

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JUNE 2016  
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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during June 2016, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

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**CASE NO. 2015CW3001 – CITY OF COLORADO SPRINGS, Colorado Springs Utilities, c/o M. Patrick Wells, P.O. Box 1103, MC 930, Colorado Springs, CO 80947-0930** (Please direct communications/pleadings to: Michael J. Gustafson, Senior Attorney, City Attorney’s Office-Utilities Division, 30 S. Nevada Avenue, MC 510, Colorado Springs, CO 80903; 719-385-5909, [mgustafson@springsgov.com](mailto:mgustafson@springsgov.com))

First Amended Application for Change of Water Rights

**EL PASO COUNTY, COLORADO**

**2. Background:** The City of Colorado Springs, acting by and through its enterprise, Colorado Springs Utilities (Colorado Springs) has purchased 9.0 shares of the Chilcott Ditch Company and seeks to change the type, manner, and place of use of the water rights represented by the shares as described in paragraph 4 below. Colorado Springs filed the original Application in this case requesting a change of water rights for 8 shares in the Chilcott Ditch Company. Colorado Springs subsequently acquired an additional share in the Chilcott Ditch Company and filed this First Amended Application to include a change of water rights for the additional share. **3. Decreed water right for which change is sought:** **3.1 Name of structure:** Chilcott Ditch. **3.2 Date, case number and court of original and all relevant subsequent decrees:** **3.2.1** - February 15, 1882, Case No. 751, District Court, El Paso County, Colorado, former Water District 10, Fountain Creek Priority No. 27, for 27.0 cfs for irrigation with an appropriation date of March 21, 1866 and Priority No. 39, for 20.63 cfs for irrigation with an appropriation date of March 21, 1874. **3.2.2** - June 2, 1919, Case No. 10146, District Court, El Paso County, former Water District 10, Fountain Creek Priority No. 172, for 30.95 cfs for irrigation with an appropriation date of December 18, 1905. **3.2.3** - August 11, 2009, Case No. 2006CW119, Water Court, Water Division 2, average annual historical consumptive use of the Chilcott Ditch water rights was quantified at 24.61 acre feet per share for all shares of the Chilcott Ditch Company, based on a ditch-wide consumptive use analysis. **3.2.4** - February 7, 2014, Case No. 2012CW1, Water Court, Water Division 2, reaffirmed that the average historical consumptive use of the Chilcott Ditch water rights is 24.61 acre feet per share for all shares of the Chilcott Ditch Company, based on a ditch-wide consumptive use analysis set forth in the decree in Case No. 2006CW119. **3.2.5** - December 10, 2014, Case No. 2010CW99, Water Court, Water Division No. 2, the average annual historical consumptive use of the Chilcott Ditch water rights was confirmed at 24.61 acre feet per share for all shares of the Chilcott Ditch Company, based on the ditchwide consumptive use analysis set forth in the decree in Case No. 2006CW119. **3.3 Legal description of structure:** The point of diversion of

the Chilcott Ditch is located at a point on the east bank of Fountain Creek in the SE ¼ of Section 25, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado. The location of the point of diversion of the Chilcott Ditch is shown on the map attached to the Amended Application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **3.4 Decreed source of water:** Fountain Creek, tributary to the Arkansas River. **3.5 Appropriation dates:** March 21, 1866 in the amount of 27.0 cfs; March 21, 1874 in the amount of 20.63 cfs; December 18, 1905 in the amount of 30.95 cfs. **Total amount originally decreed to structure:** 78.58 cfs. **3.6 Decreed use or uses:** The decreed use for the Chilcott Ditch water rights is irrigation except for those portions of the Chilcott Ditch water rights that have been changed to municipal and other uses by the City of Fountain and Security Water District in Case No. 2006CW119, Woodmoor Water and Sanitation District in Case No. 2012CW1, and the City of Fountain in Case No. 2010CW99. **3.7 Amount of water that Applicant intends to change:** Colorado Springs intends to change its *pro rata* interest in the Chilcott Ditch water rights (“Subject Water Rights”) which is as follows:

