

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING MARCH 2017

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 March 2017, 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. 2017CW1 – JOHN D. SHARP and KASEY K. SHARP, 3800 W. 105th Drive, Westminster, CO 80031; (303) 809-5547

Application for Absolute Surface and Storage Water Rights

CUSTER COUNTY

Name of structures: Sharp Spring; Sharp Pond **Legal description:** **UTM Coordinates (NAD83, Zone 13):** Sharp Spring: 454821.57E, 4214312.87N. Sharp Pond: 454869.04E, 4214348.34N. **Subdivision:** Sierra Mojada South, Lot 27. **Source of UTM:** Hand-held GPS – Solocator. **Accuracy of location displayed on GPS device:** ±13.1 feet. **PLSS Description:** Sharp Spring: Custer County, SW ¼ SE ¼ Section 2, T23S, R73W, 6th P.M., 650 feet from South line and 2,418 feet from East line. Sharp Pond: Custer County, SW ¼ SE ¼ Section 2, T23S, R73W, 6th P.M., 761 feet from South line and 2,264 feet from East line. **Source of PLSS information:** DeLorme.XMap 7. **Source:** Grape Creek, Arkansas River. **Date of Appropriation:** May 27, 1999; **How appropriation was initiated:** Construction of the pond. **Date water applied to beneficial use:** May 27, 1999. **Amount claimed:** Sharp Spring: 0.02227 cfs, Absolute. Sharp Pond: 0.6900 a.f. **Use:** Wildlife, livestock, irrigation and fire protection. **Number of acres historically irrigated:** 1; **proposed to be irrigated:** 1. This water right will not supplement irrigation of an area of land already irrigated under another water right. **Legal description of irrigated acreage:** Lot 27, Sierra Mojada South, one acre to be irrigated. A map is on file with the application, and may be inspected at the Clerk's Office, showing the location of the irrigated acreage. **Surface area of high water line:** 0.23 acres; **Vertical height of dam:** 4 feet. **Length of dam:** 111 feet. **Total capacity of reservoir:** 0.6900 a.f.; **Active Capacity:** 0.414 a.f.; **Dead storage:** 0.276 a.f. **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. **Remarks:** We have purchased Lot 27 with a pre-existing spring and pond and learned that both had never been adjudicated to the land. We would like to adjudicate the spring and pond.

CASE NO. 2017CW2 – BOBBY WILLIAMS and GLENDA WILLIAMS, 2900 Siloam Road, Pueblo, CO 81005; (719) 784-4277

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

PUEBLO COUNTY

Name of Well: Williams Well; **Permit Number:** 136837-A. **Total area of parcel on which this well is located:** 40 acres. **Legal description of well:** **UTM Coordinates (NAD83, Zone 13):** 501696.5E, 4225978.1N. **Street Address:** 2900 Siloam Road, Pueblo, CO 81005; **Source of UTM:** Spotted from section lines (per well permit search report on file with the Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **PLSS Description:** Pueblo County, SW ¼ NE ¼ Sec. 34, T21S, R68W, 6th P.M., 1675 feet from North line and 1500 feet from East line. **Source of PLSS information:** Well permit application filed by Reeves Drilling. **Date of appropriation:** 6/19/84; **How appropriation was initiated:** Well permit application filed with State Engineer Office. **Date water applied to beneficial use:** 11/15/84. **Source of water:** Ground water tributary to the Arkansas River. **Depth:** 565 feet. **Amount claimed:** 11.25 gpm, Absolute. **Use:** Fire protection ordinary household use for two single family dwellings, watering of domestic animals and livestock; watering trees, lawn and garden not more than ½ acre. **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. 2017CW3011 – ORGANIC GROWN, LLC, c/o Jeremy Montez, 43 Wheatridge, Pueblo, CO 81005

(Please send all correspondence and inquiries regarding this matter to: Douglas Gradisar, Gradisar, Trechter, Ripperger & Roth, 1836 Vinewood, Suite 200, Pueblo, CO 81005; (719) 566-8844

