

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING MARCH 2018  
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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 March 2018, 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. 2018CW2 - RP ON TC, LLC, d/b/a Eden West Ranch, Neil and Martha Hartman, Shareholders, 505 Woodglen, Benbrook, TX 76126; (817) 249-5663**

Application, as amended, for Change of Water Right

**FREMONT COUNTY**

**Name of structure:** COTS Ranch Pond No 1 and COTS Ranch Pond No 1 Flow Through Rights. **Date of original and all relevant subsequent decrees:** 13 July 2006; **Case No.:** 98CW82; **Court:** Water Division No. 2. **Legal description of structure as described in most recent decree that adjudicated the location:** Dam location of COTS Ranch Pond No 1): SW ¼ SW ¼ Section 12, Township 47 North, Range 12 East, Fremont County, Colorado, a distance of approximately 1187.5 feet from South section line and 750 feet from West section line. **Decreed source of water:** Texas Creek. **Appropriation Date:** 1 January 2000. **Total amount decreed to structure in cubic feet per second:** 0.5 cfs Conditional.; **Decreed use or uses:** recreational, piscatorial, fire protection. **Amount of Water that applicant intends to change:** 17.94 acre feet, absolute. **Detailed description of proposed change:** **INTRODUCTION:** The subject property has changed ownership and the new owners desire to modify the current water rights of the property, formerly known as “Children of the Son”, and now referred to as “Eden West Ranch (EWR)”. This request for modification includes three (3) main objectives: The current water decree is almost entirely based around a 5-acre pond and a flow through right (Case # 98CW0082) for Children of the Son. EWR wishes to eliminate the pond and flow through rights and modify/delete the other provisions in the decree no longer relevant because of this change. The second objective is to simplify the decree while maintaining the basic provisions that protect all water rights, both for EWR and others. The third objective is to implement new provisions that better fit EWR business strategies and their commitment to effectively manage its water resources. **Current Water Use and Distribution.** EWR has two (2) diversion points, three (3) water rights, and approximately 24 acres of land that may be watered during a normal season. The following table shows the breakdown of the water rights, taken from Page 12 of the current decree.

Ditch Name	Water Right	Diversion Rate	Annual Volume Limit
Likely & McCormick	Likely & McCormick	0.7 cubic feet/sec	30.2 acre-feet
McCormick	Likely & McCormick	0.05 cfs	8.9 af
McCormick	Hill # 1	0.2722 cfs	12.2af
McCormick	McCormick	0.6778 cfs	29.8 af
TOTAL		1.7 cfs	81.1 af

Water is applied to the property through sprinkler systems. Water from the source (Texas Creek) to the sprinkler systems is accomplished using two (2) PVC pipelines; 12 inches by 1.23 miles long (“Large Pipe Irrigation System - LPIS”), and 8 inches by approximately 858 feet long (“Small Pipe Irrigation System - SPIS”). Both pipelines receive water at the South end of the property and distribute it along the length of the property. Non-diverted water returns to Texas Creek at the North end of the property. The Likely & McCormick Ditch supplies water to the SPIS. The SPIS has two (2) sprinkler systems connected to it. One system is a mobile side roll consisting of a water pump, valves, and branch pipeline that provides water to 5 locations covering an 8-acre hayfield. The second sprinkler system is stationary and waters several grass lawns. A branch pipeline distributes the water to the sprinklers and is supplied by the same pump and valve system the side roll uses. Refer to Figure 1 attached to the Application for a diagram of the SPIS. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The critical component of these sprinkler systems is the flow meter that records every gallon of water that is diverted from the pipeline and applied to the respective areas. The McCormick Ditch supplies water to the LPIS from all three water rights; Likely & McCormick, Hill #1, and McCormick. The LPIS water, as stated in the current decree, primarily supports the 5-acre pond and flow through right. It can also provide water to a 15-acre hayfield via a sprinkler side roll system. This water has not been diverted for either of these purposes since EWR assumed ownership of the property. EWR seeks water right changes with the LPIS due to its changed mission. Refer to Figure 2 attached to the Application for a diagram of the LPIS. **Maximum Water Allotment.** EWR is limited to 81.1 acre-feet of water per year. Reference the current decree, Page 11, paragraph 9.c. titled “Limits on Future Irrigation Use”. The table on Page 12 (“Table 1”) defines the annual water amount granted to the three (3) water rights of EWR. Also defined is the maximum irrigated acres and the maximum diversion rates. The last column on the right side of the table shows the annual water consumption rate averaged over 10 years. This amount for all water rights is 81.1 acre-feet of water per year. Measuring and controlling the total acre-feet of water applied annually to EWR property is paramount for protecting the water rights of EWR and others. The current decree assigns diversion rates, acreage, specific water rights, and water application to individual tracts of land. This locks in where water may be applied, from which ditch to which parcel of land. Rather than this general assignment of water use, EWR proposes use of water meters for each diversion point to monitor and control precisely the amount of water used. The accurate metering of all water used will assure EWR stays in compliance and protects

other water right holders. **Water Accountability Change.** Changing the current decree means a major shift in how water use is measured and recorded on EWR. In simple terms, all water diverted from Texas Creek for lawful use on EWR must be measured to the nearest gallon as it is occurring. The reasons are as follows: There are annual volume limits on the amount of water to be used for all three water rights. This imposes real time measurement requirements for water consumed by EWR. The EWR physical plant as shown in Figures 1 and 2 to the Application, meets this requirement. The ability to apply the right amount of water for the application to prevent waste and promote healthy crops is important to the business as well as the ecosystem. Gauging when, where, and how much water to apply to all lawful applications is key to EWR water conservation goals. Accounting for real time water use is necessary, should EWR apply for an Agricultural Water Protection Water Right. (<https://www.agwaternet.org/default.aspx>). This program would allow EWR to lease water under AWPWR rules without a specific use. **Configuration.** The modified decree would specify the two (2) diversion points as they are currently defined. The three (3) water rights should be assigned to both diversion points so that any combination of those rights may be diverted from both. The Likely & McCormick Ditch supplying the SPIS, will have a maximum diversion rate of 0.7 cubic feet per second cfs. The McCormick Ditch supplying the LPIS will have a maximum rate of 1.0 cfs. Figure 3 attached to the Application is a Google map of EWR, illustrating the proposed configuration. The blue line is the SPIS and the red line is the LPIS. Water is supplied along the entire length of the property. Applying water to a specific location on the property involves installing a connection or tap on the pipeline, and a water flow meter to accurately gauge how much water is being consumed from the diversion points. **Administration.** EWR proposes adopting an Annual Water Plan at the beginning of each season. This plan specifies the locations to be watered, tap locations off the SPIS and LPIS, and quantity of water to be applied. At the end of the season, actual amounts are documented to compare to the projected amounts. The results will be forwarded to the Water Commissioner for record keeping. The schedule and format for reporting this information to be determined. **Water Management Example.** Real-time water management has been performed on the SPIS for the last 5 years. A total of 23,389,081 gallons (71.78 acre-feet) was diverted from Texas Creek onto the decreed 9.1 acres during the watering season. This amount of water provided satisfactory lawn growth and hay yields. Averaged on an annual basis, the consumption rate was 14.35 acre-feet, only 47.5% of the decreed water amount of 30.2 acre-feet per year. Under the present water decree and water application methods, the water savings cannot be captured by EWR because of the assignments of water to specific parcels of land. The proposed configuration allows EWR to reassign the available water to another application as it becomes necessary and/or desired. **Diversion Rates.** Diversion rates for the two (2) ditches are necessary to prevent excessive amounts of water being withdrawn from Texas Creek at any specific time. For both ditches, 1.7 cfs is adequate. From the water management example above, the diversion rate for the SPIS was an average of 155 gal/min or 0.345 cfs, well below the 1.7 cfs maximum rate. **Non-Irrigational Operations.** Both pipelines will constantly pass creek water even when no water is being diverted for EWR use. This has several benefits: 1) it keeps the lines clean and makes water readily available, 2) it reduces water loss due to evaporation

