

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JULY 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 July 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. 2020CW6; KATHLEEN M. DUNBAR, PO Box 1411, Westcliffe, CO 81252, (605) 645-8039

Application for Absolute Water Rights (Surface)

CUSTER COUNTY

2. Name of Structure: Rosita Hills Spring #8, **3. Legal Description of each point of diversion:** UTM Coordinates: Easting: 468207.0; Northing 4217375, Zone 13, Street Address: 1335 Good Hope Drive, Westcliffe, CO 81252, Subdivision: Rosita Hills Sub #5, Lot: #4, Source of UTM: Garmin, Accuracy of location displayed on GPD device: 20 ft., Legal Description: Custer County, NW ¼, SE ¼, Section 30, Township 22 S, Range 71W, Principal Meridian: 6th; Distance from section lines: 1650 feet from N and 1720 feet from W. Source of PLSS Information: DeLorme, See map attached to the application. (Attachments or Exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **4. Source:** Unnamed Tributary to Grape Creek. **5. Appropriation Date:** July 20, 2020. **How appropriation was initiated:** Filing this Application. **Date water applied to beneficial use:** Upon completion of construction. **6. Amount claimed:** Absolute 10 gpm. **7. Uses:** Domestic residential household use, 300-gallon cistern installed in basement of house. **8. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new or existing diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.

CASE NO. 2020CW3034; WILLIAM (ROY) MARSHALL, DEBORAH SUE MCKNIGHT, 17598 CR 386, Buena Vista, CO 81211, LINDA K. REINHOLD REV. TRUST c/o KATHY REINHOLD, 35315 US Highway 24, Buena Vista, CO 81211, TODD and BELINDA TIPTON, 35410 Highway 24, Buena Vista, CO 81211 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Scott Grosscup, Balcomb & Green,

P.C. P.O. Drawer 790, Glenwood Springs, CO 81602; (970) 945-6546).

Application for Simple Change in Surface Point of Diversion Pursuant to § 37-92-305(3.5), C.R.S. or In the Alternative for Change of Water Right

CHAFFEE COUNTY

2. Decreed water right for which change is sought: Bartholomew Ditch, Ditch No. 99. **Date of orig. and all relevant subsequent decrees:** Orig. Decree: Case No. CA-1127 entered 6/19/1890. Subsequent Decrees: CA-5792 entered 5/28/1968; Case No. 7540 entered 5/27/1982. **Decreed Location:** The headgate is located on the N. bank of

Frenchman's Creek at a pt. 325 ft. W. from where said creek crosses the line running N. and S. between the NE1/4 and the NW1/4 of the SW1/4 of Sec. 10, T. 13 S., R. 79 W. in Chaffee County, Colorado. **Source:** Frenchman's Creek, trib. of Arkansas River. **Approp. Date(s):** Priority No. 115: 6/13/1882. Priority No. 136: 9/24/1883. **Amt:** 4.0 c.f.s.; (1 c.f.s. Priority No. 115; 3.0 c.f.s. Priority No. 136). **Decreed Use:** Irrigation. **Amt to be changed:** 2.0 c.f.s. **Remarks:** Pursuant to the decree in Case No. CA-5972, 2 c.f.s. of the Bartholomew Ditch was changed as follows: One-half (.5) cubic foot of water per second of time decreed to the said Bartholomew Ditch under Priority Number 115 to be diverted through Alternate or supplemental pt. of: **Diversion Number One (1):** a pt. on the S. bank of Frenchman Creek 300 ft. Easterly from the W. line of the NW1/4 of the SE1/4 of Sec. 10, T. 13 S., R. 79 W. of the 6th P.M., Chaffee County, Colorado, and Alternate or supplemental pt. of: **Diversion Number Two (2):** a pt. on the S. bank of Frenchman Creek approx. 849 ft. Westerly from the E. line of the NE1/4 of the SW1/4 of Sec. 11, T. 13 S., R. 79 W. of the 6th P.M., or at Alternate or supplemental pt. of: **Diversion Number Three (3):** a pt. on the Southerly bank of Frenchman Creek approx. 645 ft. Westerly from the E. line of the said NE1/4 of the SW1/4 of Sec. 11, T. 13 S., R. 79 W. of the 6th P.M., aforesaid, all of said water rights being in Chaffee County, Colorado, in Water District Number 11, and that said Petitioners desire to continue to divert Alternately and Supplementally and not concurrently such water right at its present pt. of diversion. 1.5 c.f.s. under Priority No. 136 to Diversion Pts. No. 2 and No. 3, above. **Proposed Change:** Applicants seek to change the remaining 2.0 c.f.s. of the Bartholomew Ditch (0.5 c.f.s. under Priority No. 115 and 1.5 c.f.s. under priority No. 136) pt. of diversion from the decreed location (see paragraph 2.2 above) to the alternate pts. of diversion as described in paragraph 2.8 and decreed in Case No. CA-5972. The locations of the alternate pts. of diversion are depicted on a general location map, see **Exhibit A** attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The place of use for the Bartholomew Ditch will not change and Applicants have diverted the full amount decreed to the Bartholomew Ditch at the alternate pts. of diversion described above. **3. Owner of lands upon which modification to existing structure is or will be constructed:** Applicants.

****Per Order, Resume to be published by Water Division 1****

CASE NO. 2020CW3035 Water Division 2 and CASE NO. 2020CW3095 Water Division 1; Previous Case 2018CW3017 – ANDREW CONNOLLY and JENNEIL CONNOLLY, 7725 Manston Dr., Colorado Springs, CO 80920 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Chris D. Cummins, and Emilie B. Polley, MONSON, CUMMINS & SHOHET, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212).