<u>Priority No.</u>	<u>Total Decreed</u>	<u>City's <i>pro rata</i> Interest</u>
Priority 27	27.00 cfs	2.314 cfs
Priority 39	20.63 cfs	1.768 cfs
Priority 172	30.95 cfs	2.653 cfs

In Case Nos. 2006CW119, 2010CW99 and 2012CW1, the average annual historical consumptive use of the Chilcott Ditch water rights was quantified at 24.61 acre feet per share for all shares of the Chilcott Ditch Company, based on a ditch-wide consumptive use analysis. The total average annual historical consumptive use for the Subject Water Rights is 221.49 acre feet. The average annual historical return flows were quantified at 17.91 acre feet per share for all shares of the Chilcott Ditch Company based on the same analysis. The total average annual historical return flows for the 9.0 shares that represent the Subject Water Rights are 161.19 acre feet. **4. Detailed description of proposed changes:**

**4.1 Historical use of Chilcott Ditch water rights:** The historical use and consumptive use of the Chilcott Ditch water rights was quantified on a ditch-wide basis in Case No. 2006CW119, Water Court, Water Division 2, by decree entered on August 11, 2009 and was reaffirmed in Case Nos. 2012CW1, Water Court, Water Division 2, by decree entered on February, 7, 2014 and 2010CW99, Water Court, Water Division, 2 by decree entered December 10, 2014 and that quantification is *res judicata* in this case. A map showing the lands historically irrigated by the Subject Water Rights is attached to the Amended Application as Exhibit B. These lands are located within the service area of the Chilcott Ditch as determined in Case No. 2006CW119. Colorado Springs intends to rely on the ditch-wide quantification of historical use and consumptive use in Case No. 2006CW119 that was reaffirmed in Case Nos. 2012CW1 and 2010CW99 and therefore no diversion records or summaries of diversion records are included with the Application. **4.2 Change of type and manner of use:** Colorado Springs seeks to change the Subject Water Rights to include, in addition to the existing irrigation use, all municipal uses including, without limitation, domestic, agricultural, industrial, commercial, irrigation, stock watering, fire protection, recreation, power generation, fish and wildlife preservation and propagation, recharge of Denver Basin aquifers, exchange purposes, replacement of historical return flows,

replacement of depletions resulting from the use of water from other sources, relinquishment pursuant to §37-90-137(9)(b), C.R.S., all augmentation purposes, sale or lease to other water users, and such other uses as may be allowed by law. Colorado Springs seeks to use the Subject Water Rights directly and to reuse, successively use and use to extinction all return flows (including, but not limited to, lawn irrigation return flows and sewer return flows) after initial use of the Subject Water Rights. **4.3 Change in place of use:** Colorado Springs seeks to change the place of use of the Subject Water Rights to include, in addition to the existing place of use, Colorado Springs' service area as it exists now and as it may exist in the future, including any areas served by Colorado Springs by extraterritorial agreement or other contract and for replacement of depletions on Fountain Creek accruing between the City of Colorado Springs and the confluence of Fountain Creek and the Arkansas River. In addition, Colorado Springs seeks to change the place of use to any location within the Arkansas River Basin for which water may be delivered for augmentation, sale, or lease for such other uses as may be allowed by law. A map showing the current boundaries of Colorado Springs' service area is attached to the Amended Application as Exhibit C. **4.4 Plan of operation:** No change of point of diversion is proposed. Prior to being used by Colorado Springs, the Subject Water Rights may continue to be used for agricultural irrigation on the historically irrigated lands pursuant to a lease agreement between Colorado Springs and the record owner of the historically irrigated lands. After the Subject Water Rights have been removed from irrigation of the historically irrigated lands, diversions of the Subject Water Rights will continue to be made at the headgate of Chilcott Ditch and released back to Fountain Creek at the Chilcott Ditch augmentation station. Colorado Springs will take delivery and measure its share of the Subject Water Rights at the Chilcott Ditch augmentation station, subject to ditch losses. The measured water will then be returned to Fountain Creek to replace historic return flows and as consumptive use credits. Colorado Springs may also divert and measure the CU credits from the Chilcott Ditch augmentation station to a pipeline, canal or other conveyance, so long as all return flow obligations continue to be released to Fountain Creek at the location of the Chilcott Ditch augmentation station. The consumptive use credits associated with the Subject Water Rights will either be exchanged up Fountain Creek to Colorado Springs' service area for the changed uses or will be left in Fountain Creek for downstream use for the changed uses in the Arkansas Basin after their release from the augmentation stations subject to future water rights applications to be filed by Colorado Springs. **4.5 Return flows:** Return flows from the historical use of the Subject Water Rights have accrued to Fountain Creek and will be replaced by Colorado Springs consistent with the terms of the decrees in Case Nos. 2006CW119, 2010CW99 and 2012CW1. The sources of water for replacement of historical return flows will be any water owned or leased by Colorado Springs that is decreed for replacement and/or augmentation purposes and available at the required time, location and amount to prevent injury to other water rights including, but not limited to, the historical return flow portion of the Subject Water Rights. Historical return flows will be replaced only to calling water rights senior to the date of the filing of this Application and Colorado Springs hereby appropriates for the uses described in paragraph 4.2 above any historical return flows not required to be so replaced. **5. Effect of ditch-wide historical use determined for the Chilcott Ditch water rights:** Colorado Springs' consumptive

