

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JUNE 2011

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 ordered published during June 2011, 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. 08CW38 – HILL RANCH, LTD., c/o B. F. Hill, 3794-C Highway 67W, Glen Rose, TX 76043 (James W. Culichia and David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Amended Application for Change of Water Rights, for Water Storage Right, for Appropriative Rights of Exchange, and for Approval of Plan for Augmentation

LAS ANIMAS COUNTY, COLORADO

III. Background and Summary of the Amended Application. Applicant filed its Application in this Case No. 08CW38 seeking a change of Velasquez and Chacon No. 2 Ditch for all beneficial purposes, a 121.25 acre foot storage right for Legend Lake, and a plan of augmentation for the out of priority depletions associated with the interception of ground water of Legend Lake (the “Original Application”). The proposed augmentation plan in the Original Application would replace the out-of-priority depletions of Legend Lake with the changed historical consumptive use of the Velasquez and Chacon No. 2 water right claimed as either a stream credit or as stored in and subsequently released from Legend Lake. This amendment to the Original Application is for the inclusion of Applicant’s other fully consumable water rights as changed for all beneficial uses above the dam of Trinidad Lake in Case Nos. 83CW129, 83CW130, and 83CW131, to augment the out-of-priority diversions of Legend Lake. Applicant also seeks the right to claim the fully augmented water stored in Legend Lake for all subsequent beneficial uses when such stored water returns to the Purgatoire River. Applicant also seeks an exchange of its fully consumable water stored in Legend Lake to points upstream on the Middle Fork of the Purgatoire River and the South Fork of the Purgatoire River. This amendment is made for the sole purpose of adding Applicant’s other water rights to the pending Original Application and for the claims of exchange and all claims in the Original Application remain unchanged. **IV. Amendment to Augmentation Plan.** **A. Structure to be augmented.** Legend Lake as previously described in the Original Application. **B. Water Rights to be Used for Augmentation.** The water rights to be used for augmentation are as follows: **1. Velasquez & Chacon No. 2 Ditch.** The fully consumable historical use of the Velasquez & Chacon No. 2 Ditch as described and claimed in the Original Application. **2. Ramon Torres Ditch.** **a. Appropriation Date:** November 1, 1866. **b. Adjudication Date:** August 10, 1903. **c. Decreed Rates and Uses:** 7.0 c.f.s., for irrigation. **d. Priority No.:** 28. **e. Source:** South Fork of the Purgatoire River. **f. Decreed Point of Diversion:** Case No. 83CW129 indicates that

the decreed point of diversion for the Ramon Torres was on the southeast side of the South Fork of the Purgatoire River in Township 34 South, Range 69 West, and on lands claimed and occupied by G.V. Enriques and other persons named in the application filed in the original decree. The Ramon Torres diverted, however, from the north bank of the South Fork of the Purgatoire River in the SE 1/4 of the SE1/4 of Section 13, Township 34 South, Range 69 West, 6th P.M., Las Animas County, Colorado. **g. Remarks.** The Ramon Torres Ditch was changed in Case No. 83CW129 for all beneficial uses to extinction at or above Trinidad Reservoir Dam. Case No. 83CW129 determined the historical consumptive use under the Ramon Torres Ditch to be 350 annual acre feet of which 175 annual acre feet is fully consumable and allows for the year round diversion of 1 c.f.s. of the Ramon Torres for its changed uses. The Applicant's use of the Ramon Torres Ditch as an augmentation source in this Amended Application shall be in accordance with the terms and conditions decreed in Case No. 83CW129. **3. Leandro Duran & Martinez Ditch. a. Appropriation Date:** November 1, 1866. **b. Adjudication Date:** August 10, 1903. **c. Decreed Rates and Uses:** 6.6 c.f.s., for irrigation. **d. Priority No.:** 28. **e. Source:** South Fork of the Purgatoire River. **f. Decreed Point of Diversion:** Case No. 83CW130 indicates that the decreed point of diversion for the Leandro Duran & Martinez Ditch was at a point on the southwest side of the South Fork of the Purgatoire River in the NW1/4 of Section 24, Township 34 South, Range 69 West of the 6th P.M., Las Animas County, Colorado. The Leandro Duran & Martinez Ditch, however, diverted and is currently being diverted at the Consolidated Ditch, located on the north bank of the South Fork of the Purgatoire River in the NE 1/4 of Section 22, Township 34 South, Range 69 West, 6th P.M., Las Animas County, Colorado. **g. Remarks** 1.0 c.f.s. of the Leandro Duran & Martinez Ditch was changed in Case No. 83CW130 for all beneficial uses to extinction at or above Trinidad Reservoir Dam. Case No. 83CW129 determined the historical consumptive use under the Leandro Duran & Martinez Ditch to be 50 annual acre feet of which 25 annual acre feet is fully consumable and allows for the year round diversion of 1 c.f.s. of the Leandro Duran & Martinez Ditch for its changed uses. The Applicant's use of the Leandro Duran & Martinez Ditch as an augmentation water source in this Amended Application shall be in accordance with the terms and conditions decreed in Case No. 83CW130. **4. Valerio & Torres Ditch. a. Appropriation Date:** May 30, 1866. **b. Adjudication Date:** August 10, 1903. **c. Decreed Rates and Uses:** 5.0 c.f.s., for irrigation. **d. Priority No.:** 26. **e. Source:** South Fork of the Purgatoire River. **f. Original Decreed Point of Diversion:** Case No. 83CW131 indicates that the decreed point of diversion for the Valerio & Torres Ditch was at a point on the northeast side of the South Fork of the Purgatoire River on lands claimed by Sisto Trujillo near a large blazed pine tree southwest from the dam. The Valerio & Torres Ditch, however, was transferred to the Maxwell No. 20 (Consolidated Ditch), located on the north bank of the South Fork of the Purgatoire River in the NE 1/4 of Section 22, Township 34 South, Range 69 West, 6th P.M., Las Animas County, Colorado. **g. Remarks.** The Valerio & Torres Ditch was changed in Case No. 83CW131 for all beneficial uses to extinction at or above Trinidad Reservoir Dam. Case No. 83CW131 determined the historical consumptive use under the Valerio & Torres Ditch to be an average of 350 annual acre feet. Applicant only owns 1.6 c.f.s. or 32% of the Valerio & Torres Ditch changed under Case No. 83CW131 and the Applicant only claims the right to use its

proportionate amount to the changed Valerio & Torres Ditch, which amount is 112 annual acre feet. This Amended Application does not include the remaining portions of the Valerio & Torres Ditch not owned by the Applicant. The Applicant's use of the Valerio & Torres Ditch as an augmentation water source in this Application shall be in accordance with the terms and conditions decreed in Case No. 83CW131. **5. Maxwell No. 11.** **a. Appropriation Date:** July 1, 1867. **b. Adjudication Date:** August 10, 1903. **c. Decreed Rates and Uses:** 4.0 c.f.s., for irrigation. **d. Priority No.:** 36. **e. Source:** Middle Fork of the Purgatoire River. **f. Decreed Point of Diversion:** On the south bank of the Middle Fork of the Purgatoire River at a point about the center of NW1/4 of Section 29, Township 33 South, Range 68 West, of the 6th P.M., Las Animas County, Colorado. **g. Remarks.** The Maxwell No. 11 was changed in Case No. 83CW131 for all beneficial uses to extinction at or above Trinidad Reservoir Dam. Case No. 83CW131 determined the historical consumptive use under the Maxwell No. 11 to be an average of 130 annual acre feet. Applicant only owns 3.0 c.f.s. of the Maxwell No. 11 changed under Case No. 83CW131 and the Applicant only claims the right to use its proportionate amount to the changed Maxwell No. 11. This Amended Application does not include the remaining portions of the Maxwell No. 11 not owned by the Applicant. The Applicant's use of the Maxwell No. 11 as an augmentation water source in this Application shall be in accordance with the terms and conditions decreed in Case No. 83CW131. The decrees entered in Case Nos. 83CW129, 83CW130, and 83CW131 are binding as a matter of *res judicata*. *Williams v. Midway Ranches Property Owners Association, Inc.*, 938 P.2d 515 (Colo. 1997). Any final decree entered in this case will not have any effect on Applicant's ability to use the water rights for the decreed purpose in Case Nos. 83CW129, 83CW130, and 83CW131. **C. Statement of Plan for Augmentation.** In addition to their decreed uses, the historical consumptive use attributable to the above water rights will be used to replace the out of priority depletions associated with interception of ground water and diversions from the Purgatoire River to fill Legend Lake, as previously described in the Original Application. All water diverted and stored in Legend Lake under the augmentation plan will be fully consumable water. Accordingly, all water stored in Legend Lake under the augmentation plan can be subsequently used for all beneficial purposes above Trinidad Dam. As provided herein, the Division Engineer in approving Applicant's existing Substitute Water Supply Plan has determined that at times when the storage content of Legend Lake is less than a staff gauge measurement that corresponds to an elevation of 6,610.2 feet, the reservoir will be considered to be intercepting ground water at a rate of 6 g.p.m. Such ground water shall be released as directed by the Water Commissioner. To the extent Applicant is unable to release such water originating from such uncontrolled ground water inflow, Applicant will release water stored in Legend Lake to the extent necessary to prevent injury to other vested water rights or provide instream consumptive use credits from the augmentation water sources listed in this Amended Application to offset such out of priority depletions. **V. Appropriative Right of Exchange.** **A. Water to Be Exchanged.** Applicant seeks to exchange the following water rights: **1. Velasquez & Chacon No. 2 Ditch.** The fully consumable historical use of the Velasquez & Chacon No. 2 Ditch as described and claimed in the Original Application. **2. Fully Consumable Water Stored in Legend Lake.** As described in the augmentation plan in this Application, Applicant may fully augment the out of priority diversions of Legend

Lake. Such water, less any evaporative depletions, may be subsequently released for exchange purposes. **B. Exchange Right.** Applicant requests the following appropriate right of exchanges: **1. Hill Ranch Exchange No. 1.** For the exchange of Velasquez & Chacon No. 2 Ditch water from a waste gate on the Velasquez & Chacon No. 2 Ditch located in the Northwest 1/4 Section 4, Township 34 South, Range 66 West of the 6th P.M., to the confluence of the Purgatoire River and the Middle Fork and South Forks of the Purgatoire located in Section 36, Township 33 South, Range 67 West of the 6th P.M., near the town of Weston, Colorado, and up either the Middle Fork or the South Fork to: (i) The New Elk Mine (formerly known as Allen Mine) East Diversion Point on the Middle Fork of the Purgatoire River located in the SW 1/4 of the NE 1/4 of Section 23, Township 33 South, Range 68 West, 6th P.M., at a point approximately 2,200 feet west of the east section line and 2,000 feet south of the north section line of said Section 23; (ii) The New Elk Mine (formerly known as Allen Mine) West Diversion Point on the Middle Fork of the Purgatoire River located in the NE 1/4 of the SE 1/4 of Section 21, Township 33 South, Range 68 West, 6th P.M., at a point approximately 1,500 feet north of the south section line and 500 feet west of the east section line of said Section 21; (iii) The New Elk Mine Water Discharge on the Middle Fork of the Purgatoire River located in the SW 1/4 of the NE 1/4 of Section 23, Township 33 South, Range 68 West, 6th P.M., at a point approximately 1,700 feet west of the east section line and 1,900 feet south of the north section line of said Section 23, and other points in Sections 22 and 23, Township 33 South, Range 68 West where water flows from the New Elk Mine; (iv) The Consolidated Ditch, located on the north bank of the South Fork of the Purgatoire River in the NE1/4 of Section 22, Township 34 South, Range 69 West of the 6th P.M., Las Animas County, Colorado. **2. Hill Ranch Exchange No. 2.** For all water stored in Legend Lake from an outlet structure from Legend Lake directly to the Purgatoire River located either in the Southeast 1/4 of the Southeast 1/4 of Section 33 or the Southwest 1/4 of the Southwest 1/4 of Section 34, Township 33 South, Range 66 West of the 6th P.M., or from an outlet structure from Legend Lake to Lorencito Canyon Creek located in the Northwest 1/4 of Section 3 or the Northeast 1/4 of Section, Township 34 South, Range 66 West of the 6th P.M., down to the confluence of Lorencito Canyon Creek and Purgatoire River located in the Northwest 1/4 of Section 3 or the Northeast 1/4 of Section 4, Township 34 South, Range 66 West of the 6th P.M., to the confluence of the Purgatoire River and the Middle Fork and South Fork of the Purgatoire as described above, and up either the Middle Fork or the South Fork to: (i) The New Elk Mine East Diversion Point as described above; (ii) The New Elk Mine West Diversion Point as described above; (iii) The New Elk Mine Water Discharge as described above; (iv) The Consolidated Ditch as described above. **C. Uses.** All beneficial uses above Trinidad Dam including, without limitation, domestic, irrigation, fire protection, recreational purposes, fish and wildlife propagation, commercial and industrial, mining, fire suppression, and for augmentation, exchange and replacement purposes. Such uses may be for immediate application or placed into storage for subsequent beneficial use. These beneficial uses are to include use, reuse, and successive use to extinction. **D. Appropriation Date.** June 30, 2011. **E. Amount of Exchange.** Each exchange shall be a maximum exchange rate of 5.0 c.f.s., and shall not exceed the rate of flow released from Legend Lake or the waste gate on the Velasquez & Chacon No. 2. All of the exchange amount is to be a conditional water right. **F. Terms and Conditions.**

The operation of the exchange will be limited to the timing of the availability of the water rights to be exchanged within the exchange reaches. The exchanges may be operated only when there is a live stream maintained between the points of the initiation of the exchanges and the upstream terminus of the exchanges. The exchanges may only be operated to the extent that other vested water rights senior to this exchange within the exchange reaches are not deprived of water to which they would have been entitled in the absence of such exchanges. **V. Name and Address of Owners of Land on Which Structures are Located.** A. The Consolidated Ditch is on land owned by Stonewall Mountain Ranch, LLC, whose address is 8122 Datapoint Drive Ste-1000, San Antonio, TX 78229-0000 B. The New Elk Mine East Diversion Point, the New Elk Mine West Diversion Point, and the New Elk Mine Water Discharge are on lands owned by New Elk Coal Company, LLC, whose address is 136 W Main St., Trinidad, CO 81082.