Application for Revision of Plan for Augmentation

EL PASO COUNTY

II. Background and Summary of Application. A. Applicants seek to revise a portion of an existing augmentation plan concerning groundwater supplies underlying a 5 acre parcel of land located in El Paso County, Colorado. Applicants own Lot 2 of the High Plains Subdivision, depicted on attached Exhibit A and is specifically described as Lot 2, High Plains Filing No. 1, also known as 6442 Raleigh Rd, Colorado Springs, CO 80908 ("Applicants' Property"). **B.** Underground water rights within the Dawson, Denver,

Arapahoe, and Laramie-Fox Hills aquifers, along with a plan for augmentation, were decreed in Case No. 18CW3017 (consolidated with Water Court Division 2 Case No. 18CW3006), District Court, Water Division 2 (“18CW3017 Decree”). The 18CW3017 Decree established an augmentation plan for approximately 39.4 acres of land located in the SW¼ SE¼ of Section 19, Township 11 South, Range 65 West of the 6th P.M., known as the High Plains Subdivision consisting of seven lots. The augmentation plan decreed that up to a combined 3.78 acre-feet of water per year may be withdrawn from the not-nontributary Dawson aquifer from seven individual wells on each of the lots, or 0.54 acre-feet per lot. The 18CW3017 Decree set forth the water use as domestic, commercial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, piscatorial, and for storage and augmentation associated with such uses. These uses were to be augmented by return flows from the individual non-evaporative septic systems on each lot during the pumping life of the wells. Post-pumping augmentation obligations are met by the reservation of 1,022 acre feet of water from the nontributary Laramie Fox Hills aquifer (a 300-year aquifer life/plan for augmentation) underlying the entirety of the High Plains Subdivision. **C.** Applicants are the current owners of Lot 2 of the High Plains Subdivision. Applicants own the following water in the Denver Basin aquifers underlying Lot 2, as depicted on **Exhibit B** Deed 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.):

Aquifer	Annual Amount – 100 years (Acre-Feet)	Annual Amount – 300 years (Acre-Feet)	Total (Acre-Feet)
Dawson (NNT)	3.18	1.06	318
Denver (NT)	1.0	33.33	100
Arapahoe (NT)	1.56	0.52	156
Laramie-Fox Hills (NT)	1.62	0.54	162

III. Proposed Revision. Applicants are the owners of Lot 2 of the High Plains Subdivision, along with water subject to the plan for augmentation approved and decreed by the Division 1 Water Court in the 18CW3017 Decree, and additional water and water rights underlying Lot 2 as described above. Applicants do not seek any change or revision as to the 18CW3017 Decree as would affect the remainder of the 6 lots within the High Plains Filing No. 1, but rather seek only to enhance the pumping entitlements on Lot 2 utilizing additional available augmentation supplies. By this application, Applicants request the following revisions to the plan for augmentation set forth in the 18CW3017 Decree only as to Lot 2, as follows: A. Structures to be Augmented: The structure to be augmented is one well, with existing DWR Permit No. 84420-F, attached as Exhibit C, to-be constructed to the not-nontributary Dawson aquifer on Lot 2 (“the Connolly Well No. 1”), including any future replacement or substitute wells as may be constructed to the not-nontributary Dawson aquifer formation underlying the Applicants’ Property. The existing well permit will be cancelled and re-permitted upon approval of this plan for augmentation. B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the septic return flows resulting from pumping of the not-nontributary Dawson aquifer by the Connolly Well No. 1, as well as return flows from any replacement/substitute wells, as set forth in this plan for augmentation, together with water rights from the nontributary Arapahoe and Laramie-Fox Hills aquifers for any

injurious post pumping depletions. C. Statement of Plan for Augmentation. Applicants wish to provide for the augmentation of stream depletions caused by pumping the non-tributary Dawson aquifer well proposed for Applicants' Property. Potential water use criteria and the consumptive use component for replacement of actual depletions for the lot is estimated as follows: **1. Uses.** i. Household Use Only: A minimum of 0.26 acre feet annually within a single family dwelling on Lot 2, consistent with the decree in Case No. 18CW3017, with a maximum of ten percent consumptive use based on a non-evaporative septic leach field disposal systems. The annual consumptive use for the lot will therefore be 0.026 acre feet, with return flows of 0.234 acre feet annually. This amount is consistent with the 18CW3017 decree, and the Applicant does not seek an amendment of this previously decreed quantity. ii. Landscape Irrigation: 0.05 acre feet annually per 1,000 square feet (2.18 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre feet. iii. Horses (or equivalent livestock): 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. **2. The Connolly Well No. 1** will pump a maximum of 1.0 acre feet of water per year from the Dawson aquifer (the 18CW3017 decree provided for only 0.54 acre feet of pumping). Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.26 acre feet of water per year, with the additional 0.74 acre feet per year available for irrigation of lawn and garden and the watering of up to four horses or equivalent livestock. D. Depletions. Pursuant to C.R.S. §37-90-137(9)(c.5), replacement of actual stream depletions attributable to pumping of the Connolly Well will be required to the extent necessary to prevent injurious effect, to the extent the well is constructed to the Dawson aquifer. Applicants' predecessor's consultant in the 18CW3017 matter determined that maximum stream depletions over the 300-year pumping period required by El Paso County Land Use Code for the Dawson aquifer amounts to approximately 22% of pumping. Maximum annual depletions for total residential pumping from all lots within the High Plains Subdivision would therefore be 0.83 acre feet in year 300. Applicants are required to replace a maximum of 0.22 acre feet annually as a result of pumping the Connolly Well No. 1 (*i.e.* 22% of pumping). Should Applicants' pumping be less than the 1.0 total per year, as described herein, resulting depletions and required replacements will be correspondingly reduced. E. Augmentation of Depletions During Pumping. Applicants will replace depletions resulting from the pumping of the Connolly Well No. 1 during the pumping life of the well utilizing residential return flows from a non-evaporative septic system from in house uses of the lot served by the Connolly Well No. 1. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.26 acre feet per residence per year, 0.234 acre feet is replaced to the stream system per year, utilizing the non-evaporative septic systems. Thus, during pumping, stream depletions will be more than adequately augmented thereby preventing injury to other vested water rights. F. Augmentation for Post Pumping Depletions. Applicants seek to revise the prior reservation of the Laramie-Fox Hills aquifer in the 18CW3017 Decree for replacement of any injurious post-pumping depletions as to Lot 2. Under the 18CW3017, the Applicants' 1/7th reservation of the Laramie Fox Hills Aquifer is 146 acre feet. The Applicants now reserve 162 acre feet of the Laramie-Fox Hills Aquifer and an

