

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

AMENDED RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING
JUNE 2015

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during June 2015, 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. 2015CW4 – DAVID REINEKE, P. O. Box 71, Rye, CO 81069; (719) 489-2302

Amended Application for Absolute Underground Water Right

PUEBLO COUNTY

Name of Well and permit, registration or denial number: Reineke; Permit 31406.
Legal description of well: UTM Coordinates (NAD83, Zone 13): Northing 4197360.2; Easting 504270.5; **Street Address:** 10022 Miller Avenue, Rye, CO 81069;
Subdivision: Miller; **Lot:** 7 and 8; **Block:** 2. **Source of UTM's:** iPhone app.
Accuracy of location displayed on GPS device: 20 feet. **PLSS Description:** Pueblo County, NE ¼ of the NW ¼ Section 36, Township 24 South, Range 68 West, 6th P.M. **Source of water:** Ground water tributary to Greenhorn Creek, tributary to Arkansas River. **Depth of Well:** 10' (on perched water table). **Date of appropriation:** July 1967. **How appropriation was initiated:** Well dug and in use since 1967. **Date water applied to beneficial use:** July 1967. **Amount claimed in gallons per minute:** 1 gpm Absolute. **Amount claimed in acre feet annually:** 1.0 a.f. **Use:** Household (domestic) use only; no irrigation. **Remarks:** The well is an exempt well as defined in C.R.S. 37-92-602(1).

CASE NO. 2015CW9 – WILBUR C. MILLER FAMILY, LLLP, P. O. Box 1576, Westcliffe, CO 81252; (719) 371-0725

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

CUSTER COUNTY

Decreed Water Right for Which Change is Sought: Name of Structure: Risser and Lock. **Date of Original and all Relevant Subsequent Decrees:** 1896-03-12; **Case No:** 03/12/1896; **Court:** Fremont County District Court. **Legal Description of Structure as Described in Most Recent Decree that Adjudicated the Location:** From the center of Section 5, Township 23 South, Range 72 West bears South 41° 35' East 250 feet. Ditch flows from the West side of Grape Creek. **Decreed Source of Water:** Grape Creek. **Appropriation Date:** 1875-06-01. **Total Amount Decreed to Structure in cfs:** 5.11 cfs. **Decreed Use:** Irrigation. **Amount of Water that Applicant Intends to Change:** 5.11 cfs. **Detailed description of proposed change in a surface point of diversion:** Approximately 65 years ago, the stream bed had eroded to a depth that was making it very difficult to divert water from Grape Creek.

Additionally, the dry gulch which joins the stream right above the point of diversion seem to be flooding more frequently, damaging the dam and filling the ditch with sand. At that time, the ditch was extended South approximately 1500 feet and a new point of diversion was established. There are no intervening diversion points. The stream is not considered a losing stream in this area, so the amount of water physically and legally available for diversion is unaffected by this change in point of diversion. **Location of the new surface point of diversion:** UTM Coordinates: Northing 4214510; Easting 0459660; Zone 13 NAD 83. **Source of UTM:** hand-held Garmin. **Accuracy of location displayed on GPS device:** 12 feet. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion structure, or modification to any existing diversion structure is or will be constructed:** Matt Miles, 1621 Ridgewood Avenue, Holly Hill, FL 32117.

CASE NO. 2015CW10 – ROBERT J. KEAGLE and MARILYN L. KEAGLE, 1260 Houchin Boulevard, La Veta, CO 81055; (719) 746-2906

Application for Absolute Water Rights (Surface)

HUERFANO COUNTY

Name of structure: Spring #1. **Legal description of each point of diversion:** UTM Coordinates (Zone 13, NAD 27): Northing 4165824; Easting 479641. **Street Address:** 840 Houchin Blvd., La Veta, CO 81055; **Source of UTM:** Hand-held Garmin. **PLSS Location:** Huerfano County, SW ¼ of the SW ¼ Section 4, Township 28 South, Range 70 West, 6th P.M. **Source of PLSS information:** Building permit. **Source:** Unnamed tributary to Pass Creek, tributary to Huerfano River. **Date of appropriation:** Purchased December 1992; **How appropriation was initiated:** Installed spring box. **Date water applied to beneficial use:** October 2014. **Amount claimed:** 15 gpm Absolute. **Use:** Household use only--domestic home. Single family residence – 3 bedroom/2 bath home, permanent residence, environmentally friendly. Home is located approximately 700' from spring. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.

CASE NO. 2015CW3027; Previous Case No. 85CW134(B) – PUEBLO WEST METROPOLITAN DISTRICT, 109 E. Industrial Boulevard, P.O. Box 7005, Pueblo West, Colorado 81007 (Please direct all pleadings and correspondence to: Robert F.T.

Krassa, Krassa & Miller, LLC, Attorney for the Applicant, 2737 Mapleton Ave., Suite 103, Boulder, CO 80304, 303-442-2156)

Application for Finding of Reasonable Diligence

PUEBLO COUNTY, COLORADO

2. **Introduction, Description of Decree.** Pueblo West Metropolitan District ("Pueblo West") seeks a finding of reasonable diligence for appropriative rights of reuse and exchange decreed on June 8, 2009 in Case 85CW134(B), Water Division No. 2. That decree may be inspected at the office of the Clerk of this Court or at the office of the Pueblo County Clerk and Recorder under Reception #1810233, recorded June 29, 2009. a. **Said decree in 85CW134(B)** adjudicated a plan of use, re-use and successive

use by exchange of reusable return flows attributable to all sources other than measured reusable return flows from Pueblo West's wastewater treatment plants. The sources of reusable water for the exchange decreed in Case 85CW134(B), which are the subject of the present application, are sources which by their nature cannot be measured directly at those sources. Those sources include by way of example and not limitation, lawn irrigation return flows and septic system return flows. **b. Said decree in 85CW134(B) also adjudicated Pueblo West's exchange** of water from Lake Meredith to Pueblo Reservoir as part of its exchange and reuse plan, and all issues arising thereunder, as well as consideration of return flow credits based on calculation or estimation of sub-surface flows at Pueblo West's measurement points. **c. Other appropriative rights of exchange** for Pueblo West were decreed by this Court in Case 85CW134(A). The description of the bifurcation of original case 85CW134, and the distinction between 85CW134(A) and 85CW134(B), is set out on page numbers ii and iii of the decree in 85CW134(A) and was re-stated at page 2 of the said 85CW134(B) decree. The 85CW134(A) decree may be inspected at the office of the Clerk of this Court or at the office of the Pueblo County Clerk and Recorder under Reception #1029671, Book 2703, page 68 as recorded December 28, 1993. **3. Names of Structures Utilized under Case 85CW134(B).** **(a) Pueblo Reservoir.** Pueblo Reservoir is formed by a dam across the Arkansas River in Pueblo County in Sections 25 and 36, Township 20 South, Range 66 West of the 6th Principal Meridian, and in Section 1, Township 21 South, Range 66 West of 6th Principal Meridian, as depicted on the U.S. Geological Survey 7.5' series, topographic map of the Northwest Pueblo quadrangle (1974 photo revision), and as described in the Decree in Case No. B-42135 (District Court, Pueblo County), dated June 25, 1962. **(b) Pueblo West Trifurcation Point.** The current trifurcation point connection is to the Pueblo Dam South Outlet Works at the South end of the concrete portion of the dam of Pueblo Reservoir, in the SW 1/4 of the NE 1/4 of said Section 36. A second connection, to the North Outlet Works of the same dam, is located in the NW/4NE/4 of the same Section 36 and will soon come into use as part of Pueblo West's connection to the Southern Delivery System. This second connection is the functional equivalent of the existing connection for purposes of the subject exchange. Both connections are shown on 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.) **(c) Pueblo West Wastewater Treatment Plant,** located in Section 16, T.20S, R.65W of the 6th P.M. in Pueblo County, whose outfall flows into a tributary of Dry Creek (also known as Wildhorse Creek) and thence into the Arkansas River. **4. Description of Sources of Water for Exchange and Reuse.** **(a) Twin Lakes.** Pueblo West owns 5906.745 shares of the capital stock of the Twin Lakes Reservoir and Canal Company ("Twin Lakes"). This stock represents pro rata ownership of the Independence Pass Transmountain Diversion System which diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County. These water rights were adjudicated by a Decree in Civil Action No. 3082 (District Court, Garfield County) dated August 25, 1936 and were modified by a Decree in Case No. W-1901 (District Court, Water Division No. 5) dated May 12, 1976. These water rights have an appropriation date of August 23, 1930, with a direct flow amount for diversions through the transmountain tunnel of 625 cubic feet per second with an annual limit of 68,000 acre

feet, a running ten year limit of 570,000 acre feet, and various other limitations recited in the Decrees. These water rights are decreed for all beneficial uses. By virtue of its ownership of such stock, Pueblo West has the right to utilize such waters and the return flows therefrom. These are transmountain waters not native to the Arkansas River. Also, Pueblo West has, by virtue of its ownership of shares in the Twin Lakes Reservoir and Canal Company, a right to use and occupy a portion of the storage capacity of Twin Lakes Reservoir. Pueblo West's Twin Lakes water derived from Arkansas River Basin sources is not legally available for re-use. **(b) Case 80CW160.** Non-tributary underground water adjudicated in Case No. 80CW160 by Decree of the District Court for Water Division No. 2 dated November 18, 1985. This Decree adjudicated 17 wells which withdraw water from the Dakota Sandstone and Purgatoire formations. All of the wells are located within the municipal boundaries of Pueblo West. The total amount of water which may be diverted from said wells is 3303 g.p.m. or about 7.3 c.f.s. All of the wells were constructed prior to June 20, 1972, and are decreed for the following uses: "municipal, including domestic, industrial, commercial, irrigation, fire protection, stock water, recreation, and any other beneficial use, including the right to store the water, use it for augmentation purposes, and to consume all of the water withdrawn from said wells." The location, construction date and amount of water from each well are as follows. (P.W. means Pueblo West, G.C. means Golf Course and T. means Teckla. Location is given as quarter of quarter, section, township and range West of the 6th P.M. in that sequence.)

Name	Location	Date	Amount
P.W. #1	SE1/4 SW1/4 12-19-66	March 17, 1969	50 gpm
P.W. #2	SE1/4 NE1/4 16-20-66	Aug. 10, 1969	500 gpm
P.W. #3	SW1/4 NE1/4 11-20-66	Aug. 14, 1969	83 gpm
P.W. #4	SE1/4 NW1/4 9-20-66	May 30, 1962	45 gpm
P.W. #5	SW1/4 SE1/4 12-20-66	Aug. 17, 1969	15 gpm
P.W. #6	NE1/4 NW1/4 22-20-66	Aug. 20, 1969	500 gpm
P.W. #7	NE1/4 NE1/4 7-20-66	Aug. 20, 1969	175 gpm
P.W. #8	NW1/4 NW1/4 8-20-65	Sept. 10, 1969	55 gpm
P.W. #11	Ctr. of NW1/4 3-20-66	April 12, 1971	500 gpm
P.W. #12	NW1/4 NE1/4 1-20-66	April 15, 1970	65 gpm
P.W. #14	NW1/4 NW1/4 2-20-66	Aug. 4, 1970	500 gpm
P.W. #15	SE1/4 NW1/4 17-19-65	May 4, 1972	200 gpm
P.W. #16	NE1/4 NW1/4 2-20-66	April 26, 1972	100 gpm
P.W. #17	NW1/4 NW1/4 21-19-65	June 19, 1972	80 gpm
G.C. #1	NE1/4 NW1/4 11-20-66	March 27, 1972	150 gpm
T. #1	NW1/4 NW1/4 24-20-66	June 10, 1971	180 gpm
T. #3	NE1/4 NE1/4 24-20-66	March 1, 1976	105 gpm