Application for Plan for Augmentation

PUEBLO COUNTY, COLORADO

Background and Summary of Plan for Augmentation. Applicant is a single member LLC which is licensed to operate a marijuana growing facility on Lot 5 located on Pope Valley Ranch in the NE 1/4 of Section 14, Township 21 South, Range 68 West of the 6th P.M. in Pueblo County, as depicted on Exhibit A attached to the Application, consisting of approximately 35 acres. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) This legally described property is more commonly known as 1820 Pope Valley Ranch Road, Pueblo, CO 81005. From this location, Organic Grown agricultural operation will consist of one greenhouse building, one acre of outdoor crop growth, and one commercial support building with approximately five employees. Applicant intends to use the on-site Dakota well (Permit #300020; Easting 503348 Northing 4230818) and located in the SE 1/4 of the NE 1/4 of Section 14, Township 21 South, Range 68 West of the 6th P.M. to supply water for purposes of Organic Grown agricultural operations, including, but not limited to,

marijuana production on the Applicant's property. Therefore, Applicant seeks approval of a plan for augmentation for the use of such well for commercial and irrigation purposes. **Application for Approval of Plan for Augmentation. Structures to be Augmented.** The structure to be augmented consists of one constructed well (Permit #300020) on Applicant's Property. **Water Rights to be Used for Augmentation: Lease with Pueblo Board of Water Works.** Water rights to be used for augmentation consists of an annual amount of at least 10 acre-feet of fully consumable water provided by lease with the Board of Water Works of Pueblo, Colorado ("Pueblo Water") as shown by the Exhibit B lease ("Lease") attached to the Application. The Lease is for a term of ten years with Applicant's option to extend for an additional ten years. The term of the Leases commenced on January 31, 2017. The water rights or sources of water that may be used for augmentation in this augmentation plan include the following: Fully consumable water owned or controlled by Pueblo Water. All water to be used in this augmentation plan provided by Pueblo Water must be decreed or otherwise legally available for augmentation purposes. The source of such water is unspecified in the lease, but may include Pueblo Water's water stored in Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, from direct flow transmountain water or from any other reservoir or place from which Pueblo Water may deliver water, the sources of which are at the option of Pueblo Water, as long as they are legally available for augmentation purposes. Water deliveries may include, without limitation, water stored in Twin Lakes Reservoir (located in all or portions of Sec. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in T.11S., R.81W., 6th P.M., in Lake County), Turquoise Reservoir (located on Lake Fork Creek in Sec. 7, 8, 17, 18, 19, and 20, T.9S., R.80W., 6th P.M. and Sec. 10, 11, 12, 13, 14, and 15, T.9S., R.81W., 6th P.M., in Lake County), Clear Creek Reservoir (located in Sec. 7 and 8, T.12S., R.79W, and Sec. 12, T.12S., R.80W., 6th P.M. in Chaffee County, and reusable return flows. The sources of such water may include, but are not limited to, the water rights decreed in Case Nos. 84CW177, District Court, Water Div. No. 2; 84CW177(B), District Court, Water Div. No. 2; 90CW340, District Court, Water Div. No. 5; W-1901, District Court, Water Div. No. 5; 95CW321, District Court, Water Div. No. 5; 90CW55, District Court, Water Div. No. 2; and 04CW130, District Court, Water Div. No. 2. **Addition or Reduction in Quantity with Pueblo Water Lease.** Any additional fully consumable decreed water provided to Applicant through additional lease or leases with Pueblo Water may be included into this plan for augmentation and shall commensurately modify or extend the available pumping that can be conducted by Applicant. Applicant has become a member of the Siloam Well Association ("SWA"), see Exhibit C to the Application, and therefore as a member, benefits from the Lease entered into by SWA with the Pueblo Board of Water Works. The SWA was established and designated to "negotiate, execute and enter into a Water Lease Agreement ...with the Board of Water Works of Pueblo, Colorado on behalf of all Members of the SWA" Exhibit C, pg. 1. Membership in the SWA "shall include all wells on member property and adjacent member properties ..." Id. The SWA was designated and