CASE NO. 10CW20 - HAROLD REED AND BLSH, LLC, 2761 COUNTY ROAD LL, WILEY, CO 81092.

(Please address all correspondence to Counsel for Harold Reed and BLSH, LLC: Bennett W. Raley and Lisa M. Thompson Trout, Raley, Montañó, Witwer & Freeman, P.C., 1120 Lincoln Street, Suite 1600, Denver, Colorado 80203 (303) 861-1963; bwralley@mac.com and lthompson@troutlaw.com)

Amended Application for Change of Water Rights, Application for Underground Water Rights, and Application for Approval of Plan for Augmentation Including Exchange.

IN BENT AND PROWERS COUNTY

AMENDED APPLICATION FOR CHANGE OF WATER RIGHTS 2. Decreed water rights for which change is sought: A. Name of structures: Wiley Drainage Ditch water rights (a.k.a., Pleasant Valley Seepage rights) including the following:

Water Right	Pleasant Valley Priority	Appropriation Date	Total amount decreed to structure (cfs)
Pleasant Valley Ditch*	No. 1	April 1, 1895	3.6
Taylor Ditch No. 1 *	No. 2	January 15, 1896	0.63
McKibbon Shortline	No. 3	February 24, 1896	1.08
Parmenter Seepage Ditch *	No. 4	April 1, 1896	1.26
Koen Seepage Ditch	No. 5	May 1, 1896	10
Ecton Ditch	No. 6	April 1, 1898	1.08
Taylor Ditch No. 4	No. 9	April 1, 1901	1.17
Taylor Ditch No. 2	No. 11	March 15, 1904	0.18

* have decreed alternate points

B. Date of original and all relevant subsequent decrees: Bent County District Court, April 1, 1906; Case No. W-4496; Case No. W-4497. **C. Legal description of structures** (see Exhibit A attached to the Amended Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.): i) Pleasant Valley Ditch: NE ¼ SE ¼ of Section 25, Township 21S, Range 48W. ii) Taylor Ditch No. 1: SW ¼ SW ¼ of Section 30, Township 21S, Range 47W. iii) McKibbon Shortline: NW ¼ NW ¼ of Section 21, Township 22S, Range 47W. iv) Parmenter Seepage Ditch: Half section line between the north and south halves of Section 8, Township 22S, Range 47W. v) Koen Seepage Ditch: NE ¼ NE ¼ of Section 20, Township 22S, Range 47W. vi) Ecton Ditch: NW ¼ NW ¼ of Section 21, Township 22S, Range 47W. vii) Taylor Ditch No. 4: decreed location appears to include a clerical

error in the Range; the decreed location is SW ¼ of the SE ¼ of Section 25, Township 21S, Range 47 West; the correct location is SW ¼ of the SE ¼ of Section 25, Township 21S, Range 48 West. viii) Taylor Ditch No. 2: NE ¼ SE ¼ of Section 25, Township 21S, Range 48W. **D. Decreed source of water:** Wiley Drainage Ditch (a.k.a., Pleasant Valley Seepage). **E. Decreed use or uses:** domestic and irrigation. **F. Amount of water that Applicants intends to change:** i) The points of diversion for the following water rights (and associated amounts) were previously changed in Case Nos. W-4496 and 4497 to the Upper Diversion point (as described below in paragraph 3.A). a) Case No. W-4496: (1) 0.28 c.f.s. of the Pleasant Valley Priority No. 1 (Pleasant Valley Ditch); (2) 0.63 c.f.s. of the Pleasant Valley Priority No. 2 (Taylor Ditch No. 1); (3) 0.90 c.f.s. of the Pleasant Valley Priority No. 4 (Parmenter Seepage Ditch). b) Case No. W-4497: (1) 2.24 c.f.s. of the Pleasant Valley Priority No. 1 and (2) 0.36 c.f.s. of the Pleasant Valley Priority No. 4. Applicants herein seek confirmation of these previous changes in points of diversion. In the alternative, Applicants seek to change the Case Nos. W-4496 and W-4497 water rights to the Upper and Lower Diversion points. ii) Applicants further seek to change the remaining portions of the water rights listed above in 2.C. to the Upper and Lower Diversion points. iii) The following is a summary of the water rights and amounts for diversion at either the Upper or Lower Diversion point:

Water Right	Pleasant Valley Priority	Amount (cfs)
Pleasant Valley Ditch	No. 1	3.60
Taylor Ditch No. 1	No. 2	0.63
McKibbon Shortline	No. 3	1.08
Parmenter Seepage Ditch	No. 4	1.26
Koen Seepage Ditch	No. 5	10
Ecton Ditch	No. 6	1.08
Taylor Ditch No. 4	No. 9	1.17
Taylor Ditch No. 2	No. 11	0.18

3. Detailed description of proposed change: **A.** Change in point of diversion/new location of structures (see Exhibit A to the Amended Application): i) Upper Diversion: Located in the NE ¼ of Section 6, Township 22 South, Range 47 West, 6th P.M., at a point approximately 2,420 feet south of the north section line and 95 feet west of the east section line. ii) Lower Diversion: Located in the NE ¼ of Section 17, Township 22 South, Range 47 West, 6th P.M., at a point approximately 1,560 feet south of the north section line and 1,745 feet west of the east section line. **B.** The proposed irrigated acreage includes all of the Applicants' irrigated lands shown on Exhibit B to the Amended Application, which includes lands in Section 8, 16, 17, 20, 21, 22, 27 and 28, all in Township 22S, Range 47W. **4. Name(s) and address(es) of owner(s) or reputed owners of the land where diversion structures are located:** Upper Diversion Point, Curtis R. Lubbers, 36487 County Rd. 6, Lamar, Colo. 81052. Lower Diversion Point, Applicants. **APPLICATION FOR UNDERGROUND WATER RIGHTS** **5. Name of wells, permit numbers if applicable, and legal descriptions:** All well locations shown on Exhibit B to the Amended Application.

Reed Well No.	SEO ID No.	Permit No.		Previous Case No.	Legal Description	Depth of Well	Amount
1	6705217	23950	F	W-4496, 82CW115	SW ¼ of the NE ¼ of S 8, T 22S, R 47W, 2530 feet from North Section line and 2425 from East Section Line	50 ft	450 gpm
2	6705187	23852	F	W-4497, 82CW125	NW ¼ of the SE ¼ of S 17, T 22S, R 47W, 2613 feet from South Section line and 2600 from East Section Line	36 ft	450 gpm
3	6705185	23853	F	W-4497, 82CW125	NW ¼ of the SE ¼ of S 17, T 22S, R 47W, 2192 feet from South Section line and 1976 from East Section Line	36 ft	450 gpm
4	6705186	23854	F	W-4497, 82CW125	NW ¼ of the SE ¼ of S 17, T 22S, R 47W, 1949 feet from South Section line and 2153 from East Section Line	36 ft	450 gpm
5	6705208	5989	F	W-1127, 81CW96, 85CW94	SE ¼ of the SE ¼ of S 8, T 22S, R 47W, 52 feet from South Section line and 1174 from East Section Line	29 ft	500 gpm
6	6705197	24057	F	W-1127, 81CW96, 85CW94	NW ¼ of the NE ¼ of S 17, T 22S, R 47W, 158 feet from North Section line and 1656 from East Section Line	32 ft	400 gpm
7	6705210	24058	F	W-1127, 81CW96, 85CW94	NW ¼ of the NE ¼ of S 17, T 22S, R 47W, 60 feet from North Section line and 2628 from East Section Line	32 ft	400 gpm
8	6705211	24060	F	W-1127, 81CW96, 85CW94	SW ¼ of the SE ¼ of S 8, T 22S, R 47W, 559 feet from South Section line and 2637 from East Section Line	32 ft	400 gpm

6. Source of Water: groundwater tributary to the Arkansas River **A. Date of appropriation:** June 13, 2011 **B. How appropriation was initiated:** by the formulation of the intent to appropriate water and the performance of overt acts sufficient to manifest the requisite intent as of the appropriation date, as evidenced by the filing of this application. **C. Date water applied to beneficial use:** n/a **7. If well operates pursuant to a decreed plan for augmentation:** **A.** Case Number of plan for augmentation: plan for augmentation proposed herein, Case No. 10CW20 **B.** Is augmentation plan operational? Plan for augmentation proposed herein. **8. Proposed use:** Irrigation, augmentation and exchange. **A. If irrigation, complete the following:** (i) Number of acres historically irrigated: not applicable for new underground water rights. (ii) Total number of acres proposed to be irrigated and the legal description of the land irrigated:

Reed Well No.	SEO ID No.	Legal Location of Irrigated Lands
1	6705217	148 Acres in the SE ¼ of Section 8 and NE ¼ of Section 17, Township 22S, Range 47W
2	6705187	335 Acres in the SE ¼ of Section 17, the NE ¼ of Section 20, the SW ¼ of Section 16, and the W ½ of Section 21 all in Township 22S, Range 47W
3	6705185	335 Acres in the SE ¼ of Section 17, the NE ¼ of Section 20, the SW ¼ of Section 16, and the W ½ of Section 21 all in Township 22S, Range 47W
4	6705186	335 Acres in the SE ¼ of Section 17, the NE ¼ of Section 20, the SW ¼ of Section 16, and the W ½ of Section 21 all in Township 22S, Range 47W
5	6705208	91 Acres in the E ½ of Section 17, Township 22S, Range 47W
6	6705197	91 Acres in the E ½ of Section 17, Township 22S, Range 47W
7	6705210	72 Acres in the SE ¼ of Section 8 and the NE ¼ of Section 17, Township 22S, Range 47W
8	6705211	72 Acres in the SE ¼ of Section 8 and the NE ¼ of Section 17, Township 22S, Range 47W

B. If non-irrigation, describe fully. For excess diversions occurring in priority, the water may be used for augmentation and exchange. **9. Name(s) and address(es) of owner(s):** Applicants. **APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION INCLUDING EXCHANGE** **11. Name(s) of structure(s) to be augmented:** **A. Upper Diversion:** Legal description provided above in paragraph 3. Decreed in Case No. W-4496 and W-4497. Applicants herein seek confirmation of these previous changes in points of diversion. In the alternative, Applicants seek to change the Case Nos. W-4496 and W-4497 water rights to the Upper Diversion point, as described above. **B. Lower Diversion:** Legal description provided above in paragraph 3. Applicants seek to change the Wiley Drainage ditch water rights described above to this Lower Diversion. **C. Reed Well Nos. 1 through 8 and Snider Well Nos. 1 and 2.**

Reed Well No.	SEO ID No.	Permit No.	Previous Case No.	Legal Description	Amount
1	6705217	23950	F W-4496, 82CW115	SW ¼ of the NE ¼ of S 8, T 22S, R 47W, 2530 feet from North Section line and 2425 from East Section Line	450 gpm
2	6705187	23852	F W-4497, 82CW125	NW ¼ of the SE ¼ of S 17, T 22S, R 47W, 2613 feet from South Section line and 2600 from East Section Line	450 gpm
3	6705185	23853	F W-4497, 82CW125	NW ¼ of the SE ¼ of S 17, T 22S, R 47W, 2192 feet from South Section line and 1976 from East Section Line	450 gpm