additional 150 acre-feet of the underlying Arapahoe aquifer, thereby adding 166 acre-feet of post pumping supply, sufficient to replace depletions from increased pumping on Lot 2. 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 Arapahoe and Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a new well permit for the proposed Connolly Well No. 1 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. **G. Other Remarks.** **1.** This Application is being filed in Water Divisions 1 and 2 because depletions may occur to both divisions. The return flows set forth above will accrue to the South Platte River system where the majority of depletions occur, and it is Applicants' intent to consolidate the instant matter in Water Division 1 upon completion of publication. Applicants request that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient. **2.** Applicants note that no revision of the decreed plan for augmentation is requested as affects Lots 1, and 3 through 7 in Case No. 18CW3017, but rather only replacement as to uses and amounts for Lot 2. **3.** Applicants request a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). **4.** The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. **5.** The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. **IV. Remarks.** **A.** The Applicants request a finding that vested water rights of others will not be materially injured by the additional use requested herein. **B.** Upon entry of a decree in this case, the Applicants shall be entitled to apply for and receive a new well permit in accordance with the provisions of any decree entered in this case. **C.** The Water Court has jurisdiction over the subject matter of this application pursuant to §§ 37-90-137(6) and 37-92-302, C.R.S. **D.** The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' Property. **E.** The well shall be installed and metered as reasonably required by the State Engineer. The well will be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicants shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. **F.** Applicants will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), and such notice will be sent within 14 days of the filing of this application.

CASE NO. 2020CW3036; Previous Case: 12CW195 - TOWN OF ALMA, COLORADO, c/o Nancy Comer, Town Administrator, 59 E. Buckskin, P.O. Box 1050, Alma, CO 80420-1050 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Andrea L. Benson, #33176, Cynthia F. Covell, #10169, Gilbert Y. Marchand, Jr., #19870, Alperstein & Covell, P.C., 1600 Broadway, Suite 1070, Denver, CO 80202, phone: (303) 894-8191).

Application for Finding of Reasonable Diligence and to Make Portion of Water Right Absolute

PARK AND JEFFERSON COUNTIES

Applicant conveyed to the Water Clerk that this Application was erroneously filed in Water Division 2. Applicant intended to file the Application in Water Division 1, and has since filed an Application in Water Division 1 (2020CW3108). Applicant has expressed an intent to voluntarily withdraw this Application under Water Court Rule 5(a). Therefore, this Application is not being published.

CASE NO. 2020CW3037; CUCHARAS SANITATION & WATER DISTRICT, c/o Leslie Cordova, 16925 State Highway 12, Cuchara, CO 81055-9775 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Stuart B. Corbridge, Esq. Vranesh and Raisch, LLP, 5303 Spine Road, Suite 202, Boulder, CO 80301, Telephone: (303) 443-6151).

Application for Findings of Reasonable Diligence

HUERFANO COUNTY

2. Name of Water Right and/or Structures. Cucharas Coler Exchange **3. Description of Conditional Water Right.** A. Prior Decrees. The Cucharas Coler Exchange was originally decreed in Case No. 1997CW166, Water Division 2, by decree entered July 11, 2014 ("1997CW166 Decree"). (I) This is the first application for findings of reasonable diligence for the Cucharas Coler Exchange. B. Legal Description of Exchange Reach and Exchange Points. (I) Downstream terminus and Exchange-from Point: At the point where the Coler Ditch and Reservoir System returns water to the Cucharas River ("Cucharas Delivery Flume"), which point is located in the NE1/4 SW1/4 of Section 17, Township 28 South, Range 66 West, 6th P.M., Huerfano County, Colorado, at a point approximately 1,600 feet from the west line and 2,150 feet from the south line of Section 17. (II) Exchange-to Points: The Cucharas Coler Exchange extends upstream from the Exchange-from Point on the Cucharas River and its tributaries, including White Creek, the South Fork of the Cucharas River, Baker Creek, Dotson Creek (a/k/a Dodgeton Creek or Dodston Creek), and Deadman Creek to the following Cucharas Sanitation & Water District ("District") facilities: (a) The intake to the District's treatment facilities on the Cucharas River at a point in Section 22, Township 31 South, Range 69 West, 6th P.M. from which the west quarter corner of Section 15, Township 31 South, Range 69 West, 6th P.M. bears North 14° 25' West, a distance of 5,770 feet. (b) The intake for the District located on Baker Creek at a point on the north bank of Baker Creek which is 850 feet easterly of the center of Section 17, Township 31 South, Range 69 West, 6th P.M., Huerfano County, Colorado. (c) The intake for the District located on Dotson Creek (a/k/a Dodgeton Creek or Dodston Creek) from whence the east quarter corner of Section 4,

