Diversions from the Newbery Water Intake are required to be augmented in accordance with the plan for augmentation decreed in Case No. 84CW182 and under the terms of the decree entered in consolidated Case Nos. 93CW17 and 93CW18. A finding of reasonable diligence and an award continuing diligence for the Newbery Water Intake was most recently found in Case No. 10CW81 decreed on July 12, 2011. During this diligence period, Applicant, in connection with the development of its property upon which the Newbery Water Intake is located, has proceeded with significant planning, surveying, subdivision, and development of their property that would include using the Newbery Water Intake as a physical source of water for such development. This work includes,

without limitation the following: Applicants have proceeded forward with the development of the Newbury Water Intake and the integrated distribution system, by retaining the services of legal and engineering consultants. Applicants have spent over \$160,000.00 on legal and engineering consultants during this diligence period. Applicants' predecessor annexed a portion of its property into the City of Pueblo in 2007. A deposit of money has been made with the City of Pueblo associated with this annexation and the City of Pueblo has drawn from this deposit for work completed by the City on this property during this diligence period. Applicants' predecessor also sold and conveyed the water right subject of this application to the Applicants during this diligence period. The Applicants' predecessor actively marketed the water rights an integral part of the future development of the property. Applicant has commissioned fiscal impact studies related to the further annexation of the property and subdivision of the property to be developed. Applicants, in conjunction with Pueblo County, completed a realignment of Overton Road, which is a major access point for the Applicants' Property and future development. Applicants have further graded and improved roads throughout their property. Applicants have spent significant time and effort working on regarding, repairing erosion damage and stabilizing the banks along Fountain Creek. Applicants have also constructed flood mitigation systems throughout their property to limit flooding during peak rain events. Applicants have been working with two solar users for development of the Applicants' Property. Applicants have entered into multiple agreements to allow these solar projects to move forward. Applicants have completed work and have commissioned additional studies on the feasibility of minor land divisions to enable a portion of the Applicants' Property to be developed. During this diligence period Applicant has, therefore, devoted substantial efforts toward the development of its overlying property, the present and further application of groundwater from the Newbury Intake to beneficial use, and the integrated water system of distribution for the development of the Applicants' property.

CASE NO. 2017CW003040 – FREMONT COUNTY, COLORADO, DEPARTMENT OF TRANSPORTATION, 1170 Red Canyon Road, Cañon City, CO 81212

(Please direct all correspondence and inquiries regarding this matter to Applicant's attorney: John J. Cyran, Hoskins Farina & Kampf, PC, jjcyran@hfak.com, 3570 E. 12th Avenue, Suite 314, Denver, CO 80206, (303) 746-3802)

Application for Approval of Conditional and Absolute Surface Water Rights

FREMONT COUNTY, COLORADO.

1. Name, Mailing Address, and Telephone Number of Applicant: See above. **2.**

Names of Diversion Point Structures and Water Rights: FCDOT Badger Creek Diversion Point, FCDOT Coaldale Diversion Point, FCDOT CR 117A Diversion Point, FCDOT Howard Diversion Point, FCDOT Maytag Ranch Diversion Point, FCDOT Nash Ranch Diversion Point, FCDOT Oak Creek Campground Diversion Point, FCDOT Parkdale Diversion Point, FCDOT Pink House Diversion Point, FCDOT Taylor Ranch Diversion Point, FCDOT Texas Creek Diversion Point, FCDOT Thorne Ranch Diversion Point, and FCDOT Valco Diversion Point. **3. Legal Description In UTM Format:** FCDOT Badger Creek Diversion Point at 429281 Easting/4279292 Northing; FCDOT Coaldale Diversion Point at 432342 Easting/4249566 Northing; FCDOT CR 117A Diversion Point at 432156 Easting/4277944 Northing; FCDOT Howard Diversion Point