use credits available from the Subject Water Rights will be determined as set forth in the decrees in Case Nos. 2006CW119, 2010CW99 and 2012CW1. In those cases, the ditch-wide historical average annual consumptive use per share of the Chilcott Ditch Company was decreed to be 24.61 acre feet per year. This per share average annual historical consumptive use results in an average annual consumptive use of 221.49 acre feet for the 9.0 shares that are the subject of the Application. The amount of historical consumptive use from the Subject Water Rights will vary from year to year, depending on the amount of water available for diversion under the Chilcott Ditch water rights. The historical consumptive use of the Chilcott Ditch water rights, as determined in Case Nos. 2006CW119, 2010CW99 and 2012CW1, is *res judicata* in future proceedings, such as this case involving the Chilcott Ditch water rights, pursuant to *Williams v. Midway Ranches Property Owners Ass'n., Inc.*, 938 P.2d 515, 521 (Colo. 1997). **6. Names and addresses of owners or reputed owners of 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:** The Chilcott Ditch headgate and augmentation station are located upon land or easements owned by the Chilcott Ditch Company, c/o Jessie Shaffer 1845 Woodmoor Drive, Monument, CO 80132.

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**CASE NO. 2016CW7; Previous Case Nos. 2003CW61; 2010CW5 – RANDY J. and LAUREL A. PHEMISTER, 9155 Plantation Drive, Canyon, TX 79015; (806) 236-8642**

Application to Make Absolute in Whole or in Part

**HUERFANO COUNTY**

**Name of Structure:** Phemister Spring. **Describe conditional water right:** **Date of Original Decree:** 3/15/2004; Case No. 2003CW61; Court: District Court Water Division 2, Colorado. **List all subsequent decrees awarding findings of diligence:** Date of Decree: 06/25/2010; Case No. 10CW5; Court: District Court Water Division 2, Colorado. **Legal Description** SE ¼ SW ¼ Section 30, Township 29 South, Range 69 West, 6<sup>th</sup> P.M., Huerfano County, Colorado, 220 feet from the South line and 3000 feet from the East line of Section 30. **Source of PLSS information:** Past application. **Street Address:** 2122 CR 442, La Veta, CO 81055. **Subdivision:** La Veta Ranch, Lot 22. **UTM coordinates (Zone 13, NAD83):** Easting 486393; Northing 4149452. **Source of UTM:** Garmin. **Accuracy of location displayed on GPS device:** Within 200'. **Source of water:** Natural spring tributary to South Middle Creek. **Appropriation Date:** 06/02/2002; **Amount:** 3 gpm. **Use:** Domestic – cabin and shed. **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 described:** Use and structures same as previous application. **If claim to make absolute in whole or in part:** **Date water applied to beneficial use:** 05/01/2008; **Amount:** 3 gpm. **Use:** Domestic – cabin and shed.