and leakage, benefiting downstream users, and 3) it provides opportunities to use water for energy production in the future (i.e. hydroelectric). To realize these benefits, EWR proposes that during the “no use” operation, diversion rates are suspended. Water flow meters will be installed at each tap off the two pipelines, measuring water diverted from the pipelines and not directly from Texas Creek. In addition, the mechanical limitations of the piping system prevent diversion of water at a rate greater than decreed. **Ranch Business Objectives.** The business plan for the property has two main functions to create income: (1) tourism, including overnight accommodations and a group event venue, and (2) farming, to produce specialty crops for commercial sale. The lawns and 8-acre hayfield are maintained for guests of EWR, and recreational fishing along the Texas Creek merit some water allotment for wildlife and fish preservation. There are approximately 31.8 acres of useable land for farming. It is divided up into 11 parcels, most less than 2.5 acres. Two fields, 8-acres and 15-acres, are farmed for hay production. The small plots will be an assortment of crops including food, flowers, and trees. Most will use drip and sprinkler irrigation systems. All water diverted will be measured (water meters) and limited to the maximum amount. **PROPOSED MODIFICATIONS TO THE CURRENT DECREE: Reference:** Decree, Case No. 98CW0082; Due Diligence, Case No. 12CW57; Dept of Planning and Zoning, Fremont County, Colorado; Special Use Permit, SRU 12-001. **Format:** Starting on Page 2 of the current decree, each of the numbered paragraphs (5 thru 12) will be addressed and changes requested followed by an explanation as to the justification for the changes.

<b>Page</b>	<b>Paragraph</b>	<b>Change</b>
2	5a & 5b	Delete the paragraphs. The Pond and Flow Through Rights serve no useful purpose and are not wanted. It should be noted that the elimination of these two rights will significantly impact the remaining decree’s paragraphs. Most will become irrelevant.
3	6.a.iv	Change statement to: Decreed diversion rate of 0.7 cfs as stated in table #1.
4	6.a.vii	Delete the paragraph. Relates to assignments not relevant in the new decree. Reduction of diversion rate noted in the statement above (6.a.iv).
4	6.b.vii	Maintain the point of Diversion to the McCormick Ditch head gate. Delete the remainder of the paragraph. Relates to assignments irrelevant in the new decree.
5	6.c.vii	Delete the paragraph. Relates to assignments irrelevant in the new decree.
5	7	Delete the augmentation plan due to the lack of need. No Pond, no livestock and no Well #88831 are a part of the changes to the current decree.
5	7.a	Delete the paragraph. No camp or retreat operations. EWR’s operating parameters are now governed by Fremont County’s Department of Planning and Zoning under the approved Special Use Review SRU 12-001 which was reviewed and approved by Colorado’s Division of Water Resources.
6	7.b	Delete the paragraphs in this section. EWR has two active wells (#292791 and #292790). Both are permitted to EWR by the

		Colorado Division of Water Resources which contains the rules and regulations pertinent to their use. Repeating them in the new decree is redundant.
7	8.a	Delete the paragraph. There are no plans for livestock (cattle and horses) to be kept on EWR.
7 & 8	8.b	Delete the paragraphs. No pond flow through right, thus no need for operational instructions for it or the pond. No need for an augmentation plan.
8	9.a	Change the discussion on Historically Irrigated acres from a land base system of determining water consumption to one that is based on measured water usage. The analysis was done to determine how much irrigation land was to be dried up to balance the needed water to augment the evaporation losses of the pond. This was determined to be 10.6 acres to provide 17.91af. Now that there will be no pond, that 17.91 acre-feet is available for other uses on EWR. It cannot be returned to irrigating the 10.6 acres since that property has been sold. It is important to note that the new maximum total amount of water available to EWR is: $81.1 + 17.91 = 99.1$ acre-feet per year.
9	9.b	Delete the paragraphs. This section describes the control features of Hill No. 1 water right as it pertains to augmentation plan implementation. Since the pond and flow through rights are deleted, this set of conditions are irrelevant in the new decree. This will result in the release of Hill No.1 water rights to other applications other than supplying 2.0 acre-feet of water for non-irrigation season return flow obligations.
11	9.c	Delete the first paragraph. This section again defines water use for irrigation based on acreage and location which seriously restricted water application and amounts. The change to this approach is water measurement techniques which provide flexibility and promotes water conservation. The second paragraph defined future diversion maximum limits which are displayed in table #1. Changes are requested that delete the columns labeled "Irrigated Acres" and "Maximum Annual Volumetric Limit". Example of the revised Table #1 is shown above.
12	9.d	No Change
13	9.e	The basic approach of measuring all water transfers is paramount to insuring that harm to other water users is avoided always. Record keeping is also a necessity. Delete the second paragraph. No pond or flow through.
13	9.f	No Change
14	9.g	Delete the paragraph. Facts already stated.
15	9.h	Delete the lower portion of the paragraph that entangles both Hill No. 1 and Hill No. 2 when a call for water is initiated by owner of

- Hill No. 2. Not enforceable due to cooperation between owners not always being reasonable. Remaining item (insufficient water availability) not relevant due to no Pond.
- 15 9.i Delete the paragraph. Stated earlier in this document.
- 15 10 Delete the paragraph. Accounting forms and reporting are necessary and desired. Paragraph needs to be rewritten to exclude reference to the Pond, stock watering and others not relevant.
- 15 11 Delete the paragraph. No Pond or flow through.
- 15 12 Delete the paragraph. Makes references to the Hill No 1 water right and to the Flow Through Right which is deleted. Violates the Appropriation Doctrine of "First in Time, First in Line".

**Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.

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**CASE NO. 2018CW3020, Water Division 2, and CASE NO. 2018CW3044, Water Division 1 - JO ELLEN WILLES, c/o Jennifer Martz, 2650 Spring Grove Terrace, Colorado Springs, CO 80906** (Please address all pleadings and correspondence to Chris D. Cummins and Brian G. Sheldon, of Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921 (719) 471-1212.)

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

**EL PASO COUNTY**

**Summary of Application.** Applicant seeks to construct up to two (2) non-exempt wells to the not-nontributary Dawson aquifer to provide water service to an equivalent number of single family dwellings thereon, based on an anticipated subdivision of Applicant's 10-acre parcel into two lots. Applicant therefore seeks to quantify the Denver Basin groundwater underlying the Applicant's Property, and for approval of a plan for augmentation for the use thereof. **Application for Underground Water Rights. Legal**

**Description of Wells.** **Property Description.** All wells will be located on Applicant's Property, which contains approximately 10 acres, more or less ("Applicant's Property") with the plan to subdivide into two lots of approximately 5 acres each. As more particularly described as follows, and depicted in the Exhibit A map attached to the Application, Applicant's Property is located in: The NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> of Section 34, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Proposed Wells.** Applicant first proposes that the existing exempt well ("Willes Well No.1"), constructed to the not-nontributary Dawson aquifer under Division of Water Resources Permit No. 30262-A, be transferred to non-exempt status upon entry of a decree approving the plan for augmentation requested herein. Applicant further proposes that at least one additional well to be located on the Applicant's Property at a specific location not yet determined ("Willes Wells No. 2"), to be constructed to the Dawson aquifer. **Water Source. Not-Nontributary.** The ground water to be withdrawn from the Dawson, Denver, and Arapahoe aquifers of the Denver

Basin underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. Nontributary. The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer of the Denver Basin underlying the Applicant's Property is nontributary. **Estimated Rates of Withdrawal and Ground Water Available.** Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests 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. Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code §8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

AQUIFER	ELEVATION		NET SAND (ft)	DEPTH (ft)		Annual Average Withdrawal 100 Years (Acre Feet)	Annual Average Withdrawal 300 Years (Acre Feet)
	Bottom	Top		Bottom	Top		
Dawson (NNT)	6634	7243	305	771	162	6.1	2.03
Denver (NNT)	5832	6629	529.6	1573	776	9.0	-
Arapahoe (NNT)	5292	5770	225	2113	1635	3.83	-
Laramie-Fox Hills (NT)	4516	4834	189.4	2889	2571	2.84	-

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **Requested Uses.** The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct a well or use water from the not-nontributary 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 C.R.S. §37-90-137(9)(c.5). **Well Fields.** Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. **Averaging of Withdrawals.** Applicant requests that she be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's 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 Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. **Owner of Land Upon Which Wells are to Be Located.** The land upon which the wells are and will be located is owned by the Applicant. **Structures to be Augmented.** The structures to be augmented are Willes Wells Nos. 1 and 2, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson aquifer of the Denver Basin underlying the Applicant's 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 Dawson aquifer from Willes Wells Nos. 1 and 2, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. **Statement of Plan for Augmentation.** Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by two wells proposed herein for two residential lots. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: **Uses.** **Household Use Only:** 0.25 acre feet annually within single family dwellings on up to two lots, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for each lot would therefore be 0.025 acre feet per well, with return flows of 0.225 acre feet per lot (totaling 0.45 acre feet annually). Any other type of waste water disposal shall require an amendment to this plan of augmentation. **Landscape Irrigation:** 0.05 acre feet annually per 1,000 square feet (2.18 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 irrigated is therefore 0.042 acre feet. **Horses (or equivalent livestock):** 0.05 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. **Hot Tub Use:** 0.006 acre feet (2,100 gallons) annually, based upon six fillings per year, with a 50% consumptive use rate. The annual consumptive use for each hot tub is therefore 0.003 acre feet (1,050 gallons). Each well will pump a maximum of 0.5 acre feet of water per year per residence for a maximum total of 1.0 acre feet being withdrawn from the Dawson aquifer per year. Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.25 acre feet of water per year per residence with the additional 0.25 acre feet per year per residence available for irrigation of approximately 4,100 square feet of lawn and garden



and the watering of up to four horses or equivalent livestock on each residential lot.

**Depletions.** Applicant's consultant has determined that maximum stream depletions over the 300 year pumping period for the Dawson aquifer amounts to approximately 21% percent of pumping. Maximum annual depletions for total residential pumping from all wells is therefore 0.21 acre feet in year 300. Should Applicant's pumping be less than the 0.5 acre feet per lot described herein, resulting depletions and required replacements will be correspondingly reduced.

**Augmentation of Depletions During Pumping.** Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of the two residential wells. Applicant's consultant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.25 acre feet per residence per year, total of 0.5 acre feet, 0.45 acre feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, with maximum depletions of 0.21 acre feet during pumping, stream depletions will be adequately augmented.

**Augmentation for Post Pumping Depletions.** For the replacement of any injurious post-pumping depletions which may be associated with the use of the Willes Wells Nos. 1 and 2, Applicant will reserve up to 278 acre feet of water from the nontributary Laramie Fox Hills aquifer, accounting for actual stream depletions replaced during the plan pumping period, calculated at 135 acre feet. Applicant also reserves 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, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a new well permit for the Willes Wells Nos. 1 and 2 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137.

**Remarks.** This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the 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 Arkansas River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter with pending Division 1 application in Water Division 2 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient. Applicant requests a finding that they have complied with C.R.S. §37-90-137(4), 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 C.R.S. §37-90-137(9)(c.5). The term of this augmentation plan is for 300 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. The Applicant requests 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 wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. Applicant 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)(l), and such notice will be sent within 14 days of the filing of this application.