at 428940 Easting/4253888 Northing; FCDOT Maytag Ranch Diversion Point at 446548 Easting/43239071 Northing; FCDOT Nash Ranch Diversion Point at 466055 Easting/4280887 Northing , FCDOT Oak Creek Campground Diversion Point at 477225 Easting/4238897 Northing; FCDOT Parkdale Diversion Point at 465997 Easting/4259878 Northing; FCDOT Pink House Diversion Point at 476855 Easting/4253859 Northing; FCDOT Taylor Ranch Diversion Point at 453068 Easting/4274253 Northing; FCDOT Texas Creek Diversion Point at 448408 Easting/4251442 Northing; FCDOT Thorne Ranch Diversion Point at 452905 Easting/4268309 Northing; and FCDOT Valco Diversion Point at 484423 Easting/4252641 Northing. **UTM Coordinates:** NAD83, Zone 13. **Source of UTM Coordinates:** Fremont County GIS and handheld GPS. **4. Source of Water:** Badger Creek, tributary to Arkansas River; Arkansas River; Gribbles Run Creek, tributary to Badger Creek, tributary to Arkansas River; Lake Creek, tributary to Texas Creek, tributary to Arkansas River; City Creek, tributary to Wilson Creek, tributary to Fourmile Creek, tributary to Arkansas River; Oak Creek, tributary to Arkansas River; Cottonwood Creek, tributary to Current Creek, tributary to Tallahassee Creek, tributary to Arkansas River; North Tallahassee Creek, tributary to Tallahassee Creek, tributary to Arkansas River. **5. Dates of Appropriation:** FCDOT Badger Creek Diversion Point, FCDOT CR 117A Diversion Point, FCDOT Maytag Ranch Diversion Point, FCDOT Nash Ranch Diversion Point, FCDOT Pink House Diversion Point, and FCDOT Valco Diversion were all appropriated on **03/31/2017**. FCDOT Coaldale Diversion Point, FCDOT Howard Diversion Point, FCDOT Oak Creek Campground Diversion Point, FCDOT Parkdale Diversion Point, FCDOT Taylor Ranch Diversion Point, FCDOT Texas Creek Diversion Point, and FCDOT Thorne Ranch Diversion Point were appropriated **in 1997**. **6. Uses:** For all FCDOT diversion points; dust suppression, road grading, fire protection and other related county municipal purposes. Water is and will be used on Fremont County transportation network, other related facilities and infrastructure and throughout the county for fire protection purposes. **7. Place of Use:** At all FCDOT diversion points. **8. Amount:** 200 gpm condition to each of the following: FCDOT Badger Creek Diversion Point, FCDOT CR 117A Diversion Point, FCDOT Maytag Ranch Diversion Point, FCDOT Nash Ranch Diversion Point, FCDOT Pink House Diversion Point, and FCDOT Valco Diversion; and 200 gpm absolute to the following: FCDOT Coaldale Diversion Point, FCDOT Howard Diversion Point, FCDOT Oak Creek Campground Diversion Point, FCDOT Parkdale Diversion Point, FCDOT Taylor Ranch Diversion Point, FCDOT Texas Creek Diversion Point, and FCDOT Thorne Ranch Diversion Point. **9. Other Relevant Information:** None. **10. Name and Address of Owner of Land upon which any New or Existing Diversion Structures, or Modification to Existing Diversion Structure is or will be Constructed:** FCDOT Badger Creek Diversion Point is owned by United State, Bureau of Land Management, 2850 Youngfield St., Lakewood, CO 80215; FCDOT Coaldale Diversion Point is owned by State of Colorado, Division of Parks 7 Wildlife, 1313 Sherman Street, 6th Floor, Denver, CO 80203; FCDOT CR 117A Diversion Point is owned by Everett Land and Cattle Company, 10615 County Road 150, Salida, CO 81201-9528; FCDOT Howard Diversion Point is owned by Michael Baxter, 347 West Winterhaven Drive, Pueblo West, CO 81007-2648; FCDOT Maytag Ranch Diversion Point is owned by Jimmie Cole, 2849 Vrain Street, Denver, CO 80212-1518, FCDOT Nash Ranch Diversion Point is owned

by C.L. Nash Company, P.O. Box 25011, Colorado Springs, CO 80936-5011, FCDOT Oak Creek Campground Diversion Point is owned by the United States, Forest Services, 2840 Kachima Drive, Pueblo, CO 81008; FCDOT Parkdale Diversion Point is owned by State of Colorado, Division of Parks & Wildlife, 1313 Sherman Street, 6th Floor, Denver, CO 80203; FCDOT Pink House Diversion Point is owned by Ann Brown, 1400 Riverside Avenue, Canon City, CO 81212-3655; FCDOT Taylor Ranch Diversion Point is owned by Noah Taylor, 0498 Fremont County Road 9A, Canon City, CO 81212-9739; FCDOT Texas Creek Diversion Point is owned by United States, Bureau of Land Management, 2850 Youngfield St., Lakewood, CO 80215; FCDOT Thorne Ranch Diversion Point is owned by Harolf Bedell, 3841 Fremont County Road 21, Canon City, CO 81212-9787; and FCDOT Valco Diversion Point is owned by Canyon Concrete Company, 9296 Windhaven Drive, Parker, CO 80134-2808..