Township 31 South, Range 69 West, 6th P.M., Huerfano County, Colorado, bears South 52° 10' East, a distance of 3,245 feet more or less. (d) Britton Reservoir No. 1, which is located in the SW1/4 NE1/4 of Section 22, Township 31 South, Range 69 West, 6th P.M., Huerfano County, Colorado, at a point approximately 1,608 feet west and 2,730 feet south of the northeast corner of Section 22. (e) Britton Reservoir No. 2, which is located in the SW1/4 NE1/4 of Section 22, Township 31 South, Range 69 West, 6th P.M., Huerfano County, Colorado, at a point approximately 175 feet north and 1,979 feet west from the east quarter corner of Section 22. This reservoir is filled through the Deadman Creek Feeder, located on Deadman Creek in the NW1/4 SE1/4 of Section 22, Township 31 South, Range 69 West, 6th P.M., and the South Fork Feeder, located on the South Fork of the Cucharas River in the SW1/4 NE1/4 of Section 22, Township 31 South, Range 69 West, 6th P.M. (f) Britton Reservoir No. 3, which is located in the SW1/4 NE1/4 of Section 22, Township 31 South, Range 69 West, 6th P.M., Huerfano County, Colorado, at a point approximately 300 feet north and 1,999 feet west from the east quarter corner of Section 22. This reservoir is filled through the Deadman Creek Feeder and the South Fork Feeder, as described in Paragraph 3.B.(II)(e). (g) White Creek Reservoir (a/k/a Cucharas Pass Reservoir), which is decreed in Sections 14, 15, 22, and 23, Township 31 South, Range 69 West, 6th P.M., Huerfano County, Colorado. (III) See **Exhibit A** attached to the application for general location maps of the Exchange-from Point and the Exchange-to Points. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) C. Source. The physical source of supply for the water to be diverted by exchange by the District is the Cucharas River and its tributaries, including White Creek, the South Fork of the Cucharas River, Baker Creek, Dotson Creek (a/k/a Dodgeton Creek or Dodston Creek), and Deadman Creek. D. Sources of Substitute Supply. (I) The physical source of substitute supply for the Cucharas Coler Exchange is water attributable to a 3/30ths ten percent (10%) interest in the Coler Ditch and Reservoir System ("Coler System") and that system's appurtenant water rights. The Coler System water rights are as follows: (II) Coler Ditch and Reservoir System. (a) Lake Miriam Ditch: 1) The headgate of the Lake Miriam Ditch, which diverts from the Cucharas River, is located in the NW1/4 SE1/4 of Section 32, Township 28 South, Range 67 West, 6th P.M., Huerfano County, Colorado. The Lake Miriam Ditch is a feeder canal for Lake Miriam Reservoir, Lake Oehm Reservoir, and the Coler Seepage Reservoir. 2) Lake Miriam Ditch was awarded a decree for a 20 cfs direct flow water right from the Cucharas River, with an appropriation date of March 1, 1884, Priority No. 61, by the District Court of the Third Judicial District, Huerfano County, on June 12, 1889. (b) Lake Miriam Reservoir (a/k/a Horseshoe Reservoir): 1) Lake Miriam Reservoir is located in the W1/2 of Section 13 and the NW1/4 of Section 24, Township 28 South, Range 67 West, 6th P.M., Huerfano County, Colorado. 2) Lake Miriam Reservoir was awarded a storage decree for 50,000,000 cubic feet (1,148 acre feet) of water from the Cucharas River with an appropriation date of April 14, 1901, by the Huerfano County District Court, Water District 16, on October 3, 1921. (c) Lake Oehm Reservoir (a/k/a Martin Lake): 1) Lake Oehm Reservoir is located in the E1/2 of Section 13, Township 28 South, Range 67 West, 6th P.M., and in the W1/2 of Section 18, Township 28 South, Range 66 West, 6th P.M., Huerfano County, Colorado. 2) Lake Oehm Reservoir was awarded a storage decree for 100,000,000 cubic feet (2,296 acre-feet) of water from the Cucharas River with an appropriation date of April 30, 1901, by the Huerfano County District Court, Water

District 16, on October 3, 1921. In addition, the Lake Oehm Reservoir Enlargement was decreed for 12,070,000 cubic feet (277 acre-feet) with an appropriation date of November 25, 1905, by the Huerfano County District Court, Water District 16, on October 3, 1921.

(d) The Coler Reservoir System Cucharas Delivery Flume: Water released to the Cucharas River from storage in the Coler System reservoirs is delivered through the Cucharas Delivery Flume, which is located in the NE1/4 SW1/4 of Section 17, Township 28 South, Range 66 West, 6th P.M., Huerfano County, Colorado, at a point approximately 1,600 feet from the west line and 2,150 feet from the south line of said Section 17.

(e) Civil Action Nos. 3266 and 3848: On December 30, 1966, in Civil Action Nos. 3266 and 3848 (the "Ackerman Decree"), the Huerfano County District Court, Water District 16, entered a decree changing the above-described Coler System water rights to allow their use for municipal purposes, including recreation, and lawn, garden, park, and other municipal irrigation.

E. Date of Appropriation. December 12, 1997. F. Amount. 15 cfs, CONDITIONAL. The maximum annual volume of this exchange is limited to the total amount of water that must be delivered to the District in any year pursuant to the requirements of the 1997 stipulation between the District and RTV, LLC described in Paragraph 4, below.