appointed as its members' "lawful agent to negotiate, execute and deliver a signed Water Lease to [the Pueblo Board of Water Works] on behalf of all Members of SWA ..." Id. at pg. 2. Members of the SWA "shall diligently, faithfully and completely participate in, cooperate and comply with [the] signed Water Lease as a Member of the SWA." Id. Members of the SWA are bound and committed "to compliance with all terms and provisions of said Water Lease, including only using any water leased to SWA under said Water lease for augmentation of water well(s) used by Members as a source of supply for marijuana enterprises in Pueblo County, Colorado, being solely responsible for the lawful operation of it well(s) and installing such measuring devices and reporting all meter readings as Colorado administrative authorities may require." Id. Each Member of the SWA agrees to the "full and timely payment to SWA, in cash or cash equivalent, of Member's annual contribution as required by [the] Articles and Bylaws [of SWA] together with an amount equal to the projected proportionate cost and expense of the annual water charge due to [the Pueblo Board of Water Works] pursuant to said Water Lease, during the entire twenty (20) year term of said Water Lease, for providing augmentation water for any Member's "stream depletion"; "stream depletion" being defined as that amount of depletion to the Arkansas River, resulting from the pumping of Member's well(s), as determined by Colorado administrative authorities pursuant to an approved Substitute Water Supply Plan or as determined by the Division 2 Water Court pursuant to a decreed Plan of Augmentation covering Member's well(s)." Id. at pg. 3. Applicant, as a member of the SWA is therefore able to utilize this water source. **Statement of Plan for Augmentation. Diversions and Depletions.** Uses. The entirety of the diversions will be used for commercial and irrigation purposes for agricultural operations. Depletions. Water use for all uses will be considered to be one-hundred percent consumptive. Return Flows. As all uses are being considered one hundred percent consumptive Applicant is not claiming any return flows from diversions from the Wells. However, Applicant reserves the right to claim such return flows in the future through amendment of the decree. Maximum Diversions. Well Permit #300020 will pump each year no more than the annual total of the contractually allotted annual lease water from Pueblo Water. Such total is currently 40 acre-feet in the First Contract Year and may be increased in subsequent years following Board approval. Timing of Depletions. Well pumping by all wells on Applicant's Property will be entitled to occur on a year-round basis, resulting in year-round lagged depletions to the Arkansas River. The timing of the lagged depletions will be based on the distance from the well to the point of impact on the Arkansas River as determined by Applicant's engineers using generally accepted engineering principles. Replacement Water. Replacement water to augment the herein depletions currently totals 40 are-feet in the First Contract Year from the Leases and may increase or decrease in subsequent years following Board approval. Such replacement water provided by Pueblo Water is fully consumable and is available to the Applicant at the point of depletion on the Arkansas River caused by the pumping of the Wells. The amount and timing of replacement water provided by the Applicant at the point

of depletion shall be determined by lagged depletion analysis by Applicant's water resource engineering consultants and shall be subject to appropriate transit loss, if applicable. Raw water will be delivered by Pueblo Water to replace stream depletions caused by well pumping during the first ten Contract Years over a period of time not to exceed October 31, 2036. **Name and Address of Owners of Land Upon Which Structures are Located.** All structures , wells, and operations covered by this Application occur on property owned by the Applicant. **Remarks.** Upon entry of a decree in this case, the Applicant shall be entitled for use of Well Permit #300020 in accordance with any decree entered in this case. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater and replacement of lagged depletions under the proposed augmentation plan. The well shall be metered as required by the State Engineer. The well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on a monthly basis or as otherwise requested by the Division Engineer. The Applicant shall also provide Accountings to the Division Engineer and Water Commissioner to demonstrate compliance under this plan of augmentation. WHEREFORE, the Applicant requests this Application for Plan for Augmentation be granted as requested herein and for such other and further relief as the Court deems appropriate.