CASE NO. 2017CW3041 - D&J RV PARK, LLC d/b/a Bighorn RV Park, P.O. Box 284, Coaldale, CO 81222 (Send all correspondence and pleadings to their attorney, David M. Shohet, Monson, Cummins & Shohet, LLC, 319 N. Weber Street, Colorado Springs, CO 80903, (719) 471-1212)

Application for Plan for Augmentation

FREMONT COUNTY, COLORADO

Summary of Application. Applicant owns and operates the Bighorn RV Park, a family camping resort consisting of a campground store, swimming pool, hotel units, camper cabins, mobile homes/trailers, bath house, lawns, laundry, tent spaces and RV spaces. Bighorn RV Park is located in the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the E $\frac{1}{2}$ of the SE $\frac{1}{4}$, of Section 33, Township 48 N, Range 11 E of the N.M.P.M., Coaldale, Colorado. A map of Applicant's property is attached to the Application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) In Case No. 00CW151, the Court decreed to Applicant's predecessor a plan for augmentation to replace the out of priority depletions associated with the Park's uses. The Bighorn Park Underground Water Right provides, in part, a physical supply for the Park. The physical amount of water available for diversion at the Bighorn Park Underground Water Right has diminished over the years. Applicant seeks to add a new well to its decreed plan for augmentation for its domestic and commercial uses to supplement and back-up the physical supply of water diverted from the Bighorn Park Underground Water Right. **Plan for Augmentation. Name of Structure to be Augmented:** Bighorn Park Underground Water Right No. 2. **Legal Description.** Bighorn Park Underground Water Right No. 2 has not yet been drilled, but will be located in NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 33, Township 48 N, Range 11E of the N.M.P.M., at a point approximately 1365 feet north of the south section line and 530 feet west of the east section line (UTM: Zone 13, NAD 83, 13S 0434675E, 4246618 N). A map of the Bighorn RV Park and the approximate location of Bighorn Park Underground Water Right No. 2 is attached to the Application as Exhibit A. **Amount:** 50 g.p.m. **Source.** Groundwater tributary to the Arkansas River. **Uses.** Domestic, recreation, commercial, sanitation, swimming pool, fish propagation, storage and irrigation of up to 3 acres of lawn, garden and landscaping. **Water Rights to be used for augmentation: Shares in the Twin Lakes Reservoir and Canal Company.** Applicants propose to augment depletions by using one share of stock in the Twin Lakes Reservoir and Canal