4	6705186	23854	F	W-4497, 82CW125	NW ¼ of the SE ¼ of S 17, T 22S, R 47W, 1949 feet from South Section line and 2153 from East Section Line	450 gpm
5	6705208	5989	F	W-1127, 81CW96, 85CW94	SE ¼ of the SE ¼ of S 8, T 22S, R 47W, 52 feet from South Section line and 1174 from East Section Line	400 gpm
6	6705197	24057	F	W-1127, 81CW96, 85CW94	NW ¼ of the NE ¼ of S 17, T 22S, R 47W, 158 feet from North Section line and 1656 from East Section Line	400 gpm
7	6705210	24058	F	W-1127, 81CW96, 85CW94	NW ¼ of the NE ¼ of S 17, T 22S, R 47W, 60 feet from North Section line and 2628 from East Section Line	400 gpm
8	6705211	24060	F	W-1127, 81CW96, 85CW94	SW ¼ of the SE ¼ of S 8, T 22S, R 47W, 559 feet from South Section line and 2637 from East Section Line	450 gpm
Snider Well No. 1	6705181	Not Permitted		W-2874	SE ¼ of the NW ¼ of Section 21, Township 22S, Range 47W, 2056 feet from North Section line and 1629 from West Section Line	200 gpm
Snider Well No. 2	6705182	Not Permitted		W-2874	NE ¼ of the NW ¼ of Section 21, Township 22S, Range 47W, 2377 feet from North Section line and 1616 from West Section Line	250 gpm

12. Water right(s) to be used for augmentation: A. Fryingpan-Arkansas Project water, including return flows, annually purchased by Applicants from Southeastern Colorado Water Conservancy District (SECWCD). It is anticipated that Applicants will receive a Project Water allocation of approximately 281 acre-feet and a Return Flow allocation of approximately 281 acre-feet in 2011. Fryingpan-Arkansas Project is operated pursuant to lawful rules, regulations and policies of the SECWCD. B. Additional decreed fully consumptive water available to the river above the location of depletion with permission of the Division Engineer and Water Commissioner. **13. Complete statement of plan for augmentation.** A. When depletions attributable to the diversion or pumping of the augmented water rights (listed above) are out of priority, the depletions will be replaced pursuant to this plan for augmentation with the water rights to be used for augmentation. **14. Name(s) and address(es) of owner(s):** Applicants. **15. EXCHANGE:** When the point of replacement is below the point of depletion, or when excess credits need to be exchanged upstream for retiming, the plan for augmentation will include an exchange, which Applicants claim in the amounts and for the uses of the augmented water rights listed above. Applicants therefore seeks an appropriative right of exchange to allow diversion by exchange of Applicants' allocation of Fryingpan-Arkansas project water and return flow allocation, and any other augmentation source approved by the Division Engineer, as described above. **A. Appropriation date:** June 13, 2011. **B. Amount:** 10 c.f.s. **C. Exchange Reach:** The

upper terminus of the exchange is the Upper Diversion Location, as described above. The downstream terminus of the exchange is the confluence of the Arkansas River with the Wiley Drainage located in the SE ¼ of the SW ¼ of Section 28, Township 22 South, Range 47 West, of the 6th Principal Meridian. The exchange reach is shown in Exhibit C to the Amended Application. **D. Source of water:** The source of exchange water is from the Fryingpan-Arkansas Project, pursuant to lawful rules, regulations and policies of the SECWCD and any other augmentation source approved by the Division Engineer as described above.

CASE NO. 11CW19 – KEVIN JAMES RIVARD and ROBIN SUE RIVARD, P. O. Box 238, Rockvale, CO 81244; (719) 784-4103

Amended Application for Underground Water Right

FREMONT COUNTY

Structure: Rivard Well; Permit 248450. The Applicants amend their application at Paragraph 3 to read: **Legal description of well:** NW ¼ of the NW ¼ Section 25, Township 19 South, Range 70 West, 187 feet from the north line and 482 feet from the west line of Section 25. In all other respects, the Application filed March 10, 2011, remains unchanged.

CASE NO. 11CW40; Previous Case No. 99CW170(A) – THE CITY OF AURORA, COLORADO, A municipal corporation of the Counties of Adams, Arapahoe and Douglas, acting by and through its UTILITIES ENTERPRISE (“Aurora”), 15151 East Alameda Street, Suite 3600, Aurora, CO 80012-1555

(John M. Dingess and Stephanie J. Neitzel, Duncan, Ostrander & Dingess, P.C., 3600 S. Yosemite Street, Suite 500, Denver, CO 80237-1829; (303) 779-0200)

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

LAKE, CHAFFEE, FREMONT, PUEBLO, CROWLEY AND OTERO COUNTIES.

1. INTRODUCTION: This Application seeks a finding of reasonable diligence and to make absolute portions of rights of exchange originally decreed in Case No. 99CW170(A) (hereinafter referred to as the “Original Decree”). The exchanges are on the Arkansas River, extending from the Lake Henry/Lake Meredith Outlet Canal, the Arkansas Gravel Pit Reservoir Outlet and Pueblo Reservoir to Twin Lakes, Turquoise, Clear Creek and Pueblo Reservoirs, and the Otero Pump Station Arkansas River Intake. The water used as a replacement source is the historic consumptive use water under 288.274 shares of stock in the Rocky Ford Ditch Company that is the subject to the change case decree entered in Case No. 99CW169(A), Water Division 2. **2. NAME OF STRUCTURES:** (These structures are shown on Exhibit A map to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **2.1. Pueblo Reservoir.** The Pueblo Reservoir is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 in Township 20 South, Range 66 West, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, in Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23 and 25, in Township 20 South, Range 67 West, all in the 6th Principal Meridian in Pueblo County, Colorado. 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 Principal Meridian, from which the Northeast corner of said Section bears North 61° 21' 20" East, a distance of 2,511.05', all more particularly described in the decree in Case No. B-42135, District Court, Pueblo County, Colorado. **2.2. Lake Henry / Lake Meredith Outlet Canal ("Outlet Canal").** Waters released from Lake Henry or Lake Meredith reservoirs are carried through the Lake Meredith Reservoir Outlet Canal to a point in the South Half of Section 21, Township 22 South, Range 57 West of the 6th P.M., where they can be released to the Holbrook Canal and/or discharged into the Fort Lyon Storage Canal whence they are carried southeasterly approximately one-half mile in the Fort Lyon Storage Canal to a point at which they either continue in said Fort Lyon Storage Canal or are discharged through a headgate on its Southerly bank in the SW¹/₄ of Section 22, Township 22 South, Range 57 West of the 6th P.M., in Crowley County, Colorado whence they travel South-Southeast approximately one mile to discharge into the Arkansas River in the NW¹/₄ of the SE¹/₄ of Section 27, Township 22 South, Range 57 West of the 6th P.M., in Otero County, Colorado. **2.3. Arkansas Gravel Pit Reservoir ("AGPR").** To be located in of the S¹/₂ of Section 34; and a portion of the SW¹/₄ SW¹/₄ of Section 35, Township 20 South, Range 63 West; and a portion of the N¹/₂ of Section 3, Township 21 South, Range 63 West of the 6th P.M., all in Pueblo County, Colorado. The AGPR will receive water from the mainstem of the Arkansas River via the Excelsior Ditch, the headgate of which is located in the SE ¹/₄ SE ¹/₄ of Section 36, Township 20 South, Range 64 West of the 6th P.M. in Pueblo County, Colorado. The AGPR will return water to the mainstem of the Arkansas River via a return outlet to be located in the SE ¹/₄ SE ¹/₄ of Section 34, Township 20 South, Range 63 West of the 6th P.M. in Pueblo County, Colorado. **2.4. Twin Lakes Reservoir.** The Reservoir is located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in Township 11 South, Range 80 West of the 6th Principal Meridian, in Lake County, Colorado. Twin Lakes Dam axis and center line of Lake Creek intersect at a point whence the SE corner of Section 23, Township 11 South, Range 80 West of the 6th Principal Meridian bears South 54° 13' 8" East, a direction of 3,803.10' or more particularly described in the decree in Civil Action No. 5141 (District Court, Chaffee County, Colorado). **2.5. Turquoise Reservoir.** Turquoise Reservoir is located in all or portions of Sections 7, 8, 17, 18, 19 and 20, Township 9 South, Range 80 West, and Sections 10, 11, 12, 13, 14 and 15, Township 9 South, Range 81 West, all from the 6th P.M., in Lake County, Colorado. The Turquoise Reservoir Dam axis and the centerline of Lake Fork Creek intersect at a point whence the Northwest corner of Section 16, Township 9 South, Range 80 West of the 6th P.M., bears North 44° 46' 18" East of a distance of 10,344.35 feet, all as more particularly described in the decree in Civil Action No. 5141 (District Court, Chaffee County). **2.6. Clear Creek Reservoir.** Clear Creek Reservoir is located in all or part of Sections 7 and 8, Township 12 South, Range 79 West, and Section 12, Township 12 South, Range 80 West, all of the 6th Principal Meridian in Chaffee County, Colorado. The Clear Creek Reservoir Dam axis and the centerline of Clear Creek intersect at a point whence the South corner of Section 8, Township 12 South, Range 79 West, 6th Principal Meridian bears South 27° West a distance of 2,255 feet. **2.7. Otero Pump Station Arkansas River Intake.** The Otero Pump Station diverts water from the Arkansas River in Chaffee County, Colorado approximately at a point that bears North 30° West a distance of 6,180 feet to the Northeast corner of Section 6, Township 12 South, Range 79 West of the 6th Principal

Meridian. **2.8. Lake Meredith Reservoir:** Lake Meredith Reservoir is located in all or portions of Sections 15, 16, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32 and 33 in Township 21 South, Range 56 West, Sections 1, 6 and 12 in Township 22 South, Range 57 West, and in Sections 24, 25 and 36 in Township 21 South, Range 57 West, all from the 6th P.M., in Crowley County, Colorado. Lake Meredith Reservoir dam axis and the centerline of the outlet canal intersect at a point located in the NW1/4 of the SW1/4 of Section 12, Township 22 South, Range 57 West of the 6th P.M., at a point from which the West Quarter Corner of said Section 12 bears North 27° 14' West a distance of 564.30 feet. **2.9. Lake Henry Reservoir:** Lake Henry Reservoir is located in all or portions of Sections 31 and 32, Township 20 South, Range 56 West, and Sections 5 and 6, Township 21 South, Range 56 West, all from the 6th P.M., in Crowley County, Colorado; the primary outlet works for Lake Henry Reservoir are located in the South Half of said Section 6 and the Lake Henry Reservoir dam axis and the centerline of the outlet canal intersect at a point on the West line of the Southeast Quarter of said Section 6 a distance of 512 feet South of the center of Section 6, Township 21 South, Range 56 West of the 6th P.M., in Crowley County, Colorado. **3. DESCRIPTION OF CONDITIONAL WATER RIGHTS:** **3.1. Date of Original Decree:** June 27, 2005, Case No. 99CW170(A), District Court Water Division 2, Colorado (“Original Decree”). **3.2. Legal Descriptions:** See Paragraph 2, above. **3.3. Sources of Exchange Water:** 3.3.1. The water to be exchanged pursuant to the rights that are the subject of this Application is the historic consumptive use water diverted and stored in Pueblo Reservoir, diverted at the Excelsior Ditch and stored in the AGPR, and diverted at the Colorado Canal Headgate and stored in Lake Henry Reservoir or Lake Meredith Reservoir under 288.274 shares of the total 800 outstanding shares of capital stock of the Rocky Ford Ditch Company. The water right represented by the 288.274 shares that are the subject of this Application (hereinafter, the “Subject Rocky Ford Ditch Water Right”), is a portion of Priority No. 1, decreed in the original adjudication for former Water District 17, on April 8, 1905, for 111.76 cfs with an appropriation date of May 15, 1874. Pursuant to a previous purchase, Aurora owns 466.48 shares of the Rocky Ford Ditch Company. A change of those shares was decreed in Water Division 2, Case No. 83CW18. A subsequent decree for exchange was issued in Water Division 2, Case No. 87CW63, and those 466.48 shares are not involved in the exchanges that are the subject of the Original Decree or this Application. 3.3.2. The Subject Rocky Ford Ditch Water Right is also the subject of the Decree in Water Division 2, Case No. 99CW169(A) which case changed, *inter alia*, uses and points of diversion for Applicant’s share of the Subject Rocky Ford Ditch Company water. The initial diversion and storage of Applicant’s share of the subject Rocky Ford Ditch Company water is controlled by the terms and conditions of the Decree in Case No. 99CW169(A), which terms and conditions include but are not limited to limitations upon the amount of water transferred based upon revegetation and dry-up status. The terms and conditions of the decree in Case No. 99CW169(A) pertaining to revegetation and dry-up are relevant to this proceeding in that such terms and conditions temporarily limit the volume of water Aurora may divert and store in Pueblo Reservoir, AGPR, Lake Henry or Lake Meredith. Aurora’s right to operate the exchange decreed under the Original Decree is conditioned upon full compliance with the terms and conditions of the decree in Case No. 99CW169(A). **3.4. Exchange Reaches and Amounts:** 3.4.1. From the Lake