CASE NO. 2017CW3012 – DONALD E. and CATHIE G. DILL, 3285 CR 47, Howard, CO 81233 and JERRY R. and FRANCES M. PEARCE, 133 Silver Mtn. Drive, Glenwood Springs, CO 81601 (Please direct all correspondence and inquiries regarding this matter to Applicant's Attorney: Sarah A. Klahn and/or Courtney J. Krause, c/o WHITE & JANKOWSKI, LLP, 511 Sixteenth Street, Suite 500, Denver, Colorado 80202; (303) 595-9441)

Application to Add Sources to Surface Water Right and for Storage Water Right

FREMONT COUNTY

2. Application for Additional Source to Serve Direct Flow Water Right in Case No. 13CW3041: Applicants have pending an application for irrigation and domestic uses in Case No. 13CW3041, which described a discrete list of springs as the source of water. However, additional sources are available in the Old Horton Creek, and such sources may be and have been available to satisfy the claims in 13CW3041. The amounts claimed for the Additional Sources are sufficient amounts to satisfy the 0.44 cfs absolute and 0.56 cfs conditional claimed in 13CW3041. No additional direct flow amounts beyond those claimed in 13CW3041 are claimed in this application. **(a.) Legal description of Additional Source:** The point where the Horton Creek Extension diverts from Old Horton Creek: UTM X/Easting 425350, UTM Y/Northing 4249253, Zone 13. **(b.) Source:** All water arising in the Old Horton Creek, including but not limited to the five upper springs feeding Old Horton Creek, (Upper Spring Nos. 1-5), the Moore Spring, Horton Spring 1, Horton Spring 2, Horton Spring 3, all arising above the point where the Horton Creek Extension diverts from Old Horton Creek. Old Horton Creek is tributary to Stout Creek, which is tributary to the Arkansas River. Old Horton Creek, the spring locations, and the point where the Horton Creek Extension diverts

from Old Horton Creek are shown on Exhibit 1 to the Application and described with more detail below. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) (i.) Upper Spring 1: UTM X/Easting 425000, UTM Y/Northing 4248910, Zone 13; (ii.) Upper Spring 2: UTM X/Easting 424914, UTM Y/Northing 4248865, Zone 13; (iii.) Upper Spring 3: UTM X/Easting 424729, UTM Northing 4248756, Zone 13; (iv.) Upper Spring 4: UTM X/Easting 424755, UTM Y/Northing 4248734, Zone 13; (v.) Upper Spring 5: UTM X/Easting 424815, UTM Y/Northing 4248776, Zone 13; (vi.) Moore Spring: UTM X/Easting 425225, UTM Y/Northing 4249291, Zone 13; (vii.) Horton Spring 1: UTM X/Easting 425258, UTM Y/Northing 4249058, Zone 13; (viii.) Horton Spring 2: UTM X/Easting 425402, UTM Y/Northing 4249433, Zone 13; (ix.) Horton Spring 3: UTM X/Easting 425433, UTM Y/Northing 4249570, Zone 13; **(c.) Structure**: Horton Creek Extension. **(d.) Amount**: Amounts not to exceed the 0.46 cfs, absolute; 0.54 cfs, conditional claimed in Case No. 13CW3041. **(e.) Dates of appropriation**: September 25, 1903 for irrigation; May 3, 1971 for domestic use by recharge incidental to irrigation. See details regarding initiation of appropriation and date waters were put to beneficial use as outlined in the application in Case No. 13CW3041. **(f.) Uses**: Irrigation of approximately 15 acres located generally in the SE1/4 of the SW1/4 and the W1/2 of the W1/2 of the SW1/4 of the SE1/4 of Section 15, and the NE1/4 of the NE1/4 of the NW1/4 of Section 22, all in Township 48 North, Range 10 East, New Mexico PM, and domestic use by way of incidental recharge of Applicants' domestic wells via irrigation uses. **3. Application for Storage Water Right**. The Dill Pond historically received flows from the Horton Extension and stored them for the uses described below. This application seeks to adjudicate a water right to store water in Dill Pond for the uses described within. The Dill Pond is located on fee land owned by Applicant Dills. **(a.) Name of Reservoir**: Dill Pond **(b.) Legal Description of the location of the Reservoir**: The Dill Pond is an off-channel excavated Pond. As such, there is no dam. The centroid of the pond is UTM X/Easting 425918, UTM Y/Northing 4251127, Zone 13. The location of the Dill Pond is illustrated on the Exhibit 1 to the Application. **(c.) Source**: **(i.)** The point where the Horton Creek Extension diverts from Old Horton Creek: UTM X/Easting 425350, UTM Y/Northing 4249253, Zone 13. **(ii)** The five upper springs feeding Old Horton Creek, (Upper Spring Nos. 1-5), the Moore Spring, Horton Spring 1, Horton Spring 2, Horton Spring 3, and all water in Old Horton Creek upstream of the point where the Horton Creek Extension diverts from Old Horton Creek. Old Horton Creek is tributary to Stout Creek, which is tributary to the Arkansas River. Old Horton Creek, the spring locations, and the point where the Horton Creek Extension diverts from Old Horton Creek are shown on Exhibit 1 attached to the Application and described with more detail below. **(d.)** Dill Pond is near the terminus of the Horton Extension and receives water from that structure. The Horton Extension carries 1 cfs and that is the maximum rate claimed to fill this structure. **(i.) Legal description of each point of diversion**: See paragraphs 2.a and 2.b above. **(e.) Date of appropriation**: August 1, 1970. **(f.) How appropriation was initiated**: Construction and filling of Pond via the Horton Extension. **(g.) Date water applied to beneficial use**: August 15, 1970 **(h.) Amount claimed**: **(i.) Absolute**: 4.2 acre-feet, which is the pond volume, and in addition to the pond volume the Applicant requests the amount necessary to fill and re-fill the pond when in priority with the intent to keep the pond full