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**CASE NO. 2018CW3021 - COLORADO WATER PROTECTIVE AND DEVELOPMENT ASSOCIATION ("CWPDA"), 1220 E. 3<sup>rd</sup> Street, La Junta, CO 81050** (Please address

all correspondence and inquiries regarding this matter to Applicant's attorney: MacDougall & Woldridge, P.C., Julianne M. Woldridge, 1586 So. 21<sup>st</sup> St., Suite 200, Colorado Springs, CO 80904, (719) 520-9288)

Application for Approval of Plan for Augmentation

**PUEBLO COUNTY**

**2. Purpose of Application:** CWPDA is a non-profit corporation organized to, among other things, provide a means for its members to replace out-of-priority depletions from their wells. The purpose of this application is to include additional augmented structures in CWPDA's plan for augmentation approved in Case No. 07CW128 on June 7, 2016 ("07CW128 Plan"), pursuant to section 13.20 of the Findings of Fact, Conclusions of Law, Judgment and Decree entered in Case No. 07CW128 ("07CW128 Decree"). **3. Structures to be augmented:** three wells owned and operated by PFJ, LLC, Fred J. Pisciotta, and Steve Mauro with water rights adjudicated on August 24, 1973 in Case No. W-1860, District Court, Water Division No. 2, and well permits as described below. These wells are located in and the anticipated use shall occur within the boundaries of the Southeastern Colorado Water Conservancy District. The wells are located in the SE1/4 of Sec. 6, T.21S., R.63W., 6<sup>th</sup> P.M., Pueblo County, CO, as shown on Exhibit 1, attached to the application on file with the Court Clerk. The source of water for these wells is tributary groundwater: a. Pisciotta Well No. 5, WDID #1505171, 0.27 c.f.s., irrigation use, appropriation date of 03/01/1954, permit no. 6714-R. located in the NW1/4SE1/4, Sec. 6, T.21S, R.63W., 6<sup>th</sup> P.M.; b. Pisciotta Well No. 10, WDID #1505170, 0.27 c.f.s., irrigation use, appropriation date of 3/1/1954, permit no. 6713-R, located in the NW1/4SE1/4, Sec. 6, T.21S, R.63W, 6<sup>th</sup> P.M.; and c. Pisciotta Well No. 11, WDID #1505169, 0.31 c.f.s., irrigation use, appropriation date of 3/1/1954, permit no. 6715-R, located in the SE1/4, Sec 6, T.21S., R.63W., 6<sup>th</sup> P.M. **4. Water to be used for augmentation:** CWPDA may use those water rights and sources of water identified in section 10 of the 07CW128 Decree, and such other water as may become available to CWPDA pursuant to the terms of the 07CW128 Decree; however, CWPDA anticipates using primarily water derived from its shares of Bessemer Irrigating Ditch Company changed in Case No. 07CW127 and fully consumable water stored in

CWPDA's accounts in Pueblo Reservoir. The existing augmentation water sources in the 07CW128 Decree will be sufficient to replace the depletions from the wells and prevent any injury to the owners of or persons entitled to use vested water rights. **5. Statement of augmentation plan:** The wells combined irrigate approximately 35 acres described on Exhibit 1 attached to the application on file with the Court Clerk. Out-of-priority depletions resulting from the operation of the wells for irrigation uses are to be replaced pursuant to the 07CW128 Plan. The amount, timing, and location of the depletions to be replaced will be determined according to the methodologies approved in the 07CW128 Plan. The maximum well pumping, maximum well-head depletions, and lagged depletion information for the wells are generally estimated and described in Tables 1A, 1B, and 1C below. CWPDA proposes to use a presumptive depletion factor of 0.65 for flood/furrow irrigation. The depletions shall accrue to H-I Model Reach 1 of the Arkansas River below Pueblo Reservoir as described in Exhibit 1 to the application on file with the Court Clerk ranging from the confluence of the Arkansas River and the St. Charles River to the end of the Reach 1 at the Avondale Gauging Station.

Table 1A 2018 Maximum Well Pumping (acre-feet)

	SEO ID 1505171 (Well #5)	SEO ID 150170 (Well #10)	SEO ID 1505169 (Well #11)	TOTAL
April	3.55	2.27	2.17	7.99
May	1.99	1.57	1.45	5.01
June	7.90	5.57	5.36	18.83
July	7.04	5.10	5.20	17.34
Aug.	10.13	5.32	5.19	20.64
Sept.	2.10	1.76	1.75	5.61
Oct.	1.58	0.00	0.00	1.58
Nov.	0.00	0.00	0.00	0.00
Dec.	0.00	0.00	0.00	0.00
Jan.	0.00	0.00	0.00	0.00
Feb.	0.00	0.00	0.00	0.00
March	0.00	0.00	0.00	0.00
TOTAL	34.29	21.59	21.12	77.00

Table 1B 2018 Maximum Well Head Depletions (acre-feet)

	SEO ID 1505171 (Well #5)	SEO ID 150170 (Well #10)	SEO ID 1505169 (Well #11)	TOTAL
April	2.31	1.48	1.41	5.20
May	1.29	1.02	0.94	3.25
June	5.14	3.62	3.48	12.24
July	4.58	3.32	3.38	11.28
Aug.	6.58	3.46	3.37	13.41
Sept.	1.37	1.14	1.14	3.65
Oct.	1.03	0.00	0.00	1.03
Nov.	0.00	0.00	0.00	0.00
Dec.	0.00	0.00	0.00	0.00
Jan.	0.00	0.00	0.00	0.00
Feb.	0.00	0.00	0.00	0.00
March	0.00	0.00	0.00	0.00
TOTAL	22.30	14.04	13.72	50.06

Table 1C 2018 Maximum Stream Depletions (acre-feet)

	Post-plan Depletion from 2017	SEO ID 1505171 (Well #5)	SEO ID 150170 (Well #10)	SEO ID 1505169 (Well #11)	TOTAL
April	0.90	0.16	0.12	0.10	1.28
May	0.73	0.60	0.41	0.46	2.20
June	0.56	1.08	0.76	0.85	3.25
July	0.4	2.02	1.41	1.65	5.48
Aug.	0.32	2.86	1.89	2.30	7.37
Sept.	0.27	3.42	2.06	2.54	8.29
Oct.	0.18	3.01	1.76	2.10	7.05
Nov.	0.06	2.39	1.31	1.39	5.15
Dec.	0.01	1.79	1.02	0.88	3.70
Jan.	0	1.31	0.78	0.54	2.63
Feb.	0	1.00	0.59	0.33	1.92
March	0	0.71	0.46	0.21	1.38
TOTAL	3.43	20.35	12.57	13.35	49.70

6. **Name and address of owners** or reputed owners of the land upon which the wells are located: PFJ, LLC, 6198 Massive Peak Circle, Castle Rock, CO 81008. Applicant, therefore, requests approval of the addition of the structures described above to the 07CW128 Plan.