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**CASE NO. 2016CW3033; Pevious Case No. 2001CW1 – THOMAS H. SMITH, 1701 East 147<sup>th</sup> Street, Kansas City, MO 64146** (Send all pleadings to: John R. Hill, Jr., Law of the Rockies, Attorney for Applicant, 525 North Main St., Gunnison, CO 81230; (970) 641-1903; [jrhill@lawoftherockies.com](mailto:jrhill@lawoftherockies.com))

Application for Finding of Reasonable Diligence and to Make Absolute

**CHAFFEE COUNTY**

**Describe conditional water right: Date of Original Decree:** All of the conditional water rights involved in this application were decreed in Case No. 01CW1, District Court, Water Division No. 3. on June 6, 2010. There are no subsequent decrees finding reasonable diligence or making any conditional water right absolute. **Legal description**

**Droz Creek Reservoir.** The Reservoir is located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 6 Township 48 North, Range 8 East, N.M.P.M. The outlet works of the dam are located at a point in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 6, Township 48 North, Range 8 East, N.M.P.M. approximately 1700 feet west of the east line and 1800 feet south of the north line of said Section 6. UTM coordinates NAD 27 402149 E 4255469 N. **Source:** Droz Creek, a tributary of Poncha Creek, a tributary of the South Arkansas River. **Appropriation date:** May 12, 2000. **Amount:** 124.3 acre-feet. **Uses:** Recreation, piscatorial and stockwatering.

**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:** According to the Division Engineer, no water has been available to store under the conditionally decreed priority. **Smith Pond No. 1 Legal description:** Smith Pond No. 1 dam is located in the S $\frac{1}{2}$ NE $\frac{1}{4}$  Section 6, Township 48 North, Range 8 East, N.M.P.M. at a point approximately 1600 feet from the North line and 1000 feet from the East line of said Section 6. **Source:** Droz Creek, a tributary of Poncha Creek, a tributary of the South Arkansas River. **Appropriation date:** December 31, 1999. **Amount:** 2.06 acre-feet **Uses:** Recreation, piscatorial and wildlife watering. **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:** According to the Division Engineer, no water has been available to store under the conditionally decreed priority.

**Smith Pond No. 2. Legal description:** Smith Pond No. 2 dam is located in the S $\frac{1}{2}$ NE $\frac{1}{4}$  Section 6, Township 48 North, Range 8 East, N.M.P.M. at a point approximately 1500 feet from the North line and 750 feet from the East line of said Section 6. **Source:** Droz Creek, a tributary of Poncha Creek, a tributary of the South Arkansas River. **Appropriation date:** May 12, 2000. **Amount:** 1.14 acre-feet. **Uses:** Recreation, piscatorial and wildlife watering. **Provide a detailed outline of what has been done toward completion or for completion and of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures during the previous diligence period:** According to the Division Engineer, no water has been available to store under the conditionally decreed priority.

**Smith Pond No. 3. Legal description:** Smith Pond No. 3 dam is located in the S $\frac{1}{2}$ NE $\frac{1}{4}$  Section 6, Township 48 North, Range 8 East, N.M.P.M. at a point approximately 1450 feet from the North line and 500 feet from the East line of said Section. **Source:** Droz Creek, a tributary of Poncha Creek, a tributary of the South Arkansas River.