G. Use. The water diverted by the Cucharas Coler Exchange will be used in the District's municipal water system for the beneficial uses previously decreed by the Water Court for Water Division No. 2 in Case Nos. 1982CW215 and 1985CW136 (Ballejos Ditch Change and Exchange), Case No. W-4542 (White Creek Reservoir and Collection System), Case No. 1984CW183 (Britton Reservoir No. 1), and Case No. 1985CW136 (Deadman Creek Feeder Ditch, South Fork Feeder Ditch, Britton Reservoir No. 2, and Britton Reservoir No. 3). Such uses may include irrigation, municipal, domestic, industrial, piscatorial, recreational, commercial, augmentation, exchange, and all other beneficial uses served by the District's water system. If allowed by the District's decrees, the water may also be used, reused, successively used to extinction, and disposed of by the District.

4. 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. The District provides water delivery and water treatment services to an area in the general vicinity of Cuchara, Colorado, which area is adjacent to the Cucharas River and several of its tributaries. The Cucharas Coler Exchange was appropriated by the District as part of a stipulation with RTV, LLC in Case Nos. 1996CW53 and 1996CW55 entered on December 19, 1997 ("1997 Stipulation"). That stipulation includes terms and conditions, including the requirement that RTV, LLC make releases of water from the Coler System under its 3/30ths ten percent interest when certain conditions occur. The released water will be moved upstream to the Exchange-to Points described in Paragraph 3.B.(II), above, using the Cucharas Coler Exchange, and the diverted water will be put to beneficial use in the District's water system. The structures described in Paragraph 3.B.(II) are components in the District's integrated water supply system, not only for the diversion of water under the Cucharas Coler Exchange, but also as structures used in water operations associated with other decrees and water rights owned and used by the District, including the District's direct flow water rights, its Ballejos Ditch exchange decreed in Case No. 1982CW215, and its plan for augmentation decreed in Case No. 1985CW136. As such, the District's work on other components of its integrated system can be considered with respect to all components of the system. To date, the conditions

in the 1997 Stipulation that would trigger a release of Coler System water on behalf of the District have not occurred. As such, the District has not yet had the opportunity to exercise the Cucharas Coler Exchange. During the subject diligence period running through the date of filing of the application in this case, the District made diversions under its various water rights when the rights were in priority, and has otherwise managed and maintained its water supply system so as to best utilize its water rights, both absolute and conditional, to supply its customer base. The following activities and expenditures during the subject diligence period are relevant to the District's integrated water supply system and the development of the Cucharas Coler Exchange conditional water right. The activities and costs identified in this application are not all inclusive, and the District reserves the right to provide evidence of other work done and costs incurred during the subject diligence period during the proceedings for this application. A. The District continued to develop its integrated water supply system, so that water that becomes available under the 1997 Stipulation and operation of the Cucharas Coler Exchange can be diverted and placed to beneficial use. Work during the subject diligence period included general maintenance work related to Britton Reservoir Nos. 1, 2, and 3, including the completion of work projects related to the delivery pipelines for Britton Reservoir Nos. 2 and 3 and extensive renovation of Britton Reservoir No. 1. The District also engaged in general planning and field trips concerning additional updates to and maintenance on the Britton Reservoirs and their related diversion and delivery structures. B. The District did work and incurred costs related to its integrated water supply system as follows: (I) Updates to the main water plant control system during the period from 2017-2019. This work included changes to both the hardware and software in use at the plant, at a cost of approximately \$100,000.00. (II) Updates to the District's water delivery pipelines, commencing in 2017 and ongoing. This work includes installation of new water system mains and other piping, upgrades to the system water meters, and general repairs of the water delivery system, at an expected total cost of approximately \$1,600,000.00. (III) Initiation of and pre-work planning for maintenance on the District's primary 100,000 gallon water storage tank, commencing in August 2019 and ongoing, at an expected total cost of approximately \$40,000.00. (IV) Maintenance and updates on the pressure regulators in the District's water delivery system during the period from October to December 2019, at a cost of approximately \$15,000.00. C. From 2015 onward, the District has been an active participant in the Cucharas Basin Collaborative Storage Study project. This participation has included collaboration with other project participants on the development of the technical studies related to the project, with associated costs during the subject diligence period of approximately \$17,000.00, and also participation as a co-applicant in the water court application filed in Case No. 2017CW3075 for new water storage rights and appropriative rights of exchange to implement the findings of the Cucharas Basin Collaborative Storage Study project. The District has incurred legal and engineering fees and other costs in conjunction with Case No. 2017CW3075. D. In order to protect its various water rights and water operations, including the Cucharas Coler Exchange, the District filed statements of opposition in the following water court cases in Water Division 2 during the diligence period and/or was an opposer: 1997CW108(C), 2014CW3045, 2015CW3048, 2016CW3046, 2017CW3049, 2017CW3063, and 2019CW3070. The District has incurred legal and engineering fees and other costs in conjunction with its participation in these cases. In addition, the District was the applicant in the following