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**CASE NO. 2018CW3022; Previous Case Nos. 1983CW139, 1992CW89, 1999CW82, 2011CW67 - FOREST LAKES METROPOLITAN DISTRICT, Ann Nichols, District Manager, 2 North Cascade, Suite 1280, Colorado Springs, CO 80903** (Please address all correspondence and inquiries regarding this matter to Applicant's attorneys: Steven T. Monson and David M. Shohet, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, CO 80921; (719) 471-1212)  
 Application for Finding of Diligence

**EL PASO COUNTY**

**2. Name of Structure:** Bristlecone Lake No. 2. **3. Description of conditional water right:** A. Date of Original Decree: December 1, 1986. Case No.: 83CW139. Court: District Court, Water Division 2. B. List of All Subsequent Decrees Awarding Findings of Diligence: Date of Decree: June 15, 1993, Case No.: 92CW89, Court: District Court, Water Division 2. Date of Decree: October 10, 2005, Case No.: 99CW82, Court: District Court, Water Division 2. Date of Decree: March 21, 2012, Case No.: 11CW67, Court: District Court, Water Division 2. C. Legal Description: The south abutment of the dam is located in the SE1/4 of the SW1/4, Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 2,500 feet east of the west section line and 20 feet north of the south section line of said Section 27. The dam alignment runs in a northerly direction from the above-described abutment for a distance of approximately 1,600 feet. The high water line includes portions of the SW1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado. D. Sources: Beaver Creek, and its tributaries, tributary to Monument Creek. E. Appropriation Date: June 6, 1983. F. Amount claimed: 1,140 acre feet, conditional. G. Uses: Domestic, irrigation, industrial, commercial, municipal, augmentation and exchange, including the right to fill, refill and reuse. H. Dam Height: 80 feet. H. Dam Length: 1,600 feet. **4. 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:** In Case No. 83CW139, the Court decreed to Forest Lakes Metropolitan District (“Applicant”) the use of Bristlecone Lake No. 2 for the above stated conditional uses within Applicant’s service area as part of a unified municipal water system. This Court has approved a plan of augmentation for Bristlecone Lake No. 2 by a decree entered in Case No. 84CW19 on November 17, 1987. During this diligence period, the Applicant, in connection with the development of the District’s service area and as part of the integrated water supply system, has spent substantial time and money on engineering costs for the integrated system infrastructure, administering their water rights, water supply planning, permitting processes and land use approvals. Applicant further saw major development within its residential area during this diligence period. In connection with engineering of the integrated system, Applicant, as part of the master plan for water service developed during this diligence period, has hired engineering consultants to provide engineering and design service for the water, sewer, drainage, and water transmission lines. Specifically, Applicant District completed an inundation study for both Bristlecone and Pinon Reservoirs. Applicant also hired Wright Water Engineers to update and complete the design for the 1.5 mgd surface water treatment plant. Additionally, in connection with the development of its physical water supply, Applicant went out for public bids on the surface water treatment plant and subsequently awarded the construction contract to Velocity Constructors in September 2017. Construction has begun on the surface water treatment plant in 2017, and it is anticipated that it will be completed in late fall 2018. Applicant also completed all of the Water distribution infrastructure for Forest Lakes Filing No. 3 with the water distribution infrastructure for Forest Lakes Filing Nos. 2A and 2B either near complete or under construction. At the end of 2017, the Applicant was providing water service to 111 residences and expects to add at least 70 more during 2018. Applicant has also continued with annual maintenance activities on both Pinon and Bristlecone dams. In addition during this diligence period, construction has begun a Pilot Travel Center on the Applicant’s commercial development just south of Baptist Road and is expected to be in operation before the summer of 2018. The Applicant will be providing water service to that facility and all water distribution infrastructure has been installed to provide water to the travel center. In 2016, the Applicant negotiated an emergency water interconnection agreement with Triview Metropolitan District to provide another water source if its physical supply failed. Applicant has also spent significant time and effort negotiating the terms of previous agreements with the Town of Monument. Applicant also has provided augmentation water to entities and individuals with ponds and lakes on Hay Creek and Upper Beaver Creek. In regards to administering and developing their water rights as part of the integrated system, Applicant has hired a full time caretaker as well as engineers and a hydrologist who have managed and monitored the Applicant’s resources and water rights that constitute a part of the water supply system as well as retaining legal counsel to provide legal services with respect to the Applicant’s water resources. Applicant has also opposed several Water Court applications to protect its decreed vested water rights. During this diligence period, concerning the above matters Applicant has spent over \$952,000.00. Applicant will also spend \$7.7 million dollars on the surface water treatment plant by the end of 2018. **5. Claim to Make Absolute:** No part of the conditional water right is claimed to be made absolute at this time. **6. Name and**

**address of the owners of land on which structure is located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:**

Applicant owns the land where Bristlecone Lake No. 2 is located and the beneficial use of the water from Bristlecone Lake No. 2 will be within the Applicant's service area.

**WHEREFORE**, Applicant requests the Court find that Applicant has maintained diligence for the conditional water rights, that the Applicant can and will complete the decreed appropriation, and for such other relief as the Court deems appropriate.

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**CASE NO. 2018CW3023; Previous Case Nos. 1983CW145, 1992CW92, 1999CW85, 2011CW70 - FOREST LAKES METROPOLITAN DISTRICT, Ann Nichols, District Manager, 2 North Cascade, Suite 1280, Colorado Springs, CO 80903** (Please

address all correspondence and inquiries regarding this matter to Applicant's attorneys: Steven T. Monson and David M. Shoheit, Monson, Cummins & Shoheit, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, CO 80921; (719) 471-1212)

Application for Finding of Diligence

**EL PASO COUNTY**

**2. Name of Structures:** Monument Creek Diversion No. 2 & Beaver Creek Diversion No. 3. **3. Description of conditional water right:** A. Date of Original Decree: December 1, 1986. Case No.: 83CW145. Court: District Court, Water Division 2. B. List of All Subsequent Decrees Awarding Findings of Diligence: Date of Decree: June 15, 1993 Case No.: 92CW92 Court: District Court, Water Division 2. Date of Decree: October 10, 2005 Case No.: 99CW85 Court: District Court, Water Division 2. Date of Decree: March 21, 2012 Case No.: 11CW70 Court: District Court, Water Division 2. C. Legal Description: 1. Monument Creek Diversion No. 2. In the SE1/4 of the SE 1/4, Section 35, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point on the left bank of Monument Creek approximately 479 feet from the east section line and 38 feet from the south section line of said Section 35. 2. Beaver Creek Diversion No. 3. In the SW 1/4 of the SE 1/4, Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, located approximately 8 feet from the south line and 1,388 feet from the east line of said Section 27. D. Sources: 1. Monument Creek Diversion No. 2. Monument Creek and its tributaries. 2. Beaver Creek Diversion No. 3. Beaver Creek, and its tributaries. E. Appropriation Dates: December 30, 1983 for each structure. F. Amount claimed: 10 c.f.s, conditional for each structure. G. Uses: Each structure will divert water to be used in a unified municipal water system to be used, reused, successively used and otherwise disposed of for all beneficial purposes including municipal, domestic, irrigation, industrial, commercial, stock watering, recreational, fire protection, fish and wildlife, for direct use, for storage, for subsequent application to such uses, for exchange, for replacement of depletions resulting from the use of water from other sources and for all other augmentation purposes. **4. 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:** In Case No. 83CW145, the Court decreed to Forest Lakes Metropolitan District ("Applicant") the use of Monument Creek Diversion No. 2 & Beaver Creek Diversion No. 3 for the above stated conditional uses within Applicant's service area as part of a unified municipal water system. This Court has approved a plan of