The remaining provisions of the said Decree in case 80CW160, which is recorded at Book 2264, pages 790 through 807, records of Pueblo County, are incorporated by reference. This water is non-tributary to the Arkansas River and may be used and re-used to extinction subject to C.R.S. 37-82-106. **(c) Case 80CW171.** Non-tributary underground water adjudicated in Case No. 80CW171 by Decree of the District Court for Water Division No. 2 dated August 13, 1985, for Pueblo West Well No. 18, located in the SW 1/4 NW 1/4, Section 18, T. 19 S., R. 65 W. of the 6th P.M. in Pueblo County,

withdrawing water from the Dakota and Lytle Sandstone formations, in an amount of 40 gpm or 0.09 c.f.s., with a limitation to 650 acre feet in any ten consecutive years. The construction date is November 15, 1976, and the decreed uses are the same as recited in subparagraph (b) hereinabove. The remaining provisions of the said Decree in case 80CW171, which is recorded at Book 2253 pages 308 through 312, records of Pueblo County, are incorporated by reference. This water is non-tributary to the Arkansas River and may be used and re-used to extinction pursuant to C.R.S. 37-82-106. **(d) Successive Use Waters.** Return flows from the re-use of waters described in paragraphs 5(a) through 5(c) hereof, will be successively reused to extinction. **(e) Other Sources.** Water from such additional or replacement wells as are constructed by Pueblo West pursuant to the provisions of the Decrees for the water rights identified in foregoing subparagraphs (b) and (c), or pursuant to applicable rules, regulations or permits, to recover the amount of groundwater to which Pueblo West is entitled. **5. Description of Exchange and Re-Use Plan, With Appropriation Date. a. Date of original decree:** June 8, 2009, Case 85CW134(B), District Court, Water Division No. 2, State of Colorado, as recorded June 29, 2009 at Reception # 1810233, records of Pueblo County. **b. Subsequent decrees awarding findings of diligence:** not applicable as the present case is the first diligence application for the subject appropriative rights of exchange. **c. Priority Date:** December 1, 1978 **d. Use:** All municipal purposes, including domestic, industrial, commercial, irrigation, stock water, recreation and firefighting, and all uses for which the waters to be exchanged and reused are decreed, including the uses decreed in said Case 85CW134(A). **e. Location of exchange reaches and amounts of exchange decreed: (1) For return flows delivered to the Arkansas River** below Pueblo Reservoir and which are simultaneously exchanged to Pueblo Reservoir storage and to the Trifurcation Point, the rate of flow shall be a maximum of 30.0 cfs on an average daily basis. **(2) For return flows stored in Lake Meredith** and then released to the Arkansas River, the rate of flow for exchange to Pueblo Reservoir and to the Trifurcation Point shall be a maximum of 100.0 cfs on an average daily basis. **(3) For return flows delivered to the Arkansas River upstream of the dam** forming Pueblo Reservoir, Pueblo West may simultaneously divert at the Pueblo West Trifurcation Point, or store in Pueblo Reservoir, at the rate those return flows accrue to the stream as determined under this Decree. **6. Provide a detailed outline of what has been done toward completion or for completion of appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** Pueblo West owns and operates a single, unified and integrated municipal water supply and wastewater collection and treatment system that contain numerous components. Those components include, but are not limited to, the individual water rights and points of diversion described in this application, and the appropriative rights of exchange and reuse rights that are the subject of this application. Paragraph 108 of the said decree in Case 85CW134(A) provides that, "The proposed exchange and reuse program is part of a single extensive system of water supply and distribution. Pueblo West's ability to complete and make absolute the appropriative rights of exchange is dependent in large part on growth in water demand in the Pueblo West Water Service Area. Therefore, based on the foregoing Findings of Fact, for purposes of showing diligence in completing the appropriative rights of exchange, diligence as to any part of the system by which Pueblo

West brings the Reusable Waters to the Pueblo West Water Service Area and reuses the Reusable Sewered Return Flows shall be considered diligence as to completion of the appropriative rights of exchange. Sec. 37-92-301(4)(b), C.R.S.” This provision, along with all other provisions of the decree in 85CW134(A) not specifically changed by the decree in 85CW134(B) was incorporated by reference into the decree in 85CW134(B) by paragraph 2 thereof. During the period from June 8, 2009 through June 19, 2015 (the "Diligence Period"), Pueblo West has among other things conducted the following activities. **a. carried out the exchanges decreed in Case 85CW134(B)** to the extent of its present water and wastewater production quantities. **b. proceeded with plans to pipeline** much of the route of its return flows in Wildhorse Creek. As part of that project, Pueblo West has engaged in negotiations, entered into agreements with other governmental entities, completed the design of said pipeline and associated structures, identified parcels of land needed for acquisition and is proceeding diligently toward completion of that project. **c. engaged in litigation** and entered into further agreements with other governmental entities to secure its ability to utilize the first 900 feet of the pipeline of the Southern Delivery System (“SDS”) to move its subject water from Pueblo Reservoir, as a necessary increase in capacity to move water and also as a backup system. **d. Participated in the funding** of the said Southern Delivery System project. **e. Expanded its water treatment plant**, which is necessary to treat the subject water so that it can be re-used. **f. participated in a number of water court cases** in which other entities seek exchanges in the Arkansas River between the Fountain Creek confluence and Pueblo Reservoir, in order to protect Pueblo West’s ability to operate the subject exchange as decreed in said case 85CW134. **f. The total amount spent by Pueblo West** on activities related to the exchange and reuse rights decreed in Case 85CW134(B) during the Diligence Period exceeds \$18 million. The work performed and actions taken by Pueblo West during the Diligence Period demonstrate Pueblo West's continuing intent to develop the conditional appropriative rights of exchange and reuse described in this application. Pueblo West has shown that it can and will divert, store or otherwise capture, possess or control and beneficially use the subject exchange and reuse rights and that the subject exchange and reuse rights can and will be completed with diligence and within a reasonable time. Pueblo West has in all respects diligently worked toward placing the subject conditional water right to beneficial use. 7. **Names and addresses of owners 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. **a. Pueblo Reservoir and both of the above described** the Pueblo West Trifurcation Point locations are on land owned the U.S. Department of Interior, Bureau of Reclamation, (“Reclamation”), Eastern Colorado Area Office, 11056 West County Rd. 18-E, Loveland, Colorado 80537-9711. **b. The Pueblo West Wastewater Treatment Plant is on land owned by Pueblo West.** **WHEREFORE,** Pueblo West prays that the court enter a Decree finding that Pueblo West has shown reasonable diligence in development of the conditional exchange and reuse rights decreed in Case 85CW134(B), and that for purposes of the subject exchange the two above described locations of the Pueblo West Trifurcation Point are functionally equivalent.

CASE NO. 2015CW3028 – CHEROKEE METROPOLITAN DISTRICT v. GROUND WATER COMMISSION; and UPPER BLACK SQUIRREL CREEK GROUND WATER MANAGEMENT DISTRICT.

(Please send all responsive pleadings to Peter C. Johnson, PC Johnson Attorney at Law, LLC, attorneys for Plaintiff, 528 East First Avenue, Denver, Colorado 80203, (970) 231-1466)

Verified Complaint for Declaratory Judgment

EL PASO COUNTY

Plaintiff Cherokee Metropolitan District (“Cherokee”), by and through its counsel, hereby brings this action pursuant to C.R.C.P. 57 for Declaratory Judgment, and as grounds therefor alleges as follows. **I. JURISDICTION** 1. The Court has jurisdiction over this matter pursuant to C.R.S. § 37-92-203(1)(2014). Water matters include determinations of the right to use water. *In re Tonko*, 154 P.3d 397, 404 (Colo. 2007); *Southern Ute Indian Tribe v King Consolidated Ditch Company*, 250 P.3d 1226, 1235 (Colo 2011). 2. Notice by newspaper publication and publication in the water resume is proper for declaratory judgment actions involving water rights where it is necessary “to alert all water users on the stream system whose rights may be affected by the application, and provide an opportunity for any person to participate in the water right proceeding and to oppose the application.” *S. Ute*, 250 P.3d at 1235. When notice of the application is published through the resume procedure, the court obtains jurisdiction over persons and property affected by the application. *Id.* at 1234. 3. Notice by personal service is appropriate for declaratory judgment actions involving controversies between individual named parties over water rights. *S. Ute*, 250 P.3d at 1235. 4. Because the relief requested herein is necessary to resolve a water rights controversy between Cherokee, the Ground Water Commission (“Commission”), and the Upper Black Squirrel Creek Ground Water Management District (“UBS”), Cherokee will affect personal service of this Complaint on both the Commission and UBS in accordance with C.R.C.P. 4. *S. Ute*, 250 P.3d at 1235. 5. In order to alert any other water user who may have an interest in this application, Cherokee also will publish this application through the water court resume procedure. **II. PARTIES** 6. Cherokee Metropolitan District is a Colorado Special District formed under the laws of the State of Colorado, which provides water, wastewater, and street lighting services to users located within and without its boundaries. 7. Defendant UBS is a Ground Water Management District formed on December 4, 1979 pursuant to C.R.S. §§ 37-90-118 through 135. 8. Defendant Ground Water Commission is a commission of the State of Colorado created pursuant to C.R.S. § 37-90-104 *et seq.* **III. ALLEGATIONS** *Original Adjudication of Wells 1-8* 9. Cherokee has the right to withdraw ground water from the Upper Black Squirrel Designated Ground Water Basin from eight wells now known as Cherokee Wells 1-8 (“Wells 1-8”). 10. Wells 1-8 were originally decreed by the Pueblo County District Court in Case No. 42135-B, by Water Court Decree issued on June 25, 1962 (the “Decree”). A copy of the Decree is attached to the Complaint as Exhibit 1. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Footnote 1: Cherokee’s water rights for Wells 1-8 are referenced in the Decree as: Ross #2 (Cherokee Well #1); Hill #2 (Cherokee Well #2); Hill #1 (Cherokee

Well #3); Salladay #3 (Cherokee Well #4); Salladay #5 (Cherokee Well #5); Harding #1 (Cherokee Well #6); Harding #2 (Cherokee Well #7); and Guyer Ranch #7 (Cherokee Well #8). 11. For each of the water rights associated with Wells 1-8, the Decree describes the following elements: a. Priority b. Name of Structure c. Source d. Point of Diversion e. Purposes f. Priority Date g. Amount 12. The Decree granted water rights for Wells 1-8 in various amounts for irrigation, domestic, and mechanical types of use. The Decree does not describe a place of use for any of the water rights associated with Wells 1-8. 13. The Statements of Claim and Transcript of Testimony from Case No. 42135-B provide relevant evidence in interpreting the Decree with respect to the appropriators intended types and places of use of water from Wells 1-8. Statements of claim and transcripts of testimony in adjudication proceedings are admissible evidence in other actions involving the construction or interpretation of water decrees. *In re Water Rights of Central Colorado Water Conservancy Dist.*, 147 P.3d 9 (Colo. 2006). 14. The farmers associated with Wells 1-8 filed Statements of Claim as part of Case No. 42135-B. These Statements of Claim set forth the basic elements of each water right such as the structure name, the point of diversion, the source of the water, the types of use, the date of appropriation, and the amount of water claimed. 15. The Statements of Claim also identified that Wells 1-8 would be used for irrigation of a certain number of acres, although the location of such acres is not described. Most of the statements also provide that the “project is in the course of construction, and no water has been actually applied to beneficial use at the time of filing this statement of claim.” 16. The Transcript of Testimony from Case No. 42135-B provides evidence as to the extent of the places and types of use intended by the appropriators and authorized by the Decree. In addition to the irrigation use of Wells 1-8 for the acreages identified in the Statement of Claim, the Transcript of Testimony evidences that the appropriators for Wells 1-8 sought, and the Decree granted, the right to use Wells 1-8 for beneficial use anywhere in the general vicinity of Colorado Springs, in addition to the irrigation use referenced in the Statements of Claim. 17. Specifically, the Transcript of Testimony from Case No. 42135-B evidences that the appropriators of Wells 1-8 in Case No. 42135-B sought, and the Decree granted, the right to make available for delivery into “the vicinity of Colorado Springs” or the “Colorado Springs area” surplus water from Wells 1-8 above the farmer’s needs in the immediate basin. 18. The Transcript of Testimony from Case No. 42135-B also evidences that the appropriators sought, and the Decree granted, the right to use water from Wells 1-8 for delivery into the general vicinity of Colorado Springs for any beneficial use, without limitation. Specifically, the Transcript of Testimony evidences that the appropriators requested the Court authorize water from Wells 1-8 be decreed for “every known type of human use for water,” including municipal purposes; irrigation of land including lawns, shrubs, parks, and industry; fire protection; sanitary uses; and commercial greenhouses. 19. The Transcript of Testimony also demonstrates that, if necessary, the water would be eventually be entirely removed from the irrigation use at the farms, and used solely in the Colorado Springs area for “every known type of human use for water.” The initial plan for development of the water was to serve at least 80,000 people, and this number was later enlarged when engineering analyses revealed a substantial amount of water available to the wells. **Creation of UBS Basin and UBS** 20. The Upper Black Squirrel Creek Designated Ground Water Basin (“UBS Basin”) was designated by Order of the Ground Water Commission on May 1, 1968. 21.