**Appropriation date:** May 12, 2000. **Amount:** 1.09 acre-feet. **Uses:** Recreation, piscatorial and wildlife watering. **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:** According to the Division Engineer, no water has been available to store under the conditionally decreed priority. **Smith Pond No. 4.** Legal description: Smith Pond No. 4 dam is located in the S½NE¼ Section 6, Township 48 North, Range 8 East, N.M.P.M. at a point approximately 1700 feet from the North line and 300 feet from the East line of said Section 6. **Source:** Droz Creek, a tributary of Poncha Creek, a tributary of the South Arkansas River. **Appropriation date:** May 12, 2000. **Amount:** 0.7 acre-feet **Uses:** Recreation, piscatorial and wildlife watering. **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:** According to the Division Engineer, no water has been available to store under the conditionally decreed priority. **Application to Make Twin Lakes-Droz Creek Reservoir Exchange Absolute.** **Name of exchange:** Twin Lakes-Droz Creek Exchange. **Date of Appropriation:** January 7, 2004. **Amount:** 5 acre-feet. **Description of exchange:** Upstream terminus of exchange: Droz Creek Reservoir Downstream terminus of exchange: Confluence of the South Arkansas and Arkansas Rivers. **Operation of exchange:** Water available under Applicant's 5.54 shares of Twin Lakes Reservoir and Canal Company (Twin Lakes) is released from Twin Lakes and allowed to flow downstream to the confluence of the South Arkansas and Arkansas Rivers. Water is exchanged back up Poncha Creek to Droz Creek. **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:** The exchange was operated in 2012 and 2013 in the amount of 5.0 acre-feet as evidenced by the accounting. Persons desiring the accounting should contact Applicant's attorney at [jrhill@lawoftherockies.com](mailto:jrhill@lawoftherockies.com) or by calling 970-641-1903 ext 4. **Names(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant, see address above.

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**CASE NO. 2016CW3034; Previous Case No. 2009CW136 - WHP CROSSROADS, LLC, c/o William Peetz, 3925 Hill Circle, Colorado Springs, CO 80904;** (Please address all pleadings and correspondence to: Chris D. Cummins and Ryan W. Farr, Monson, Cummins & Shohet, LLC, Attorneys for Applicant, 319 N. Weber St., Colorado Springs, CO 80903; (719) 471-1212)

Application for Finding of Reasonable Diligence

**FREMONT COUNTY**

**Name of structures:** Applicant is the successor in interest to Crossroads Land & Cattle, Inc. as concerns the Crossroads Arena near the intersection of Colorado Highway 115 and U.S. Highway 50 in Fremont County, Colorado. Crossroads Land &