Henry/Lake Meredith Outlet Canal (“Outlet Canal”) to the following points: 3.4.1.1. Twin Lakes Reservoir 500 cfs. 3.4.1.2. Turquoise Reservoir 350 cfs. 3.4.1.3. Clear Creek Reservoir 250 cfs. 3.4.1.4. Otero Pump Station Arkansas River Intake 165 cfs. 3.4.2. From the Arkansas Gravel Pit Reservoir (“AGPR”) Outlet to Arkansas River to the following points: 3.4.2.1. Pueblo Reservoir 500 cfs 3.4.2.2. Twin Lakes Reservoir 500 cfs. 3.4.2.3. Clear Creek Reservoir 250 cfs. 3.4.2.4. Otero Pump Station Arkansas River Intake 165 cfs. 3.4.3. From Pueblo Reservoir to the following points: 3.4.3.1. Twin Lakes Reservoir 500 cfs. 3.4.3.2. Turquoise Reservoir 350 cfs. 3.4.3.3. Clear Creek Reservoir 250 cfs. 3.4.3.4. Otero Pump Station Arkansas River Intake 165 cfs. 3.4.4. The maximum rates of exchange into each of the specific receiving reservoir or facility shall be limited to the following:

	<u>Maximum Rate in c.f.s.</u>
Turquoise Reservoir	350
Twin Lakes Reservoir	500
Clear Creek Reservoir	250
Otero Pump Station	165
Pueblo Reservoir	500

The above stated maximum exchange rates shall apply to the sum of any exchanges made pursuant to the exchange rights granted herein and the exchange rights decreed or that may hereafter be decreed in Water Division 2, Case Nos. 87CW63, 99CW170(B), 01CW145 and diversions, if any at alternate points of diversion upstream of Pueblo Reservoir under any decree entered in Case No. 99CW169(B)[Upon the occurrence of certain conditions stated in that Intergovernmental Agreement dated October 3, 2002 between Aurora and Southeastern Colorado Water Conservancy District, Part B of Case No. 99CW169 will be dismissed. In that event, there will be diversions pursuant to 99CW169(B)]. Amounts exchanged or diverted upstream of Pueblo Reservoir pursuant to Case Nos. 87CW63, 99CW169(B) and 01CW145 will be subtracted from the above stated maximum exchange rates to determine the remaining amount of exchange rate available for the operation of the rights herein decreed. **3.5. Appropriation Date:** December 28, 1999. **3.6. Uses:** The water exchanges pursuant to this decree may be used for the purposes authorized under the decree in Case No. 99CW169(A) and may be totally consumptively used, successively used, reused and captured for later use. **4. DETAILED OUTLINE OF WHAT HAS BEEN DONE TOWARD COMPLETION OR FOR COMPLETION OF THE APPROPRIATIONS AND APPLICATION OF WATER TO A BENEFICIAL USE AS CONDITIONALLY DECREED.** During the diligence period of July 2005 through June 2011, Aurora performed the following work and made the following expenditures toward completion of the appropriations and application of the water rights decreed in the Original Decree to beneficial use (Expenditure numbers are rounded to the nearest \$1000): **4.1. Project Specific Efforts:** Aurora has done at least the following project-specific work toward completion of the appropriations and application of the conditional water rights decreed in Case No. 99CW170(A) to beneficial use: 4.1.1. Revegetation: During this diligence period, 99.7% as the percentage of completion for revegetation of formerly irrigated lands required under the decree in Case No. 99CW169(A) was achieved, to allow for operation of the exchanges that are the subject of this Application and use of the exchanged water by Aurora. Aurora expended over \$1,472,000 during this diligence

period for revegetation, including expenditures for expert revegetation classifications and reports, and actual revegetation and weed control costs. 4.1.2. Payment for Rocky Ford Ditch shares: Aurora spent more than \$6,179,000 during this diligence period for repayment of bonds and payments to Note Sellers, including principal and interest, that were issued or refunded for purchase of Applicant's share of the Subject Rocky Ford Ditch Company shares that are the source of the water for the exchanges herein. 4.1.3. Arkansas Gravel Pit Reservoir ("AGPR"). Aurora made significant efforts to secure the AGPR that is a necessary facility for some of the exchanges that are the subject of this Application. Aurora entered into a purchase Option Agreement with LaFarge West, Inc. in 2003 for development of the LaFarge Rich Pit for use by Aurora as the AGPR storage facility upon completion of gravel mining/ mineral extraction by LaFarge. This Agreement was extended several times, including the Fourth, Fifth and Sixth Option Extension Agreements executed during this diligence period, on September 19, 2005, March 10, 2006 and September 8, 2006, respectively. During this diligence period, Aurora paid \$30,100 as consideration for these extensions to be applied as earnest money for the purchase price of the completed storage facility. In March 2006, Deere and Ault also performed a Reservoir Feasibility Study of the Rich Pit for Aurora, at a cost of \$26,000. Aurora also made efforts to investigate and negotiate alternative storage facility sites for the AGPR. Recent negotiations include with Stonewall Springs Ranch and Southwest Sod Farms. Aurora has expended more than \$12,000 in legal fees with regard to these option agreement and negotiation efforts. 4.1.4. Payments to Rocky Ford School District R-2: The payments that Aurora agreed to make under an Intergovernmental Agreement with Otero County to compensate for the County's loss of property taxes and assessments, include taxes Otero County collects on behalf of the Rocky Ford School District R-2. Aurora and the School District entered into a separate Intergovernmental Agreement on February 7, 2005 under which Aurora agreed to make accelerated payments to the School District for that portion of the money due to the School District by Aurora. Aurora and Otero County amended their Intergovernmental Agreement to allow that portion of the assessments due to the School District to be paid directly by Aurora to the Foundation for Rocky Ford Schools. During this diligence period, Aurora made payments totaling \$1,200,000 to this Foundation under this agreement. 4.1.5. Pueblo Reservoir Storage: During this diligence period, Aurora paid the Bureau of Reclamation more than \$3,197,000 for storage use of Pueblo Reservoir necessary to operate these exchanges. Aurora also paid the Bureau of Reclamation \$225,000 for long-term storage as well as an additional \$943,000 for consultants and legal fees for the long-term storage contract. 4.1.6. Assessments Paid for Use of Twin Lakes, Lake Henry/Lake Meredith, Rocky Ford Ditch: During this diligence period, Aurora paid at least the following in annual assessments: \$277,000 for Twin Lakes Company; \$1,117,000 for the Colorado Canal/Lake Henry/Lake Meredith; \$232,000 for the Rocky Ford Ditch for the shares attributable to the Subject Rocky Ford Ditch Water Right. 4.1.7. Purchase of Additional Twin Lakes Shares: In 2006, Aurora purchased additional shares in the Twin Lakes Reservoir and Canal Company. Aurora's expenditures in this transaction totaled \$52,000.00. Twin Lakes Reservoir is an exchange-to facility for the exchanges herein. 4.1.8. Rocky Ford Ditch check structures: In 2010, check structures were constructed on the Rocky Ford Ditch to ensure that the minority shareholders get their water. This was necessary for the change of use of the

Subject Rocky Ford Ditch shares under Case No. 99CW169(A), said shares being the source of the exchange water herein. 4.1.9. Intergovernmental Agreement with SECWCD. On October 3, 2003, Aurora entered into an Intergovernmental Agreement with the Southeastern Colorado Water Conservancy District (“SECWCD”), replacing an agreement between the parties dated December 7, 2001. Under this new IGA, Aurora and SECWCD agree to support proposed federal legislation relating to the Fryingpan-Arkansas Project to include, among other things, re-operations of the existing water storage facilities, studies for enlargements to Pueblo and Turquoise Reservoirs, and confirming the authority of the Bureau of Reclamation to enter into contracts with Aurora for use of the facilities, including long-term contracts. Aurora’s ability to use Fryingpan-Arkansas facilities is expanded under this IGA and Aurora is obligated to make certain payments to SECWCD in consideration for the expanded use. Under this IGA, SECWCD also agrees not to oppose Aurora’s attempts to contract with the Bureau of Reclamation for use of the Fryingpan-Arkansas Project facilities, to facilitate delivery of Aurora’s water, and to settle opposition to each other’s water court applications, including this case. During this diligence period, Aurora made payments of more than \$5,080,000 to SECWCD under this IGA. 4.1.10. Agreements for Use of the Holbrook System Facilities. On March 1, 2005, Aurora entered into two agreements pertaining to use of unused diversion, conveyance and storage facilities of the Holbrook Mutual Irrigating Company (“Holbrook”). The purpose of these agreements is to implement a program to recapture and store yield from foregone diversions of senior water rights envisioned under an Arkansas River Flow Management Agreement. This program is called Restoration of Yield (“ROY”). The first agreement is only between Holbrook and Aurora and provides for Aurora’s use of unused capacity in the Holbrook system. In a subsequent agreement, Aurora assigns some of its rights and obligations under the first agreement to other parties to allow their participation in the ROY program. Aurora has completed structural modifications to the Holbrook system facilities and has filed a Substitute Water Supply Plan necessary to operate the ROY. Further, Aurora has initiated a study to look at enlargement of the Holbrook Reservoir to further facilitate operation of the ROY. During this diligence period, Aurora made payments of more than \$165,000 to Holbrook under this agreement. 4.1.11. Legal Activities: During the subject diligence period, Aurora spent \$296,000 on legal activities connected to storage of water in Pueblo Reservoir, \$296,000 on legal activities connected to land use and revegetation concerning the rights transferred in Case No. 99CW169(A), \$18,000 on activities connected to follow-up issues in Case No. 99CW169(A) and 99CW170(A).

4.2. System-wide Efforts. Pursuant to the Original Decree, these exchanges are part of a unified extensive system for the collection, treatment and distribution of water operated by Aurora. For the purposes of showing diligence as to completion of the appropriative right of exchanges originally decreed in Case No. 99CW170(A), diligence as to any part of the Aurora water rights system used to operate or benefiting from these exchanges shall be diligence as to the completion of the exchanges. During this diligence period, Aurora has done at least the following systemwide work that will be used to operate or benefit the remaining conditional exchanges: 4.2.1. Metro Wastewater Reclamation District Charges: Aurora expended over \$89,847,000 during this diligence period for charges for wastewater treatment of its water. Such treatment is necessary for the reuse within the South Platte River Basin of the water that is the

subject of the exchanges herein. 4.2.2. Sand Creek Water Reuse Plant Expansion: More than \$479,000 was spent for expansion of the existing Sand Creek Wastewater Treatment Plant. This work is necessary for reuse within the South Platte River Basin of the water that is the subject of the exchanges herein and also to comply with water reuse requirements. 4.2.3. Griswold Water Treatment Plant Renovations. This facility treats a portion of the raw water exchanged under the Original Decree and then transported to the South Platte Basin and to Aurora, before it is delivered to Aurora's customers. More than \$8,377,000 was spent by Aurora during this diligence period for improvements to this facility necessary to accommodate the water that is the subject of the exchanges herein. This includes expenditures directly by Aurora for renovation of the facility and for renovation loan payments. 4.2.4. Wemlinger Water Treatment Plant Expansion. During this diligence period, Aurora spent more than \$10,113,000 for expansion of the Wemlinger Water Treatment Plant. This facility treats a portion of the raw water exchanged under the Original Decree and then transported to the South Platte Basin and to Aurora, before it is delivered to Aurora's customers. 4.2.5. Prairie Waters Project. The Prairie Waters Project is a large comprehensive water supply, storage and treatment project in which return flows to the South Platte River from Aurora's water sources, including the water that is the subject of the exchanges herein, may be rediverted for subsequent reuse. During this diligence period, Aurora filed and prosecuted applications in Case Nos. 06CW104, 03CW414 and 03CW415, Water Division 1, to facilitate this project, obtained permits, and acquisition and right-of-way, and constructed the project. Construction of the initial phase of the project was sufficiently complete to allow its operation beginning at the end of 2010. Approximately \$600 million has been spent toward implementation of this project during this diligence period. 4.2.6. Lawn Irrigation Return Flows (LIRFs) Credits: During this diligence period, Aurora prosecuted and obtained a decree in Case No. 02CW341, WD-1, under which LIRFs from Aurora's reusable water are quantified to facilitate future reuse. Water that is transported under the exchanges herein and used in Aurora's service area can be reused under the decree in Case No. 02CW341. 4.2.7. Rampart Reservoir and Delivery System: More than \$8,473,000 was spent by Aurora during this diligence period for improvements to expand the capacity of the Rampart Reservoir delivery system. This reservoir is used to store the water that has been exchanged from the Arkansas Basin and transported to the South Platte River before it is transported through the parallel 54" and 40" pipelines to Aurora. Rampart Reservoir is important for regulation of the flow through these parallel pipelines. 4.2.8. Improvements to Extend and Improve Water Service in and to Aurora: More than \$13,729,000 was spent by Aurora during this diligence period for extension and upgrade of its water transmission system necessary to deliver the water that is the subject of the exchanges herein to Aurora's customers. This includes improvements to the 54" raw water transmission pipeline between Rampart Reservoir and storage and water treatment facilities within the City. 4.2.8. Improvements to Sanitary Sewer System: More than \$29,946,000 was spent by Aurora during this diligence period for extension and upgrade of its sanitary sewer system necessary for wastewater treatment and reuse within the South Platte River Basin of the water that is the subject of the exchanges herein. 4.2.9. Automated Meter Reading System: Aurora spent more than \$6,574,000 during this diligence period for conversion of its manual utility reading system to a fully automated system. This is

needed for efficient operation of Aurora’s water supply and delivery system, including use of the water that is the subject of the exchanges herein. 4.2.11. Study of Aurora’s Water Needs. During this diligence period, Aurora spent more than \$76,000 toward engineering and planning studies to assist in determining the City’s future water needs and a plan to meet those needs. 4.2.12. Protection Efforts: During this diligence period, Aurora participated in Divisions 1 and 2 cases to protect the rights and interests of Aurora with regard to its water supply system, including the subject exchanges. **5. CLAIMS TO MAKE ABSOLUTE**: During this diligence period, Applicant made absolute appropriative rights of exchange from Pueblo Reservoir upstream on the Arkansas River to the following points: **5.1. To Twin Lakes Reservoir**, as described in paragraph 3.4.3.1., above: 5.1.1. Date: June 6-14, 2005. 5.1.2. Amount: 75 c.f.s. 5.1.3. Uses: See paragraph 3.6., above. **5.2. To Turquoise Reservoir**, as described in paragraph 3.4.3.2., above: 5.2.1. Date: May 23-25, 2009. 5.2.2. Amount: 350 c.f.s. 5.2.3. Uses: See paragraph 3.6., above. **6. DESCRIPTION OF CONDITIONAL APPROPRIATIVE RIGHTS OF EXCHANGE FOR WHICH DILIGENCE IS CLAIMED:**