The Upper Black Squirrel Ground Water Management District (“UBS”) was created by the Final Order and Decree of the Ground Water Commission issued on December 4, 1979. **Subsequent Court Proceedings Involving Wells 1-8** 22. Well #3 was decreed as an absolute water right in Case No. 42135-B, but the remaining wells 1, 2, 4, 5, 6, 7, and 8 were decreed therein as conditional water rights, necessitating further court proceedings to establish reasonable diligence in perfecting the water rights as absolute. 23. Diligence was maintained on these water rights through the following series of cases: Case No. 42135-B (supplemental), Case No. W-46 on April 28, 1972, as amended on May 11, 1973, in Case No. W-4407(76), Case No. 80CW23 (W-46), Case No. 83CW47 (W-46); Case No. 84CW45; Case No. 87CW07; Case No. 88CW35; and consolidated Case Nos. 94CW23, 95CW19, and 95CW150. 24. In the final decree in consolidated Case Nos. 94CW23, 95CW19, and 95CW150, Cherokee made portions of Wells 1-8 absolute and abandoned other portions, resulting absolute water rights in the following amounts: a. Well #1: 1 cfs, 700 acre-feet per year, priority date of December 1, 1954. b. Well #2: 1 cfs, 700 acre-feet per year, priority date of December 1, 1954. c. Well #3: 1 cfs, 700 acre-feet per year, priority date of March 1, 1954 d. Well #4: 1 cfs, 700 acre-feet per year, priority date of November 25, 1954. e. Well #5: 0.82 cfs, 591 acre-feet per year, priority date of November 24, 1954. f. Well #6: 1 cfs, 700 acre-feet per year, priority date of September 15, 1932. g. Well #7: 0.67 cfs, 469 acre-feet per year, priority date of December 1, 1954. h. Well #8: 1 cfs, 700 acre-feet per year, priority date of August 1, 1954. **Cherokee’s Use of Wells 1-8 Prior to 1999** 26. As early as 1963, Cherokee had contracted with the City of Colorado Springs to provide water partially from Wells 1-8 for the City’s use, and Cherokee built a pipeline from its water sources to the Colorado Springs area. Footnote 2: At this time, Cherokee was known as the Cherokee Water District. 26. In addition to the contract with Colorado Springs, Cherokee agreed to provide water partially from Wells 1-8 to Woodland Park in a three-way agreement whereby Woodland Park would take water from Colorado Springs’ Homestake system and Cherokee would deliver a like amount of water to Colorado Springs for use on the east side of Colorado Springs. 27. In addition to the sale of water to Colorado Springs, Wells 1-8 were a portion of the primary supply of water for Cherokee’s customers, both within and outside of the UBS Basin. Wells 1-8 were used for irrigation, domestic, and mechanical purposes in the immediate vicinity of the wells, and Cherokee delivered water to customers in its service area as well as other service areas along the pipeline towards Colorado Springs for irrigation, domestic, and mechanical uses. 28. In addition to the delivery of water to Cherokee’s service area, Cherokee also undertook commitments to provide water for irrigation, domestic, and mechanical uses to a number of customers within the UBS Basin, including Ellicott Springs, Woodmen Hills Metropolitan District (“Woodmen Hills”), Ellicott School District, Harding Nursery, Antelope Acres, and Schriever Air Force Base. Prior to 1999, Cherokee was committed to providing approximately 1,890 acre-feet per year to in-basin uses. The return flows from these in-basin uses of Wells 1-8 return to the UBS Basin aquifer. 29. In 1989, an area within the UBS Basin known as Woodmen Hills was included in Cherokee’s service area. Cherokee intended to provide Woodmen Hills with water from Wells 1-8. However, Woodmen Hills adjudicated the Denver Basin ground water beneath its service area, which has provided a short-term nonrenewable supply of water, and the area was later excluded from Cherokee’s service area. **1999 Stipulation**

in Case No. 98CW80 30. In 1998, Cherokee filed Case No. 98CW80 in District Court, Water Division 2, seeking a finding of reasonable diligence as to a series of designated ground water wells known as the “Sweetwater Wells.” 31. As part of the 98CW80 proceeding, Cherokee sought to obtain the approval of UBS to export water from the Sweetwater Wells for use outside of the UBS Basin. UBS, Cherokee and others eventually resolved this issue by executing a stipulation in Case No. 98CW80 (the “1999 Stipulation”), a copy of which is attached to the Complaint as Exhibit 2. The 1999 Stipulation was incorporated into this Court’s Findings of Fact, Conclusions of Law, Judgment and Decree in Case No. 98CW80. 32. In the 1999 Stipulation, Cherokee agreed that it would use Wells 1-8 “only for supplying in-basin beneficial uses that discharge any unconsumed water back into the Upper Black Squirrel Designated Basin and for emergency and backup purposes.” 33. The “emergency and backup” provision in the 1999 Stipulation became the source of a legal dispute between UBS and Cherokee, with the Supreme Court ultimately determining that Cherokee could not use Wells 1-8 to supply any commitments outside of the UBS Basin that Cherokee had made after the 1999 Stipulation. On March 17, 2006, the Division 2 Water Judge entered an order in Case No. 98CW80 finalizing this limitation on Wells 1-8. As a result of this order, Cherokee’s use of Wells 1-8 declined significantly. 34. On April 6, 2006, counsel for UBS sent a letter to Cherokee ordering Cherokee to cease and desist “all withdrawals from Wells 1-8 for any purpose other than use within the boundaries” of the UBS Basin. This dispute was resolved by Cherokee agreeing to limit its use of Wells 1-8 from 2007 to 2009 to supplying only Harding Nursery with water from Wells 1-8. 35. Due to Cherokee agreeing to limitations on use of Wells 1-8, as well as a ruling from the Colorado Supreme Court that resulted in abandonment of a portion of Cherokee’s water rights portfolio, Cherokee began looking for other sources of water and other methods of using Wells 1-8 that would serve its growing demand. 36. In 2010, Cherokee entered into a short-term (3 year take or pay) water service agreement with Colorado Springs Utilities (“CSU”) whereby Cherokee would lease water from CSU on a temporary basis for use in its service area. 37. Cherokee also considered the purchase of designated basin ground water rights owned by Dean Goss, a farmer in the UBS Basin (“Goss water rights”). In contemplation of this purchase, Cherokee entered into an agreement in March of 2011 which allowed it to pump test the subject wells to determine the available yield, and in exchange for water used during the pump test, Cherokee agreed to provide Goss with short-term water from Wells 1-8. Cherokee subsequently declined to purchase the Goss water rights. 38. In 2013, Cherokee again became interested in purchasing the Goss water rights, and Goss was willing to sell so long as Cherokee would provide water to keep the lands owned by Goss in agricultural production. Through a series of contracts and transactions that ultimately culminated in a July 23, 2013 agreement, Cherokee agreed to provide water from Wells 1-8 and other sources to Dean Goss for irrigation of certain properties within the UBS Basin (the “Goss Lease”). This irrigation use occurs within the UBS Basin, thus return flows from this use return to the UBS Basin by percolating into the ground. 39. Cherokee also began considering contractual arrangements that would allow it to use Wells 1-8 water in the UBS Basin in exchange for water that could be exported and used in Cherokee’s service area. Beginning in 2010, Cherokee entered into a series of short-term contracts with Woodmen Hills in which it agreed to provide water from Wells 1-8 in exchange for

water from water rights owned partially by Woodmen Hills known as the Guthrie Wells (the “Woodmen Hills Exchange Agreement”). The Guthrie Wells are designated ground water rights associated with Permit Nos. R-612-RFP-R and 27554-FP. The Guthrie Wells were approved for export and use outside the UBS Basin pursuant to the findings and order of the Ground Water Commission dated May 14, 1990. 40. Woodmen Hills and Cherokee both use the water provided under the Woodmen Hills Exchange Agreement for municipal purposes within their respective service areas. Woodmen Hills’ service area is located entirely within the UBS Basin, and the return flows from the Wells 1-8 water provided to Woodmen Hills under this agreement return to the UBS Basin through irrigation return flows or sewerage returns. 41. The other portion of the Guthrie Wells is owned by GTL Development, Inc. (“GTL”). Beginning in 2008, Cherokee entered into a series of short-term contracts with GTL which began as leases of water from the Guthrie Wells from GTL to Cherokee, but subsequently evolved into agreements in which Cherokee would trade water from Wells 1-8 in exchange for GTL’s water from the Guthrie Wells (the “GTL Exchange Agreement”). 42. GTL and Cherokee both use the water provided under the GTL Exchange Agreement for municipal purposes within their respective service areas. GTL uses the water within the Meridian Ranch development, which is located entirely within the UBS Basin. The return flows from the Wells 1-8 water provided to GTL under this agreement return to the UBS Basin through irrigation return flows or sewerage returns. ***Controversy between the Parties Pertaining to the Decreed Uses of Water from Wells 1-8*** 43. On April 7, 2010, Cherokee’s counsel wrote to the State Engineer and Ground Water Commission staff, explaining Cherokee’s understanding that the Ground Water Commission and UBS had “already agreed in the 98CW80 Stipulation that Cherokee can use Wells 1-8 anywhere inside the basin so long as the unconsumed water is discharged back into the UBS Basin.” Counsel for the Ground Water Commission responded with a letter stating that the place of use for Wells 1-8 “is limited to the Cherokee service area inside the [UBS] Basin with any return flows discharged back into the Basin...” and that a change of use would be required “to use the water for replacement purposes in [Cherokee’s proposed] replacement plan.” The letter did not state that a change of use was required for in-basin use of Wells 1-8. 44. On April 12, 2011 UBS’s counsel wrote to Cherokee’s counsel stating that UBS had become aware that Cherokee was providing water from Wells 1-8 for agricultural irrigation within the UBS Basin, and further stating that the use of Wells 1-8 was limited to the “legal historical in-basin places of use” and requesting further information regarding such uses. Cherokee’s counsel responded with a letter providing the requested information and explaining that Cherokee had provided water from Wells 1-8 to Dean Goss to accomplish a pump test in contemplation of Cherokee’s purchase of such wells. Cherokee’s counsel further explained Cherokee’s position that Wells 1-8 could be used anywhere within the boundaries of the UBS Basin. 45. On July 22, 2011, UBS’s counsel wrote to counsel for the Ground Water Commission, alleging that Cherokee has illegally expanded the use of Wells 1-8 by providing water for irrigation of lands within the UBS Basin and by providing water to Woodmen Hills in exchange for exportable designated ground water. Despite the fact that the Decree does not describe a location of use or an amount of irrigated acreage for Wells 1-8, the letter included a table incorrectly listing a “decreed acreage” for Wells 7 and 8. 46. On November 29, 2011, UBS sent a letter to Cherokee again alleging that Cherokee was

using Wells 1-8 to “irrigate outside the legal places of use” without obtaining a change of water rights. Cherokee responded in January 2012, explaining that it disagreed with UBS’s assessment that Cherokee was engaging in illegal use of Wells 1-8 because the Subject Water Rights were intended for irrigation, domestic, and mechanical uses both inside and outside the UBS Basin, on property in the vicinity of the wells and in the vicinity of Colorado Springs. 47. On February 22, 2012 UBS’s counsel wrote to Cherokee, alleging that Cherokee had “used Wells 1 through 8 for agricultural irrigation beyond the legal acreage set out in Civil Action B-42135.” The letter also ordered Cherokee to “cease and desist all withdrawals from Wells 1 through 8 for agricultural irrigation beyond the acreage listed in the statements of claim (attached) until a change in the place of use is approved.” 48. On March 20, 2015, Cherokee met with representatives from both UBS and the Ground Water Commission to discuss the use of Wells 1-8. At this meeting, the Ground Water Commission and UBS both expressed opposition to Cherokee’s use of Wells 1-8 for the purposes of the Goss Lease, the Woodmen Hills Exchange Agreement, and the GTL Exchange Agreement. UBS and the Ground Water Commission informed Cherokee that if it did not file an application to change the use of Wells 1-8, and if it continued to provide water pursuant to the Goss Lease, the Woodmen Hills Exchange Agreement, and the GTL Exchange Agreement, then UBS and the Ground Water Commission would file a formal enforcement action to curtail and/or enjoin such use of Wells 1-8. **IV. FIRST CLAIM FOR RELIEF (Type and Place of Use of Wells 1-8 Authorized by Decree)** 49. The allegations of paragraphs 1 through 48 are incorporated herein by this reference. 50. A party may through a declaratory judgment action request that a water court construe and make a determination regarding the scope of water rights adjudicated in a prior decree. *S. Ute*, 250 P.3d 1226, 1235 (Colo 2011). 51. There is an active controversy between Cherokee and UBS and the Commission with respect to the scope of uses of water from Wells No. 1-8 authorized by the Decree in Case No. 42135-B. 52. UBS and the Commission assert that the Decree restricts Cherokee's in-basin use of water from Wells 1-8 to irrigation of the acreage identified in the Statements of Claim as the initial location of use of the water right. UBS and the Commission further assert that, for the claimed reason that the Decree so restricts the type and location of Cherokee's in-basin use, Cherokee may not use water from Wells 1-8 for the types or locations of use that are the subject of the Goss Lease, the Woodmen Exchange Agreement, and the GTL Exchange Agreement. 53. Cherokee asserts the Decree, consistent with the intent of the appropriators as evidenced by the Statements of Claims and Transcript of Testimony, authorizes use of water from Wells 1-8 in the general vicinity of the wells and the general vicinity of Colorado Springs for domestic, irrigation, and mechanical uses now more commonly described as municipal uses, which uses were intended to encompass “every known type of human use for water.” Cherokee further asserts that, because the Decree predates the existence of the UBS basin, the Decree does not differentiate between Cherokee's in-basin and out-of-basin uses, or impose additional restrictions upon Cherokee's in-basin uses. Cherokee accordingly asserts that the Decree does not preclude use of Water from Wells 1-8 for the types or locations of use that are the subject of the Goss Lease, the Woodmen Exchange Agreement, and the GTL Exchange Agreement. 54. Resolution of this controversy is necessary to protect Cherokee’s interests. As described above, Cherokee has undertaken contractual