(ii.) Rate of diversion: 0.46 cfs, absolute; 0.54 cfs, conditional **(i.) List All Uses or Proposed Uses:** irrigation, piscatorial, recreational and aesthetic **(i.)** Irrigation of approximately 15 acres located generally in the SE1/4 of the SW1/4 and the W1/2 of the W1/2 of the SW1/4 of the SE1/4 of Section 15, and the NE1/4 of the NE1/4 of the NW1/4 of Section 22, all in Township 48 North, Range 10 East, New Mexico PM. Applicants irrigate out of the pond using a water wheel. **(ii.)** Domestic use: Filling of the pond incidentally recharges ground water benefiting Applicants' domestic wells. **(iii.)** Piscatorial: the pond has been used to stock fish; **(iv.)** Recreational: the pond has been used for fishing and swimming: aesthetic: the pond aesthetically enhances the property. **(j) Surface area of the high-water line:** 0.42 acres **(i.) Pond Depth:** 14 feet **(k.) Total capacity of reservoir in acre-feet:** 4.2 acre-feet **(i.) Active capacity:** 0 acre-feet **(ii.) Dead storage:** 4.2 acre-feet **Notes:** Applicants claim the above stated appropriation dates, and notes that these claims are senior to the appropriations claimed in Case No. 17CW3010 by applicants Tom and Joan French ("Frenchs"). However, should the Court determine the claims herein should not be administered as senior to the water rights claimed in Case No. 17CW3010, Applicants claim the same administration date as the water rights claimed in Case No. 17CW3010 under the relation-back doctrine and C.R.S. § 37-92-306.1.

CASE NO. 2017CW3013 – PAUL M. CAMPBELL, P. O. Box 806, Salida, CO 81201

(Please direct all pleadings to Applicant's attorneys: Cynthia Covell and Andrea Benson, Alperstein & Covell, P.C., 1600 Broadway, Suite 900, Denver, CO 80202; (303) 894-8191)

Application for Correction of an Established but Erroneously Described Point of Diversion Pursuant to § 37-92-305(3.6), C.R.S.