Cattle, Inc. was approved for a plan for augmentation, including conditional underground water rights in Case No. 09CW136. Said conditional underground water right is for the "Crossroads Well", a structure completed into the alluvium of the Arkansas River in the SE1/4 NW 1/4 of Section 7, Township 19 South, Range 68 West of the 6<sup>th</sup> P.M., as more particularly described herein. Said well was decreed for a total of 25 gallons per minute, with 15 gpm of such appropriation being made absolute in Case No. 09CW136, and 10 gpm remaining conditional. Applicant seeks a finding of reasonable diligence for said conditional portion of the Crossroads Well ground water right adjudicated in Case No. 09CW136 as more particularly described as follows: **Date of original decree:** June 17, 2010, Case No. 09CW136, District Court, Water Division 2. **Conditional Water Storage Right.** Applicant seeks a finding of reasonable diligence for all of the following conditional water storage right: **Name of Water Right:** Crossroads Well. **Legal Description:** The legal description of the Crossroads Well, located on Applicant's property, is as follows: In the SE/14 NW1/4 of Section 7, Township 19 South, Range 68 West of the of the 6<sup>th</sup> P.M., 1,980 feet from the west section line and 2,000 feet from the north section line of said Section 7. UTM coordinates: Easting 496093.1, and Northing 4251560.5, NAD 83, Zone 13. **Source:** The source for the Crossroads well is the tributary alluvial groundwater of the Arkansas River, with the well being constructed to a depth of 658 feet. **Appropriation:** The appropriation date for the Crossroads Well is December 21, 2009, pursuant to the filing date for Case No. 09CW136. **Amount of Water:** Applicant seeks a finding of reasonable diligence for the 10 gallons per minute conditional component of the Crossroads Well, in addition to the previously decreed absolute 15 gpm (25 gpm total appropriation). **Uses:** Commercial purposes (including commercial sanitary and drinking water, use in a restaurant/bar, and veterinary clinic uses), stockwatering, domestic, and fire protection purposes. **Remarks:** The Crossroads Well is currently permitted by the Colorado Division of Water Resources under Well Permit No. 74574-F. **Outline of what has been done toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** **Description of Water Rights:** The Applicant seeks a finding of reasonable diligence for the above described conditional component of the ground water right in the Crossroads Well, as previously conditionally adjudicated in Case No. 09CW136. **Statement of Diligence:** Applicant, and its predecessor in title, have expended extensive time and resources since the decree in 09CW136 in the development and marketing of the Crossroads Arena, for which the conditional water rights are decreed. Part of Applicant's diligence in pursuing and maintaining this conditional ground water right during the diligence period, therefore, includes these related activities to purchase, repair, complete, and fully utilize the Crossroads Arena, as necessary to place such conditional component of the Crossroads Well water right to beneficial use. Applicant conservatively estimates that it, and its predecessor in title, have expended in excess of \$5,000 since the decree in Case No. 09CW136 in completion of related construction and marketing activities associated with the Crossroads Arena, and in improving the water system to provide water services thereto. Such activities include planning, design, construction, marketing, legal and engineering consulting fees, as well as expenditures by Applicant on maintaining and reconditioning the water system for future provision of expanded services. Such costs, of course, do



not include the expenditures by Applicant in acquiring the Crossroads arena itself, and the additional investment therein in light of the water rights associated with the property, including the conditional water rights subject of this Application. Based on the expenditures described herein, and ongoing efforts related to the use of the conditional component of the Crossroads Well water structure through expanded and full use of the Crossroads Arena facility, the Applicant has established that it can and will complete the development of the adjudicated conditional water right component of the Crossroads Well and place it to beneficial use within a reasonable period of time. **Names of the owners of land on which structure is or will be located upon which water is or will be stored or upon which water is or will be placed to beneficial use:** All lands upon which water will be pumped or produced, and beneficially used, are currently owned by Applicant.

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**CASE NO. 2016CW3035 - RUSH CREEK, LLC, Attn: Mr. Ralph Kramer, 3914 Heatherglenn Lane, Castle Rock, Colorado 80104** (Please direct all communication/pleadings to: Robert E. Schween, Robert E. Schween, P.C., Attorney for Applicant, 62489 East Border Rock Road, No. 2, Tucson, Arizona 85739. Telephone: 303-995-7870. Email: [respc@q.com](mailto:respc@q.com))

Application for Adjudication of Conditional Water Right and Plan for Augmentation.

**PUEBLO COUNTY**

**2. Overview of Application:** **A. Applicant.** (1) Applicant Rush Creek, LLC, is the owner of property in Pueblo County, known as Lot 20, Pope Valley Ranch Road, Pueblo, CO 81005. Applicant intends to irrigate certain crops in an indoor facility and outdoors on the land for agricultural purposes. Applicant may also use such water for domestic/household uses and for sanitary purposes. (2) Accordingly, Applicant has initiated a conditional appropriation of water for such beneficial purpose. Applicant has an existing domestic well constructed into the Dakota aquifer to withdraw such water (Well Permit No. 297774). The source is groundwater tributary to the mainstem of the Arkansas River in Pueblo County. (3) All such withdrawals will be considered to be out-of-priority. Applicant seeks a decree of the Water Court to confirm its conditional appropriation and to approve a plan for augmentation for the replacement of all out-of-priority withdrawals. **B. Location.** The Rush Creek Well ("Well No. 1") is located in the NW $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 23, Township 21 South, Range 68 West of the 6th P.M, at a point 2607 feet from the South Section line and 977 feet from the West Section line of said Section 23, in Pueblo County, Colorado. See General Location Map, Exhibit A to the Application; Site Location Map showing the well location, Exhibit B 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. Source.** Well No. 1 will withdraw Dakota aquifer groundwater which is tributary to the Arkansas River. See technical letter report, attached to the Application as Exhibit C. **D. Date of Appropriation.** June 05, 2015. **E. How Appropriation Initiated.** By filing a well permit application. **F. Amount.** 15 gpm, up to 7.92 acre-feet per year, CONDITIONAL. **G. Uses.** Irrigation, domestic, sanitation uses on Applicant's property as well as all commercial uses of the water on property other than Applicant's by agreement. **3. Augmentation Claim:** **A. Irrigation Use.** Applicant will use the groundwater withdrawn through Well No. 1 to irrigate commercial crop in both outdoor and indoor settings. Outdoor irrigation will be