obligations that are dependent on its ability to use Wells 1-8 for purposes such as the Goss Lease, the Woodmen Hills Exchange Agreement, and the GTL Exchange Agreement. UBS and the Commission have threatened to curtail or enjoin such uses of Wells 1-8. As a result of the threatened curtailment or injunction from the UBS and the Commission, Cherokee has temporarily suspended its deliveries of Wells 1-8 water pursuant to the Goss Lease, the Woodmen Hills Exchange Agreement, and the GTL Exchange Agreement, pending the outcome of this case. This has put Cherokee in the untenable position of potentially facing breach of contract actions from Goss, GTL, and Woodmen Hills, or facing legal action from the Commission and UBS prohibiting the use of Wells 1-8 for purposes such as the Goss Lease, the Woodmen Hills Exchange Agreement, and the GTL Exchange Agreement. 55. This controversy over the legal types and locations of use of Wells 1-8 involves a question over the decreed use of a water right, and is thus resolvable only in water court. *In re Tonko*, 154 P.3d 397, 404 (Colo. 2007). 56. Cherokee is entitled to a declaratory judgment that the Decree does not prevent Cherokee from using Wells 1-8 for irrigation, domestic and mechanical, municipal, and all other uses both within and without the UBS Basin, including but not limited to the types of use and places of use that are the subject of the Goss Lease, the Woodmen Exchange Agreement, and the GTL Exchange Agreement. **V. SECOND CLAIM FOR RELIEF (Effect of 1999 Stipulation regarding Type and Place of Use of Wells 1-8)** 57. The allegations of paragraphs 1 through 56 are incorporated herein by this reference. 58. There is an active controversy between Cherokee and UBS and the Commission with respect to the effect of the 1999 Stipulation on the scope of uses of water from Wells No. 1-8. 59. UBS and the Commission assert that the 1999 Stipulation restricts Cherokee's use of water from Wells 1-8 to in-basin irrigation of the acreage identified in the Statements of Claim as the initial location of use of the water right. UBS and the Commission further assert that, for the claimed reason that the 1999 Stipulation so restricts the type and location of Cherokee's in-basin use, Cherokee may not use water from Wells 1-8 for the types or locations of use that are the subject of the Goss Lease, the Woodmen Exchange Agreement, and the GTL Exchange Agreement. 60. Cherokee asserts the 1999 Stipulation restricts Cherokee's use of Wells 1-8 only insofar as such use must be within the UBS Basin and return flows from such use must return to the UBS Basin. Footnote 3: Cherokee also maintains that Wells 1-8 may be used outside of the UBS Basin for emergency and backup purposes, but these uses are not in dispute and Cherokee does not seek a declaration as to such uses. Cherokee further asserts that the 1999 Stipulation does not prohibit use of water from Wells 1-8 within the UBS Basin for domestic, irrigation, and mechanical uses now more commonly described as municipal uses, which uses were intended to encompass "every known type of human use for water." Cherokee accordingly asserts that the 1999 Stipulation does not preclude use of Water from Wells 1-8 for the types or locations of use that are the subject of the Goss Lease, the Woodmen Exchange Agreement, and the GTL Exchange Agreement. 61. Resolution of this controversy is necessary to protect Cherokee's interests for the same reasons described in paragraph 54 above. 62. Cherokee is entitled to a declaratory judgment that the 1999 Stipulation does not prevent Cherokee from using Wells 1-8 for irrigation, domestic, mechanical, municipal, and all other uses within the UBS Basin, including but not limited to the types of use and places of use that are the subject of the Goss Lease, the Woodmen Exchange

Agreement, and the GTL Exchange Agreement. **WHEREFORE, Plaintiff Cherokee Metropolitan District respectfully requests the Court:** 1. Declare that the Decree does not limit Cherokee's in-basin use of water from Wells 1-8 to irrigation use on the acreage identified in the Statement of Claim as the initial location of use; 2. Declare that the Decree authorizes Cherokee to use water from Wells 1-8 for irrigation, domestic and mechanical, municipal, and all other uses, both within and without the UBS Basin; 3. Declare that the use of water from Wells 1-8 at the locations and for the purposes identified in the Goss Lease does not violate the Decree; 4. Declare that the use of water from Wells 1-8 at the locations and for the purposes identified in Woodmen Exchange Agreement does not violate the Decree; 5. Declare that the use of water from Wells 1-8 at the locations and for the purposes identified in GTL Exchange Agreement does not violate the Decree; 6. Declare that the 1999 Stipulation does not limit Cherokee's in-basin use of water from Wells 1-8 to irrigation use on the acreage identified in the Statement of Claim as the initial location of use; 7. Declare that the 1999 Stipulation does not prohibit Cherokee's use of water from Wells 1-8 for irrigation, domestic and mechanical, municipal, and all other uses, within the UBS Basin; 8. Declare that the use of water from Wells 1-8 at the locations and for the purposes identified in the Goss Lease does not violate the 1999 Stipulation; 9. Declare that the use of water from Wells 1-8 at the locations and for the purposes identified in Woodmen Exchange Agreement does not violate the 1999 Stipulation; 10. Declare that the use of water from Wells 1-8 at the locations and for the purposes identified in GTL Exchange Agreement does not violate the 1999 Stipulation; 11. Grant whatever further relief the Court deems just and proper.

CASE NO. 2015CW3029; Previous Case Nos. 1987CW63; 2000CW28(1987CW63); and 2006CW101(1987CW63) – THE CITY OF AURORA, COLORADO, a municipal corporation of the Counties of Adams, Arapahoe, and Douglas, acting by and through its Utility Enterprise (“Aurora Water”), 15151 E. Alameda Parkway, Suite 3600, Aurora, CO 80012-1555

(Please address all pleadings and correspondence to: John M. Dingess, Esq., and Peter C. Johnson, Esq. (Special Counsel), Hamre, Rodriguez, Ostrander & Dingess, P.C., Attorneys for Applicant, 3600 South Yosemite Street, Suite 500, Denver, Colorado 80237. Telephone 303.779.0200)

Application to Make Conditional Water Right Absolute, for a Finding of Reasonable Diligence and to Continue Conditional Water Rights

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

2. Name of Structures: **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 P.M. 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 P.M., 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 decrees in Case No. B-42135, District Court, Pueblo County, Colorado and Case No. 80CW6, District Court, Water Division 2, Colorado. **2.2. 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, Ranges 80 and 81 West of the 6th P.M., 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 P.M. bears South 54° 13' 8" East, a distance of 3,803.10 feet as more particularly described in the decrees in Civil Action No. 5141, District Court, Chaffee County, Colorado and Case No. 80CW6, District Court, Water Division 2, Colorado. **2.3. 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 decrees in Civil Action No. 5141, District Court, Chaffee County and Case No. 80CW6, District Court, Water Division 2, Colorado. **2.4. Clear Creek Reservoir:** Clear Creek Reservoir is located on Clear Creek in all or part of Sections 7 and 8, Township 12 South, Range 79 West of the 6th P.M., and Section 12, Township 12 South, Range 80 West of the 6th P.M., in Chaffee County, Colorado. The Clear Creek Reservoir Dam axis and the centerline of Clear Creek intersect at a point whence the South quarter corner of Section 8, Township 12 South, Range 79 West of the 6th P.M. bears South 27° West a distance of 2,255 feet. **2.5. Otero Pump Station:** 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 P.M. **3. Description of conditional water right:** **3.1. Date of Original Decree:** March 22, 1994, Case No. 87 CW 63, District Court Water Division 2, Colorado. **3.2. Subsequent Decrees:** In Case No. 00CW28, District Court, Water Division 2, Colorado (decree entered November 13, 2000), the Division 2 Water Court entered a decree making absolute portions of the conditional right and finding reasonable diligence for the remaining portions. In Case No. 06CW101, District Court, Water Division 2, Colorado (decree entered June 8, 2009), the Division 2 Water Court entered a decree finding reasonable diligence for the portion of the subject water right which remained conditional. **3.3. Sources of Exchange Water:** Historic consumptive use water stored in Pueblo Reservoir under Applicant's 466.48 shares of the Rocky Ford Ditch Company. The water rights represented by these shares that are available under this subject exchange were originally decreed as Priority No. 1 in the original adjudication of former Water District No. 17 on April 8, 1905, for 111.76 c.f.s., with an appropriation date of May 15, 1874. The water represented by these shares was transferred by the District Court Water Division 2 pursuant to the Decree of this Court issued in Case No. 83CW18 on November 3, 1986. Since entry of the Decree, Case No. 83CW18, the use of this water has been the subject of various Stipulations and Orders. This Court issued a Completion Order dated March 23, 2001 under which it found that Aurora satisfied the revegetation requirements set forth in the decree and stipulations in that matter and could take its full entitlement of water under the 83CW18 Decree. **3.4. Exchange Reaches and Amounts:** Applicant's Rocky Ford Ditch Company water, described in paragraph 3.3 above, stored in Pueblo Reservoir, described in paragraph 2.1 above,

was decreed for exchange to one or more of the receiving facilities, described in paragraphs 2.2 through 2.5 above, at a rate of flow into the receiving facilities of up to 500 c.f.s. in total. The current conditionally decreed rates of exchange and the amounts previously made absolute for each of the specific receiving reservoirs or facilities are as follows:

Structure	Originally Decreed Rate (cfs)	Rate (cfs) Made Absolute in 00CW28	Additional Rate (cfs) Made Absolute in 06CW101	Amount Remaining Conditional
Turquoise Reservoir	350	100	0	250
Twin Lakes Reservoir	500	500	0	0
Clear Creek Reservoir	250	250	0	0
Otero Pump Station	165	0	0	165

3.5. Appropriation Date: December 21, 1987. **3.6. Uses:** Direct diversion and storage for subsequent use for irrigation, all municipal and domestic purposes, industrial use and exchange, and initial and successive use and reuse outside the Arkansas River Basin.

4. Integrated Water Supply System: The conditionally decreed water right described above constitutes a feature of an integrated water system for gathering, treatment and distribution of water operated by Aurora. “When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.” C.R.S. § 37-92-301(4)(b).

5. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the previous diligence period:

During this diligence period, Applicant undertook the following work in furtherance of this conditional water right, including the following:

5.1. Aurora’s Diligence Activities Specific to the Subject Conditional Water Right:

5.1.1. Payments to Otero County: Aurora and Otero County entered into an Intergovernmental Agreement on February 22, 1994, and amended that Agreement on October 29, 2001 under which Amendment Aurora agreed to make annual payments to Otero County concerning lands formerly irrigated by the Rocky Ford Ditch shares that are the source of exchange water for the subject conditional water rights. During this diligence period, Aurora made payments of over \$214,000.

5.1.2. Payment for purchase and lease of Rocky Ford Ditch shares: During this diligence period, Aurora spent over \$3,800,000 for repayment of bonds, including principal and interest, that were issued or refunded for the purchase of original Rocky Ford Ditch shares changed in Case No. 83CW18, Water Division 2.