CHAFFEE COUNTY

Decreed water right for which correction is sought: Name of structure: Campbell Well No. 2 (Permit No. 128482). **Date of Original and All Relevant Subsequent Decrees:** Original decree: April 1, 1985, Case No.: 84CW068, Water Court, Water Division 2. Subsequent decrees awarding findings of diligence: Case No. 89CW10, decreed June 29, 1989; Case No. 94CW146, decreed June 4, 1996; Case No. 2002CW91, decreed July 7 2003; Case No. 2009CW97, decreed December 1, 2009; Case No. 2015CW3066, decreed September 22, 2016; all in Water Court, Water Division 2. **Legal description - Decreed Location:** NE 1/4, SE 1/4, Section 9, Township 48 North, Range 8 East of the N.M.P.M. in Chaffee County, Colorado, 2000 feet from the South section line and 1220 feet from the East section line of said Section 9. **Source of water:** Groundwater tributary to Poncha Creek. **Appropriation Date:** September 14, 1982. **Amount:** 0.33 cfs (15 gpm), but not to exceed one acre-foot in any one calendar year. In Case No. 95CW146, Campbell Well No. 2 was decreed absolute for 7 gpm for irrigation of up to one-half acre, and diligence was found as to the remaining 8 gpm for irrigation uses. Diligence was also found for the Campbell Well No. 2 for the 15 gpm flow rate decreed for domestic purposes. **Use:** The well is decreed for domestic use and irrigation of one-half acre. **Depth:** 167 feet. **Detailed description of proposed correction to an established but erroneously described point of diversion.** The well has been at the same physical location since the original decree confirmed the water right. The well has been at the same physical location since the

original well permit was applied for and granted. The well permit is attached to the Application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Applicant has diverted water pursuant to the water right decreed in Case No. 84CW068 as evidenced in the subsequent diligence decrees listed above. During the most recent diligence filing, Case No. 15CW3066, the water commissioner re-plotted the well and determined that it is approximately four hundred twenty (420) feet from the decreed location. There are no intervening water rights between these two locations. Applicant had no reason to believe prior to this time that the well was not within two hundred (200) feet of the decreed location. This application does not include or join an action seeking any other type of change of water right or diligence proceeding. The correction of the erroneously described point of diversion will not result in expansion of use of the subject water right. **The legal description of the corrected point of diversion is as follows:** UTMs: NAD 83 13S 0405377E, 4253891N. **Name and address of owner or reputed owners of the land upon which any new diversion structure, or modification to any existing diversion structure is or will be constructed or upon which water is or will be stored:** Applicant.

CASE NO. 2017CW3014, Water Division 2 and CASE NO. 2017CW3052, Water Division 1 – FRED and SARAH VOLLBRACHT, 7335 Loch Fyne Lane, Colorado Springs, CO 80908

(Please direct all correspondence and inquiries regarding this matter to Applicants' attorney: James J. Petrock, Petrock & Fendel, P.C., 700 Seventeenth Street, Suite 1800, Denver, CO 80202; (303) 534-0702)

Application for Underground Water Rights from Nontributary and Not Nontributary Sources and for Approval of Plan for Augmentation in the Nontributary Laramie-Fox Hills and the Not Nontributary Denver and Arapahoe Aquifers