seasonal (May through October); indoor irrigation will be year around. **B. Domestic and Sanitation Uses.** Applicant also intends to use such water as necessary for domestic or various household uses within the home on the property and for sanitation uses in the facility. **C. Commercial Uses.** Applicant may use such water for commercial uses on his property or on the property of others by means of temporary water use agreements. **D. Full Replacement of Depletions.** For purposes of the claimed plan, Applicant will assume that all withdrawals are out-of-priority and all stream depletions must be replaced to avoid injurious effect upon the water rights of others. **4. Estimated Stream Depletions:** **A.** Applicant has modeled the amount and timing of stream depletions caused by pumping Well No. 1 based on the projected maximum level of withdrawals under this plan of 7.92 acre-feet per year. **B.** The results of this modeling effort demonstrate that the total stream depletion caused by pumping Well No. 1 will be 0.00 acre-feet after one (1) year of pumping. **5. Application for Plan for Augmentation:** **A. Structure to be Augmented.** Well No. 1 pumps Dakota aquifer ground water that is tributary to the mainstem of the Arkansas River in Pueblo County. The location of the well is described above and shown on the Site Location Map attached to the Application as Exhibit B. **B. Summary of Diversions.** (1) Sanitary and Domestic Uses. Sanitary and related uses are estimated to be 0.24 acre-feet per year. (2) Irrigation Use. Indoor and outdoor irrigation and related uses are estimated to be 7.60 acre-feet per year. (3) Evaporative Loss. Evaporation is estimated to be 0.08 acre-feet per year. **C. Stream Depletions.** Stream depletions were modeled and found to be a maximum of 4.9 acre-feet per year (with the last approximately 5% of depletions wrapped into that amount). Return flows will be negligible and are not claimed as a replacement source under this plan. **D. Replacement.** (1) Applicant intends to make full replacement of stream depletions on a monthly basis by delivery of replacement water supplied by a Water Supply Lease Contract with the Pueblo Board of Water Works (“Pueblo”). Pueblo will deliver approximately 10.0 acre-feet of fully consumptive use water per year, on a monthly basis, pursuant to the Water Supply Contract. The estimated schedule for such deliveries is as follows:

Month	Deliveries (AF)	Month	Deliveries (AF)
January	0.83	July	0.83
February	0.83	August	0.83
March	0.83	September	0.83
April	0.83	October	0.83
May	0.83	November	0.83
June	0.83	December	0.83
Total			10.0

(2) After accounting for transit losses, such deliveries will be adequate to replace all stream depletions caused by the pumping of Well No. 1 and will prevent injury to the vested and conditionally decreed water rights of others. **6. Description of the Augmentation Plan:** **A. Replacement Water.** (1) Point of Release: Replacement water is released from Clear Creek Reservoir, Chaffee County, approximately 139.1 miles upstream of the depletion point. (2) Augmentation Point: A point on the Arkansas River, located in the SE ¼ of NW ¼ of Section 36, Township 20 South, Range 66 West, at a point approximately 3290 feet from the South Section Line and 1280 feet from the West Section Line. **B. Description of Source:** Replacement of stream depletions caused by