Company (“Twin Lakes Share”). The Twin Lakes Share represents a pro rata interest in native Arkansas River diversions and the Independence Pass transmountain diversion system, which diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County for storage in Twin Lakes Reservoirs in Lake County, Colorado. Twin Lakes Shares consist of direct flow and storage rights that are available for one hundred percent consumptive use and reuse and a portion are available for augmentation. Specifically for this plan, the transmountain diversion system water will be used for augmenting depletions in this case. The native Arkansas River water will not be used for augmenting depletions in this case. The water rights that produce the pro rata interest of the Applicant in the Twin Lakes Share are described as follows: Colorado River Water Rights: Decrees: Case No. 3082, District Court, Garfield County, August 25, 1936. Case No. W-1901, District Court, Water Division 5, May 12, 1976. Priority: August 23, 1930, No. 431. Source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Division 5, as more fully set forth in the above reference Decrees. Use: Direct flow and storage purposes for irrigation, domestic, commercial, industrial, municipal, and all other beneficial uses. Amount: Direct flow amount for diversions through transmountain tunnels of 625 c.f.s. with an annual limit of 68,000 acre-feet, a running ten year limit of 570,000 acre-feet, and other limitations set forth in the decrees. Arkansas River Water Rights: Decrees: Original decree, Case No. 2346, District Court, Chaffee County, July 14, 1913. Modified decree, Case No. W-3965, District Court, Water Division 2, April 19, 1974. Priorities: December 15, 1896, No. 3, and March 25, 1897, No. 4. Source: Lake Creek and its tributaries, tributary to the Arkansas River. Use: Storage for irrigation, domestic, commercial, industrial, and municipal purposes on any site in the Arkansas River Basin of Colorado below the Twin Lakes Reservoir that are capable of being served with water by diversion from said Arkansas River. Amount: 54,452 acre-feet (20,645.3 acre-feet: Priority No. 3, 33,806.7 acre-feet: Priority No. 4). **Lease of Water with Pueblo Board of Water Works.** Applicants are entitled to up to four acre feet of water pursuant to a 30 year water lease agreement dated May 3, 2002, between David B. Wancura as Lessee and the Board of Water Works of Pueblo, CO. The water rights or sources of water that may be used for augmentation in this augmentation plan under the lease include the following: Any fully consumable water owned or controlled by the Pueblo Water. All water to be used in this augmentation plan provided by Pueblo Water must be decreed or otherwise legally available for augmentation purposes. The source of such water is unspecified in the lease, but may include Pueblo Water’s water stored in Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, from direct flow transmountain water or from any other reservoir or place from which Pueblo Water may deliver water, the sources of which are at the option of Pueblo Water, as long as they are legally available for augmentation purposes. Water deliveries may include, without limitation, water stored in Twin Lakes Reservoir (located in all or portions of Sec. 14,15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in T.11S., R.81W., 6th P.M., in Lake County), Turquoise Reservoir (located on Lake Fork Creek in Sec. 7, 8, 17, 18, 19, and 20, T.9S., R.80W., 6th P.M. and Sec. 10, 11, 12, 13, 14, and 15, T.9S., R.81W., 6th P.M., in Lake County), Clear Creek Reservoir (located in Sec. 7 and 8, T.12S., R.79W, and Sec. 12, T.12S., R.80W., 6th P.M. in Chaffee County, and reusable return flows. The sources of such water may include, but are not limited to, the water rights decreed in Case Nos.

84CW177, District Court, Water Div. No. 2; 84CW177(B), District Court, Water Div. No. 2; 90CW340, District Court, Water Div. No. 5; W-1901, District Court, Water Div. No. 5; 95CW321, District Court, Water Div. No. 5; 90CW55, District Court, Water Div. No. 2; and 04CW130, District Court, Water Div. No. 2. **Statement of Plan for Augmentation.** Applicants seek to add the Bighorn Park Underground Water Right No. 2 as an augmented structure under the augmentation plan decreed in Case No. 00CW151. Applicant will calculate the consumptive use associated with diversions from the Bighorn Park Underground Water Right No. 2 in accordance with Case No. 00CW151. The decree entered in Case No. 00CW151 is attached to the Application as Exhibit B. Applicant will then calculate the lagged depletions associated with diversions from the well and make replacement of its calculated lagged depletions. **Name And Address Of Owners Of Land On Which Structures Will Be Located.** Applicant owns the land on which the Bighorn Park Underground Water Right No. 2 will be used and located. **Additional Terms and Conditions.** Applicants shall install and maintain such water measuring devices as deemed essential by the State Engineer or Division Engineer and the same shall be installed and operated in accordance with the instruction of that office. The Division Engineer shall assess appropriate transit losses, if any.

CASE NO. 2017CW3042 – JBS FAMILY ENTERPRISES, LLLP, 6385 Corporate Drive, Suite 200, Colorado Springs, CO 80919 (Please forward all correspondence or inquiries regarding this matter to Applicant’s attorneys: Alan G. Hill and Ashley N. Pollock, Hill & Pollock, LLC, 1528 Wazee Street, Denver, CO 80202; (303) 993-4452)

Application for Approval of Plan for Augmentation for Use of Not Nontributary Groundwater