Exchange Reach	Original Decreed Conditional Amount	Amount Claimed Absolute in this Application	Amount to Remain Conditional for which Reasonable Diligence is Claimed
From Lake Henry/Lake Meredith Outlet Canal To:			
Twin Lakes	500 cfs	0	500 cfs
Turquoise Reservoir	350 cfs	0	350 cfs
Clear Creek Reservoir	250 cfs	0	250 cfs
Otero Pump Station Arkansas Intake	165 cfs	0	165 cfs
From AGPR Outlet to Arkansas River To:			
Pueblo Reservoir	500 cfs	0	500 cfs
Twin Lakes Reservoir	500 cfs	0	500 cfs
Clear Creek Reservoir	250 cfs	0	250 cfs
Otero Pump Station Arkansas River Intake	165 cfs	0	165 cfs
From Pueblo Reservoir To:			
Twin Lakes Reservoir	500 cfs	75 cfs	425 cfs
Turquoise Reservoir	350 cfs	350 cfs	0
Clear Creek Reservoir	250 cfs	0	250 cfs
Otero Pump Station Arkansas River Intake	165 cfs	0	165 cfs

7. NAMES AND ADDRESSES OF OWNERS OF THE LAND UPON WHICH ANY NEW DIVERSION OR STORAGE STRUCTURE OR MODIFICATION TO ANY EXISTING

DIVERSION OR STORAGE STRUCTURE OR EXISTING STORAGE POOL IS OR WILL BE CONSTRUCTED OR UPON WHICH WATER IS OR WILL BE STORED.

Structure	Owner	Address
Lake Henry/Lake Meredith Outlet Canal	City of Aurora owns shares in both the Lake Henry and Lake Meredith Reservoir Companies, so has a right to use the Outlet Canal. Lake Henry and Lake Meredith Reservoir facilities are owned by the Colorado Canal Companies.	15151 East Alameda Street, Suite 3600, Aurora, CO 80015-1555 The Colorado Canal Companies, 331 Main Street, P.O. Box 8, Ordway, CO 81063.
Twin Lakes Reservoir, Turquoise Reservoir, Pueblo Reservoir	U.S. Department of the Interior, Bureau of Reclamation	11056 West County Road, 18E, Loveland, CO 80537-9711
Clear Creek Reservoir	Pueblo Board of Public Works	319 West 4 th St., Pueblo, CO
Otero Pump Station Arkansas River Intake	50% owned by City of Aurora; 50% owned by City of Colorado Springs	15151 East Alameda Street, Suite 3600, Aurora, CO 80015-1555; 121 S. Tejon Street, Colorado Springs, CO 80903
AGPR	To be located on lands owned by the following: Mineral Reserves Inc. Southwest Ready-Mix Inc Stonewall Springs Quarry LLC	10170 Church Ranch Way Unit 200, Westminster, CO 80021-6060 214 29 th Lane, Pueblo CO 81006-9348 2928 Straus Ln #210, Colorado Springs, CO 80907

Wherefore, Applicant respectfully requests that the Court make absolute the appropriative rights of exchange described herein, and find diligence in the development of those portions of the appropriative rights not made absolute, and continue the conditional decree for said structures and remaining conditional amounts for the statutory period, and provide any other relief it finds just and appropriate in these circumstances.

CASE NO. 11CW41; Previous Case No. 99CW170(B) – THE CITY OF AURORA, COLORADO, A municipal corporation of the Counties of Adams, Arapahoe and Douglas, acting by and through its UTILITY ENTERPRISE (“Aurora”), 15151 East Alameda Street, Suite 3600, Aurora, CO 80012-1555

(John M. Dingess and Stephanie J. Neitzel, Duncan, Ostrander & Dingess, P.C., Attorneys for Applicant, 3600 S. Yosemite Street, Suite 500, Denver, Colorado 80237-1829; (303) 779-0200).

Application for Finding of Reasonable Diligence

LAKE, CHAFFEE, FREMONT, PUEBLO, CROWLEY AND OTERO COUNTIES.

1. INTRODUCTION: This Application seeks a finding of reasonable diligence for rights of exchange originally decreed in Case No. 99CW170(B) (hereinafter referred to as the “Original Decree”). These exchanges on the Arkansas River extend from the proposed Arkansas Gravel Pit Reservoir upstream to either Box Creek Reservoir or its Arkansas River Intake, the Upper River Ditch or the Derry Ditch No. 1. The water used as a replacement source is the historic consumptive use water under 288.274 shares of stock in the Rocky Ford Ditch Company that is the subject to the change case decree entered in Case No. 99CW169(A), Water Division 2. **2. NAME OF STRUCTURES**

(These structures are shown on 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.). **2.1. Arkansas Gravel Pit Reservoir (“AGPR”).** To be located in of the S½ of Section 34; and a portion of the SW¼ SW¼ of Section 35, Township 20 South, Range 63 West; and a portion of the N½ of Section 3, Township 21 South, Range 63 West of the 6th P.M., all in Pueblo County, Colorado. The AGPR will receive water from the mainstem of the Arkansas River via the Excelsior Ditch, the headgate of which is located in the SE ¼ SE ¼ of Section 36, Township 20 South, Range 64 West of the 6th P.M. in Pueblo County, Colorado. The AGPR will return water to the mainstem of the Arkansas River via a return outlet to be located in the SE ¼ SE ¼ of Section 34, Township 20 South, Range 63 West of the 6th P.M. in Pueblo County, Colorado. **2.2. Box Creek Reservoir** – To be located in all or portions of Sections 32 and 33, Township 10 South, Range 80 West and Sections 4 and 5, Township 11 South, Range 80 West of the 6th P.M., all in Lake County, Colorado. The exact location of Box Creek Reservoir Dam is not yet established. The Box Creek dam axis may intersect the approximate centerline of the Box Creek valley at a point approximately 2,000 feet West and 300 feet South of the Northeast corner of said Section 4, Township 11 South, Range 80 West of the 6th P.M. in Lake County, Colorado. **2.3. Arkansas River Intake to Box Creek Reservoir:** -- To be located in Sections 22, 27 and 34, Township 10 South, Range 80 West; and Section 3, Township 11 South, Range 80 West of the 6th P.M., in Lake County, Colorado. **2.4. Upper River Ditch** – Located on the west bank of the Arkansas River at point whence the Southeast corner of Section 16, Township 10 South, Range 80 West of the 6th P.M. bears South 23° 28’ East, a distance of 2,008.5 feet, in Lake County, Colorado. Water diverted into the Upper River Ditch may be stored in Box Creek Reservoir. **2.5. Derry Ditch No. 1 Headgate** – At a point on the Right bank of the Arkansas River whence the quarter-corner of Section 16, Township 10 South, Range 80 West of the 6th P.M. bears South 22° 1’ East, a distance of 3,753 feet, in Lake County, Colorado. Water diverted at the Derry Ditch No. 1 may be stored in Box Creek Reservoir. **3. DESCRIPTION OF**

CONDITIONAL WATER RIGHTS: 3.1. Date of Original Decree: July 28, 2005, Case No. 99CW170(B), District Court Water Division 2, Colorado (“Original Decree”). **3.2. Legal Descriptions:** See Paragraph 2, above. **3.3. Sources of Exchange Water:**

3.3.1. The water to be exchanged pursuant to the rights that are the subject of this Application is the historic consumptive use water diverted at the Excelsior Ditch and stored in AGPR pursuant to Aurora’s ownership of 288.274 shares of the total 800 outstanding shares of capital stock of the Rocky Ford Ditch Company. The water right represented by the 288.274 shares that are the subject of this Application (hereinafter, the “Subject Rocky Ford Ditch Water Right”), is a portion of Priority No. 1, decreed in the original adjudication for former Water District 17, on April 8, 1905, for 111.76 cfs with an appropriation date of May 15, 1874. Pursuant to a previous purchase, Aurora owns 466.48 shares of the Rocky Ford Ditch Company. A change of those shares was decreed in Water Division 2, Case No. 83CW18. A subsequent decree for exchange was issued in Water Division 2, Case No. 87CW63, and those 466.48 shares are not involved in the exchange that is the subject of the Original Decree or this Application.

3.3.2. The Subject Rocky Ford Ditch Water Right is also the subject of the Decree in Water Division 2, Case No. 99CW169(A) which case changed, *inter alia*, uses and points of diversion for Applicant’s share of the Subject Rocky Ford Ditch Company water. The initial diversion and storage of Applicant’s share of the subject Rocky Ford Ditch Company water is controlled by the terms and conditions of the Decree in Case No. 99CW169(A), which terms and conditions include but are not limited to limitations upon the amount of water transferred based upon revegetation and dry-up status. The terms and conditions of the decree in Case No. 99CW169(A) pertaining to revegetation and dry-up are relevant to this proceeding in that such terms and conditions temporarily limit the volume of water Aurora may divert and store in Pueblo Reservoir, AGPR, Lake Henry or Lake Meredith. Aurora’s right to operate the exchanges decreed under the Original Decree is conditioned upon full compliance with the terms and conditions of the decree in Case No. 99CW169(A).

3.4. Exchange Reaches and Amounts: 3.4.1. From the AGPR Outlet to Arkansas River, to the following points: 3.4.1.1. Box Creek Reservoir 50 cfs. 3.4.1.2. Arkansas River Intake for Box Creek Reservoir 200 cfs. 3.4.1.3. Upper River Ditch 200 cfs. 3.4.1.4. Derry Ditch No. 1 200 cfs. 3.4.2. The rates of exchange listed above are the maximum rates of exchange that shall apply to the sum of any exchanges made pursuant to the exchange rights granted herein and the exchange rights decreed or that may hereafter be decreed in Water Division 2, Case Nos. 87CW63, 99CW170(A), 01CW145 and diversions, if any at alternate points of diversion upstream of Pueblo Reservoir under any decree entered in Case No. 99CW169(B)[Upon the occurrence of certain conditions stated in that Intergovernmental Agreement dated October 3, 2002 between Aurora and the Southeastern Colorado Water Conservancy District, Part B of Case No. 99CW169 will be dismissed. In that event, there will be no diversions pursuant to 99CW169(B)]. Amounts exchanged or diverted upstream of Pueblo Reservoir pursuant to Case Nos. 87CW63, 99CW169(B), 99CW170(A) and 01CW145 will be subtracted from the above stated maximum exchange rates to determine the remaining amount of exchange rate available for the operation of the rights herein decreed.

3.5. Appropriation Date: December 28, 1999.

3.6. Uses: The water exchanges pursuant to this decree may be used for the purposes authorized under the decree in Case No. 99CW169(A) and may be totally

consumptively used, successively used, reused and captured for later use. **4. DETAILED OUTLINE OF WHAT HAS BEEN DONE TOWARD COMPLETION OR FOR COMPLETION OF THE APPROPRIATIONS AND APPLICATION OF WATER TO A BENEFICIAL USE AS CONDITIONALLY DECREED.** During the diligence period of August 2005 through July 2011, Aurora performed the following work and made the following expenditures toward completion of the appropriations and application of the water rights decreed in the Original Decree to beneficial use (Expenditure numbers are rounded to the nearest \$1000): **4.1. Project Specific Efforts:** Aurora has done at least the following project-specific work toward completion of the appropriations and application of the conditional water rights decreed in Case No. 99CW170(B) to beneficial use: 4.1.1. Revegetation: During this diligence period, 99.7% as the percentage of completion for revegetation of formerly irrigated lands required under the decree in Case No. 99CW169(A) was achieved, to allow for operation of the exchanges that are the subject of this Application and use of the exchanged water by Aurora. Aurora expended over \$1,472,000 during this diligence period for revegetation, including expenditures for expert revegetation classifications and reports, and actual revegetation and weed control costs. 4.1.2. Payment for Rocky Ford Ditch shares: Aurora spent more than \$6,179,000 during this diligence period for repayment of bonds and payments to note sellers, including principal and interest that were issued or refunded for purchase of Applicant's share of the Subject Rocky Ford Ditch Company shares that are the source of the water for the exchanges herein. 4.1.3. Arkansas Gravel Pit Reservoir ("AGPR"). Aurora made significant efforts to secure the AGPR that is a necessary facility for some of the exchanges that are the subject of this Application. Aurora entered into a purchase Option Agreement with LaFarge West, Inc. in 2003 for development of the LaFarge Rich Pit for use by Aurora as the AGPR storage facility upon completion of gravel mining/ mineral extraction by LaFarge. This Agreement was extended several times, including the Fourth, Fifth and Sixth Option Extension Agreements executed during this diligence period, on September 19, 2005, March 10, 2006 and September 8, 2006, respectively. During this diligence period, Aurora paid \$30,100 as consideration for these extensions to be applied as earnest money for the purchase price of the completed storage facility. In March 2006, Deere and Ault also performed a Reservoir Feasibility Study of the Rich Pit for Aurora, at a cost of \$26,000. Aurora has made efforts to investigate and negotiate alternative storage facilities for the AGPR. Recent negotiations include with Stonewall Springs Ranch and Southwest Sod Farms. Aurora has expended more than \$12,000 in legal fees with regard to these option agreement and negotiation efforts. 4.1.4. Payments to Rocky Ford School District R-2: The payments that Aurora agreed to make under an Intergovernmental Agreement with Otero County to compensate for the County's loss of property taxes and assessments, include taxes Otero County collects on behalf of the Rocky Ford School District R-2. Aurora and the School District entered into a separate Intergovernmental Agreement on February 7, 2005 under which Aurora agreed to make accelerated payments to the School District for that portion of the money due to the School District by Aurora. Aurora and Otero County amended their Intergovernmental Agreement to allow that portion of the assessments due to the School District to be paid directly by Aurora to the Foundation for Rocky Ford Schools. During this diligence period, Aurora made payments totaling \$1,200,000 to this Foundation under this

agreement. 4.1.5. Development of Box Creek Reservoir: During this diligence period Aurora has performed the following work towards development of Box Creek Reservoir:

4.1.5.1. Preliminary Design: In March 2011, Aurora entered into a contract with URS Corp. for preliminary design of the river diversion and forebay structures for Box Creek Reservoir. This work is presently ongoing and expected to be completed in September 2011. Compensation under the contract is not to exceed \$323,061.00.

4.1.5.2. Fens Research Project: During this diligence period, Aurora performed background work for a mitigation project for fens wetlands that may be impacted by the proposed reservoir project. Aurora spent over \$122,000 for initial study costs by the Colorado Mountain College. Aurora also obtained a substitute water supply plan for replacement of depletions associated with irrigation of the transplanted fens wetlands research project. Aurora spent over \$3,900 in engineering fees for the substitute supply plan.

4.1.5.3. Permitting Issues and Community Relations: Aurora paid \$125,000 for professional services for investigation of permitting and community relations issues associated with Box Creek Reservoir.

4.1.5.4. Historic American Building Survey: Aurora has been working with the Colorado Mountain College for their performance of an Historic American Building Survey explaining the cultural resources at the proposed reservoir site. During this diligence period, Aurora paid Colorado Mountain College \$5,000 for this survey.

4.1.6. Application in Case No. 01CW145, D-2: During this diligence period, Aurora prosecuted its application in Case No. 01CW145, D-2, seeking appropriate rights of exchange on the Arkansas River that include Box Creek Reservoir, the Arkansas River Intake and the Upper River Ditch as exchange point structures and the Subject Rocky Ford Ditch Water Right as one of the sources of replacement water. This is diligence work related to the water rights at issue here because it draws it integrates these structures and the Rocky Ford replacement source more fully into Aurora's interconnected Arkansas Basin water supply network.

4.1.7. Negotiations with Lake County regarding Box Creek Reservoir and forebay facilities.: During this diligence period, Aurora and Lake County have been negotiating an intergovernmental agreement under which Lake County agrees to support the building of Box Creek Reservoir, as well as a forebay storage facility as a first phase of Box Creek Reservoir. Lake County support includes that which is necessary to enable the Box Creek storage facilities to be realized, including support in water court proceedings, state administrative proceedings, federal proceedings and land purchase.

4.1.8. Rocky Ford Ditch check structures: In 2010, check structures were constructed on the Rocky Ford Ditch to ensure that the minority shareholders get their water. This was necessary for the change of use of the Subject Rocky Ford Ditch shares under Case No. 99CW169(A), said shares being the source of the exchange water herein.

4.1.9. Agreements for Use of the Holbrook System Facilities. On March 1, 2005, Aurora entered into two agreements pertaining to use of unused diversion, conveyance and storage facilities of the Holbrook Mutual Irrigating Company ("Holbrook"). The purpose of these agreements is to implement a program to recapture and store yield from foregone diversions of senior water rights envisioned under an Arkansas River Flow Management Agreement. This program is called Restoration of Yield ("ROY"). The first agreement is only between Holbrook and Aurora and provides for Aurora's use of unused capacity in the Holbrook system. In a subsequent agreement, Aurora assigns some of its rights and obligations under the first agreement to other parties to allow their

participation in the ROY program. Aurora has completed structural modifications to the Holbrook system facilities and has filed a Substitute Water Supply Plan necessary to operate the ROY. Further, Aurora has initiated a study to look at enlargement of the Holbrook Reservoir to further facilitate operation of the ROY. During this diligence period, Aurora made payments of more than \$165,000 to Holbrook under this agreement. 4.1.10. Legal Activities: During the subject diligence period, Aurora spent \$296,000 on legal activities connected to land use and revegetation concerning the rights transferred in Case No. 99CW169(A), \$18,000 on legal activities connected to follow-up issues in Case No. 99CW169(A) and 99CW170(B). **4.2. Systemwide Efforts.** Pursuant to the Original Decree, these exchanges are part of a unified extensive system for the collection, treatment and distribution of water operated by Aurora. For the purposes of showing diligence as to completion of the appropriative right of exchanges originally decreed in Case No. 99CW170(B), diligence as to any part of the Aurora water rights system used to operate or benefiting from these exchanges shall be diligence as to the completion of the exchanges. During this diligence period, Aurora has done at least the following system-wide work that will be used to operate or benefit the conditional exchanges: 4.2.1. Metro Wastewater Reclamation District Charges: Aurora expended over \$89,846,000 during this diligence period for charges for wastewater treatment of its water. Such treatment is necessary for the reuse within the South Platte River Basin of the water that is the subject of the exchanges herein. 4.2.2. Sand Creek Water Reuse Plant Expansion: More than \$479,000 was spent for expansion of the existing Sand Creek Wastewater Treatment Plant. This work is necessary for reuse within the South Platte River Basin of the water that is the subject of the exchanges herein and also to comply with water reuse requirements. 4.2.3. Griswold Water Treatment Plant Renovations. This facility treats a portion of the raw water exchanged under the Original Decree and then transported to the South Platte Basin and to Aurora, before it is delivered to Aurora's customers. More than \$8,377,000 was spent by Aurora during this diligence period for improvements to this facility necessary to accommodate the water that is the subject of the exchanges herein. This includes expenditures directly by Aurora for renovation of the facility and for renovation loan payments. 4.2.4. Wemlinger Water Treatment Plant Expansion. During this diligence period, Aurora spent more than \$10,113,000 for expansion of the Wemlinger Water Treatment Plant. This facility treats a portion of the raw water exchanged under the Original Decree and then transported to the South Platte Basin and to Aurora, before it is delivered to Aurora's customers. 4.2.5. Prairie Waters Project. The Prairie Waters Project is a large comprehensive water supply, storage and treatment project in which return flows to the South Platte River from Aurora's water sources, including the water that is the subject of the exchanges herein, may be rediverted for subsequent reuse. During this diligence period, Aurora filed and prosecuted applications in Case Nos. 06CW104, 03CW414 and 03CW415, Water Division 1, to facilitate this project, obtained permits, and acquisition and right-of-way, and constructed the project. Construction of the initial phase of the project was sufficiently complete to allow its operation beginning at the end of 2010. Approximately \$600 million has been spent toward implementation of this project during this diligence period. 4.2.6. Lawn Irrigation Return Flows (LIRFs) Credits: During this diligence period, Aurora prosecuted and obtained a decree in Case No. 02CW341, WD-1, under which LIRFs from Aurora's

reusable water are quantified to facilitate future reuse. Water that is transported under the exchanges herein and used in Aurora’s service area can be reused under the decree in Case No. 02CW341. 4.2.7. Rampart Reservoir Improvement. More than \$8,473,000 was spent by Aurora during this diligence period for improvements to expand the capacity of the Rampart Reservoir delivery system. This reservoir is used to store the water that has been exchanged from the Arkansas Basin and transported to the South Platte River before it is transported through the parallel 54” and 40” pipelines to Aurora. Rampart Reservoir is important for regulation of the flow through these parallel pipelines. 4.2.8. Improvements to Extend and Improve Water Service in and to Aurora: More than \$13,729,000 was spent by Aurora during this diligence period for extension and upgrade of its water transmission system necessary to deliver the water that is the subject of the exchanges herein to Aurora’s customers. This includes improvements to the 54” raw water transmission pipeline between Rampart Reservoir and storage and water treatment facilities within the City. 4.2.9. Improvements to Sanitary Sewer System: More than \$29,946,000 was spent by Aurora during this diligence period for extension and upgrade of its sanitary sewer system necessary for wastewater treatment and reuse within the South Platte River Basin of the water that is the subject of the exchanges herein. 4.2.10. Automated Meter Reading System: Aurora spent more than \$6,574,000 during this diligence period for conversion of its manual utility reading system to a fully automated system. This is needed for efficient operation of Aurora’s water supply and delivery system, including use of the water that is the subject of the exchanges herein. 4.2.11. Study of Aurora’s Water Needs. During this diligence period, Aurora spent more than \$76,000 toward engineering and planning studies to assist in determining the City’s future water needs and a plan to meet those needs. 4.2.12. Protection Efforts: During this diligence period, Aurora participated in Water Divisions 1 and 2 cases to protect the rights and interests of Aurora with regard to its water supply system, including the subject exchanges.

5. NAMES AND ADDRESSES OF OWNERS OF THE LAND UPON WHICH ANY NEW DIVERSION OR STORAGE STRUCTURE OR MODIFICATION TO ANY EXISTING DIVERSION OR STORAGE STRUCTURE OR EXISTING STORAGE POOL IS OR WILL BE CONSTRUCTED OR UPON WHICH WATER IS OR WILL BE STORED.

Structure	Owner	Address
Box Creek Reservoir	The Reservoir is proposed to be built on Hallenbeck Ranch lands, owned by the City of Aurora. Depending of the final reservoir configuration and location, it may also inundate lands owned by the U.S. Forest Service, the State of Colorado, and additional private entities.	City of Aurora, 15151 East Alameda Street, Suite 3600, Aurora, CO 80012-1555. Bureau of Land Management, U.S. Dept of Interior, 3170 East Main St., Canon City, CO 81212-000 U.S. Forest Service, P.O. Box 970, Leadville, CO 80461-000 State of Colorado, 1313 Sherman St, Rm 618, Denver, CO 80203 Dennis Smith, 4961 South Boston Street, Greenwood

		Village, CO 80111 Bobby and Jolene Wood, P.O. Box 1351, Leadville, CO 80461 Terry and Susan Speicher, 2262 King James Court, Winter Park, FI 32790 Mt Elbert Mining Company LLC, 32460 Inverness Drive, Evergreen, CO 80439
Arkansas River Intake for Box Creek Reservoir	Located on lands owned by City of Aurora and State of Colorado	City of Aurora, 15151 East Alameda Street, Suite 3600, Aurora, CO 80012-1555. State of Colorado, Division of Parks, 1313 Sherman Street, Denver, CO 80203.
Upper River Ditch headgate	Located on lands owned by the State of Colorado	1313 Sherman Street, Suite 620, Denver, CO 80203.
Derry Ditch No. 1 headgate	Located on lands owned by Bernard Smith, DVM,	134 County Road 44, Leadville, CO 80461
AGPR	Located on lands owned by the following: Mineral Reserves Inc. Southwest Ready-Mix Inc Stonewall Springs Quarry LLC	10170 Church Ranch Way Unit 200, Westminster, CO 80021-6060 214 29 th Lane, Pueblo, CO 81006-9348 2928 Straus Ln #210, Colorado Springs, CO 80907

Wherefore, Applicant respectfully requests that the Court find diligence in the development of the appropriative rights described herein, and continue the conditional decree for said structures and conditional amounts for the statutory period, and provide any other relief it finds just and appropriate in these circumstances.

CASE NO. 11CW42 – COMPLAINT. This case is a complaint and is being listed in the resume to account for the case number in consecutive order.

CASE NO. 11CW43 - SPRING LOADED, LLC, PARK STATE BANK & TRUST, AND RAINBOW VALLEY WATER DISTRICT; Spring Loaded, LLC, c/o Joey Truscelli, Manager, 7522 County Road 61, Divide, Colorado 80814; Rainbow Valley Water District, c/o Kent Murphy, Treasurer, P.O. Box 388, Divide, Colorado 80814; Park State Bank & Trust, c/o Tony Perry, President/CEO, P.O. Box 9, Woodland Park, Colorado 80866; (Copies of all pleadings to: Stephen C. Larson, David F. Bower, Johnson & Repucci LLP, 2521 Broadway, Suite A, Boulder, Colorado 80304; 303-442-1900)

Application for Change of Water Rights to Add Alternate Point of Diversion, for Change of Water Right to Add Alternate Places of Storage, and to Amend Plan for Augmentation
TELLER COUNTY, COLORADO

Overview. Applicant Rainbow Valley Water District (the “District”) is a Title 32 water district which supplies residential customers within the Rainbow Valley subdivision near Divide, Colorado, pursuant to an augmentation plan decreed in Case No. 81CW0009, Water Division 2. The water supply under the augmentation plan is provided from three (3) underground springs in the alluvium of Four Mile Creek, which were adjudicated in Case No. W-4523, Water Division 2, and changed to alternate points of diversion on Four Mile Creek in 81CW0009 (collectively, the “Intake Rights”). The augmentation supply under the augmentation plan is provided by consumptive use credits from the District’s 0.994 cfs interest in the Doris Ditch, which was changed and quantified in Case No. 81CW0009 (“Doris Ditch CU Credits”). Pursuant to the augmentation plan, the Doris Ditch CU Credits are diverted at the structure known as the Silver Spruce Intake Ditch (“Intake Ditch”), which is on Putney Creek, just upstream of its confluence with Four Mile Creek. The Doris Ditch CU Credits were to be stored, for subsequent augmentation releases, in a storage structure referred to as Silver Spruce Lake No. 7 (“Lake No. 7”). See the map 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.) The original and alternate points of diversion for the Intake Rights, as well as Lake No. 7 and the Intake Ditch, are all located on property currently owned by Applicant Park State Bank & Trust (the “Bank”) and leased by Applicant Spring Loaded, LLC (“Spring Loaded”). The property is a 72-acre ranch known as “One Good Turn Ranch” (the “Ranch”). Spring Loaded allows use of the Ranch facilities for fishing, hiking and other recreational activities by youth groups. In exchange for the District utilizing water right structures on the Ranch property, the District has leased Doris Ditch CU Credits to Spring Loaded which are in excess of the credits needed to operate the District’s augmentation plan. In addition to Lake No. 7, the Intake Ditch and the Intake Rights, there are six (6) other interconnected storage structures located on the Ranch, which are known as Silver Spruce Lakes Nos. 1-6 (“Lakes Nos. 1-6”). In Civil Action No. 5690, Fremont County District Court, all of the Silver Spruce Lakes (“Lakes Nos. 1-7”) were decreed storage rights for fish propagation purposes, and the Intake Ditch was decreed as a point of diversion for the seven storage structures. The existing infrastructure on the Ranch for operation of the District’s augmentation plan does not utilize the original points of diversion or the alternate points of diversion for the Intake Rights. Instead, the Intake Rights must be diverted, under the current infrastructure configuration, at the Intake Ditch, which is also the same point of diversion

decreed for the Doris Ditch CU Credits in Case No. 81CW0009, and for filling Lakes Nos. 1-7 pursuant to Civil Action No. 5690. Accordingly, one purpose of this application is to decree the Intake Ditch, on Putney Creek, a tributary of Four Mile Creek, as an alternate point of diversion for the Intake Rights. In addition, Applicants seek to decree Lakes Nos. 1-6 as alternate places of storage (in addition to Lake No. 7) for the Doris Ditch CU Credits and for augmentation releases of those credits. Finally, the District seeks to add Lakes Nos. 1-7 as augmented structures under the plan in Case No. 81CW0009. No other changes to the District's augmentation plan and change of water rights decree in Case No. 81CW0009 are sought. **I. APPLICATION FOR CHANGE OF WATER RIGHTS TO ADD ALTERNATE POINT OF DIVERSION** **Decreed Water Rights for Which Change is Sought.** **Name of Water Rights (the Intake Rights).** Underground Spring No. 1; Underground Spring No. 2; and Underground Spring No. 3. **Date of Original and all Relevant Subsequent Decrees.** The Intake Rights are absolute water rights decreed on June 13, 1978 in Case No. W-4523, Water Division 2. A subsequent decree, adding three alternate points of diversion on Four Mile Creek, was entered in Case No. 81CW0009, Water Division 2. **Decreed Legal Descriptions of Structures.** **Underground Spring No. 1:** An underground spring located in SE1/4 of Section 1, T14S, R70W, 6th P.M., Teller County, Colorado, located 1454 feet North of the SE corner of said Section 1. **Underground Spring No. 2:** An underground spring located in the NW1/4 SE1/4 of Section 1, T14S, R70W, 6th P.M., Teller County, Colorado, whence the SE corner of said Section 1 bears S40°22'E a distance of 2363 feet. **Underground Spring No. 3:** An underground spring located in the NW1/4 SE1/4 of Section 12, T14S, R70W, 6th P.M., Teller County, Colorado, whence the NE corner of said Section 12 bears N59°51'E a distance of 2290 feet. **Source.** The Intake Rights are located in the alluvium of Four Mile Creek, which is a tributary of the Arkansas River. **Appropriation Date.** November 1938. **Total Amount Decreed to Structures.** **Underground Spring No. 1:** 10 gpm. **Underground Spring No. 2:** 11 gpm. **Underground Spring No. 3:** 25 gpm. **Decreed Uses.** Domestic (in-house uses). **Amount of Water that Applicants Intend to Change to Alternate Point of Diversion.** Applicants seek the right to use the Intake Ditch described below as an additional alternate point of diversion for the Intake Rights described above. This change would apply to the full amount decreed to the Intake Rights as stated above. **Detailed Description of Proposed Change.** **Complete Statement of Change.** Applicants are seeking to add the Intake Ditch point of diversion as an alternate point of diversion for the Intake Rights. The Intake Rights are decreed to divert out of Four Mile Creek. The alternate point of diversion, the Intake Ditch, is located on Putney Creek, 2,080 feet upstream from Putney Creek's confluence with Four Mile Creek. See Exhibit A to the Application. No other changes for the Intake Rights are sought. **Location of the Alternate Point of Diversion (the Intake Ditch) for the Intake Rights.** The Silver Spruce Intake Ditch is located at a point on the left or South bank of said Putney Creek, from which it diverts its supply of water, whence the Southwest Corner of Section 6, Township 14 South, Range 69 West of the Sixth Principal Meridian bears South 71 degrees 14 minutes West 1834.9 feet. **Name of Owner of Land Upon Which New or Modified Structures Are Located.** Applicant, the Bank. **Remarks.** There are no intervening water rights between the decreed points of diversion for the Intake Rights on Four Mile Creek (including the alternate points decreed in Case No. 81CW0009), and

the subject alternate point of diversion on Putney Creek, a tributary of Four Mile Creek, other than Applicant's water rights associated with the Silver Spruce Lakes decreed in Civil Action No. 5690. **II. APPLICATION FOR CHANGE OF WATER RIGHT TO ADD ALTERNATE PLACES OF STORAGE** **Decreed Water Right for Which Change is Sought.** **Name of Water Right (Doris Ditch CU Credits).** Doris Ditch (consumptive use credits quantified in Case No. 81CW0009). **Date of Original and all Relevant Subsequent Decrees.** The Doris Ditch was decreed by the District Court of the Eleventh Judicial District of the State of Colorado, *In the Matter of the Adjudication of water rights in Water District No. 12*, on February 3, 1894. In Case No. 81CW0009, the District's 0.994 cfs interest in the Doris Ditch was quantified (31 acre-feet/year); changed to new uses, including augmentation; approved for storage in Silver Spruce Lake No. 7; and decreed a new point of diversion at the Intake Ditch described in section I.4(b) above. **Legal Description of Structure Approved for Storage of Doris Ditch CU Credits (Lake No. 7).** In 81CW0009, Doris Ditch CU Credits were approved for storage in Silver Spruce Lake No. 7, which is located in the NE1/4 NE1/4 of Section 12, Township 14 South, Range 70 West of the 6th P.M., Teller County, Colorado, 320 feet from the north section line and 460 feet from the east section line of said Section 12. Case No. 81CW0009 also approved storage of the Doris Ditch CU Credits in a yet-to-be constructed reservoir "immediately south of" Lake No. 7, which was never constructed. **Source.** The source of the Doris Ditch CU Credits is Putney Creek, a tributary of Four Mile Creek, as decreed in Case No. 81CW0009. **Appropriation Date.** June 7, 1870. **Total Amount Decreed to be Stored in Structure.** In Case No. 81CW0009, Applicants' 0.994 cfs interest in the Doris Ditch was quantified as 31 acre-feet/year, average historical consumptive use, all of which were approved for storage in an expanded Silver Spruce Lake No. 7. **Decreed Uses.** Applicants' interest in the Doris Ditch was changed to all beneficial purposes, including augmentation, by exchange, lease, sale or otherwise, in Case No. 81CW0009. **Amount of Water that Applicants Intend to Change to Alternate Places of Storage.** Applicants seek alternate places of storage for its 31 acre-feet/year of Doris Ditch CU Credits, from Lake No. 7, to also include Lakes Nos. 1-6. Accordingly, all 31 acre-feet/year and 0.994 cfs associated with Applicants' interests in the Doris Ditch CU Credits are subject to this change. **Detailed Description of Proposed Change to Alternate Places of Storage.** **Complete Statement of Change.** Applicants seek to use Lakes Nos. 1-6 as alternate places of storage to Lake No. 7 for the storage of its Doris Ditch CU Credits. Applicants anticipate that any combination of interconnected Lakes Nos. 1-7 may be active and available for storage of Doris Ditch CU Credits any given year. No other changes for the Doris Ditch water right is sought. **Location of the Alternate Places of Storage for the Doris Ditch CU Credits (Lakes Nos. 1-6).** *Silver Spruce Lake No. 1* is located the SW1/4 SW1/4 of Section 6, Township 14 South, Range 69 West, of the 6th P.M., 735 feet from the south section line and 1410 feet from the west section line of said Section 6. *Silver Spruce Lake No. 2* is located the SW1/4 SW1/4 of Section 6, Township 14 South, Range 69 West, of the 6th P.M., located 800 feet from the south section line and 1115 feet from the west section line of said Section 6. *Silver Spruce Lake No. 3* is located the SW1/4 SW1/4 of Section 6, Township 14 South, Range 69 West, of the 6th P.M., located 880 feet from the south section line and 800 feet from the west section line of said Section 6. *Silver Spruce Lake No. 4* is located the SE1/4 SE1/4 of Section

1, Township 14 South, Range 70 West, of the 6th P.M., located 930 feet from the south section line and 400 feet from the east section line of said Section 1. *Silver Spruce Lake No. 5* is located the SE1/4 SE1/4 of Section 1, Township 14 South, Range 70 West, of the 6th P.M., located 675 feet from the south section line and 450 feet from the east section line of said Section 1. *Silver Spruce Lake No. 6* is located the SE1/4 SE1/4 of Section 1, Township 14 South, Range 70 West, of the 6th P.M., located 240 feet from the south section line and 460 feet from the east section line of said Section 1. **Name of Owner of Land Upon Which New or Modified Structures Are Located.** Applicant, the Bank.

III. APPLICATION TO AMEND PLAN FOR AUGMENTATION **Description of Amended Plan for Augmentation.** Applicants seek to amend the augmentation plan in 81CW0009 in order to add Lakes Nos. 1-7 as augmented structures. Applicants anticipate that any combination of Lakes Nos. 1-7 may be active in any given year. Under the augmentation plan as amended, up to 31 acre-feet/year of Doris Ditch CU Credits will be diverted at the Intake Ditch and will be delivered into the active ponds. The balance of the storage capacity of the active ponds will temporarily hold the District's Intake Rights needed to supply the subdivision (currently 8 acre-feet), as a forebay for pumping into the District's holding tanks, and/or will hold storage rights decreed for Lakes Nos. 1-7 in Civil Action No. 5690 and diverted in-priority, and/or will hold other water lawfully exchanged into the ponds. All water under the various water rights diverted at the Intake Ditch (Doris Ditch CU Credits, Intake Rights and Lakes Nos. 1-7 storage rights) will be separately accounted for. Flow through water will also be diverted to the interconnected lakes from the Intake Ditch. This will cause the lakes to store their evaporative losses. All such inflows that are out of priority will be credited against the Doris Ditch CU Credits or other fully consumable water lawfully exchanged into the ponds. Annually, with typical ice cover, the evaporative loss from all seven lakes combined is anticipated to be approximately 29.77 acre-feet. However, typically, less than all seven lakes will be active and operational in any given year. In any event, actual out-of-priority depletions from the active lakes will be credited against the Doris Ditch CU credits. Additionally, the District's out-of-priority depletions (currently 0.8 acre-feet/year) will be augmented by releases of Doris Ditch CU Credits, from any of the active ponds in which the credits are stored. All such water releases shall be measured and accounted for. **Structures to be Augmented (Lakes Nos. 1-7).** *Silver Spruce Lake No. 1* is located the SW1/4 SW1/4 of Section 6, Township 14 South, Range 69 West, of the 6th P.M., 735 feet from the south section line and 1410 feet from the west section line of said Section 6. *Silver Spruce Lake No. 2* is located the SW1/4 SW1/4 of Section 6, Township 14 South, Range 69 West, of the 6th P.M., located 800 feet from the south section line and 1115 feet from the west section line of said Section 6. *Silver Spruce Lake No. 3* is located the SW1/4 SW1/4 of Section 6, Township 14 South, Range 69 West, of the 6th P.M., located 880 feet from the south section line and 880 feet from the west section line of said Section 6. *Silver Spruce Lake No. 4* is located the SE1/4 SE1/4 of Section 1, Township 14 South, Range 70 West, of the 6th P.M., located 930 feet from the south section line and 400 feet from the east section line of said Section 1. *Silver Spruce Lake No. 5* is located the SE1/4 SE1/4 of Section 1, Township 14 South, Range 70 West, of the 6th P.M., located 675 feet from the south section line and 450 feet from the east section line of said Section 1. *Silver Spruce Lake No. 6* is located the SE1/4 SE1/4 of Section 1, Township 14 South, Range 70 West, of the 6th

P.M., located 240 feet from the south section line and 460 feet from the east section line of said Section 1. *Silver Spruce Lake No. 7* is located in the NE1/4 NE1/4 of Section 12, Township 14 South, Range 70 West, of the 6th P.M., 320 feet from the north section line and 460 feet from the east section line of said Section 12. **Source of Augmentation Water.** Storage of evaporative losses in the ponds will be credited against Doris Ditch CU Credits stored in the ponds, as described in section III.10 above. **Total Depletions Added to the Plan Via this Amendment.** Lakes Nos. 1-7 have a total combined storage volume of 50.44 acre-feet; 31 acre-feet of which will be occupied by Doris Ditch CU Credits. This amendment seeks to add depletions from pond evaporation as augmented depletions under the plan. Total maximum annual evaporative losses are estimated to be approximately 29.77 acre-feet. **Remarks.** Applicant will measure and account for all water usage; equip all ponds with staff gauges and other measuring devices acceptable to the Division Engineer; and will provide annual projections to the Division Engineer, updated monthly, which reflect anticipated diversions and depletions and which balance anticipated depletions with available augmentation water. Applicants shall have the ability to bypass diversions to ponds as necessary for the proper administration of the augmentation plan. Applicants reserve the right, pursuant to C.R.S. § 37-92-305(8) and 37-92-309, to use additional or alternative sources of water for replacement under this plan for augmentation or an approved substitute water supply plan, including water leased or owned by Applicant or pursuant to an interruptible water supply agreement. It is Applicants' intent, except as amended hereby, that the terms and conditions of the decree and augmentation plan in Case No. 81CW0009 shall remain in full force and effect.

CASE NO. 11CW44; Previous Case No. 01CW148 – THE TOWN OF PONCHA SPRINGS, c/o Mark Thonhoff, Mayor, P. O. Box 190, Poncha Springs, CO 81242

(Steven T. Monson and David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Finding of Reasonable Diligence

CHAFFEE AND LAKE COUNTIES

III. Name of Conditional Water Right. Town of Poncha Springs' Exchange. **IV. Description of conditional water right.** **A. Type of Conditional Water Right:** Conditional exchange. **B. Decree No.:** 01CW148, District Court, Water Division No. 2. **C. Date of Original Decree:** June 17, 2005. **D. Amount of Conditional Exchange:** 125 annual acre feet of water, at a maximum exchange rate of 10 cfs. **E. Sources of Exchange Water:** 1. **McPherson Ditch.** The historical stream depletion credits during the irrigation season from the 1.0 cfs of the McPherson Ditch as changed in Case No. 99CW183, Water Division 2 ("McPherson Water Right"). Pursuant to Case No. 99CW183, the McPherson Water Right is used, without limitation, as additional augmentation water within Applicant's existing augmentation plan decreed in Case No. 82CW104 and can be placed into upstream storage in O'Haver Reservoir for later use. The decreed amount in Case No. 99CW183 is 43.4 annual acre feet of depletion credits during the historical irrigation season with delayed return flow obligations of 8.2 acre feet, for a net consumptive use of 35.2 annual acre feet. The availability and timing of water under the McPherson Water Right is determined under the decree in Case No. 99CW183. 2. **Fryingpan-Arkansas Project Water.** The Applicant's allocation of

Fryingpan-Arkansas Project Water purchased from the Southeastern District (“Project Water”) as placed into O’Haver Reservoir, North Fork Reservoir and Boss Lake by exchange described as follows: (a) West Slope Decrees: The Fryingpan-Arkansas Project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County. The principal water rights were adjudicated by the decrees in Civil Action No. 4613 (District Court, Garfield County) dated June 20, 1958, and August 3, 1959; and were modified by the Decree in Case No. W-829-76 (District Court, Water Division No. 5) dated November 27, 1979; and were supplemented by the Decree in Case No. 83CW352 (District Court, Water Division No. 5) dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travels under the Continental Divide through Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, and applied to beneficial use within Southeastern’s District boundaries. Because the water is imported from another river basin, it is fully consumable in Water Division 2. (b) East Slope Decrees: The Fryingpan-Arkansas Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141 (District Court, Chaffee County) dated July 9, 1969; and Civil Action No. B-42135 (District Court, Pueblo County) dated June 25, 1962; and were modified and supplemented by the Decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed for reuse and exchange for beneficial use within Southeastern’s District boundaries. Under these decrees, Turquoise Reservoir and Twin Lakes Reservoir may store native water or imported water, directly or by exchange with each other or with Pueblo Reservoir. **F. Priority Date of the Conditional Exchange:** November 26, 2001. **G. Uses of the Exchange Water:** Augmentation purposes in accordance with the Applicant’s decreed plans for augmentation in Case Nos. 82CW104 and 99CW183. **H. Exchange Reach.** On the mainstem of the Arkansas River from its confluence with the South Arkansas River in Section 4, Township 49 North, Range 9 East, N.M.P.M., and from this point, (1) up the mainstem of the Arkansas River to the confluence with the Lake Fork of the Arkansas River located in Section 5, Township 10 South, Range 80 West, 6th P.M., and from this point up the Lake Fork of the Arkansas River to the terminus of the exchange at Turquoise Reservoir formed by a dam across the Lake Fork of the Arkansas River in Lake County in Section 19, Township 9 South, Range 80 West of the 6th P.M., as described in the Decree in Case No. 80CW6; and (2) up the mainstem of the Arkansas River to the confluence with Lake Creek located in Section 24, Township 11 South, Range 80 West of the 6th P.M., and from this point up Lake Creek to the terminus of the exchange at Twin Lakes Reservoir formed by a dam across Lake Creek in Lake County in Section 23, Township 11 South, Range 80 West of the 6th P.M., as described in the decree in Case No. 80CW6. **V. Outline of Work Done Towards Completion of Appropriation and Application of Water to Beneficial Use.** In Case No. 01CW148, the Applicant was awarded a 10 c.f.s. conditional water right for the exchange of its McPherson Water Right and its allocation of Project Water into storage in Turquoise Reservoir and Twin

Lakes Reservoir. The adjudicated depletion and consumptive use under the McPherson Water Right is available for exchange as a direct flow stream credit or as water placed into and released from storage in O'Haver Reservoir in accordance with the terms of the decree in Case No. 99CW183. The Applicant's purchased allocation of Project Water is available for this exchange as placed into and released from storage in O'Haver Reservoir, North Fork Reservoir, and Boss Lake, which will increase the efficiency and flexibility of Applicant's use of Project water. The use of the exchange water is for augmentation purposes in accordance with the Applicant's decreed plans for augmentation in Case Nos. 82CW104 and 99CW183. Accordingly, Applicant's exchange awarded in Case No. 01CW148 is an integral part of Applicant's current and future municipal water supply system. During this diligence period, Applicant has performed significant work within its service boundaries and on its municipal water system to develop the decreed exchange as part of its integrated municipal supply system. This work, without limitation, includes major upgrades to the Applicant's monitoring and recording systems for its municipal wells, including the purchase of computer equipment to monitor and record readings for the water system. Applicant has also replaced all manual read water meters with automated read meters. The transition from manual read to automated read meters also required the purchase of new hardware and software for the automated reading systems. Accordingly, the Applicant purchased all new SCADA equipment for the operation of its fully automated and integrated system. Applicant also drilled a new municipal well, Poncha Well No. 4 (Permit No. 62784-F), for its municipal supply. As part of the installation of Poncha Well No. 4, the Applicant installed a new pumphouse, chlorination chamber, and SCADA system components for the well. Applicant also spent significant time and effort updating its physical water supply delivery system, including replacing the pump and motor in Poncha Well No. 3. The Applicant also updated Poncha Well Nos. 1 and 2 from chlorine gas to soluble chlorine injection systems. Lastly, a new water main to the Town's visitors center has been installed, which partially completes a loop of the Applicant's water system. Applicant also completed the annexation of a parcel known as the Friend Ranch into its service area and has commenced work towards providing water service to the Friend Ranch. This includes work by the Applicant and developer in upgrading and constructing main lines for the Friend Ranch development, construction of Friend Ranch Reservoir, drilling of Poncha Springs Well No. 5, and acquisition of additional augmentation for replacement of municipal depletions. Applicant has also filed and is proceeding with two water court applications, Case Nos. 07CW111 and 09CW138, which, in part, will provide the physical and legal water supply to the Friend Ranch annexation as well as the Applicant's current and future demands. During this diligence period, the Applicant has also continued to participate with the Southeastern District for the use of excess capacity storage space and enlargement space in the Fryingpan-Arkansas Project storage facilities consisting of Pueblo Reservoir, Turquoise Reservoir and Twin Lakes Reservoir. This participation included cooperation in the prior Preferred Storage Option Plan as well as the subsequent excess capacity storage plan that is now in progress. Applicant has signed a Memorandum of Agreement with the Southeastern District to proceed with the environmental analysis and negotiations with the Bureau of Reclamation for an excess capacity storage contract. Participation with these projects will allow the Applicant to

store its non-project water, such as the McPherson Water Right, in Project facilities, which storage will in part be implemented by the subject exchange. The Southeastern District has filed water rights applications in Case Nos. 00CW138 and 00CW139, Water Division 2, requesting conditional decrees for additional storage space in order to implement this storage, and the Southeastern District is continuing to pursue final decrees in these applications. Applicant has also worked with the Southeastern District in decreeing the District's exchange of Project Water on the South Arkansas River in Case No. 99CW160 for the benefit of the Applicant and other South Arkansas River water users. Poncha has also entered into an agreement with the District to use the District's exchange decreed in Case No. 99CW160. The Applicant has also continued to negotiate for the renewal of its December 9, 1982 Agreement with the Upper Arkansas Water Conservancy District allowing the storage of water in O'Haver Reservoir, North Fork Reservoir and Boss Lake located in the upper reaches of the South Arkansas River and its tributaries above the Town of Poncha Springs. The existing and continued South Arkansas River storage is an integral part of the subject storage to storage exchange. As the decreed exchange is part of the Applicant's integrated water supply system, work performed on behalf of one component of this integrated system constitutes diligence on behalf of all structures which are a part of this integrated system. Applicant expended a total of approximately \$814,948.71 on the work associated with its municipal water system during this diligence period. Applicant has also incurred legal, engineering, and administrative fees related to its water supply system consisting of, without limitation, water supply and distribution analysis, water rights planning, Water Court filings for the change of water rights and for the protection of its water rights, well permitting, and water rights administration matters. **VI. Additional Information.** No part of the conditional water right awarded in Case No. 01CW148 is requested to be made absolute herein at this time.

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 August 2011, (forms available at Clerk's office or at www.courts.state.co.us, must be submitted in quadruplicate, 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 8th day of July, 2011.



Mardell R. DiDomenico

Mardell R. DiDomenico, Clerk
District Court, Water Div. 2
Pueblo County Judicial Building
320 W. 10th Street
Pueblo, CO 81003; (719) 583-7048

(Court seal)
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