pumping of Well No. 1 will be made on the Arkansas River by releases from stored water upstream. All appropriate transit losses will be assessed from the point of release to the point of stream depletion. See Sample Accounting Form, Exhibit D to the Application. **7. Replacement of Post-Pumping Stream Depletions:** A. Pueblo. Once pumping of Well No. 1 permanently ceases (modeled as 5 years, 10 months after pumping is commenced), due to the distance and travel time from the point of pumping and the river and the complex geology of area, stream depletions will continue for a period of 13.5 years, at which time greater than 95% of the total volume of withdrawals will have accrued as depletions to the Arkansas River. To satisfy post-pumping replacement obligations, Applicant or its successors will continue to use the augmentation supplies contracted through Pueblo. Such supplies are sufficient in quantity, time, and place to replace all injurious stream depletions. B. Additional or Alternative Replacement Sources. Pursuant to C.R.S. § 37-92-305(8), the Court may authorize Applicant to use additional or alternative supplies of replacement water, including water leased on a yearly or less frequent basis, in this augmentation plan. The procedure and terms and conditions under which these sources may be added to this plan after entry of the initial decree will be set forth in Applicant's proposed ruling and decree. **8. Statement of Plan Operation:** A. Withdrawals of Groundwater. Well No. 1 withdraws Dakota aquifer groundwater that is tributary to the Arkansas River for irrigation, domestic, and sanitation purposes on Applicant's land at a rate of flow of approximately 15 gpm. B. Consumptive Use. All uses of such water are considered fully consumptive in nature. Any unconsumed portions return to the stream from either direct runoff or deep percolation. Credit is not claimed for such return flows by this plan. C. Replacement of Depletions. Out-of priority stream depletions, as defined above, will be fully replaced with in-basin water by means of the contract with Pueblo. Such sources will adequately replace all modeled stream depletions in time, place, and amount and in such a manner as to prevent injury to all other vested and decreed conditional water rights. **9. Proposed Terms and Conditions:** A. Tributary groundwater pumped from Well No. 1 will be limited based on an amount of water calculated to be available from replacement sources. B. Applicant will perform all necessary accounting functions and make reports to the Division Engineer as requested. A sample accounting form is attached to the Application as Exhibit D and will be attached to the proposed ruling and decree. C. The plan requested herein will prevent injurious effect upon other owners or persons entitled to use water under vested or decreed conditional water rights. **10. Name and Address of Owners of Land Upon Which Water Rights Are Located:** Applicant Rush Creek, LLC. **11. Jurisdiction:** The Water Court has jurisdiction over the subject matter of this application pursuant to § 37-92-302, C.R.S. **12. Remarks:** A. Need for Water. The water rights requested in this application are needed for irrigation as well as in-facility domestic and sanitation purposes on Applicant's property. Applicant reasonably believes that it has such needs and is committed to developing and operating the augmentation plan requested herein. B. Completion of Augmentation Plan. By undertaking this application and the related planning, engineering, legal efforts, and other activities that become necessary and apparent, Applicant can and will complete and operate the augmentation plan applied for hereby. **13. Prayers for Relief:** WHEREFORE, Applicant Rush Creek, LLC, requests this Court to enter a decree granting the application herein and awarding the conditional water right and plan for

augmentation requested herein. Further, Applicant requests that the Court retain jurisdiction over this matter for a period necessary to assure that the operation of the plan will not cause injury to other vested water rights. FURTHER, Applicant asks the Court grant such other relief as it deems just and proper in this matter.

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

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of August 2016, (forms available at Clerk's office or at [www.courts.state.co.us](http://www.courts.state.co.us), after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

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Witness my hand and the seal of this Court this 6th day of July, 2016.



*Mardell R. DiDomenico*

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Mardell R. DiDomenico, Clerk  
District Court, Water Div. 2  
Pueblo Judicial Building  
501 N. Elizabeth Street, Suite 116  
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(Court seal)  
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