EL PASO COUNTY

Applicant, JBS FAMILY ENTERPRISES, LLLP, by and through its attorneys, Hill & Pollock, LLC for its Application for Approval of Plan for Augmentation for Use of Not Nontributary Groundwater, states as follows: The Applicant owns certain groundwater rights underlying approximately 240.53 acres, more or less, located generally in portions of Sections 3 and 10, Township 12 South, Range 66 West, 6th P.M., El Paso County, Colorado (the “Property”), which were decreed in Case No. 06CW16, Water Division 2, and entered December 1, 2009. The legal description of the Property is attached to the Application as Exhibit A. A map depicting the Property is attached to the Application as Exhibit B. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) No part of the Property lies within a designated groundwater basin. Applicant seeks, in this application, to augment the depletions associated with operation of not nontributary wells tapping the Denver and Arapahoe aquifers located on the Property, through septic return flows, irrigation return flows, direct delivery to the stream, and reservation of nontributary Laramie-Fox Hills groundwater to augment post-pumping depletions. The Water Court has jurisdiction over this application pursuant to sections 37-90-137(4) and -137(9), C.R.S. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located within the Property. **FIRST CLAIM FOR RELIEF Augmentation for Use of Not Nontributary Groundwater. Names of Structures to be Augmented:** The Applicant has plans to develop the Property to include various sized separate tracts or lots, with a maximum of two (2) residential lots, a reservoir, swimming pool, and other

landscape features. Total demand is anticipated to be approximately 60 acre-feet per year. Applicant will utilize both Denver and/or Arapahoe aquifers groundwater, in conjunction, for these purposes, including outside irrigation for up to 30 acres. Applicant shall operate the wells from the Denver and Arapahoe aquifers so that adequate water is available at pumping and post-pumping times. Well permit applications have not been submitted at the time of this application for a plan for augmentation. Applicant has not determined the specific locations for all the wells required to withdraw groundwater from the Denver and Arapahoe aquifers; however, each well will be constructed within the Applicant's Property and each well will be designed so that it taps water in the Denver and Arapahoe aquifers. Applicant requests the right to locate the wells required to withdraw its entitlement from the Denver and Arapahoe aquifers at any point within the Applicant's Property without the necessity of republishing or petitioning the Court for the reopening of any decree. See 2 CCR 402-7, Rule 11. Applicant owns Applicant's Property described herein. To the extent Applicant's Property is not free and clear of all liens or encumbrances, Applicant shall provide certification of its compliance with the lienholder notice provisions set forth in C.R.S. § 37-92-302(2)(b) and § 37- 90-137(4)(b.5)(l). **Previous Decrees for Water Rights To Be Used for Augmentation Source:** The decree in Case No. 06-CW-016, Water Division 2, adjudicating rights in nontributary and not nontributary ground water underlying the Property which are to be used as sources of replacement water in this augmentation plan, is summarized as follows: Decree Entered: December 1, 2009. Court: District Court, Water Division 2. Type of Water Right: Vested property right to withdraw all groundwater underlying the property in specified aquifers, pursuant to §§ 37-90-137(4) and -137(9), C.R.S. Legal Description: The decreed ground water rights underlie portions of Sections 3 and 10, Township 12 South, Range 66 West, 6th P.M., El Paso County, Colorado, consisting of 240.53 acres, more or less, described on Exhibit A to the Application. Sources and Amounts of Ground Water Decreed:

AQUIFER	TYPE	ANNUAL ENTITLEMENT
Dawson	NNT	88.36 acre-feet
Denver	NNT	204.08 acre-feet
Arapahoe	NNT	94.25 acre-feet
Laramie-Fox Hills	NT	67.79 acre-feet

Decreed Uses: Reuse and successive uses for all beneficial purposes including municipal, domestic, industrial, commercial. irrigation, stock watering, recreation, fish and wildlife, fire protection, and sanitary purposes, including the right to use, reuse, and successively use such water to extinction. Further, such water may be stored for subsequent use and may be used for augmentation, exchange, and replacement purposes. **Statement and Description of Plan for Augmentation:** Source of Augmentation Water. The augmentation sources for this plan will be the fully augmented not nontributary groundwater in the Denver and Arapahoe aquifers and the nontributary groundwater in the nontributary Laramie-Fox Hills aquifer, including such nontributary groundwater underlying Applicant's Property, described in Exhibit A to the Application. Such sources may be available by direct discharge to the stream system, by percolation and return to the stream system after domestic use, irrigation, land application, and by rapid infiltration. The average amounts of groundwater available for augmentation purposes are those amounts decreed in the above-referenced decree, Case No. 06-CW-016, Water Division No. 2. Use and Estimated Demand. The