EL PASO COUNTY

30 acres being the SW1/4NW1/4, except for the south 821.9 feet of the west 530 feet, Section 32, T12S, R65W of the 6th P.M., El Paso County, as shown on Attachment A to the Application ("Subject Property"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Source of Water Rights:** Denver and Arapahoe aquifers are not nontributary as described in Sections 37-90-103(10.7), C.R.S., and the Laramie-Fox Hills aquifer is nontributary as described in Section 37-90-103(10.5), C.R.S. **Estimated Amounts:** Denver: 14.7 acre-feet, Arapahoe: 13.5 acre-feet, Laramie-Fox Hills: 8.5 acre-feet. **Proposed Use:** Domestic, commercial, irrigation, livestock watering, fire protection, and augmentation purposes, including storage, both on and off the Subject Property. **Groundwater to be augmented:** Approximately 2.8 acre-feet per year of Denver aquifer groundwater for 300 years as requested herein. **Water rights for augmentation:** Return flows from the use of not nontributary and nontributary groundwater and direct discharge of nontributary ground water. **Statement of plan for augmentation:** The Denver aquifer groundwater will be used through four wells to serve four residences at rates of flow not to exceed 15 gpm. Each well will withdraw approximately 0.7 acre-feet annually for 300 years for in house use (0.35 acre-feet), irrigation of lawn, garden, and trees (0.3 acre-feet), and stockwatering of up to 4 large domestic animals (0.05 acre-feet). Applicants reserve the right to amend these amounts and values without amending the application

or republishing the same. Sewage treatment for in house use will be provided by non-evaporative septic systems and return flow from in house and irrigation use will be approximately 90% and 15% of that use, respectively. During pumping Applicants will replace an amount equal to 4% of the annual amount withdrawn pursuant to Section 37-90-137(9)(c.5), C.R.S. Because depletions may occur to stream systems in Water Divisions 1 and 2, this application is being filed in both divisions. Based on the location of the Subject Property, return flows from use of the water on the Subject Property return to the Arkansas River stream system and such return flows are sufficient to replace the total annual actual depletion. Applicants request that the total actual depletion be returned to the Arkansas River stream systems and for a finding that those replacements are sufficient to prevent injury to all affected stream systems. Applicants will reserve an equal amount of the nontributary Laramie-Fox Hills aquifer groundwater requested herein to meet post pumping augmentation requirements. Further, Applicants pray that this Court grant the application and for such other relief as seems proper in the premises.

CASE NO. 2017CW3015, Water Division 2 and CASE NO. 2017CW3054, Water Division 1 – DALE D. McGEHEE and STEPHANIE B. McGEHEE, 10958 Mt. Evans Road, Falcon, CO 80831

(Please direct all correspondence and inquiries regarding this matter to: Henry D. Worley, Worley Law Firm, LLC, 611 North Weber Street, Suite 104, Colorado Springs, CO 80903; (719) 634-8330)

Application for Adjudication of Denver Basin Water Rights and for Approval of Plan for Augmentation

EL PASO COUNTY

2. Applicants seek a decree adjudicating water rights in the Denver Basin aquifer underlying their property, which is described as “Lot 3 Mountain Shadows Ranch Second Phase”, a 10.5 acre parcel of land located in the SW1/4 Section 19, T. 11 S., R. 65 W., 6th P.M. (the “Property”) A map depicting the location of the Property is attached to the Application as Figure 1. A copy of the Applicants’ deed to the Property is attached to the Application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

3. Names of wells and permit, registration, or denial numbers: Permit no. 257593. This is a permitted, but not constructed, well in the Denver aquifer. **4. Legal**

description of wells: There are currently no wells on the property. **5. Source:** Not nontributary Dawson aquifer. **6.A. Date of appropriation:** Not applicable. **6.B. How appropriation was initiated:** Not applicable. **6.C. Date water applied to beneficial use:** Not applicable. **7. Amounts claimed:** Not nontributary Dawson aquifer: 1,026

acre feet, absolute. Nontributary Denver aquifer: 912 acre feet, absolute. Nontributary Arapahoe aquifer: 434 acre feet, absolute. Nontributary Laramie-Fox Hills aquifer: 315 acre feet, absolute. **8. Proposed use:** all beneficial uses except municipal. **9. Names and addresses of owners of land on which well is located:** Same as Applicants. **10.**

Remarks: There are no liens against the Property so the notice provisions of C.R.S. 37-92-302(2)(b) do not apply. **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.**

11. Name of structures to be augmented: A yet-to-be constructed Dawson aquifer well. No other water rights will be diverted from the Dawson aquifer well. **12. Previous decrees for water rights to be used for**

augmentation: not applicable. **13. Historic use:** Not applicable. **14. Statement of plan for augmentation:**

A. Water Demand. Applicants seek approval of a plan for augmentation which will allow them to pump 0.843 acre foot annually from the Dawson aquifer well for all beneficial uses except municipal use. The most likely uses will be for indoor uses for drinking and sanitary purposes in a residence, for livestock watering, for landscape and garden irrigation, including in a greenhouse, for a hot tub or swimming pool, for fire suppression and for augmentation of depletions pursuant to the augmentation plan applied for herein.