augmentation for Monument Creek Diversion No. 2 & Beaver Creek Diversion No. 3 by a decree entered in Case No. 84CW19 on November 17, 1987. During this diligence period, the Applicant, in connection with the development of the District's service area and as part of the integrated water supply system, has spent substantial time and money on engineering costs for the integrated system infrastructure, administering their water rights, water supply planning, permitting processes and land use approvals. Applicant further saw major development within its residential area during this diligence period. In connection with engineering of the integrated system, Applicant, as part of the master plan for water service developed during this diligence period, has hired engineering consultants to provide engineering and design service for the water, sewer, drainage, and water transmission lines. Specifically, Applicant District completed an inundation study for both Bristlecone and Pinon Reservoirs. Applicant also hired Wright Water Engineers to update and complete the design for the 1.5 mgd surface water treatment plant. Additionally, in connection with the development of its physical water supply, the Applicant went out for public bids on the surface water treatment plant and subsequently awarded the construction contract to Velocity Constructors in September 2017. Construction has begun on the surface water treatment plant in 2017, and it is anticipated that it will be completed in late fall 2018. Applicant also completed all of the Water distribution infrastructure for Forest Lakes Filing No. 3 with the water distribution infrastructure for Forest Lakes Filing Nos. 2A and 2B either near complete or under construction. At the end of 2017, the Applicant was providing water service to 111 residences and expects to add at least 70 more during 2018. Applicant has also continued with annual maintenance activities on both Pinon and Bristlecone dams. In addition during this diligence period, construction has begun a Pilot Travel Center on the Applicant's commercial development just south of Baptist Road and is expected to be in operation before the summer of 2018. The Applicant will be providing water service to that facility and all water distribution infrastructure has been installed to provide water to the travel center. In 2016, the Applicant negotiated an emergency water interconnection agreement with Triview Metropolitan District to provide another water source if its physical supply failed. Applicant has also spent significant time and effort negotiating the terms of previous agreements with the Town of Monument. Applicant also has provided augmentation water to entities and individuals with ponds and lakes on Hay Creek and Upper Beaver Creek. In regards to administering and developing their water rights as part of the integrated system, Applicant has hired a full time caretaker as well as engineers and a hydrologist who have managed and monitored the Applicant's resources and water rights that constitute a part of the water supply system as well as retaining legal counsel to provide legal services with respect to the Applicant's water resources. Applicant has also opposed several Water Court applications to protect its decreed vested water rights. During this diligence period, concerning the above matters Applicant has spent over \$ 952,000.00. Applicant will also spend \$7.7 million dollars on the surface water treatment plant by the end of 2018. **5. Claim to Make Absolute:** No part of the conditional water right is claimed to be made absolute at this time. **6. Name and address of the owners of land on which structure is located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicant owns the land where Monument Creek Diversion No. 2 & Beaver Creek Diversion No. 3 are located and the beneficial use of

the water from Monument Creek Diversion No. 2 & Beaver Creek Diversion No. 3 will be within the Applicant's service area. WHEREFORE, Applicant requests the Court find that Applicant has maintained diligence for the conditional water rights, that the Applicant can and will complete the decreed appropriation, and for such other relief as the Court deems appropriate.

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**CASE NO. 2018CW3024; Previous Case Nos. 1983CW138, 1992CW88, 1999CW81, 2011CW66 - FOREST LAKES METROPOLITAN DISTRICT, Ann Nichols, District Manager, 2 North Cascade, Suite 1280, Colorado Springs, CO 80903** (Please

address all correspondence and inquiries regarding this matter to Applicant's attorneys: Steven T. Monson and David M. Shohet, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, CO 80921; (719) 471-1212)

Application for Finding of Diligence

**EL PASO COUNTY**

**2. Name of Structure:** Pinon Lake No. 1. **3. Description of conditional water right:**

A. Date of Original Decree: December 1, 1986. Case No.: 83CW138. Court: District Court, Water Division 2. B. List of all Subsequent Decrees Awarding Findings of Diligence: Date of Decree: June 15, 1993, Case No.: 92CW88, Court: District Court, Water Division 2. Date of Decree: October 10, 2005, Case No.: 99CW81, Court: District Court, Water Division 2. Date of Decree: March 21, 2012, Case No.: 11CW66, Court: District Court, Water Division 2. C. Legal Description: The west abutment of the dam is located in the SE 1/4 of the SE 1/4, Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1,000 feet west of the east section line and 350 feet north of the south section line of said Section 27. The dam alignment runs in an easterly direction from the above-described abutment for a distance of approximately 700 feet. The high water line includes portions of the SE 1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado. D. Sources: Beaver Creek, and its tributaries, tributary to Monument Creek. E. Appropriation Date: June 6, 1983. F. Amount claimed: 120 acre feet, conditional. G. Uses: Domestic, irrigation, industrial, commercial, municipal, augmentation and exchange, including the right to fill, refill and reuse. H. Dam Height: 40 feet. I. Dam Length: 700 feet. **4. 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:** In Case No. 83CW138, the Court decreed to Forest Lakes Metropolitan District ("Applicant") the use of Pinon Lake No. 1 for the above stated conditional uses within Applicant's service area as part of a unified municipal water system. This Court has approved a plan of augmentation for Pinon Lake No. 1 by a decree entered in Case No. 84CW19 on November 17, 1987. During this diligence period, the Applicant, in connection with the development of the District's service area and as part of the integrated water supply system, has spent substantial time and money on engineering costs for the integrated system infrastructure, administering their water rights, water supply planning, permitting processes and land use approvals. Applicant further saw major development within its residential area during this diligence period. In connection with engineering of the integrated system, Applicant, as part of the master plan for water service developed during this diligence period, has hired engineering consultants to provide engineering and design service for