5.1.3. Payments to Rocky Ford School District R-2: Aurora and the Rocky Ford School District R-2 entered into an Intergovernmental Agreement on February 7, 2005 under which Aurora agreed to make annual payments to the School District concerning the lands formerly irrigated by Rocky Ford Ditch shares that are a source of exchange water for the subject conditional water rights. During this diligence period, Aurora made \$1,200,000 in

payments. **5.1.4. Pueblo Reservoir Storage:** During this diligence period, Aurora paid the Bureau of Reclamation over \$3,118,000 for use of Pueblo Reservoir. **5.2. Aurora's Legal Protection and Development Efforts Pertaining to the Subject Conditional Water Right:** **5.2.1.** Aurora has actively protected the subject conditional water right from potential injury by performing monthly reviews of the Water Division 2 Water Court Resume to determine whether the filing of Statements of Opposition was necessary to protect its water rights in Water Division 2, including the subject conditional water right. Aurora has filed Statements of Opposition in several cases to protect its water rights during this diligence period. Additionally, Aurora's counsel has continued to participate in pending legal actions to protect this conditional water right during this diligence period. During the subject diligence period, Aurora expended more than \$240,000 on legal and related expenses for the aforementioned development and protection of the subject conditional water right. **5.3. Aurora's System-Wide Diligence Activities:** During this diligence period, Aurora performed work on other parts of its integrated water supply system that is either necessary for the successful operation of the subject water right or in furtherance of that right, including the following: **5.3.1. South Platte River Basin:** **5.3.1.1. Prairie Waters Project:** During this diligence period, Aurora has expended over \$177,213,000 on the construction of several elements of its Prairie Waters Project which allows reuse of water exchanged by the subject water rights. **5.3.1.2. Construction of Northern Treatment Plant:** Aurora is a member of the Metro Wastewater Reclamation District ("Metro"). Metro is currently constructing its Northern Treatment Plant, which is projected to be operational by 2016. This will facilitate further reuse of water exchanged by the subject water rights. **5.3.1.3. Sand Creek Water Reuse Plant:** Aurora operates this 5-million-gallon per day facility to provide treated water for irrigation throughout the city. During this diligence period, Aurora expended over \$2,600,000 on improvements and expansion of this facility. **5.3.1.4. Reuse of Lawn Irrigation Return Flows:** During this diligence period, Aurora performed studies of LIRFs throughout Aurora that included various analyses conducted to determine the amount, timing, and location of additional LIRFs within several drainage basins within Aurora's service area. **5.3.1.5. Water System Master Plan:** Aurora updates its Master Plan every five years to identify water storage, transmission, and pumping system improvements needed to meet future growth. Aurora expended over \$124,000 during the subject diligence period on this effort. **5.3.1.6. South Platte Exchange:** On September 22, 2013, Aurora obtained a decree in Case No. 08CW253, Water Division 1, granting a finding of reasonable diligence and making absolute portions of conditional exchange rights. These water rights allow Aurora to exchange certain reusable water from the confluence of Tarryall Creek and the South Platte River to Spinney Mountain Reservoir. **5.3.1.7. Griswold Water Treatment Plant Renovations:** This facility treats a portion of the raw water before it is delivered to Aurora's customers. Over \$1,170,000 was spent by Aurora during this diligence period for improvements to this facility. **5.3.1.8. Wemlinger Water Treatment Plant Expansion:** During this diligence period, Aurora spent over \$18,000,000 on expansion of the Wemlinger Water Treatment Plant. **5.3.1.9. Automated Meter Reading System:** Aurora spent over \$42,900,000 during this diligence period for conversion of its manual utility reading system to a fully automated system. **5.3.1.10. Study of Aurora's Water Needs:** During this diligence period, Aurora spent more than \$2,000,000 toward engineering and planning studies to assist in

determining the City's future water needs and a plan to meet those needs. **5.3.2. Arkansas River Basin:** **5.3.2.1. 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. Aurora's use of Fryingpan-Arkansas facilities for certain water rights is discussed under this IGA. During this diligence period, Aurora made payments of approximately \$932,000 to SECWCD under this IGA. **5.3.2.2. Intergovernmental Agreement with LAWVWCD:** Pursuant to an Intergovernmental Agreement with the Lower Arkansas Valley Water Conservation District ("LAVWCD"), Aurora paid approximately \$1,000,000 to LAVWCD for the identification and implementation of infrastructure improvements, research, and investigations designed to assist in the permitting or implementation of water leasing programs in the Lower Arkansas Valley, as well as remediation and restoration efforts in the Fountain Creek Corridor. **5.3.2.3. Agreements for Use of the Holbrook System Facilities:** On March 1, 2005, Aurora entered into two agreements pertaining to the use of the diversion, conveyance and storage facilities of the Holbrook Mutual Irrigating Company ("Holbrook"). Aurora and Holbrook extended this agreement on February 2, 2010. These agreements implement a program to recapture and store yield from foregone diversions of senior water rights. Aurora completed structural modifications to the Holbrook system facilities and filed a Substitute Water Supply Plan necessary to implement the program. Further, Aurora initiated a study to examine enlargement of the Holbrook Reservoir to further facilitate operations. During this diligence period, Aurora made payments of approximately \$184,000 to Holbrook under this agreement. **5.3.2.4. Gravel Pit Storage:** Aurora is pursuing gravel pit storage options on the Arkansas River downstream from Pueblo Reservoir to allow storage of its water rights for eventual exchange to Pueblo Reservoir. These stored rights will facilitate Aurora's Arkansas River Basin operation. During this diligence period, Aurora spent over \$100,000 toward this effort. **5.3.3. Protection Efforts:** During this diligence period, Aurora made expenditures for legal services for participation 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 conditional water right. **6. Claim to make absolute:** **6.1. Name of Water Right:** The Rocky Ford-I Exchange from Pueblo Reservoir to Turquoise Reservoir, as more fully described in paragraph 3 above. **6.2. Date of application to beneficial use:** June 8 and 9, 2015. **6.3. Amount:** 250 cfs. **6.4. Type of use:** Direct diversion and storage for subsequent use for irrigation, all municipal and domestic purposes, industrial use and exchange, and initial and successive use and reuse outside the Arkansas River Basin. **6.5. Evidence that diversion was made in priority:** Applicant's accounting and accounting from the Bureau of Reclamation demonstrate that the subject exchange was operated in priority on the above-described dates. **6.6. Remarks:** 100 cfs of the 350 cfs decreed amount of the Rocky Ford Exchange from Pueblo Reservoir to Turquoise Reservoir was made absolute in Case No. 00CW28, District Court, Water Division 2. On June 8 and 9, 2015, Aurora operated this exchange at a total rate of 350 cfs. Accordingly, upon approval of the 250 cfs absolute claim herein, this exchange will be made absolute at the full decreed amount of 350 cfs. **7. Name and address of owner 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: Clear Creek Reservoir: Pueblo Board of Water Works, PO Box 400, Pueblo, CO 81002. Pueblo, Twin Lakes and Turquoise Reservoirs: US Bureau of Reclamation, Great Plains Region, PO Box 36900, Billings, MT 59107-6900. Otero Pump Station (Jointly owned by Aurora and Colorado Spring Utilities), Colorado Springs Utilities, PO Box 1103, Colorado Springs, CO 80947. WHEREFORE, the Applicants respectfully request that this Court enter a decree: (1) finding that the Applicants have exercised reasonable diligence in the development of the above-referenced conditional water right; (2) confirming that the above-described conditional water right is part of an integrated water system and that due diligence as to any one component constitutes due diligence on all parts of such system; (3) awarding an absolute water right in the amount described above; and (4) continuing the remaining conditional amounts of the subject water right in full force as decreed; and for such other and further relief as this Court deems just and proper.

CASE NO. 2015CW3030 – CITY OF SALIDA (“Salida”), c/o Dara MacDonald, City Administrator, 448 E. First Street, Suite 112, Salida, CO 81201 (Please address all pleadings and correspondence to: Jennifer M. DiLalla and Brian T. Selogie, Moses, Wittemyer, Harrison & Woodruff, P.C., Attorneys for Applicant, P. O. Box 1440, Boulder, CO 80306-1440; (303) 443-8782)

Application for Finding of Reasonable Diligence

CHAFFEE COUNTY

2. Description of conditional appropriative rights of exchange: **2.1 South Arkansas River Exchange:** 2.1.1 Original decree: June 30, 2009, Case No. 04CW125, Water Division 2 (“04CW125 Decree”). 2.1.2 Source of substitute supply: Augmentation credits generated by Salida’s Tenassee Ditch water rights changed in Case No. 04CW125. The augmentation credits are measured at the turnback structure at the Salida Reservoir Ditch (a/k/a Champ Ditch) headgate, as described in paragraph 9.3 of the 04CW125 Decree (“Turnback Structure”). 2.1.3 Exchange Reach: The downstream extent of the exchange reach is the decreed point of diversion for the Tenassee Ditch, which is located on the South Arkansas River at a point North 47° 47’ East 800.2 feet from the North ¼ Corner of Section 7, Township 49 N., Range 9 E. of the N.M.P.M., Chaffee County, Colorado. The upstream extent of the exchange reach is the headgate of the Harrington Ditch, which is located at a point in the NW ¼ of the SE ¼ of Section 10, Township 49 N., Range 8 E. of the N.M.P.M., on the North bank of the South Arkansas River whence the Southwest Corner of said Section 10 bears South 64° 6’ West a distance of 3,969 feet, in Chaffee County, Colorado. As confirmed in the 04CW125 Decree, measurement of the augmentation credits for exchange at the Turnback Structure at the Salida Reservoir Ditch does not change the downstream extent of the exchange. 2.1.4 Amount: 2.23 cfs, CONDITIONAL. 2.1.5 Appropriation date: December 29, 2004. 2.1.6 Use: Water diverted under the South Arkansas River Exchange will be used as a source of augmentation water under the plan for augmentation decreed in Case No. 84CW158, as amended by the 04CW125 Decree and by any subsequent decrees amending that plan for augmentation, and will be used to replace out-of-priority depletions for all municipal purposes, including without limitation domestic, industrial, commercial, irrigation, stockwatering, recreation, fish and

wildlife preservation and propagation, and fire protection, including both immediate application for such purposes and storage for subsequent application for such purposes; and for use, reuse, and successive use to extinction as allowed by Salida's decrees. **2.2 Arkansas River Exchange:** 2.2.1 Original decree: The 04CW125 Decree. 2.2.2 Source of substitute supply: Augmentation credits generated by Salida's Tennesse Ditch water rights changed in Case No. 04CW125. The augmentation credits are measured at the Turnback Structure and delivered to the confluence of the Arkansas River and South Arkansas River, located as described in paragraph 2.2.3 below. 2.2.3 Exchange reach: The downstream extent of the exchange reach is the confluence of the Arkansas River and the South Arkansas River, located near the point where the South Section line of Section 4, Township 49 N., Range 9 E. of the N.M.P.M. crosses the Arkansas River. The upstream extent of the exchange reach is Pasquale Springs, the point of diversion for which is in the NW ¼ of Section 32, Township 50 N., Range 9 E. of the N.M.P.M., at a point approximately 2,000 feet from the North section line and 2,300 feet from the West section line of said Section 32. An underground collection system diverts water from various underground springs lying generally to the west, northwest of the described point of diversion at a distance of approximately 800 feet. Diversions at Pasquale Springs deplete the Arkansas River adjacent to the described springs. In addition to Pasquale Springs, water will be diverted under the Arkansas River Exchange at two exchange-two points within the exchange reach, as follows: (i) Marvin Park Irrigation System, diversions at which will be made from the Arkansas River through use of a pumping plant or collection gallery at a point approximately 3,223 feet North of the South section line of Section 32, Township 50 N., Range 9 E. of the N.M.P.M., and 3,552 feet West of the East section line of said Section 32; and (ii) Riverside Park Irrigation System, diversions at which will be made from the Arkansas River through use of a pumping plant or collection gallery at a point approximately 1,107 feet North of the South section line of Section 32, Township 50 N., Range 9 E. of the N.M.P.M., and 850 feet West of the East section line of said Section 32. 2.2.4 Amount: 2.23 cfs, CONDITIONAL. Diversions at Marvin Park Irrigation System will be at a maximum rate of 0.66 cfs, and diversions at Riverside Park Irrigation System will be at a maximum rate of 0.36 cfs. 2.2.5 Appropriation date: December 29, 2004. 2.2.6 Use: Water diverted by exchange at Pasquale Springs will be used as a source of augmentation water under the plan for augmentation decreed in Case No. 84CW158, as amended by the 04CW125 Decree and by any subsequent decrees amending that plan for augmentation, and will be used to replace out-of-priority depletions for all municipal purposes, including without limitation domestic, industrial, commercial, irrigation, stockwatering, recreation, fish and wildlife preservation and propagation, and fire protection, including both immediate application for such purposes and storage for subsequent application for such purposes; and for use, reuse, and successive use to extinction as allowed by Salida's decrees. Water diverted by exchange at Marvin Park Irrigation System will be used for irrigation of Marvin Park; water diverted by exchange at Riverside Park Irrigation System will be used for irrigation of Riverside Park. **2.3 Exchange of Excess Credits to North Fork Reservoir:** 2.3.1 Original decree: The 04CW125 Decree. 2.3.2 Source of substitute supply: Augmentation credits generated by Salida's Tennesse Ditch water rights changed in Case No. 04CW125, in excess of those needed by Salida pursuant to the plan for