water court cases in Water Division 2, and incurred legal and engineering fees and other costs related to these cases: 2013CW3055 and 2016CW3022. E. District staff also worked on other items necessary for the development of the Cucharas Coler Exchange during the subject diligence period, and continued to monitor its overall water supply system to evaluate the best process and timelines for developing its water resources to meet current and future committed demands. F. The District is a relatively small sanitation and water district, and the development of its integrated water supply system can only advance in stages. This development is tied to the best use of its water resources, based on current water demands and future water service commitments. The District will divert water and use it for the decreed beneficial purposes in the future when the triggering conditions in the 1997 Stipulation occur and the Cucharas Coler Exchange is in priority, and maintains its intent to complete the appropriation for the appropriative rights of exchange described in Paragraph 3. **5. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool.** Other than White Creek Reservoir, the diversion and storage facilities identified as the Exchange-to Points in Paragraph 3.B.(II) have been constructed and are used in the District's water diversion and delivery operations. The following have been identified as the current owners of the land on which these diversion and storage structures are located: A. Cucharas Sanitation & Water District, 16925 State Highway 12, La Veta, CO 81055-9775 B. Robert Beck, 405 Olympia Fields, Meadow Lakes, TX 78654 C. United States Department of Agriculture, U.S. Forest Service, Rocky Mountain Region, c/o Current Water Rights Coordinator, Current Regional Hydrologist, 1617 Cole Blvd., Lakewood, CO 80401 D. San Carlos Ranger District, c/o District Ranger, 3028 E. Main St., Canon City, CO 81212 E. Jacque and Otto Goemmer, P.O. Box 212, La Veta, CO 81055 F. William P. Goemmer, P.O. Box 185, La Veta, CO 81055 G. Huerfano County, 401 Main Street, Suite 201, Walsenburg, CO 81089 H. McCombs Family Ltd., 755 East Mulberry Avenue, Suite 600, San Antonio, TX 78212 I. Colorado Department of Transportation, 2829 W. Howard Place, Denver, CO 80204. In addition, although the source of substitute supply for the Cucharas Coler Exchange is released from the Coler System, the Cucharas Coler Exchange does not otherwise divert into or store water rights in that system, and the Coler Reservoir System Cucharas Delivery Flume has already been constructed and would not be modified by this application. The District has provided landowner notice to the City of Walsenburg at the following address, as the operator of the Coler System: A. City of Walsenburg, 525 South Albert Street, Walsenburg, CO 81089-2296 WHEREFORE, The District requests that the Court enter a decree finding that the District has exercised reasonable diligence in completing the appropriation and placing the conditional appropriative rights of exchange described in this application to beneficial use, and ordering that the conditional water right remains in full force and effect for another diligence period.

CASE NO. 2020CW3038; HERMIT BASIN LODGE, LLC, c/o Penny Button, P.O. Box 25, 1699 Camino Drive, Westcliffe, CO 81252 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Lisa M. Thompson, Mirko L.

Kruse, TROUT RALEY, 1120 Lincoln Street, Suite 1600, Denver, CO 80203, (303) 861-1963).

Application for Finding of Reasonable Diligence.

CUSTER COUNTY

2. Description of Conditional Water Rights: Applicant's subject water rights, 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.)

are used to supply the Hermit Basin Lodge development. As described in 14CW3003, the Revised Full Build-Out Plan for Hermit Basin Lodge includes (i) 88 single-family dwelling units, (ii) 0.386 acres of landscaping, (iii) one lodge, (iv) one 36-room motel, (v) one restaurant, (vi) one swimming pool, and (vii) no snowmaking. Under the decree entered in 95CW10, out of priority depletions from Hermit Basin's Revised Full Build-Out Plan are augmented using stream depletion credits from the Katzenstein Ditch No. 1 and Conquistador Reservoir No. 1. As further described in 10CW30, these stream depletion credits are available to fully augment the Hermit Basin Lodge development up to the uses described above in the Revised Full Build-Out Plan and any excess credits are available as a replacement source in the Upper Arkansas Water Conservancy District's augmentation plan decreed in 06CW32. a. Name of structures: (1) Priestly-Robbins Ditch (2) Hermit Basin Exchange. Applicant does not claim diligence on the Hermit Basin Upper Pond or Hermit Basin Wells Nos. 1, 2, and 3, as described in 14CW3003. b. Decrees: (1) Original Decree: Case No. 95CW10 (Water Div. 2), decree dated August 4, 1998. (2) Decrees granting finding of reasonable diligence: Case No. 04CW71 (Water Div. 2) decree dated January 29, 2008; Case No. 14CW3003 (Water Div. 2) decree dated July 7, 2014. c. Legal Description, Source, Appropriation Date, Amount, and Use: (1) The Priestly-Robbins Ditch diverts from Middle Taylor Creek in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, T. 22 S., R. 73 W. of the 6th P.M. at a point 1,300 feet from the South section line and 1,600 feet from the East section line of said Section 19. In Case No. 95CW10, the Priestly-Robbins Ditch was decreed in the amount of 0.6 cfs for domestic, landscape irrigation, commercial, fire fighting and recreational purposes, with an appropriation date of June 1, 1985, of which 0.033 cfs was decreed absolute and 0.567 cfs was decreed conditional. In Case No. 04CW71, an additional 0.065 cfs of the Priestly-Robbins Ditch was made absolute, thereby making a total of 0.098 cfs decreed absolute, with 0.502 cfs remaining conditional. In Case No. 14CW3003, this conditional amount was continued in force and effect. (2) The Hermit Basin Exchange is an appropriative right of exchange on Middle Taylor Creek from the point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, T. 22 S., R. 73 W. of the 6th P.M. where water is released thereto from Conquistador Reservoir No. 1 upstream on Middle Taylor Creek to the headgate of the Priestly-Robbins Ditch in Section 19, T. 22 S., R. 73 W. of the 6th P.M., at which point diversions are made from Middle Taylor Creek for the uses described herein. The Conquistador Reservoir is located in the SE $\frac{1}{4}$ of Section 21, T. 22 S., R. 73 W. of the 6th P.M. In Case No. 95CW10, the exchange was decreed for 2 cfs, conditional, with an appropriation date of June 30, 1995. In Case No. 04CW71, 0.098 cfs of the Hermit Basin Exchange was made absolute, with 1.902 cfs remaining conditional. In Case No. 14CW3003, this conditional amount was continued in force and effect. **3. Detailed outline of what has been done toward completion of the appropriation, including expenditures during the diligence period:** a. During the last