the water, sewer, drainage, and water transmission lines. Specifically, Applicant District completed an inundation study for both Bristlecone and Pinon Reservoirs. Applicant also hired Wright Water Engineers to update and complete the design for the 1.5 mgd surface water treatment plant. Additionally, in connection with the development of its physical water supply, the Applicant went out for public bids on the surface water treatment plant and subsequently awarded the construction contract to Velocity Constructors in September 2017. Construction has begun on the surface water treatment plant in 2017, and it is anticipated that it will be completed in late fall 2018. Applicant also completed all of the Water distribution infrastructure for Forest Lakes Filing No. 3 with the water distribution infrastructure for Forest Lakes Filing Nos. 2A and 2B either near complete or under construction. At the end of 2017, the Applicant was providing water service to 111 residences and expects to add at least 70 more during 2018. Applicant has also continued with annual maintenance activities on both Pinon and Bristlecone dams. In addition during this diligence period, construction has begun a Pilot Travel Center on the Applicant's commercial development just south of Baptist Road and is expected to be in operation before the summer of 2018. The Applicant will be providing water service to that facility and all water distribution infrastructure has been installed to provide water to the travel center. In 2016, the Applicant negotiated an emergency water interconnection agreement with Triview Metropolitan District to provide another water source if its physical supply failed. Applicant has also spent significant time and effort negotiating the terms of previous agreements with the Town of Monument. Applicant also has provided augmentation water to entities and individuals with ponds and lakes on Hay Creek and Upper Beaver Creek. In regards to administering and developing their water rights as part of the integrated system, Applicant has hired a full time caretaker as well as engineers and a hydrologist who have managed and monitored the Applicant's resources and water rights that constitute a part of the water supply system as well as retaining legal counsel to provide legal services with respect to the Applicant's water resources. Applicant has also opposed several Water Court applications to protect its decreed vested water rights. During this diligence period, concerning the above matters Applicant has spent over \$ 952,000.00. Applicant will also spend \$7.7 million dollars on the surface water treatment plant by the end of 2018. **5. Claim to Make Absolute:** No part of the conditional water right is claimed to be made absolute at this time. **6. Name and address of the owners of land on which structure is located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicant owns the land where Pinon Lake No. 1 is located and the beneficial use of the water from Pinon Lake No. 1 will be within the Applicant's service area. WHEREFORE, Applicant requests the Court find that Applicant has maintained diligence for the conditional water rights, that the Applicant can and will complete the decreed appropriation, and for such other relief as the Court deems appropriate.

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**CASE NO. 2018CW3025; Previous Case Nos. Civil Action No. 5141, Chaffee County District Court, W-40, W-40(76), W-1067, 1980CW116, 1984CW60, 1988CW42, and 1995CW57, and 2001CW92 - UNITED STATES OF AMERICA, Department of the Interior, Bureau of Land Management, Royal Gorge Field Office, 3028 E. Main Street, Canon City, CO 81212** (Service of all pleadings, etc. should be made on Applicant's attorney: Kristen C. Guerriero, #32663 Office of the Regional Solicitor 755 Parfet Street, Suite 151 Lakewood, Colorado 80215 Phone: (303) 445-0614)

Application for Finding of Reasonable Diligence and Change of Conditional Water Right  
**CHAFFEE COUNTY, COLORADO**

**2. Name of structures:** Cache Creek Reservoir and Water System. **3. Description of conditional water right:** **A. Case number of original decree:** Civil Action No. 5141, District Court in and for the County of Chaffee **B. Date of original decree:** July 9, 1969 **C. Case number of latest diligence decree:** 2001 CW 92 **D. Date diligence decree entered:** March 22, 2012 **E. Legal description of point of diversion:** Dam to be located at a point which bears South 39 degrees East a distance of 4,786.26 feet from the Northwest corner of Section 36, T11S R80W, Sixth P.M. **F. Source:** Channel, bed, and drainage area of Cache Creek **G. Appropriation Date:** October 19, 1966 **H. Amount:** 7,618 acre-feet, conditional. 2.0 acre feet of the original 7,620 acre feet decreed conditional were made absolute in Case No. 1980 CW 116. The conditional water right was reduced to 760 acre feet in Case No. 2001 CW 92, and the remaining 6,856 of the conditional water right was cancelled. **I. Use:** Irrigation, domestic, municipal, industrial, manufacturing, recreation, power, and other beneficial purposes **4. Detailed outline of what has been done toward completion of the appropriation and application of water to beneficial use as conditionally decreed:** A detailed outline of the steps taken toward reasonable diligence are set forth in the complete application. **5. Change request for additional allowed place of contract storage:** The Applicant requests a change, if necessary, for an additional allowed place of contract storage of water in Box Creek Reservoir, a reservoir that is being developed by The City of Aurora, acting by and through its Utility Enterprise. The Applicant requests authorization to store water derived from the above described conditional water right that Applicant may move by lawful exchanges into Box Creek Reservoir. The Applicant does not request to utilize exchanges that have been decreed by City of Aurora that will be used to place the City's water into Box Creek Reservoir. The Applicant acknowledges that any contract storage of its water in Box Creek Reservoir will require the consent of The City of Aurora, which it may grant or withhold at its discretion, through a storage contract or intergovernmental agreement. Box Creek Reservoir is described below: Box Creek Reservoir will be constructed on the channel of Box Creek, and will include all or portions of Sections 32 and 33, Township 10 South, Range 80 West, 6<sup>th</sup> P.M. and Sections 4 and 5, Township 11 South, Range 80 West, 6<sup>th</sup> P.M., in Lake County, Colorado. The exact location of Box Creek Reservoir Dam is subject to change based upon refinement of engineering analyses, however, Aurora anticipates that the Box Creek dam axis will intersect the centerline of the Box Creek valley within 500 feet of a point approximately 2000 feet west and 300 feet south of the northeast corner of said Section 4, Township 11 South, Range 80 West, 6<sup>th</sup> P.M. **6. Name and**

**address of owners of lands on which points of diversion, places of use, and place of contract storage are located:** United States Department of the Interior, Bureau of Land Management, Royal Gorge Field Office, 3028 E. Main St., Canon City, CO 80212. Aurora Water Department – 15151 E. Alameda Parkway, Suite 3600, Aurora, CO 80012. Attention: Brian Fitzpatrick.