B. Water Consumption and Return Flows. Annual indoor water usage for the principal house is assumed by the State Engineer to be at least 0.2 acre foot. It is generally accepted that no more than ten percent of water used indoors in residences using non-evaporative septic systems and leach fields for wastewater disposal is consumed, with 90 percent, or annual return flows of 0.18 acre foot returning to the stream system. Although there will be some return flows from other uses, Applicants will rely only on return flows from septic systems and leach fields for replacement of depletions during a proposed 300 year pumping period.

C. Allowable Annual Pumping and Replacement of Stream Depletions During Pumping. Based on computer modeling, stream depletions will occur to tributaries of the South Platte and Arkansas Rivers. Applicant proposes to aggregate and replace all stream depletions to East Cherry Creek, a tributary of Cherry Creek and the South Platte River. Computer modeling for a nearby property indicates that during pumping total stream depletions will gradually increase to a maximum of 21.35 percent of annual pumping in the 300th year. Under Applicants' proposed pumping limit of 0.843 acre foot annually for 300 years, septic system return flows will equal or exceed depletions every year of the 300 year pumping period.

D. Replacement of Stream Depletions After Cessation of Pumping. Applicants will reserve approximately 226 acre feet from the nontributary Denver aquifer underlying the Property for the replacement of post-pumping depletions, unless and until such time as the obligation to replace post-pumping depletions is eliminated, or unless Applicants obtain judicial approval of another source of replacement water for post-pumping depletions. Applicants shall make post-pumping replacements annually as required to replace modeled stream depletions. Applicants propose to aggregate all depletions and to replace them to the South Platte drainage.

E. Miscellaneous. (1) Applicants will include in the decree provisions which (a) limit annual pumping from the proposed Dawson aquifer well to 0.843 acre feet annually and 253 acre feet total; (b) require the use of a non-evaporative septic system for wastewater treatment; (c) reserve adequate nontributary water for replacement of post-pumping depletions, which reservation may be voided upon the occurrence of any of the events specified above eliminating the need for such reservation; (d) inform future owners that utilization of water for indoor residential purposes is required in order to generate the necessary return flows for augmentation; (e) indicate that the owners will be required to construct a well or wells into the Denver aquifer underlying the Property for replacement of post-pumping depletions if the source of augmentation water is unchanged; and (e) curtail all diversions from the Dawson aquifer well unless a single family home on the Property is being occupied, so septic system return flows will be present to replace depletions during the pumping period. Provisions otherwise limiting the uses to which water may be used on the Property are unnecessary because the annual pumping limitations, and the requirement that non-evaporative septic systems be

used, ensures that septic system return flows alone will equal depletions throughout the 300 year pumping period. **(2)** This application is being filed in both Water Divisions 1 and 2 because stream depletions will occur in both the South Platte and Arkansas River drainages. After the time for filing statements of opposition has expired, Applicants will seek to consolidate the two applications in Water Division 1. **(3)** It is not uncommon in applications such as this for values for amounts of water available for appropriation, amounts which may be pumped annually pursuant to the plan for augmentation, depletion factors, and amounts required to replace post-pumping depletions to vary somewhat from the values determined by the Division of Water Resources. Applicants hereby give notice that they reserve the right to amend the figures set forth herein as necessary to conform to the State's figures regarding such issues.

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 May 2017, (forms available at Clerk's office or at 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.

Witness my hand and the seal of this Court this 4th day of April, 2017.



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

(Court seal)
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