diligence period, Applicant made expenditures for the maintenance and improvement of its central water system. These expenditures included \$ 9,600 from May through December, 2014 for maintenance of its water system and for a complete remodel of its water filtration system, including engineering work and new components. Other maintenance expenditures totaled \$ 23,367 from 2015 to the present for regulatory oversight expenses, purchasing filters, test supplies, lab results, and hydrochloric acid, replacing and repairing pumps and new water taps, repairing insulated pipe, obtaining sanitary surveys, and ditch maintenance. These expenses do not include costs for activities described below. b. Applicant spent approximately six hours per week conducting maintenance and oversight of its central water system, including replacing water filters, ditch cleaning, water testing, collecting meter readings, operating Conquistador Reservoir to supply the appropriate amount of replacement water to augment Applicant's diversions, and communicating and coordinating with the Upper Arkansas Water Conservancy District to manage Applicant's water system operations outlined in 10CW30. c. Applicant made improvements to the Hermit Basin Lodge development, including installation of an entrance gate, renovation of the hot tub, and repair of the swimming pool at a cost of \$ 3,100. d. Applicant made progress under the Revised Full Build-Out Plan for Hermit Basin Lodge, with Applicant servicing an additional water tap in the Priestly-Robbins subdivision at a cost of \$ 3,505 to Applicant. Owners of several lots within the Priestly-Robbins subdivision have not yet built homes on their lots but would require water taps serviced from Applicant once construction proceeded. e. Applicant reviewed notices of water court applications for potential injurious impacts to the subject water rights. **4. Name and address of landowners:** All structures are currently located, or have decreed locations, on lands owned by the Applicant.

CASE NO. 2020CW3039; Plaintiffs; WILLIAM ROY MARSHALL, DEBORAH SUE MCKNIGHT, TODD AND BELINDA TIPTON, LINDA K REINHOLD REV TRUST,

(Please address all pleadings and inquiries regarding this matter to Plaintiff's attorneys: Scott Grosscup, Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81601 (970) 945-6546).

Verified Complaint for Declaratory Judgment

CHAFFEE COUNTY

Plaintiffs through counsel, brings this Complaint for Declaratory Judgment seeking interpretation of a Decree entered in Case No. 5792 to recognize that the Bartholomew Ditch right could continue to be used for irrigation purposes until such time that the change to industrial uses has been implemented. The Plaintiffs are William Roy Marshall and Deborah Sue McKnight, Todd and Belinda Tipton, and Linda K. Reinhold all own property located at 17598 County Road 386, Buena Vista, CO and receive water for irrigation purposes from the Bartholomew Ditch Alternate Diversion Points 1, 2, or 3 located on Frenchman Creek. The Bartholomew Ditch was first decreed in Civil Action 1127, Chaffee County District Court, for a total of 4 cfs to irrigate 200 acres of land with appropriation dates of 6/30/1882 ("Priority 115") and 9/24/1883 ("Priority 136"). In Civil Action 5792 ("Decree 5792") the former owner obtained a water court decree adding three alternate points of diversion for 0.5 cfs of Priority 115 and 1.5 cfs of Priority 136. It also granted the right to use 1.5 cfs for non-consumptive industrial use to be diverted at Points No. 2 and 3. After the issuance of Decree 5792, Alternate points of diversion 1, 2, and 3 were

constructed. The industrial uses were never developed. Plaintiffs, and Plaintiffs' predecessors in interest, have used the water diverted at the Alternate Points 1 through 3 to irrigate their respective properties. Use of the Bartholomew Ditch water rights for irrigation purposes has repeatedly been recognized by the Division Engineer. Plaintiffs request a Declaratory Judgment to clarify Decree 5792 added non-consumptive industrial use to Priority 136 such that water can continue to be used for irrigation purposes until it is put to a non-consumptive use. A full copy of the complaint is available by contacting Plaintiffs' counsel.

CASE NO. 2020CW3040; Previous Cases: 12CW109, 06CW6, 97CW158 - ALCE TORO RANCH LLC, 14 Main Street, Park Ridge IL 60068 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Paul L. Noto, Esq. and Danielle L. Van Arsdale, Esq., Patrick, Miller & Noto, P.C., 229 Midland Ave., Basalt, CO 81621, (970) 920-1030).