Applicant's Property, shown on Exhibit B to the Application, will be developed over time with residential home sites. The development will consist of two (2) home sites, a reservoir, swimming pool, and irrigation of approximately 25 acres of land. Nonevaporative wastewater discharge (septic) systems will be used. Augmentation and Replacement of Depletions. Depletions associated with pumping from the Denver and Arapahoe aquifers are four percent (4%) of withdrawals. Stream Systems Affected: Monument Creek, tributary to the Arkansas River. Replacement of Depletions During Pumping Period. The two single family residences will generate return flows of 90% of the water used in-house and a minimum of 10% of the water used for irrigation purposes, the total combined return flows (approximately 6.4 acre-feet acre-feet per year) at full build-out will exceed the required augmentation amount (approximately 2.4 acre-feet per year). The domestic and irrigation return flows will be adequate in quantity to replace depletions caused by the withdrawals of not nontributary ground water from the Denver and Arapahoe aquifers. For the period addressed by this plan, stream depletions caused by the withdrawal of all not nontributary ground water will be adequately augmented by return flows of fully augmented not nontributary groundwater sources. Excess Return Flows: To the extent that irrigation and domestic effluent returns exceed the quantities needed to fully augment all projected stream depletions, Applicant reserves the right to apply for alluvial wells in the Monument Creek basin to recapture and reuse such excess returns. Replacement of Depletions During the Post-Pumping Period. Applicant reserves the right to claim and demonstrate that the impact of post-pumping depletions are wholly de minimis and non-injurious and need not be replaced under the law. § 37-90-137(9), C.R.S. Assuming that such depletions may be determined to be injurious and replacement is required, Applicant will reserve for such purpose the nontributary groundwater in the Laramie-Fox Hills aquifer underlying the property, as such ground water is decreed in Case No. 06-CW-16, Water Division No. 2. Such quantity is sufficient to fully replace all water withdrawn under this plan for augmentation. Summary of Augmentation Plan. The planned development will require up to 68 acre-feet per year to be produced from the Denver and/or Arapahoe aquifers. Return flows from uses of such ground water will exceed the annual depletions and will, therefore, adequately replace all projected depletions. **Administration of Plan for Augmentation:** The Applicant or any successor in interest shall install and maintain such measuring devices and maintain such accounting forms as necessary to demonstrate the adequacy of Applicant's augmentation efforts as a minimum requirement for administration of its augmentation obligations hereunder. Applicant shall make reports annually, or at such other times as required by the Division Engineer. **Retained Jurisdiction:** Applicant requests the Court to retain jurisdiction for a period to be determined after the entry of the decree to protect against injury to other water rights. Applicant requests that any party or entity invoking such retained jurisdiction must make a prima facie case that injury to its water rights has been actually caused by Applicant's withdrawals or operation of this plan for augmentation. Further, Applicant requests that the Court retain jurisdiction to resolve any controversy which may arise with respect to well construction, well location(s), and amount, timing, and location of replacements hereunder. Finally, Applicant requests the Court to retain jurisdiction to allow Applicant to file a separate application for the recapture and reuse of the excess return flows, in addition to changing the source of post-pumping augmentation supply. WHEREFORE,

Applicant asks the Court to enter a decree in this matter: Granting the application sought herein. Specifically determining that (a) Applicant's Denver and Arapahoe aquifers ground water withdrawals may be augmented with return flows from domestic and irrigation uses of such ground water; (b) Return flows from such uses will be adequate to replace any and all injurious stream depletions caused by pumping of such ground water; (c) Granting this application will not injuriously affect the owners or persons entitled to use water under vested water rights or decreed conditional water rights; (e) Jurisdiction will be retained on the question of injury and as further requested herein; and (f) this Court grant this and such other relief as it deems proper and necessary.

CASE NO. 2017CW3043 (Prior Case 2011CW22; 02CW52) - RIVER VILLAGE, LLC 222 ½ F Street, Poncha Springs, CO 81201 (Please send all correspondence and pleadings to the attorneys, David Shohet of Monson, Cummins & Shohet, LLC, 319 N. Weber Street, Colorado Springs, CO 80903 (719) 471-1212).

Application For Finding Of Reasonable Diligence

CHAFFEE COUNTY

Name of Structure: Collegiate Well No. 4. **Describe Conditional Water Right Including Information From Previous Decree:** **Original Decree:** Case No. 02CW52, District Court, Water Division No. 2, decreed on March 15, 2005. **List All Subsequent Decrees Awarding Findings of Diligence:** Case No. 11CW22, District Court, Water Division No. 1, decreed on July 12, 2011. **Legal Description:** Collegiate Well No. 4 is decreed to be located within 200 feet of either Collegiate Well No. 1, Collegiate Well No. 2 or Collegiate Well No. 3. Collegiate Well No. 1 is located in the NW1/4 of the SW 1/4 of Section 22, Township 14 South, Range 78 West, 6th P.M., at a distance of 1,390 feet from the south line of said section, and 450 feet from the west line of said section. Collegiate Well No. 2 is located in the NW 1/4 of the SW 1/4 of Section 22, Township 14 South, Range 78 West, 6th P.M., at a distance of 1,350 feet from the south line of said section, and 240 feet from the west line of said section. Collegiate Well No. 3 is located in the SW 1/4 of the SW 1/4 of Section 22, Township 14 South, Range 78 West, 6th P.M., at a distance of 1,110 feet from the south line of said section, and 320 feet from the west line of said section. Exhibit A attached to the Application indicates the approximate location of Collegiate Wells 1-3. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Source:** Arkansas River alluvium with an estimated depth of 60 feet. **Appropriation Date:** April 22, 2002. **Amount:** 45 g.p.m., conditional. **Use:** Domestic and commercial uses for the mobile home park known as Collegiate Valley Mobile Village. **Detailed Outline Of What Has Been Done Toward Completion Or For Completion Of The Appropriation And Application Of Water To A Beneficial Use As Conditionally Decreed, Including Expenditures, During The Previous Diligence Period:** In Case No. 02CW52, the Water Court adjudicated three absolute underground water rights and one conditional underground water right for use in an integrated central water system for the domestic and commercial uses within a mobile home park known as the Collegiate Valley Mobile Village (the "Village") located in Chaffee County. Under the decree awarded in Case No. 02CW52, the Applicant may divert water for up to a total of 60 mobile homes and up to 40 multifamily units or

apartments, together with the irrigation of up to 37,000 square feet of lawn, garden and landscaping. A plan for augmentation was also decreed in case No. 02CW52 to replace any out of priority depletions caused by the Applicant's use of water along with terms and conditions to prevent injury to any decreed absolute or conditional water right on the Arkansas River. Collegiate Well No. 4 was the sole decreed conditional water right in case No. 02CW52. It was decreed as a replacement well for Collegiate Well Nos. 1, 2, and 3, to be the sole source of water for the Village as part of the integrated central water supply system for the full development of the Village. During this diligence period, the Applicant's predecessor actively marketed the Village and its water rights for sale. In April 2017, Applicant purchased the Village along with its water rights, including the Collegiate Well No. 4. Since purchasing the property, Applicant has completed significant work towards improving the Village and selling lots within the Village. Applicant has made improvements to the park within the Village. This work includes construction on a community meeting room, installation of new playground equipment and new lawns within the park. Applicant has spent significant efforts to develop an additional 10 lots within the Village for sale in 2018. Applicant has also remodeled several vacant trailers and has leased several vacant lots within the Village. Applicant is also in the process of enacting new watering rules within the Village. These new rules will require all lots to either contain lawns or be xeriscape. Applicant also replaced the 3 pressure water tanks for the water delivery system to the Village. A new water meter was also installed as part of the replacement of the tanks. During this diligence period, the Applicant has expended approximately \$65,000 relating to the construction and maintenance of the Village, including its integrated water supply system. During this diligence period, Applicant has therefore devoted substantial efforts toward the development of its overlying property, the present and further application of groundwater from the Collegiate Well No. 4 to beneficial use, and the integrated water system of distribution for the development of the Applicant's property. **Claim to Make Absolute:** None. **Names And Addresses of Owners:** Applicant is the owner of the land upon which the Collegiate Well No. 4 is located and the place of use for said water right.

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 September 2017, (forms available at Clerk's office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 9th day of August, 2017.

Mardell R. DiDomenico



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

(Court seal)
Published: August ____, 2017