augmentation decreed in Case No. 84CW158, as amended by the 04CW125 Decree and any subsequent decrees amending that plan for augmentation. The excess augmentation credits are measured at the Turnback Structure. 2.3.3 Exchange reach: The downstream extent of the exchange reach is the decreed point of diversion for the Tennessee Ditch, as described in paragraph 2.1.3 above. The upstream extent of the exchange reach is North Fork Reservoir, which is located on the North Fork of the South Arkansas River in the SE ¼ of Section 5, Township 50 N., Range 6 E. of the N.M.P.M. As confirmed in the 04CW125 Decree, measurement of the augmentation credits for exchange at the Turnback Structure at the Salida Reservoir Ditch does not change the downstream extent of the exchange. 2.3.4 Amount: 2.23 cfs, CONDITIONAL. 2.3.5 Appropriation date: December 29, 2004. 2.3.6 Operation of exchange: Pursuant to paragraph 15.3.1 of the 04CW125 Decree, this exchange will operate pursuant to the terms of the 04CW125 Decree and the decree entered in Case No. 87CW61, Water Division 2, on September 19, 1988 (“87CW61 Decree”). 2.3.7 Use: Pursuant to paragraph 15.3.7 of the 04CW125 Decree and paragraph 7 of the 87CW61 Decree, the excess augmentation credits stored by exchange in North Fork Reservoir will be used for municipal purposes, including incidental irrigation, and will retain all the uses for which they were decreed, including replacement of out-of-priority depletions under the plan for augmentation decreed in Case No. 84CW158. **2.4** The South Arkansas River Exchange, the Arkansas River Exchange, and the Exchange of Excess Credits to North Fork Reservoir are referred to collectively in this Application as the “Subject Conditional Water Rights.” **3. Outline of work and expenditures during the diligence period towards completion of the appropriations and application of water to beneficial use**: The Subject Conditional Water Rights are part of the integrated system of water rights that makes up Salida’s municipal water supply. “When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.” C.R.S. § 37-92-301(4)(b). The diligence period for the Subject Conditional Water Rights is June 2009 through June 2015 (“Diligence Period”). During the Diligence Period, Salida worked diligently to develop the Subject Conditional Water Rights, complete the appropriations, and place the water to beneficial use, as demonstrated by the following activities and expenditures: **3.1** Salida expended in excess of \$144,000 on engineering, construction, and materials costs to comply with Salida’s stipulation with Nancy Dominick under the 04CW125 Decree, which authorizes the Tennessee Ditch change of water rights under which Salida generates the augmentation credits that provide the source of substitute supply for the Subject Conditional Water Rights. Salida also devoted approximately twenty-four personnel hours per year to such compliance. **3.2** Salida devoted approximately fifty-four personnel hours per year to maintenance of the Harrington Ditch, which is the exchange-to point for the South Arkansas River Exchange. **3.3** Salida expended in excess of \$250,000 in legal fees related to filing and prosecuting statements of opposition in Water Court to protect Salida’s water rights, including the Subject Conditional Water Rights, from injury; related to preparation and prosecution of Water Court applications to maintain the water rights that, along with the Subject Conditional Water Rights, make up Salida’s integrated municipal system; and related to compliance with Salida’s stipulation with Nancy Dominick under the 04CW125

Decree, as described in paragraph 3.1 above. **3.4** Salida expended approximately \$40,810 in costs for engineering consultants in support of the Water Court activity described in paragraph 3.3 above. Such engineering consulting work included work related to the dry-up of the acreage historically irrigated with Salida's changed Tenassee Ditch water rights, which generate the augmentation credits that provide the source of substitute supply for the Subject Conditional Water Rights. **4. Names and addresses of owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored:** North Fork Reservoir is located on land owned by the United States Forest Service, P.O. Box 25127, Lakewood, Colorado 80225. The reservoir is owned by Chaffee County, 104 Crestone Avenue, Salida, Colorado 81201, and managed and operated under a contract with Chaffee County by the Upper Arkansas Water Conservancy District, 339 East Highway 50, Salida, Colorado 81201. WHEREFORE, Salida respectfully requests that the Court enter a decree finding that Salida has exercised reasonable diligence in applying to beneficial use the Subject Conditional Water Rights, and continuing those conditional water rights in full force and effect for an additional diligence period.

CASE NO. 2015CW3031; Previous Case No. 2008CW92 – R. JAY JOLLY, also known as Robert Jay Jolly and DIANA LYNNE JOLLY, 31111 County Road 23, Hugo, CO 80821

(Please address all pleadings and correspondence to: Ezekiel J. Williams, Lewis, Bess, Williams & Weese, P.C., 1560 Broadway, Suite 1400 Denver, CO 80202; (303) 861-2828)

Application for Finding of Reasonable Diligence

LINCOLN COUNTY

2. Name of structure: Spring Area No. 1. **3. Describe conditional water right (as to each structure) including the following information from previous decree:** **A. Date of Original Decree:** June 9, 2009 Case No. 08CW92 Court: District Court Water Division 2. **B. List all subsequent decrees awarding findings of diligence:** N/A. **C. Legal description:** NW ¼ of the SE ¼ Section 33, Township 12 South, Range 56 West, 6th PM., Lincoln County, Colorado, 3168 feet from the North line and 3696 from the West line of Section 33. See map 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.) **D. Source of water:** Springs tributary to Middle Rush Creek **E. Appropriation Date:** June 4, 2008 **Amount:** 58 gpm Absolute; 617 gpm Conditional. **F. Use:** Industrial purposes for intermittent oil and gas well drilling operations upon Applicants' property. **4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the previous diligence period:** Applicants have applied the water rights to beneficial use by selling water to oil and gas operators for oil and gas well drilling on Applicants' property in 2008, 2009, 2010, 2011, 2012, and 2013. Due to the drop in oil and gas prices over the last 2 years, oil and gas drilling has slowed down; no water sales for oil and gas well drilling on Applicants' property occurred in 2014 or 2015 year to date. Applicants anticipate that water use for oil and gas drilling operations on Applicants' property will resume in the future when market conditions for oil and gas improve.

Exhibit 1 to the Application is a table of water use for oil and gas well drilling operations on Applicants' property. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The information in the table is based on Applicants' records, information provided in 2009 in connection with this Application, and on information provided by Nighthawk Production. Information previously provided in connection with this Application and information obtained from Nighthawk Production appears in Exhibit 2 to the Application. **5. If claim to make absolute in whole or in part:** N/A. **6. 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:** _____. **7. Remarks or any other pertinent information:** This water right was decreed in Case No. 08CW92 for the stated use: industrial purposes for intermittent oil and gas well drilling operations upon Applicants' property. Subsequently, in Case No. 10CW45, District Court, Water Division 2, the Applicants were awarded 58 gpm Absolute, and 675 gpm Conditional for "Industrial purposes for intermittent oil and gas well drilling operations, wind energy development, and other intermittent industrial purposes." The application for a finding of reasonable diligence of the conditional water rights awarded in Case No. 10CW45 is due in 2017.

CASE NO. 2015CW3032, RALPH R. WILLIAMS, TRUSTEE OF THE GREENVIEW TRUST V. STEVEN J. WITTE, IN HIS OFFICIAL CAPACITY AS THE DIVISION ENGINEER, WATER DIVISION 2; DICK WOLFE, IN HIS OFFICIAL CAPACITY AS COLORADO STATE ENGINEER (Please send all responsive pleadings to:

MacDougall & Woldridge, P.C., Julianne M. Woldridge, attorneys for Plaintiff, 1586 So. 21st Street, Suite 200, Colorado Springs, CO 80904; (719) 520-9288)

Complaint for Declaratory Judgment

Resolution of this Complaint may affect the State and Division 2 Engineers' administration practices and may have consequences for all water users in Division No. 2.

PUEBLO COUNTY

Plaintiff, through his counsel, and for his Complaint for Declaratory Judgment and determination of water rights against Defendants, Steven J. Witte in his official capacity as Division Engineer, Water Division 2, and Dick Wolfe in his official capacity as Colorado State Engineer, alleges as follows: 1. The Greenview Trust owns water rights ("Greenview's Water Rights"), the priorities for which are adjudicated as described below: a. **the Greenview Ditch**, for irrigation uses, in the amount of 2.0 c.f.s., with an appropriation date of Spring 1862 (administered as March 21, 1862), decreed in CA2535, District Court, Pueblo County, Colorado on March 23, 1896 ("1896 Decree"), with a point of diversion located on the east bank of the Fontaine Qui Bouille (a/k/a Fountain Creek), N. 8°25' E. 43.25 chains distant from the 16th Section corner on 8th Guide Meridian in N.W.¼ Sec. 19, T. 19 S., R. 64 W., in Pueblo County; b. **Greenview Ditch Reservoir**, in the amount of 2,613,600 cubic feet, with an appropriation date of December 31, 1870, which is filled from and used in connection with the Greenview Ditch described in subparagraph a. above; and c. **Enlargement of the Greenview**

Ditch, in the amounts of 0.6 c.f.s. and 0.2 c.f.s., with appropriation dates of April 30, 1882 and December 31, 1883 respectively, at the location described in subparagraph a. above. 2. The Greenview Trust owns lands irrigated with Greenview's Water Rights. 3. Steven J. Witte is the current Division Engineer for Water Division 2; and Dick Wolfe is the current Colorado State Engineer (collectively referred to herein as the "Engineers"). 4. The Engineers are responsible for the administration of water rights in Water Division 2. C.R.S. § 37-80-101, et seq. (2014); C.R.S. § 37-92-101, et seq. (2014). 5. This Court has jurisdiction over "water matters" pursuant to C.R.S. § 37-92-203 (1) (2014). Actions for declaratory relief determining the right to use water are "water matters" within the water courts' exclusive jurisdiction. See *N. Sterling Irr. Dist. v. Simpson*, 202 P.3d 1207, 1210 (Colo. 2009); *Kobobel v. Dept. of Natural Resources*, 215 P.3d 1218, 1220 (Colo. App. 2009). 6. This court has the "power to declare rights, status, and other legal relationships..." C.R.S. § 13-51-105 (2014); accord C.R.C.P. 57 (a) (2014). 7. The land and water rights described above are not within a designated groundwater basin. 8. Venue is proper pursuant to C.R.S. § 37-92-203(3) (2014). 9. Greenview's Water Rights are real property rights. 10. A controversy exists as to whether or not Greenview's Water Rights are surface water rights that include the right to divert the water from the underflow of the river. 11. This court has jurisdiction to construe and interpret decrees and make determinations regarding the scope of water rights, including determinations of previously adjudicated water rights. C.R.S. § 37-92-302 (1) (2014); see, e.g., *City and County of Denver v. City of Englewood*, 826 P.2d 1266, 1271 (Colo. 1992); *Southern Ute Indian Tribe v. King Consolidated Ditch Co.*, 250 P.3d 1226, 1233-34 (Colo. 2011). 12. In construing a decree, the court may consider statements of claims and transcripts of testimony given in adjudications of the water rights' priorities. See, *Orchard City Irr. Dist. v. Whitten*, 146 Colo. 127, 361 P.2d 130, 135 (1961). 13. The claims described in statements and transcripts are "basic and essential elements of the adjudication proceedings". *Id.* at 134. 14. The Constitution of Colorado currently guarantees, and all times relevant hereto has guaranteed the right to "divert the unappropriated waters of any natural stream to beneficial uses..." Constitution of Colorado, Art. XVI, Sec. 6 (L. 1877, p. 72). 15. The appropriation of water within the meaning of Art. XVI, Sec. 6 of the Constitution of Colorado, and thus the creation of a water right, occurs when water of the natural stream is diverted and applied to a beneficial use. See, *Farmers Highline Canal & Res. Co.*, 13 Colo. 111, 21 P. 1028, 1029 (1889). A "water right" "means a right to use in accordance with its priority a certain portion of the waters of the state by reason of the appropriation." C.R.S. § 37-92-103 (12) (2014). 16. In 1884, the Colorado Supreme Court accepted the rule adopted in California that a water right relates to the date of the first step to secure an appropriation. *Seiber v. Frink*, 7 Colo. 148, 2 P. 901, 903 (1881). 17. The Colorado Supreme Court declared in 1883 that "[t]he true test of appropriation of water is the successful application thereof to the beneficial use designed; and the method of diverting or carrying the same, or making such application, is immaterial. *Thomas v. Guiraud*, 6 Colo. 530, 533 (1883). 18. The constitutional term "waters of any natural stream" includes both surface water and ground water that is tributary to surface water. See, e.g., *Empire Lodge Homeowners' Ass'n v. Moyer*, 39 P.3d 1139, 1147 (Colo. 2001). 19. The Colorado Supreme Court declared in 1902: "[t]he subterranean volume of water which finds its way through the sand and gravel constituting the beds of the