Application for Findings of Reasonable Diligence

LAS ANIMAS COUNTY

JOSE LEONBIALPANDO DITCH TRIBUTARY TO THE NORTH FORK OF THE PURGATOIRE RIVER, TRIBUTARY TO THE PURGATOIRE RIVER, TRIBUTARY TO THE ARKANSAS RIVER. First Claim: Name of conditional water right: Appropriative Right of Substitution and Exchange. **Description of conditional water right:** Date of original decree: February 28, 2000, Case No. 97CW158, Division 2 Water Court. Subsequent diligence decrees: October 10, 2006, Case No. 06CW6, Division 2 Water Court; July 30, 2014, Case No. 12CW109, Division 2 Water Court. Legal description of location: The exchange reach lies between the mouth of Long Canyon at the Purgatoire (Las Animas) River in Las Animas County, Colorado (downstream terminus), to the diversion points for the uppermost ponds in Colorow Canyon, described in paragraph 3.C.v, and in Long Canyon, described in paragraph 3.C.vii. All of the structures are located in Las Animas County, Colorado (upstream termini). 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.) **An off-channel pond in Long Canyon**, a/k/a Long Canyon Pond No.1, in the NE ¼ of Section 27, T34S, R65W, with the point of diversion 1250 feet from the North line of Section 27 and 2230 feet from the East line of Section 27. **An off-channel pond in Long Canyon** in the SW ¼ of Section 23, T34S, R65W, with the point of diversion 275 feet from the South line of Section 23 and 60 feet from the West line of Section 23. **An off-channel pond in Colorow Canyon**, a/k/a Colorow Canyon Pond No. 1, in unsurveyed SE1/4 of Section 24, T34S, R65W, with the point of diversion 1450 feet from the South line of Section 24 and 800 feet from the East line of Section 24. **An off-channel pond in Colorow Canyon** at the unsurveyed north line of Section 36, T34S, R65W, with the point of diversion 1700 feet from the West line of Section 36 and 800 feet from the North line of Section 36. **An off-channel pond in Colorow Canyon** in unsurveyed NW ¼ of Section 1, T35S, R65W, with the point of diversion 560 feet South of the South line of Section 36 and 1700 feet east of the West line of Section 36 projected. **An off-channel pond in Long Canyon** in the NE ¼ of Section 33, T34S, R65W, with the point of diversion 750 feet west of the east line of Section 33 and 650 feet south of the north line of Section 33. **Source:** The water right originally decreed to the Jose Leon Bialpando Ditch as changed by the decree

entered in Case No. 97CW158, Division 2 Water Court, including the right to divert that water by exchange. **Appropriation date:** December 30, 1997. **Amount:** 1.60 cfs, reduced to 1.57 cfs to account for transit loss. In Case No. 12CW109, 0.98cfs, total was made absolute, consisting of 0.78cfs on Long Canyon and 0.20cfs on Colorow Canyon, with the maximum rate of 0.98cfs on Long Canyon below its confluence with Colorow Canyon. The 0.98cfs was made absolute for filling and re-filling two ponds (described in paragraphs 3.C.i and 3.C.iii, above), recreational, fishing, fishery, water quality improvements, aesthetic, and wildlife uses. There remains 0.0585 cfs, conditional, for filling and re-filling of ponds, recreational, fishing, fishery, water quality improvements, aesthetic, and wildlife uses for Long Canyon Pond No. 1 (paragraph 3.C.i), and 0.005cfs, conditional, for filling and re-filling of ponds, recreational, fishing, fishery, water quality improvements, aesthetic, and wildlife uses for Colorow Canyon Pond No. 1 (paragraph 3.C.iii). The entire 1.57cfs remains conditional for general irrigation, irrigation for pasture grasses or alfalfa for wildlife grazing, stream-channel restoration, and domestic, lawn, and garden uses for a single recreational cabin for the Long Canyon Pond No. 1 and Colorow Canyon Pond No. 1. For the ponds identified in paragraphs 3.C.ii, 3.C.iv, 3.C.v, and 3.C.vi, the entire 1.57cfs remains conditional for all decreed uses. Applicant is seeking a finding of reasonable diligence for all remaining conditional amounts and uses. **Uses:** For all of the purposes for which water may lawfully be used through the structures to which the exchanges are made as decreed in Case No. 97CW158, including irrigation for pasture grasses or alfalfa for wildlife grazing, pond filling, aesthetic, recreational, irrigation, fishing, fishery, wildlife uses, stream-channel restoration uses, water quality improvement, and domestic, lawn, and garden uses for a single recreational cabin. **Claim for finding of reasonable diligence:** Applicant has exercised reasonable diligence towards completion of the Appropriative Right of Substitution and Exchange water right. A detailed outline of work performed towards completion of the appropriation, including expenditures, is on file with the court as **Exhibit B**. Applicant owns the land on which the water rights are located, and where the water will be put to beneficial use. **Remark:** To allow for operational flexibility and efficiency, Applicant may, at its discretion, divert at any one or more of the exchange-to points of diversion so long as the uses are within the decreed aggregate limits. Based on the above, Applicant respectfully requests the Court to enter a decree finding and ordering the following: Applicant exercised reasonable diligence in the development of the Appropriative Right of Substitution and Exchange as a conditional water right for the following amounts and uses: 1.57cfs, conditional, for the ponds described in paragraphs 3.C.ii, 3.C.iv, 3.C.v, and 3.C.vi, for all of the purposes for which water may lawfully be used through the structures to which the exchanges are made as decreed in Case No. 97CW158, including general irrigation, irrigation for pasture grasses or alfalfa for wildlife grazing, pond filling, aesthetic, recreational, irrigation, fishing, fishery, wildlife uses, stream-channel restoration uses, water quality improvement, and domestic, lawn, and garden uses for a single recreational cabin; 0.585, conditional for filling and re-filling of ponds, recreational, fishing, fishery, water quality improvements, aesthetic, and wildlife uses for Long Canyon Pond No. 1 (paragraph 3.C.i); 0.005cfs, conditional, for filling and re-filling of ponds, recreational, fishing, fishery, water quality improvements, aesthetic, and wildlife uses for Colorow Canyon Pond No. 1 (paragraph 3.C.iii); 1.57cfs, conditional, for general irrigation, irrigation for pasture grasses or alfalfa for wildlife grazing, stream-channel restoration, and domestic, lawn, and garden uses for

a single recreational cabin for the Long Canyon Pond No. 1 and Colorow Canyon Pond No. 1.

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 2020, (forms available at Clerk's office or at 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 5th day of August 2020.



Michele Santistevan

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

(Court seal)
Published: