

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JUNE 2014  
AND NOTICE OF CHANGE IN COURT ADDRESS EFFECTIVE AUGUST 1, 2014  
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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 2014, 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:

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**CASE NO. 1996CW233 – CITY OF CRIPPLE CREEK, Attn: City Administrator, P.O. Box 430, Cripple Creek, CO 80813** (Please address all pleadings and correspondence to Chris D. Cummins, Felt, Monson & Culichia, LLC, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Second Amended Application for Water Rights

**PARK AND TELLER COUNTIES**

**II. AMENDMENT.** This Second Amendment seeks to add an alternate location for the water storage right requested in the Application, as previously amended, for the Oil Creek Reservoir, including specific identification of the Oil Creek Pipeline and the Oil Creek Pipeline Alternate Point of Diversion as sources of fill for said alternate storage location. Applicant filed its Application in this matter, Case No. 96CW233, on December 31, 1996, and filed its First Amendment to said Application on December 30, 1998. Amendment of the Application is requested only as expressly provided herein, and except as so provided, it is Applicant's intent that the Application remain otherwise unchanged. **III. SURFACE WATER STORAGE RIGHT. A. Alternate Location – Oil**

**Creek Reservoir. 1. Name of Reservoir:** Oil Creek Reservoir, Alternate Location. **2. Legal Description of Center of Dam:** a. Original Location (as provided in original Application): An on-channel reservoir, in the SE1/4 SE1/4 Section 28, Township 14 South, Range 69 West of the 6<sup>th</sup> P.M., approximately 145 feet west of the east line and 1,250 feet north of the south line of said Section 28. These distances are based on a BLM re-survey of Sections 28 and 33 dated November 7, 1987. The location of the Oil Creek Reservoir is depicted on the Exhibit A map attached to the Second Amended Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) b. Alternate Location: An off-channel reservoir in the NW1/4 NE1/4 of Section 4, Township 15 South, Range 69 West of the 6<sup>th</sup> P.M., approximately 2,470 feet west of the east line and 100 feet south of the north line of said Section 4. These distances are based on a BLM re-survey of Sections 28 and 33 dated November 7, 1987, and represents the alternate location of the Oil Creek Reservoir, as depicted on the Exhibit A Map attached to the Second Amended Application. **3. Source:** a. Original Location: Surface flows of Oil Creek, tributary to Fourmile Creek, tributary to the Arkansas River. b. Alternate Location: Surface flows of Oil Creek, tributary to Fourmile Creek, tributary to the Arkansas River, as delivered through the Oil Creek Pipeline, including alternate point of diversion, as described in the

original application, as amended. **4. Appropriation:** Applicant claims a relation back to the original application date of December 31, 1996 as an appropriation date for the Alternate Location of Oil Creek Reservoir, or in the alternative coincident with the date of this Second Amended Application, May 13, 2014. **5. Amounts of Water:** a. Original Location: 252 acre feet, conditional, representing the maximum capacity of the Oil Creek Reservoir. The amount of water decreed is for the capacity of the reservoir and is for the storage of in-priority impoundment of water and all or any portion of the depletion credits decreed in Case No. 96CW190, or other water rights exchanged to the reservoir via exchanges sought in the original application, or subject of prior or subsequent adjudications. b. Alternate Location: 240 acre feet, conditional, representing the maximum capacity of the Oil Creek Reservoir at the Alternate Location requested herein. The amount of water decreed is for the capacity of the reservoir and is for the storage of in-priority impoundment of water and all or any portion of the depletion credits decreed in Case No. 96CW190, or other water rights exchanged to storage in the Oil Creek Reservoir via exchanges decreed herein, or subject of prior or subsequent adjudications. **6. Use:** Oil Creek Reservoir, at either the original or alternate location, is sought for municipal beneficial use, including without limitation, domestic, stock watering, irrigation, recreational, wildlife habitat and fish propagation, commercial, industrial, and also including exchange and augmentation, conditional. **7. Reservoir Specifications:** a. Original Location: The maximum surface area of Oil Creek Reservoir at the high water line will be approximately 15.5 acres. The maximum height of the dam across Oil Creek will be approximately 60 feet, and the length of the crest of the dam will be approximately 380 feet. b. Alternate Location: The maximum surface area of Oil Creek Reservoir at the high water line will be approximately 11 acres. The maximum height of the dam at the alternate site is approximately 40 feet, and the maximum length of the crest of the dam will be approximately 510 feet. **8. Capacity:** a. Original Location: The total capacity of the Oil Creek Reservoir shall not exceed 252 acre feet, all of which shall be active capacity, at the high water line. b. Alternate Location: The total capacity of the Oil Creek Reservoir shall not exceed 240 acre feet, all of which shall be active capacity, at the high water line. **9. Land Ownership:** The land upon which the dam for the Oil Creek Reservoir is to be located, both original and alternate, and the land within the high water line, is owned by parties other than the Applicant. Applicant can and will acquire the necessary interests in land and/or land use authorizations, as applicable, for the construction, use, maintenance and operation of the Oil Creek Reservoir, in either location, from the fee owner(s) of the real property effected thereby prior to construction of the Oil Creek Reservoir and storage or beneficial use of water therein. **10. Remarks:** The approximate locations of the Oil Creek Reservoir and its areas of inundation are depicted on Exhibit A attached to the Second Amended Application, including the Alternate Location. Applicant shall construct the Oil Creek Reservoir at one, but not both, of the locations provided. Water shall be delivered to the Oil Creek Reservoir Alternate Location, if so constructed, via the Oil Creek Pipeline, including Alternate Point of Diversion therefore, as described herein in the original application, as amended (and coincident Oil Creek Pipeline II, as described in pending Case No. 98CW174). Applicant shall bypass all native surface flows in Oil Creek when not in priority, except those flows augmented by prior or subsequent decreed plans for augmentation, or flows representing exchanges of water

from other sources decreed to Applicant's use, in prior or subsequent decrees of the Water Court, or as may be administratively approved from time to time.

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**CASE NO. 2012CW127 – TORRES TROUT HATCHERY aka TORRES FISH HATCHERY now known as TORRES VALLEY FISH HATCHERY, c/o Ken Torres, 5359 C.R. 12, Weston, CO 81091** (Please send all pleadings and correspondence to:

Gerald B. McDaniel, Gerald B. McDaniel, P.C., Attorney for Applicant, 485 Guyout Ridge Court, Colorado Springs, CO 80919; (719) 260-9304)

First Amended Application for Absolute Water Storage Right

**LAS ANIMAS COUNTY**

**REASON FOR AMENDMENT:** The primary point of diversion for the subject ponds is changed from a point on Vallejos Creek to the existing pass-through structure for Vallejos Creek located at the Consolidated Ditch Diversion Structure on the South Fork of the Purgatoire River. The alternate diversion point on the South Fork of the Purgatoire shall remain the same. In addition the name of the Applicant has been changed to Torres Valley Fish Hatchery. No other substantive amendments are made. The Exhibits attached to the Amended Application are adapted from the original Application with the only changes being to Ex. A with the addition of the new point of diversion while showing the original point of diversion. The original date of the exhibits of 12-28-12 has been retained. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Name of**

**Reservoir:** Torres Fisheries Pond 3 and Torres Fisheries Pond 4. **Legal description of location of dam centerline: Location information in UTM format: UTM coordinates (UTM Zone 13; Units in meters; Datum NAD83; Unit set to true North):**

Northing 148.189.1500 (Pond 3); 148 366.5430 (Pond 4); Easting 129603.6570 (Pond #3); 129848.0090 (Pond 4). **Street Address:** Near the residence of Ken Torres, address shown above).

**PLSS Location:** Ponds 3 and 4 located as follows within the Maxwell Land Grant: Las Animas County, SW ¼ of the NE ¼ Section 24, Township 34 South, Range 69 West, 6<sup>th</sup> P.M. **Source of PLSS information:** Gary Terry Surveying PLS 12160. **Source:** South Fork of the Purgatoire River. **If filled from a ditch:**

**Name(s) of ditch(es) used to fill reservoir and capacity in cubic feet of water per second (cfs):** Torres Hatchery Diversion #1. Once diverted through the Vallejos Creek heading at the Consolidated Ditch, Applicant's water will flow down the irregular Vallejos Creek channel with a capacity of about 4 c.f.s. to a point on the Juanita Torres estate property adjacent to Applicant's ponds where it will be diverted into Applicant's ponds.

Absolute; Torres Hatchery Diversion #2 Alternate (Leandro Duran Martinez headgate on the South Branch of the South Fork)- capacity 1.5 c.f.s Conditional. **Legal description of each point of diversion:** Applicant's point of diversion shall be the existing but separate headgate within the Consolidated Diversion Structure which diverts water separately into the Vallejos Creek drainage, said headgate having been added into the Consolidated Ditch diversion structure, the location of which is taken from Case No. 83 CW 131 as follows: The headgate is located on the north bank of the South Fork of the Purgatoire River in the NE/4 of Sec. 22; Township 34 South, Range 69 West. 6th P.M. , Las Animas County, Colorado.

**Location information in UTM format: UTM coordinates (UTM Zone 13; Units in meters; Datum NAD83; Unit set to true North):** Consolidated Ditch: UTMX = 492401 UTM Y = 4103182. Northing 147 775.6134

(Leandro Duran Martinez headgate on South Fork- Alternate Diversion #2); Easting: 128 854.6958 (Leandro Duran Martinez Alternate Diversion #2 South Fork). **Street Address:** Near the residence of Ken Torres, address shown above). **Source of UTMs:** Gary Terry Surveying performed- Not known. Division #2 office supplied GPS coordinates for the Consolidated Ditch. **Accuracy of location displayed on GPS device:** Not known. **PLSS Location:** Las Animas County, NE ¼ of the NE ¼ Section 22, Township 34 South, Range 69 West, 6<sup>th</sup> P.M. See Exhibit A map on file with Amended Application. **Source of PLSS information:** Gary L. Terry Surveying, PLS #12160. **Date of appropriation:** 1959 for Pond #3; 1989 for Pond #4. **How appropriation was initiated:** Diversion of surface flows into ponds for raising fish. **Date water applied to beneficial use:** 1959 upon initial appropriation for Pond #3; and 1989 upon initial appropriation after construction and filling of pond #4. **Amount claimed:** Absolute: Pond 3- 3 AF; Pond 4 – 1.5 AF. **If filled from a ditch, rate of diversion in cfs for filling the reservoir:** Conditional: Alternate Pt. of Diversion from South Fork - 1 c.f.s. Absolute: 1 c.f.s. from Consolidated Ditch Diversion to Vallejos Creek. **Use or Proposed Use:** Commercial fish production. Water will be diverted from the Vallejos Creek Channel primarily, for pass-through or flow-through Ponds 3 and 4 and released back to the stream. Only in the event of emergency, obstruction or inadequate water in Vallejos Creek will the diversion through the historic Leandro Duran Martinez headgate be used. All consumptive use will be replaced by current SWSP based upon pending application for permanent augmentation plan in case # 2002 CW 151; Water Division #2. Applicant has secured a 15 yr. lease of 6.85 acre feet of augmentation water from the City of Trinidad to cover consumptive use evaporative losses associated with each pond as follows: Pond 3- 3.76 AF and Pond 4 – 3.01 AF (41 inches per year gross evaporation resulting in 3.43 AF per surface acre per NOAA Technical Report NWS-33). The existing ponds are already full and only upon infrequent occasions will the ponds require filling or re-filling. If such occasion occurs, Applicant will have to secure additional augmentation water for refilling. **Surface area of high water line:** 1.1 acre for Pond #3; .88 acre for Pond #4. **Vertical height of dam in feet measured vertically from the elevation of the lowest point of the natural surface of the ground where that point occurs along the longitudinal centerline of the dam up to the crest of the emergency spillway of the dam:** Pond #3: 8.3 ft.; Pond #4: 5.5 ft (feet). **Length of dam in feet:** Pond #3 - 180'; Pond #4- 220'. See Exhibits 1 and 2 attached to the Amended Application and Incorporated by reference. **Total capacity of reservoir in acre-feet:** Pond 3- 3 acre-feet; Pond 4 – 1.5 acre feet. **Dead storage:** All storage held for fish production with spillway at top of berm of each pond. See Exhibit 3 attached to the Amended Application and incorporated by reference. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new or existing diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool.** The new point of diversion is now located upon the land of Stonewall Mountain Ranch, LLC, represented by David Shohet, attorney, as an objector in this case. Applicant and said Objector have come to an agreement regarding access upon Objector's land for maintenance and administration of Applicant's water right. The Estate of Juanita Torres was notified in the original Application because the

original point of diversion was located upon the land in the Estate of Juanita Torres. The Estate did not object at that time. Nothing has changed regarding the diversion and storage features located within and upon the estate property in this Amended Application. NOTE: Both ponds 3 and 4 and both diversion points described herein are on the lands currently in the estate of Juanita Torres c/o Marlene Julia Marquez successor PR to Pricilla Torres, Personal Representative Name of Owner : Estate of Juanita Torres Deceased, c/o Marlene Julia Marquez successor Personal Representative. Mailing Address: 315 State Street, Trinidad, CO 81082. **Remarks or any other pertinent information:** Torres Hatchery, consisting of Manuel Torres (father) and Ken Torres, has diverted water from Vallejos Creek annually since the late 1950's for fish production. Vallejos Creek water temperature and quality is better for fish production than the South Fork water due to significant agricultural production on the South Fork drainage. The alternate point of diversion on the South Fork is for emergency purposes. Applicant has, and desires to continue to raise fish in cooperation with The State Division of Wildlife and for other commercial purposes. Applicant and Objector Stonewall Mountain Ranch LLC are in the final stages of negotiation and stipulation to the entry of the Final Augmentation Plan in case #02 CW 151 which is based upon the 15-year lease of augmentation water from the City of Trinidad. In the status conference in this case on May 20, 2014 Applicant and all Objectors participating stipulated that Objections already filed in this case would suffice as Objections to the Amended Application. Objectors need not file a separate Objection to this First Amended Application.

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**CASE NO. 2014CW10 – MATTHEW GEISER, 14 Road 3315, Aztec, NM 87410; (505) 947-6721**

Amended Application for Absolute Water Rights (Surface) and Application for Absolute Underground Water Right for an Exempt Well Pursuant to § 37-92-602(4), C.R.S., as amended

**LAS ANIMAS COUNTY**

**APPLICATION FOR WATER RIGHTS (SURFACE).** Name of structure: Geiser Spring. **Legal description of each point of diversion:** **PLSS Description:** Las Animas County, SE ¼ of the SW ¼ Section 1, Township 31 South, Range 65 West, 6<sup>th</sup> P.M., 1100 feet from the South line and 2,735 feet from the West line. **Street Address:** 26131 Pinon Ridge Drive, Aguilar, CO 81020; **Subdivision:** Pinon Ridge Estates; Lot 11; 36.56 acres. **Source:** None. **Date of appropriation:** July 1976; **How appropriation was initiated:** Cleaning out of spring with bulldozer. **Date water applied to beneficial use:** July 1976. **Amount claimed:** 15 gpm absolute. **Use:** Domestic, household use, 1 acre irrigation, fire protection, watering of domestic animals, up to 3 single family dwellings. **Legal description of irrigated acreage:** Area in front of, behind, and up to the sides of the home; areas are highlighted on map attached to the Application; also next to spring and up toward house. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage**

**pool:** Applicant. **Remarks or any other pertinent information:** Spring now producing ½ gpm but does produce over 15 gpm in non-drought years. Spring was used by previous landowner to water cattle since at least from July of 1976. **APPLICATION FOR UNDERGROUND WATER RIGHT FOR AN EXEMPT WELL.** **Name of Well:** Geiser Well; **Permit No.:** 294014. **Total area of parcel on which this well is located:** 36.56 acres. **Legal description of well: UTM Coordinates (Zone 13; Units in Meters; Datum NAD83; unit set to true North):** Northing 4136153; Easting 0533822. **Street Address:** 26131 Pinon Ridge Drive, Aguilar, CO 81020; **Subdivision:** Pinon Ridge Estates; Lot 11; 36.56 acres. **Date of appropriation:** April 10, 2014; **How appropriation was initiated:** Filed with State Engineer's Office; **Date water applied to beneficial use:** Not as of yet. **Source of water:** Ground water. **Amount claimed:** 15 gpm absolute. **Uses:** Domestic, household use, 1 acre irrigation, fire protection, watering of domestic animals and livestock, up to 3 single family dwellings. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant. **Remarks:** Plan on drilling by July 2014.

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**CASE NO. 2014CW3027; Previous Case Nos. W-2681, W-2681(78); 1982CW100(W-2681); 1986CW84(W-2681); 1993CW46(W-2861); 1999CW163(W-2681) AND 2007CW21(W-2681) – THE STATE OF COLORADO, ACTING BY AND THROUGH THE STATE BOARD OF LAND COMMISSIONERS, 1127 Sherman Street, Suite 300, Denver, CO 80203** (Please address all pleadings and correspondence to: Virginia M. Sciabbarrasi, Assistant Attorney General, Attorney for Applicant, 1300 Broadway, 7<sup>th</sup> Floor, Denver, CO 80203; (720) 508-6253)

Application for Finding of Reasonable Diligence

**EL PASO COUNTY, COLORADO**

The Colorado State Land Board of Land Commissioners, by and through counsel, hereby submits the following application for finding of reasonable diligence. **Name of Structures and legal descriptions:** **a. Holmes Camp No. 3, State of Colorado Engineer's Permit No. 31654**, NE¼ SW¼ of Section 29, Township 17 South, Range 63 West, 6th P.M., 2600 feet east and 3400 feet south of the northwest corner of said Section 29, in El Paso County. **b. Guest House No. 2, State of Colorado Engineer's Permit No. 37544**, NW¼ SE¼ of Section 29, Township 17 South, Range 63 West, 6th P.M. 3900 feet east and 3400 feet south of the northwest corner of said Section 29, in El Paso County. See Exhibit A attached to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **3. Describe conditional water rights, giving the following from the Referee's Ruling and Judgment and Decree:** **a. Holmes Camp No. 3**, (1) Date of Original Decree: March 15, 1974, (2) Appropriation Date: December 31, 1942, (3) Use: a unified well system to include irrigation, mechanical, and domestic, (4) Amount: 0.20 cfs (90 gpm), 0.033 cfs absolute (15 gpm), 0.167 cfs conditional (75 gpm), (5) Source: Black Squirrel Creek. **b. Guest House No. 2**, (1) Date of Original Decree: March 15, 1974, (2) Appropriation Date: December 7, 1968, (3) Use: a unified well system to include irrigation, mechanical, and domestic, (4) Amount: 0.20 cfs (90 gpm), 0.033 cfs

absolute (15 gpm), 0.167 cfs conditional (75 gpm), (5) Source: Black Squirrel Creek. **4. Description of project features:** The Chico Basin Ranch is a 90,000 acre ranch in south central El Paso County and north central Pueblo County. These lands are located along the Black Squirrel Creek Drainage and Chico Creek. The structures listed above have been upgraded to provide livestock water to the ranch. **5. Provide a detailed outline of what has been done toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** During this diligence period the Applicant and its Lessee have continued to work towards the perfection of these water rights. Total expenditures by the Applicant and its Lessee during the diligence period are approximately \$30,000. The expenditures are from monthly monitoring cost, well recertification, pump repair or replacements, dues to CWPDA, augmentation water costs, repair of pipelines and tanks, replacement of flow meter and other associated cost to pump the water to the northern and eastern portions of the Chico Basin. In addition, the wells service the Holmes House and the Guest House. A portion of the costs incurred were related to the removal of Salt Cedar and Russian Olive groves just down gradient from these two wells. The above activities on the part of the Applicant, the State Board of Land Commissioners, show a pattern of diligence and continuous work toward the development and implementation of these water rights. WHEREFORE, Applicant prays that this Court enter a decree finding that Applicant has exercised reasonable diligence in the development of the conditional water rights.

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**CASE NO. 2014CW3028; Previous Case Nos. W-2682, W-2782(78); 1982CW101(W-2682); 1986CW85(W-2682); 1993CW45(W-2682), 1999CW164(W-2682); and 2007CW22(W-2682) – STATE OF COLORADO, ACTING BY AND THROUGH THE STATE BOARD OF LAND COMMISSIONERS, 1127 Sherman Street, Suite 300, Denver, CO 80203** (Please address all pleadings and correspondence to: Virginia M. Sciabbarrasi, Assistant Attorney General, Attorney for Applicant, 1300 Broadway, 7<sup>th</sup> Floor, Denver, CO 80203; (720) 508-6253.

Application for Finding of Reasonable Diligence

**PUEBLO COUNTY**

The Colorado State Land Board of Land Commissioners, by and through counsel, hereby submits the following application for finding of reasonable diligence. **2. Name of Structures and legal descriptions:** Headquarters Well No. 1; State of Colorado Engineer's Permit No 31516 SW¼ SW¼ of Section 3, Township 18 South, Range 63 West, 6<sup>th</sup> P.M. 260 feet east and 1000 feet north of the southwest corner of said Section 3, in Pueblo County. See Exhibit A attached to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **3. Describe conditional water rights, giving the following from the Referee's Ruling and Judgment and Decree: Headquarters Well No. 1.** (1) Date of Original Decree: March 15, 1974. (2) Appropriation Date: December 31, 1942. (3) Use: a unified well system to include irrigation, mechanical, and domestic. (4) Amount: 0.13 (60 gpm), 0.033 cfs absolute (15 gpm), 0.097 cfs conditional (45 gpm). (5) Source: Black Squirrel Creek. **4. Description of project features:** The Chico Basin Ranch is a 90,000 acre ranch in south central El Paso County and north central Pueblo County. These lands are located along the Black Squirrel Creek Drainage and Chico Creek.

The structure listed above has been utilized to pump water to an extensive livestock watering system to the west of Chico Basin headquarters. It is also used to help fill the Smith Reservoir just south of the headquarters. **5. Provide a detailed outline of what has been done toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** During this diligence period, the Applicant and its lessee have continued to work towards the perfection of these water rights. Total expenditures by the Applicant during this diligence period are approximately \$83,430. These expenditures include repair or replacement of livestock pipeline east and west of the headquarters, removal of Salt Cedar and Russian Olive in the meadow areas upstream of the well, repair and replacement of livestock tanks along the system, and cost to monitor well on monthly basis to include the services of a hydrologist. In addition, the costs include purchasing augmentation water and membership in CWPDA for reporting purposes. The above activities on the part of the Applicant, the State Board of Land Commissioners, show a pattern of diligence and continuous work toward the development and implementation of these water rights. WHEREFORE, Applicant prays that this Court enter a decree finding that Applicant has exercised reasonable diligence in the development of the conditional water rights and that these conditional amounts be decreed absolute.

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**CASE NO. 2014CW3029; Previous Case No. 2008CW118 - LAMBERT HIRSHEIMER AND KAREN HIRSHEIMER, 401 County Road 9, Leadville, CO 80461** (Please send

all pleadings and correspondence to: Henry D. Worley, Worley Law Firm, LLC, Attorney for Applicants, 611 North Weber Street, Suite 104, Colorado Springs, CO 80903; (719) 634-8330)

Application to Make Conditional Right of Exchange Absolute

**LAKE COUNTY**

**2. Name of structure:** Appropriative right of exchange. Amount: 0.01 cfs. Location of exchange reach: from the confluence of the Arkansas River and Lake Creek in the NW1/4 SE1/4 Section 24, T. 11 S., R. 80 W., 6<sup>th</sup> P.M., up the Arkansas River to its confluence with California Gulch, the location at which depletions from the Lambert Well described are deemed to affect the Arkansas River, near the east-west center line of Section 32, T. 9 S., R. 80 W., 6<sup>th</sup> P.M., approximately 2000 feet west of the east line of said section. **3. Information from original decree:** Case No. 07CW118, Water Division 2, decree entered June 30, 2008. No subsequent decrees have been entered in this case. **4. Work done toward completion of the appropriation:** Applicants have pumped the Lambert Well, which is located in the SE1/4 NW1/4 Section 22, T. 9 S., R. 80 W., 6<sup>th</sup> P.M., and used it for its decreed purposes, resulting in depletions to the Arkansas River. Water attributable to Applicants' one-half share of stock in Twin Lakes Canal and Reservoir has been released from storage into Lake Creek on a monthly basis since August or September, 2009, meaning that there have been at least 57 such monthly releases between September 2009 and the beginning of June, 2014. The existence of exchange potential has not yet been determined for any specific date of release of Twin Lakes augmentation water, but the Division Engineer's office has verified that the river call almost always occurs at or below Pueblo Reservoir. Location of the calling water right at or below Pueblo Reservoir establishes *a fortiori* that at such times, there is exchange potential in the Arkansas River from its confluence with Lake



Creek, upstream to its confluence with California Gulch. This is sufficient to establish that the exchange was operated at such times. Wherefore, Applicants request that the Court grant them an absolute appropriative right of exchange, as described in ¶ 2 above.

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**CASE NO. 2014CW3030; Previous Case No. 2005CW66 – TOWN OF LIMON (“Limon” or “Town”), 100 Civic Center Drive, P. O. Box 9, Limon, CO 80828**

(Please send all pleadings and correspondence to: David C. Taussig, Philip E. Lopez, White & Jankowski, LLP, Attorneys for Applicant, 511 Sixteenth Street #500, Denver, CO 80202; (303) 595-9441)

Application for Finding of Reasonable Diligence and to Make Absolute

**LINCOLN AND ELBERT COUNTIES**

**2. Name of structure:** 2005 Limon Municipal Wastewater Treatment Plant Diversion (a/k/a 2005 Limon WWTP Right). **3. Description of Applicant.** The Town of Limon is in Lincoln County, Colorado, and has a current population of 1864. It is located in eastern Colorado and is known as the “Hub City” as a result of being at the crossroads of 5 major U.S. and State Highways and I-70. The Town owns and operates wells, water rights and a raw water treatment system to provide water to its citizens and to its contract customers. It also owns and operates a sewage treatment plant. The 2005 Limon WWTP Right is a component part of the Town’s water and sewer facilities. **4. Description of conditional water including information from previous decree:** A. Date of Original Decree: June 9, 2008, Case No. 05CW66, Water Division 2. B. Subsequent Decrees: N/A. C. Legal Description of Points of Diversion: i. WWTP Outfall. The WWTP Outfall is located in the SE ¼ NW ¼ of Section 21, T. 9 S., R. 56 W., 6th P.M., Lincoln County, Colorado, approximately 1,425 feet from the North line and 2,390 feet from the West line. GPS coordinates are N 39 degrees 15.266' and W 103 degrees 40.150'. ii. Wetlands Intake Pump: The Wetlands Intake Pump is located in the SE ¼ NW ¼ of Section 21, T. 9 S., R. 56 W., 6th P.M., Lincoln County, Colorado, approximately 1,405 feet from the North line and 2,330 feet from the West line. GPS coordinates are N 39 degrees 15.269' and W 103 degrees 40.139'. iii. Wetlands Flume: The Wetlands Flume is located in the NW ¼ NW ¼ of Section 21, T. 9 S., R. 56 W., 6th P.M., Lincoln County, Colorado, approximately 170 feet from the North line and 1,225 feet from the West line. GPS coordinates are N 39 degrees 15.474' and W 103 degrees 40.389'. D. Source: Treated sewage effluent derived from water originally diverted by the Town from the Big Sandy Alluvium in the Upper Big Sandy Designated Ground Water Basin in Lincoln and Elbert Counties. E. Appropriation Date: September 1, 2005. F. Amount: 1.5 cfs (673.5 gpm), conditional. G. Use: All municipal uses, including, but not limited to, domestic, manufacturing, industrial, commercial, mechanical, fire protection, sewage treatment, street sprinkling and dust suppression, generation of electric power and power generally, watering of parks, lawns, golf courses, gardens and other public spaces, irrigation, agricultural, recreation, piscatorial, wildlife preservation, creation, maintenance, and preservation of wetlands and associated flora and fauna and aesthetic purposes and for replacement, adjustment and regulation of the Town’s storage and delivery systems, among themselves and with others. The Town may divert, store and use the water directly, by and for augmentation, substitution, exchange, replacement, recharge, or otherwise, as may be

appropriate to maximize its lawful use. The Town may reuse, successively use, dispose of, and/or otherwise apply all water to extinction. The return flows discharged or released by the Town attributable to the exercise of this right shall have associated with it the same rights of use, reuse, successive use and disposition. The water may be placed to use within the Town's service area as it now exists or may exist in the future and in any other location capable of service with water produced from the water right for which the Town has a contractual arrangement. **5. Claim to make absolute:** A. Date water applied to beneficial use: Between January 6, 2011 and June 21, 2014. B. Amount: 1.5 cfs (673.5 gpm). C. Use: Over a time period between January 6, 2011 and June 21, 2014 the 2005 Limon WWTP Right has been operated at rates up to and exceeding 673.5 gpm and applied to beneficial use. Such usage has been observed by and confirmed with Josh Kasper, the District 67 Water Commissioner. An accounting of the 2005 Limon WWTP Right for January 6, 2011 through June 21, 2014 is attached to the application as Exhibit 1. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **6. Detailed outline of what has been done to perfect the water right:** During the period from June 9, 2008 to June 30, 2014 (Diligence Period), the Town engaged in the following efforts and expended money in perfecting the 2005 Limon WWTP Right: A. Diversion and Use of the Water: During the Diligence Period, the Town diverted water under this right and applied it to beneficial use in 2011, 2012, and 2014. B. Construction of the Pumping Facilities: During the Diligence Period, the Town installed a pump, piping and associated appurtenances at the cost of \$30,896.52 for the system to fill the trucks that haul water that use this right. C. Water Treatment Plant: During the Diligence Period, the Town has expended more than \$1,547,604 on its Water Treatment Plant for operation, water quality testing, chemicals, repair, and replacement. D. Waste Water Treatment Plant and Collection System: During the Diligence Period, in excess of \$1,898,526 was spent on repairs, operation and maintenance, water quality testing, and rehabilitation of the waste water treatment plant and collection system. E. Raw and Treated Water Systems and Infrastructure Improvements: During the Diligence Period, over \$2,153,988 was spent on legal, consulting, maintenance and construction in connection with the raw and treated water infrastructure, including pipe repair and replacement. F. Replacement Well Permits: During the Diligence Period, the Town replaced wells that provide part of the initial source of the effluent for this water right. Cost of this work was approximately \$119,080.00. G. Protection and Maintenance Efforts: During the Diligence Period, the Town protected and maintained the water rights that provide the initial source of the effluent for this conditional water right. The cost of this work was approximately \$4,000. H. Payments for Water Treatment Plant: During the Diligence Period, the Town made payments on revolving fund loans and various bonds. **7. Names and addresses of owners of land upon which structures are located:** On information and belief, the Town and the Colorado State Land Board, 1127 Sherman Street, Suite 300, Denver, CO 80203, own the land upon which the structures are located. WHEREFORE, the Town respectfully requests that the Court find the Town has exercised reasonable diligence in the development of the 2005 Limon WWTP Right and confirm that the water right has been made fully absolute for 1.5 cfs (673.5 gpm).

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**CASE NO. 2014CW3031; Previous Case Nos. 1993CW47 and 2006CW90 – COLORADO DIVISION OF PARKS AND WILDLIFE AND THE PARKS AND WILDLIFE COMMISSION, 6060 Broadway, Denver, CO 80216** (Please send all

pleadings and correspondence to: Elaine J. Wizzard and Heather A. Warren, Assistant Attorneys General, Attorneys for the Applicant, 1300 Broadway, 7<sup>th</sup> Floor, Denver, CO 80203; 720-508-6312 or 720-508-6266)

Application for Finding of Reasonable Diligence and to Continue Conditional Water Rights

**CHAFFEE COUNTY, COLORADO**

The Colorado Division of Parks and Wildlife and the Parks and Wildlife Commission (collectively “CPW”), by and through its counsel, hereby submits the following application for finding of reasonable diligence and to continue a conditional water rights.

**2. Name of Structure:** Buena Vista Well No. 5. **3. Conditional Water Right**

**Information:** A. Original Decree: October 18, 2000, Case No. 93CW47, Water Division

2. B. Subsequent decrees awarding findings of diligence: June 24, 2008, Case No.

06CW90, Water Division 2. C. Legal Description from most recent decree: Buena Vista

Well No. 5 is located in the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , Section 16, T14S, R78W, 6<sup>th</sup> P.M. at a point

240 feet from south section line and 750 feet from west section line of said section. See

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.)

D. Source: Spring arising in the Arkansas Valley Alluvium, tributary to the Arkansas

River. E. Date of Appropriation: July 1, 1913. F. Amount: 348 g.p.m. CONDITIONAL

(See “Additional Remarks” section below). G. Use: The well is used for piscatorial

purposes to provide *the sole source* of water for CPW’s Buena Vista fish rearing unit

which is located within Buena Vista Correctional Facility. The well is used to provide

water to operate four raceways and a settling pond. Outflows from the raceways are

routed through the settling pond located outside the Buena Vista Correctional Facility,

prior to return of the outflows by pipeline to the Arkansas River. H. Depth: The well is

an 800 foot long interceptor drain located 10 to 15 feet beneath the land surface. I.

Additional Remarks: The subject water right was initially adjudicated by decree of the

Court issued October 18, 2000, in Case No. 93CW47 in the amount of 348 g.p.m.

conditional and 652 g.p.m. absolute. The 652 g.p.m. made absolute by that decree is

not at issue in this proceeding. **4. Outline of what has been done toward**

**completion or for completion of the appropriation and application of water to a**

**beneficial use as conditionally decreed, including expenditures:** The amount of

fish that can be raised at CPW’s Buena Vista fish rearing unit is dependent on the

amount of water available and produced from Buena Vista Well #5. Currently, the

production of fish is limited by the flow rate of Buena Vista Well # 5 which derives water

through an underground interceptor drain; the conditional portion of 348 g.p.m. will be

used to increase fish production when and if the collection system yields more water.

During this diligence period, in continuing the development of the conditional water

rights, applicant has been engaged in the legal defense and protection of said water

right and has been diligent in the continued use and development of the water rights

involved, including expenditures for legal and engineering work. Colorado Correctional

Industries (CCI), on behalf of CPW, operates the fish rearing unit located within Buena

Vista Correctional Facility. During this diligence period CCI has expended funds and employee resources to: walk the lines and inspect the underground water delivery system annually, contract for meter adjustment and calibration annually, maintain the fish rearing unit facilities daily, meter effluent discharge daily, account for water diverted monthly, perform effluent chemical analysis, and produce 80-100 thousand fish each year. Additionally, in 2010, CCI expended approximately \$1,295.00 to rooter underground pipelines that carry water from the collection system to the fish rearing unit. **5. Name and address of owners of the land on which structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Colorado Division of Parks and Wildlife, and the Parks and Wildlife Commission, 6060 Broadway, Denver, CO 80216. Telephone: 303-297-1162. WHEREFORE, Applicant respectfully requests that this Court enter a decree finding that Applicant has exercised reasonable diligence in the development of the conditional right, continuing the conditional portion of the water right in full force as decreed, and for such other and further relief as this Court deems just and proper.

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**CASE NO. 2014CW3032 - DANIEL A. NEWHARD AND LYNNE A. BLYMIRE, 119 Mountain Drive, Andreas, PA 18211** (Please address all pleadings and correspondence to: David M. Shohet, Ryan W. Farr, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for a Simple Change in a Surface Point of Diversion Pursuant to §37-92-305(3.5) C.R.S.

**PUEBLO COUNTY, COLORADO**

**Summary of Application for Simple Change in Surface Point of Diversion.**

Applicants are the 100% owners of the Fisher Canon Ditch No. 2, diverted from Fisher Canon Creek, a tributary to Muddy Creek, tributary to Greenhorn Creek, and tributary to the St. Charles River. Applicants seek a decree pursuant to § 37-92-305(3.5),C.R.S. to move the decreed point of diversion of the Fisher Canon Ditch No. 2 approximately 240 feet downstream from its decreed point of diversion. By this application the Applicants seek only a simple change in point of diversion for the Fisher Canon Ditch No. 2. The Applicants are seeking no other change. **Decreed water right for which change is sought.** A. Name of Structure: Fisher Canon Ditch No. 2. B. Decree Information: Case No. CA2756-29 in District Court, Water District No. 15 in Pueblo County, dated July 5, 1929. C. Decreed Point of Diversion: On the south bank of Fisher Canon Creek in the NW1/4 of the NW1/4 of Section 25, Township 24 South, Range 68 West of the 6<sup>th</sup> P.M., from whence the NW corner of Section 25 bears North 84° West 1,165 feet. The Exhibit A map attached to the Application shows the approximate location of the decreed point of diversion for the Fisher Canon Ditch No. 2. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) D. Source: Fisher Canon Creek, tributary to Muddy Creek, tributary to Greenhorn Creek, tributary to the St. Charles River, and tributary to the Arkansas River. E. Appropriation Date: June 27, 1893. F. Decreed Amount and Use. 2.0 c.f.s., absolute, for irrigation. **Change in the Point of Diversion.** Applicants seek a simple change of point of diversion for the Fisher Canon Ditch No. 2 pursuant to § 37-92-305(3.5),C.R.S. from its originally decreed point of diversion to a new location

approximately 225 feet downstream on Fisher Canon Creek. There are no intervening surface diversion points or inflows between this proposed new location and the originally decreed point of diversion from which change is sought. The location of the proposed new point of diversion for the Fisher Canon Ditch No. 2 is on the Applicants' property in the SW1/4 of Section 24, Township 24 South, Range 68 West of the 6<sup>th</sup> P.M., at a point located in GPS UTM NAD83 format, Zone 13S, Easting 0504150, Northing 4199150. The Exhibit A map shows the approximate location of the proposed new decreed point of diversion for the Fisher Canon Ditch No. 2. **Names and addresses of owners of the land upon which any new diversion structure will be constructed.** The new point of diversion for the Fisher Canon Ditch No. 2 is on lands owned by the Applicants. **Terms and Conditions.** A. There will be no injury to other vested water users as a result of the requested change in point of diversion. This change in point of diversion will not result in a diversion of a greater amount of water than has been decreed and historically utilized. C. The quantities of water appropriated for the decreed Fisher Canon Ditch No. 2 water right are present and available for diversion from this new point of diversion, as the water that would have been removed from Fisher Canon Creek at the original point of diversion will now instead be removed approximately 240 feet downstream. Applicants seek no other changes to the Fisher Canon Ditch No. 2 water right, and will continue to beneficially use the flows therefrom on the historically irrigated acreage upon which this water right matured to beneficial use. D. No injury will result to other vested water rights as a result of this requested simple change in point of diversion. No intervening point of diversion from, or inflows to, Fisher Canon Creek occur between the original point of diversion and the requested changed point of diversion. No greater quantities of water than is decreed to the Fisher Canon Creek will be diverted nor used because of the proposed simple change, nor are any other changes to the Fisher Canon Ditch No. 2 water right requested.

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THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT AND PROTEST WITHIN THE TIME PROVIDED BY STATUTE, OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of August 2014, (forms available at Clerk's office or at [www.courts.state.co.us](http://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.

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Witness my hand and the seal of this Court this 8th day of July, 2014.



*Mardell R. DiDomenico*

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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)  
Published: July \_\_\_\_\_, 2014

# **NOTICE OF CHANGE OF ADDRESS**

Effective August 1, 2014, Water Division 2 will be located at the new Pueblo Judicial Building:

501 North Elizabeth Street, Suite 116  
Pueblo, CO 81003

All water court proceedings scheduled on or after August 5, 2014, before Judge Larry C. Schwartz will be held in Courtroom 406 on the 4<sup>th</sup> Floor.

The main telephone number for the Pueblo Judicial Building will be (719) 404-8700. The water clerk's direct number will be provided when available.