streams which traverse the country adjacent to the mountains of this section are recognized as part of the waters of the stream to the same extent as though flowing upon the surface...Underground currents of water which flow in well defined and known channels, the course of which can be distinctly traced, are governed by the same rules of law as streams flowing upon the surface.” *Medano Ditch Co. v. Adams*, 29 Colo. 317, 68 P. 431, 434 (Colo. 1902). 20. The purpose of 1879 and 1881 legislation regulating the appropriation of water was not to establish water rights, but to establish the priorities of water rights as against other competing users. See, *Farmers Highline Canal*, 21 P. at 1036; *Lamar Canal Co. v. Amity Land & Irr. Co.*, 26 Colo. 370, 58 P. 600, 602 (1899) (regarding the statutory requirement for the filing of maps and statements, which was held unconstitutional due to the title, and which was later retitled and replaced by the legislature); *Denver & Ft. W.R. Co. v. Dotson*, 20 Colo. 304, 38 P. 322, 323 (1894). 21. These early statutes did not change the existing law regarding appropriation of water rights, they were only declarations of existing law. See generally, *Wiel, Samuel C.*, “*Water Rights in the Western States*, 2d. ed., sec. 112 (1908). 22. Greenview’s Water Rights and their scope were established by the diversion of water and placement of such water to beneficial uses. Greenview’s Water Rights historically have diverted the underflow of the river and placed the water to beneficial use. 23. A proceeding to adjudicate the priorities of water rights was commenced in the District Court, Pueblo County entitled “In the matter of the adjudication of the priorities of water rights in Water District No. 14, Pueblo County, State of Colorado” (“1881 Proceeding”), pursuant to General Statutes, State of Colorado, ch. LVII, § 1762 (1883) (referred to herein as the “1881 Adjudication Act”). Records of the 1881 Proceeding can be found in the Colorado Department of Personnel & Administration State Archives and Public Records. Copies of relevant records of that proceeding, including the 1896 Decree are attached to the Complaint as Exhibit 1 and are available from the Water Court. 24. The statutory purpose for the 1881 Proceeding was “hearing, adjudicating and settling all questions concerning the priority of appropriation of water between ditch companies and other owners of ditches drawing water for irrigation purposes from the same stream or its tributaries within the same water district, and all other questions of law and questions or right growing out of or in any way involved or connected therewith...” General Statutes, State of Colorado, ch. LVII, § 1762 (1883) (copy attached to the Complaint as Exhibit 2 and available from the Water Court). 25. The 1881 Proceeding and the 1896 Decree established the priorities for Greenview’s Water Rights with respect to competing users. The priorities were established based upon the date the appropriations were initiated, not the date they were completed. The 1881 Proceeding and the 1896 Decree did not create or establish Greenview’s Water Rights. 26. The 1881 Adjudication Act contained two provisions for the filing of maps and statements. The first, in Section 1720 entitled “New Ditches – Sworn statements must be filed- Contents – Map” stated: “[e]very person, association or corporation hereafter constructing or enlarging any ditch, canal, or feeder for any reservoir, for irrigation, and taking water directly from the any natural stream...shall...file and cause to be recorded in the office of the county clerk of the county into which such water may extend, a sworn statement in writing, showing the name of the ditch, canal, or of the reservoir supplied by such feeder, the point at which the head gate thereof is situated (if it be new construction), the size of the ditch, canal or feeder, in width and depth, and the carrying

capacity thereof in cubic feet per second, the description of the line thereof, and the time when the work was commenced, and the name or names of the owner or owners thereof, the legal subdivisions of land, in on surveyed lands, with proper corners and distances, and in the case of an enlargement, the depth and width, also the carrying capacity of the ditch enlarged, and the width and depth of the ditch, canal or feeder as enlarged, and the increased carrying capacity of the same thereby occasioned, and the time when the enlargement was commenced, and no priority of right for any purpose shall attach to any such construction or enlargement until such record is made.” The second, in Section 1763 entitled “Filing of statements of claim – Ditch, name, description – P.O. address” stated: “[i]n order that all parties may be protected in their lawful rights to the use of water for irrigation, every person, association or corporation owning or claiming any interest in a ditch, canal or reservoir, within any water district shall...file with the clerk of the district court having jurisdiction of priority of right to the use of water for irrigation in such water district, a statement of claim, under oath, entitled of the proper court, and in the matter of priorities of water rights in district number -, as the case may be, which statement shall contain the name or names, together with the post-office address of the claimant or claimants claiming ownership, as aforesaid of any such ditch, canal or reservoir, the name thereof (if any), and, if without a name, the owner or owners shall choose and adopt a name, to be therein stated, by which such ditch, canal or reservoir shall thereafter be known, the description of such ditch, canal or reservoir as to location of head-gate, general course of ditch, the name of the natural stream from which such ditch, canal or reservoir draws its supply of water, the length, width, depth and grade thereof, as near as may be, the time, fixing a day, month and year as the date of the appropriation of water by original construction, also by any enlargement or extension, if any such thereof may have been made, and the amount of water claimed by or under such construction, enlargement or extension, and the present capacity of the ditch, canal or feeder of reservoir, and also the number of acres of land lying under and being or proposed to be irrigated by water from such ditch, canal or reservoir...” General Statutes, State of Colorado, ch. LVII, §§ 1720 and 1763 (1883) (copy attached to the Complaint as Exhibit 2 and available from the Water Court). 27. A “Statement” by George N. Steinmetz as proprietor of the Greenview Ditch and Reservoir dated November 7, 1891 was filed in the 1881 Proceeding for the stated purpose of “securing to himself the benefit of all laws relating to priority of water rights (“11/7/1891 Statement”). The 11/7/1891 Statement describes the Greenview Ditch and Reservoir water rights which included an “underground extension” to divert underflows from the river. It states: “[t]hat about the 20th day of the month of June, 1889, A.J. Overton, then owner and proprietor of said land and ditch, began the construction of an underground extension above and North of the head-gate of said ditch, for about a distance of 1300 to 1400 feet, for the purpose of securing a sufficient amount of water at seasons of the year when the water in said stream was too low to furnish such an amount, which said extension was finished about July 8th, 1889, and is shown on the map hereto attached. Said ditch, reservoir and extension are particularly shown on the map hereto attached and made a part of this statement. To more particularly comply with the later laws of Colorado, to wit: With General Section 1720, of the General Statutes of 1883, as amended in the Session Law of 1887, pages 314, 315 and 316...Said underground extension was made as aforesaid in about the months of June

& July 1889.” 28. Accompanying the 11/7/1891 Statement was a “Plat of the Greenview Ditch” prepared by W.P. Hobson and dated November 4th, 1891 filed in the 1881 Proceeding (“1891 Plat”). The 1891 Plat states that it “exhibits the plan of obtaining an underflow of water when the stream is not running, which plan has been constructed since the date of said survey.” The drawing of the “underflow” on the 1891 Plat shows the underflow collection structure connecting to the “Headgate” of the Greenview Ditch”. This “Plat” was filed twice in the 1881 Proceeding, with the only apparent change being a correction in the number of acres. 29. The 11/7/1891 Statement and the 1891 Plat were verified under oath by H.R. Steele on November 9, 1891 as being “true and correct of his own knowledge”, which verification was also filed in the 1881 Proceeding. 30. An “Amended Statement and Map” describing the “Greenview Ditch and Reservoir”, dated November 11, 1891 and signed by George Steinmetz was filed in the 1881 Proceeding (“11/11/1891 Amended Statement”). The 11/11/1891 Amended Statement states that it was “intended as a correction of all former statements wherein the same may be defective. The amended Statement did not explicitly describe, nor did it explicitly correct the “underflow” diversion structure described in the 11/7/1891 Statement. It states “[a] map of said ditch and reservoir, made by W.P. Hobson, Civil Engineer, is hereto attached and made a part hereof, which map shows the route of said ditch, the location of said reservoir, and other matters of importance in reference thereto.” The Map filed in the 1881 Proceeding was the second filing in that proceeding of the 1891 Plat. This Amended Statement and Map and the 1891 Plat were recorded together in the real property records of Pueblo County on November 12, 1891 at reception number 53876. 31. The 1881 Proceeding includes testimony of T. J. Steele, dated November 15, 1887 describing the Greenview Ditch and Reservoir. This testimony describes the ditch as being constructed before about 1862, the reservoir as being constructed “in about 1870” and the ditch being “enlarged to its present capacity in 1882”, with the “only change that has been made by the enlargement is that it has been widened.” 32. The 1881 Proceeding includes a “Statement of the Greenview Ditch and Reservoir”, dated November 15, 1887 by W.O Foote, E.D. Foote and George E. Bryant. It describes the line of the ditch from the headgate “as will appear from the map of said ditch filed with the County Clerk and Recorder of Pueblo County Colorado”. 33. The only enlargement of the Greenview Ditch referred to in the 1881 Proceeding was that enlargement constructed in 1882 that widened the ditch, and for which a separate priority was adjudicated. The underflow structure is never identified in the 1881 Proceeding as an “enlargement” of the size, or capacity of the ditch or the water rights. A separate priority was not adjudicated for the underflow structure. 34. The 1896 Decree states: “it is also ordered, adjudged and decreed in respect to all and singular the Findings of said Referee, as to each ditch, canal or reservoir in said Findings numbered, as the same are hereinafter separately mentioned and designated in this Decree and in the several lists attached to and made a part hereof, - that this Decree shall be taken, deemed and held as confirming, determining and establishing the several priorities of water rights, for irrigation, of all said ditches, canals and reservoirs in said Water District No. 14, concerning which testimony has been offered in this matter, according to the construction, enlargement or extension thereof, and also the further appropriations of water made by ditches and canals in said district...” 35. The law in effect at the time of the 1896 Decree did not

require that the 1896 Decree identify the diversion of underflows as being part of the Greenview's Water Rights. The diversion of underflows as part of the Greenview's Water Rights was established by the diversion of such and placement to beneficial use. The evidence in the 1881 Proceeding is proof the Greenview Water Rights, as such were diverted and placed to beneficial use, included the diversion of underflows. The priorities for the diversion of underflow pursuant to the Greenview's Water Rights are adjudicated as part of the Greenview's Water Rights in the 1896 Decree. 36. The transcripts and maps and statements of the 1881 Proceeding may be used to interpret that Decree. These transcripts and maps and statement also describe the scope of Greenview's Water Rights as established by appropriation, the priorities for which were established by the 1896 Decree. 37. In 1903, the Colorado legislature replaced the 1881 Adjudication Act with an act that also contained two provisions for the filings of maps and statements. The first, Section 3181, entitled "Map of Ditch or reservoir to be filed" stated: "[e]very person, association or corporation hereafter constructing or enlarging any reservoir or reservoirs, constructing, changing the location of, or enlarging any ditch, canal, or feeder for any ditch or reservoir, for the purpose of furnishing a supply of water from any natural stream, shall...make filings in the office of the state engineer...two duplicate copies...of a map..." That act also stated that filing of such a map and statement with the State Engineer "shall be prima facie evidence in any court having jurisdiction of the intent of the claimant or claimants to make such construction and to utilize such rights as are shown and described in the map and statement." Revised Statutes of Colorado, ch. 72, §§ 3181 and 3186 (1908) (L. 1903, p. 291, §6). Although this 1903 act was not in effect at the time of the filing of maps and statements in the 1881 Proceeding, the purpose of the maps and statements under both statutes was the same. 38. On August 27, 1907 a "Map of the Greenview Ditch and Reservoir Underflow and Extension" was filed with the State Engineer (copy attached to the Complaint as Exhibit 3 and available from the Water Court). This map is dated August 21, 1907. This Map describes a "Headgate Extension. 1." as an extension of the original headgate for the Greenview's Water Rights. That map and its accompanying statement describes the headgate of the "original ditch" and states that a subterranean gallery from that headgate was constructed "in the months of December 1898 and January 1899" and "has been in continual operation since that date supplying water to said ditch and Reservoir , as originally constructed developing and running an actual carrying capacity of 1.5 cubic feet of water per second of time from said underflow waters." This map and statement are evidence of the diversion of underflow as part of the Greenview's Water Rights and the appropriation of such. 39. Greenview's Water Rights include the right to divert water from the underflow of Fountain Creek with the priorities adjudicated to those water rights in the 1896 Decree. 40. Defendant, Dick Wolfe, in a letter to Plaintiff dated March 6, 2015 (copy attached to the Complaint as Exhibit 4 and available from the water court) took the position that Greenview's Water Rights do not include the right to divert the water from the underflow of the river. 41. The Engineers' position that Greenview's Water Rights do not include the right to divert the water from the underflow of the river is incorrect. 42. Further administrative review by the Engineers would be futile because the Engineers have taken the position that they will not administer the Greenview's Water Rights as including the right to divert the water from the underflow of the river. 43. Declaratory Judgment determining the scope