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**CASE NO. 2018CW3026, Water Division 2, and CASE NO. 2018CW3057, Water Division 1 - PHYLLIS DIDLEAU and JON A.P. DIDLEAU, 8250 Forest Heights Circle, Colorado Springs, CO 80908 and JON P. DIDLEAUX, 7935 Forest Heights Circle, Colorado Springs, CO 80908** (Please direct all correspondence and inquiries regarding this matter to Applicants' attorney: Julianne M. Woldridge, MacDougall & Woldridge, P.C. 1586 So. 21<sup>st</sup> St., Suite 200, Colorado Springs, CO 80904 (719) 520-9288)

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

**2. Application for Adjudication:** Applicants seek to adjudicate the Denver Basin groundwater underlying their property described below ("Property"). Applicants plan to construct or operate up to three wells on the Property to provide service to single-family dwellings on the Property, based on an anticipated subdivision of the Property resulting in up to three lots. **A. Property Location:** Two adjacent lots totaling approximately 33.36 acres in section 9, T.12S., R.65W., 6<sup>th</sup> P.M., El Paso County, more particularly described on Exhibit A attached to the application on file with the Water Clerk, also known as 12725 Herring Road, Colorado Springs, CO 80908 ("Parcel 1") (approximately 30.86 acres) and 7935 Forest Heights Circle, Colorado Springs, CO 80908 ("Parcel 2") (approximately 2.5 acres), as shown on the map attached hereto as Exhibit B attached to the application on file with the Water Clerk. **B. Wells:** There is an existing well constructed into the not nontributary Dawson aquifer and located on Parcel 2, NW1/4SW1/4, Sec. 9, T.12S., R.65W., 6<sup>th</sup> P.M. with well permit # 293425 ("Didleau Well 1"). Upon entry of a decree in this matter this well will be repermited consistent with the augmentation plan described herein. Applicants propose up to two additional wells on the Property at specific locations to be determined, also to be constructed into the Dawson aquifer. Applicants request the right to locate wells as required to withdraw its entitlement from the Dawson aquifer at any point on the Property and to permit additional wells without the necessity for republishing or petitioning the Court for reopening of any decree. Applicants request the right to produce the full legal entitlement through any combination of wells and that the wells be treated as a well field. **C. Sources of water:** Not nontributary Dawson aquifer, not nontributary Denver aquifer, nontributary Arapahoe aquifer, and nontributary Laramie-Fox Hills aquifer underlying the Property. **D. Amounts:** Applicants request the right to withdraw all groundwater determined to be available underlying the Property, at rates of flow necessary to withdraw the entire amounts available over a 300-year life of the aquifers as required by El Paso County. The actual pumping rates for each well will vary depending on aquifer characteristics and well capabilities. Said amounts may be withdrawn as set forth in C.R.S. § 37-90-137 (4). Applicants request the ability to withdraw an amount in excess of the average annual amounts decreed so long as the sum of the total withdrawals from all wells 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 the decree, whichever is first, multiplied by the average annual volume of water Applicants are entitled to withdraw. Decreed amounts may vary based upon the State's determination of facts. Pursuant to C.R.S. § 37-92-305 (11), Applicants request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. Applicants estimate the amounts of water available for appropriation underlying the Property are: Dawson aquifer - 2,490 acre-feet total and 8.30 acre-feet per year average withdrawal (based on a 300-year aquifer life consistent with the augmentation plan); Denver aquifer - 2,123 acre-feet total and 21.23 acre-feet per year average withdrawal (based on a 100-year aquifer life); Arapahoe aquifer - 1,446 acre-feet total and 14.46 acre-feet per year average withdrawal (based on a 100-year aquifer life); and Laramie-Fox Hills aquifer - 954 acre-feet total and 9.54 acre-feet per year average withdrawal (based on a 100-year aquifer life).

**E. Proposed uses:** All beneficial uses including without limitation domestic, commercial, irrigation, greenhouse, industrial, stock water, recreation, wildlife, fire protection, and augmentation uses. The nontributary water may be used, reused, and successively uses to extinction, on and off the Property, subject to the requirement of C.R.S. § 37-90-137 (9)(b) that no more than 98% of the amount withdrawn annually shall be consumed.

**F. Name and address of owners of land upon which wells will be located:** Applicants.

3. **Request for approval of plan for augmentation:** Applicants request approval of a plan for augmentation as described below.

**A. Structures to be augmented:** Individual wells in the Dawson aquifer to be located on the Property, including Didleau Well 1 described above along with any replacement or additional wells. The number and location of the wells is described above. Well permit applications will be submitted.

**B. Water to be used for augmentation:** water the rights to which are requested herein.

**C. Plan for augmentation:** Applicants seek approval of a plan for augmentation that will allow pumping of up to 8.30 a.f.y. from all wells in the Dawson aquifer, with an anticipated maximum allocation of 2.77 a.f.y. per well assuming three wells, over a 300-year pumping period. Water will be used for the purposes stated above and such use shall be a combination of household use, irrigation of lawns and gardens, and the watering of horses or equivalent livestock. Maximum stream depletions over the 300-year pumping period for all wells in the Dawson aquifer is estimated to be 268.8 a.f. in year 300 with cumulative stream depletions of 334.7 a.f. after year 335. Should pumping be less, resulting depletions will be reduced accordingly. Depletions from the wells are expected to impact Cherry Creek and West Cherry Creek, tributaries to the South Platte River, and Monument Creek, a tributary of the Arkansas River. Pursuant to C.R.S. § 37-90-137 (9) (c.5), augmentation requirements for wells in the not nontributary Dawson aquifer require the replacement of actual stream depletions and wells in the not nontributary Denver aquifer, which is more than one mile from any point of contact from any natural stream require replacement of 4% of the amount withdrawn. Applicants propose to replace depletions during pumping with return flows from use of the not nontributary Dawson aquifer water through nonevaporative septic systems including leach fields on each of the subdivided lots with an estimated consumption rate of 10% of the amount used. Such return flows will accrue to the Monument Creek basin within the Arkansas River basin. Given the maximum pumping amount, return flows will equal or exceed the maximum total stream

depletions for all wells during pumping. Applicants reserve the right to claim and demonstrate that the impact of post-pumping depletions are wholly de minimus and non-injurious and need not be replaced under law pursuant to C.R.S. § 37-90-137 (9). To the extent such post-pumping depletions are injurious and replacement is required, Applicants will reserve for such purpose sufficient nontributary water from the rights adjudicated herein and underlying the Property, maintaining the right to use any excess nontributary water for the purposes stated above. Such water is sufficient in quantity to fully replace all water withdrawn under this plan. Applicants reserve the right to replace such post-pumping depletions with any other acceptable source of augmentation water after judicial approval of such. 4. **Miscellaneous:** A. This application is being filed in Water Divisions 1 and 2 because depletions from the pumping of the Dawson wells may occur in both divisions. The return flows will accrue to Division 2 where the majority of the depletions will occur. Applicants request a finding that such replacement is sufficient under the proposed augmentation plan. Applicants will seek to consolidate the two cases in Division 2 where the Property is located. B. Lienors: None. C. Applicants request the right to make changes in the amounts of water claimed for appropriation and in the allowable amounts to be pumped annually under the augmentation plan, based on revisions to the information available. Applicant, therefore, requests adjudication of the water rights claimed and approval of the augmentation plan.

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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 May 2018, (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 April, 2018.

*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  
Pueblo, CO 81003; (719) 404-8832

(Court seal)  
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