of Greenview's Water Rights is a proper remedy to determine Plaintiff's rights, status, or other legal relations. 44. A judgment or decree in this case will terminate the controversy or remove uncertainty as to the scope and administration of Greenview's Water Rights. 45. The location of the channel of Fountain Creek at the headgate of the Greenview's Water Rights has moved to the east from its location as depicted in the 1891 Plat. The headgate for Greenview's Water Rights has been moved to the east, but is still located at the approximate location on the east bank of Fountain Creek as it was when the Greenview's Water Rights appropriations were initiated. 46. C.R.S. § 37-86-111 (2014) states: "(1) In case the channel of a natural stream becomes so cut out, lowered, turned aside, or otherwise changed from any cause as to prevent any ditch, canal, or feeder of any reservoir from receiving the proper inflow of water to which it may be entitled from the natural stream, the owners of the ditch, canal, or feeder have the right to relocate the head of the ditch, canal, or feeder to such distance to the stream that supplies it as may be necessary for securing a sufficient flow of water into the ditch, canal, or feeder. For that purpose they have the same right to maintain proceedings for condemnation of a right-of-way for the relocation as in the case of constructing a new ditch. The priority of right to take water from a stream through such ditch, canal, or feeder remains unaffected in any respect by reason of the relocation; but the relocation must not physically interfere with the complete use or enjoyment of any absolute or decreed conditional water right. (2) If an owner of a water right relocates a surface diversion structure to a new surface point of diversion in compliance with subsection (1) of this section, the owner does not need to file a change of water right application for the new surface point of diversion." 47. A right to divert and use water from a stream at the headgate of a ditch includes the right to make and change as necessary diversion works within the stream bed, as contemplated by C.R.S. § 37-86-111; and construction of a structure within the stream bed to conduct water to the headgate is not a change in point of diversion. See, *Downing v. Copeland*, 126 Colo. 373, 249 P.2d 539, 540 (1952) (The Court, in interpreting an earlier version of this statute in the context of a right-of-way dispute stated "[t]he construction of a channel within the stream bed to conduct the water to that headgate did not require any proceeding under the statute to authorize the change of point of diversion, and did not constitute a change of point of diversion."). 48. The headgate for the Greenview Ditch is the "surface diversion structure" and the point of diversion for the Greenview's Water Rights including the diversion of river underflow within the meaning of C.R.S. § 37-86-111 (2014). Plaintiff, therefore, requests a declaratory judgment and determination that: a. the Greenview's Water Rights, the priorities for which were adjudicated in the 1896 Decree, include the right to divert the water from the underflow of the river; b. the method of diversion of the underflow water is immaterial to the administration of the Greenview's Water Rights; c. the headgate for the Greenview Ditch is the "surface diversion structure" and the point of diversion for the Greenview's Water Rights including the diversion of river underflow within the meaning of C.R.S. § 37-86-111 (2014); and d. such other relief as the Court deems appropriate, including an award of costs incurred in this matter.

CASE NO. 2015CW3033 (Water Division 2) and Case No. 2015CW3086 (Water Division 1) - DAVID A. HOFFER AND SUSAN E. HOFFER, 9429 S. East Cherry Creek Road, Franktown, CO 80116

(Please address all pleadings and correspondence to: Chris D. Cummins and Ryan W. Farr, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation

DOUGLAS COUNTY

Applicants wish to use an existing well located on a portion of Applicants' property to provide water service to a single family dwelling and for irrigation, including but not limited to berries and other produce in greenhouse or similar environments, as well as other irrigation uses. Applicants currently have a permitted well on their property that will be re-permitted pursuant to the plan for augmentation requested herein, upon entry of a decree. Applicants therefore seek to quantify the Denver Basin groundwater underlying the Applicants' Property, and for approval of a plan for augmentation for the use thereof of the current well on their property and any additional or replacement wells.

Legal Description of Wells. Property Description. All wells will be located on Applicant's property which is a parcel of land located in the SE ¼ of the NE ¼ of Section 32, Township 9 South, Range 65 West of the 6th P.M., County of Douglas, State of Colorado, more particularly described as follows: Beginning at the southeast corner of said NE ¼; thence south 89°52'15" west, along the south line of said NE ¼, a distance of 1,254.46 feet thence north 00°00'10" east, a distance of 1,294.58 feet; thence north 89°52'16" east, a distance of 1,255.69 feet to the east line of said NE ¼; thence south 00°03'26" west, along said east line, a distance of 1,295.58 feet to the point of beginning, consisting of approximately 36.728 acres, more or less (Applicants' Property). See Exhibit A general location map 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.)

Existing Well. There is currently a well constructed to the Upper Dawson aquifer on the Applicants' Property permitted under Division of Water Resources Permit No. 221323 and is located in the SE ¼ of the NE ¼ of Section 32, Township 9 South, Range 65 West of the 6th P.M., Douglas County, Colorado ("Hoffer Well No. 1").

Water Source. Not-Nontributary. The ground water withdrawn from the Upper Dawson aquifer of the Denver Basin underlying Applicants' Property is not-nontributary. Pursuant to § 37-90-137(9)(c.5), C.R.S., the augmentation requirements for wells in the Upper Dawson will require the replacement of actual stream depletions.

Nontributary. The groundwater that will be withdrawn from the Lower Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers of the Denver Basin underlying the Applicants' Property is nontributary.

Estimated Rates of Withdrawal and Groundwater Availability. Estimated Rates of Withdrawal. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicants' request the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions.

Estimated Average Annual Amounts of Ground Water

Available. Applicants request a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicants' Property. Said amounts may be withdrawn over the 100-year life of the aquifers pursuant to § 37-90-137(4), C.R.S. Applicants estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants' Property:

Aquifer	Sand Thickness (Feet)	Total Ground Water Storage (Acre Feet)	Annual Average Withdrawal – 100 Years (Acre Feet)
Upper Dawson (NNT)	247	1,827	18.3
Lower Dawson (NT)	193	1,431	14.3
Denver (NT)	243	1,529	15.3
Arapahoe (NT)	273	1,717	17.2
Laramie Fox Hills (NT)	188	1,045	10.45

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to § 37-92-305(11), C.R.S., the Applicants request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **Requested Uses.** The Applicants request the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicants also request that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicants' Property subject, however, to the requirement of § 37-90-137(9)(b), C.R.S. that no more than 98% of the amount withdrawn annually shall be consumed. Applicants may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicants shall only be entitled to construct a well or use water from the not-nontributary Upper Dawson aquifer pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with § 37-90-137(9)(c.5), C.R.S.

Well Fields. Applicants request that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicants' Property through any combination of wells. Applicants request that these wells be treated as a well field.

Averaging of Withdrawals. Applicants request that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicants' Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicants are entitled to withdraw from the aquifers underlying the Applicants' Property.

Name and Address of Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are and will be located is owned by Applicants.

APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION. Structures to

be Augmented. The structures to be augmented are Hoffer Well No. 1 as is currently constructed to the not-nontributary Upper Dawson aquifer along with any replacement or additional wells associated therewith, underlying the Applicants' Property as requested and described herein. **Water Rights to be Used for Augmentation.** The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Upper Dawson aquifer, and direct pumping from the Upper Dawson aquifer, together with water rights from the nontributary Arapahoe and Laramie-Fox Hills aquifers for any injurious post pumping depletions. **Statement of Plan for Augmentation.** Applicants wish to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Upper Dawson aquifer. Water use criteria and their consumptive use component for replacement of actual depletions for the Applicants' Property are as follows: **Household Use.** 0.30 acre-feet annually within one single family dwelling with a 10% consumptive use based on a nonevaporative septic leach field disposal system. The annual consumptive use for this residence is therefore 0.030 acre-feet with resulting return flows of 0.27 acre-feet. Any other type of wastewater disposal shall require an amendment to this plan of augmentation. **Landscape and Irrigation.** 0.046 acre-feet annually per 1,000 square feet (2.0 acre-feet per acre) per year with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden, or irrigation of berries, produce, and other irrigation is therefore 0.039 acre-feet. **Depletions.** Based on nearby adjudicated augmentation plans, Applicants have determined the maximum stream depletions over the 100-year pumping period for the Upper Dawson aquifer to be approximately 11% of pumping. Consequently, maximum depletions as a result of pumping the full annual amount of 18.3 acre feet allowed from the Upper Dawson aquifer equals 2.0 acre-feet. **Augmentation of Depletions During Pumping.** Pursuant to § 37-90-137(9)(c.5), C.R.S., Applicants are required to replace actual stream depletions attributable to pumping of the Hoffer Well No. 1 or any additional or replacement wells to the Upper Dawson aquifer. Applicants wish to pump the full annual amount allowed from the Upper Dawson aquifer, consisting of 18.3 acre-feet annually. Such use will be broken down to 0.3 acre-feet for in-house use and up to 18 acre-feet for maximum irrigation uses. Return flows from in-house use amount to 90% of pumping resulting in a total amount of 0.27 acre-feet. Return flows from irrigation use amount to 15% of pumping resulting in a total amount of 2.7 acre-feet at maximum irrigation. Applicants' return flows from any combination of in-house use and irrigation use ranging from no irrigation to maximum irrigation utilizing 18 acre-feet of water will always adequately replace the maximum depletions of 11% of pumping over the 100-year pumping period thereby adequately augmenting stream depletions. **Alternative Augmentation of Depletions During Pumping.** If, contrary to Applicants' request, Applicants are granted return flow credit from irrigation of less than 11% of pumping, or less than the actual maximum depletive percentage as determined by the State Engineer's determination of facts, Applicants will meet maximum stream depletions caused by pumping from the Upper Dawson aquifer through direct stream replacement as an alternative augmentation means. In-house use results in return flows of 0.27 acre feet per year and therefore, adequately provide replacement for the use of up to 2.5 acre-feet for irrigation purposes. For any additional irrigation use under this alternative beyond such 2.5 acre feet of pumping, Applicants will pump an additional quantity of

water to the stream necessary to replace the maximum depletion percentage of 11%, or the maximum depletion percentage as determined in the State Engineer's determination of facts. By way of example, were the entire 15.5 annual acre-feet of supply beyond in-house demand and preliminary 2.5 acre feet of irrigation pumped, 11% or 1.7 acre-feet, would be pumped directly to the stream to provide augmentation of the remaining 89% or 13.8 acre-feet, which is applied to irrigation use. Applicants' irrigation would be reduced by such direct replacement, if necessary, but Applicants assert that irrigation is conservatively estimated at 85% consumptive, as has been previously decreed by this court on numerous occasions, and that such alternative augmentation means are unnecessary. **Augmentation for Post Pumping Depletions.** For the replacement of any injurious post-pumping depletions which may be associated with the use of the Hoffer Well No. 1 and any additional or replacement wells, Applicants will reserve up to 1,045 acre-feet of water from the nontributary Laramie Fox Hills aquifer, less the amount of actual stream depletions replaced during the plan pumping period, and 819 acre-feet from the nontributary Arapahoe aquifer, less the amount of actual stream depletions replaced during the plan pumping period. Said amounts include the 2% of pumping beyond anticipated maximum post-pumping depletions for which Applicants are statutorily required to forego consumption. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicants reserve the right in the future to prove that post pumping depletions will be noninjurious. The reserved Arapahoe and Laramie-Fox Hills nontributary water will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicants will be entitled to apply for and receive a well permit for Hoffer Well No. 1 for the uses in accordance with this Application and otherwise in compliance with § 37-90-137, C.R.S. **REMARKS.** This Application is being filed in Water Divisions 1 and 2 because depletions from the pumping of the Upper Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the South Platte River system where the majority of such depletions will occur. Applicants request that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient. Applicants request a finding that they have complied with § 37-90-137(4), C.R.S., and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to § 37-90-137(9)(c.5), C.R.S. The term of this augmentation plan is for 100-years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. Pursuant to § 37-90-137, C.R.S., upon approval of the plan for augmentation requested herein, Applicants will file an application with the State Engineer's office to permit the existing Hoffer Well No. 1 on

Applicants' approximately 36.728 acre property for operation under the plan for augmentation. The Applicants request a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. The well(s) shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicants shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' Property. Applicants will comply with any lienholder notice provisions set forth in C.R.S. § 37-92-302(2)(b) and § 37-90-137(4)(b.5)(I), and such notice will be sent within 14 days of the filing of this application.

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 2015, (forms available at Clerk's office or at www.courts.state.co.us; 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 7th day of July, 2015.



Mardell R. DiDomenico

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