

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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AMENDED RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING  
MAY 2014  
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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and ordered published during May 2014, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

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**CASE NO. 2010CW2 – PIONEER NATURAL RESOURCES USA, INC., Attn: Douglas Wall, Esq., 1401 Seventeenth Street, Suite 1200, Denver, CO 80202; XTO ENERGY INC., Attn: Michael Cannon, 810 Houston Street, Fort Worth, TX 76102; ARP PRODUCTION COMPANY, LLC, Attn: Carla Suszkowski, 1000 Commerce Drive, 4th Floor, Pittsburgh, PA 15275; RED RIVER RANCH HOLDINGS, LLC, Attn: James Killean, Esq., Ireland Stapleton Pryor & Pascoe, PC, 1675 Broadway, Suite 2600, Denver, CO 80202** (Please direct all pleadings and correspondence to Applicants' counsel: Christopher L. Thorne, William H Caile, and Kylie J. Crandall, Holland & Hart, LLP, Attorneys for Pioneer Natural Resources USA, Inc., XTO Energy, Inc. and ARP Production Company, LLC, P.O. Box 8749, Denver, Colorado 80201-8749; (303) 295-8000; AND James J. Killean, Esq., Ireland Stapleton Pryor & Pascoe, PC, Attorney for Red River Ranch Holdings, LLC, 1675 Broadway, Suite 2600, Denver, CO 80202-4675; (303) 623-2062)

Amended Application for Approval of Plan for Augmentation, Including Exchanges

**LAS ANIMAS COUNTY**

**2. Overview of Application:** Applicants operate coalbed methane (“CBM”) gas wells in the Central Raton Basin, which includes the drainages of the Purgatoire River and its tributaries generally above Trinidad Reservoir and portions of the Apishapa River. As part of the CBM extraction process, CBM gas wells typically produce small amounts of ground water (“produced water”) from deep ground water aquifers. Produced water from some of the Applicants’ CBM wells in the Central Raton Basin is tributary to surface streams. Pursuant to the decision of the Colorado Supreme Court in *Vance, et al. v. Wolfe*, 205 P.3d 1165 (Colo. 2009) and subsequent legislation, CBM wells that withdraw tributary produced water are subject to the water well permitting and water rights administration requirements of C.R.S. § 37-90-101, *et seq.*, and C.R.S. 37-92-101, *et seq.* This Application requests approval of a plan for augmentation, including exchange, to replace out-of-priority depletions from Applicants’ CBM wells within the Central Raton Basin that withdraw tributary produced water, in the time, location, and amount necessary to prevent injury to vested senior water rights. This Application also requests approval of various appropriative rights of exchange for use in operating the requested plan for augmentation. **FIRST CLAIM FOR RELIEF – PLAN FOR AUGMENTATION**

**3. Background on Tributary CBM Wells Located in Central Raton Basin:** Applicants seek to augment depletions from all of Applicants’ CBM gas

wells that withdraw tributary produced water in the Central Raton Basin. CBM wells in the Central Raton Basin are drilled into one or both of the Raton formation or the Vermejo formation. The map attached to the Amended Application as Exhibit A-1 generally shows the portions of the Central Raton Basin that have been evaluated in connection with Applicants' CBM wells and the proposed plan for augmentation. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Applicants' consultants constructed a calibrated, multi-layered, numeric ground water model of the ground water flow systems in the Central Raton Basin using the USGS's MODFLOW computer code (the "Model"). Using the Model, Applicants' consultants have evaluated the degree of surface and ground water interaction in the Central Raton Basin and have identified which of Applicants' existing CBM wells withdraw ground water from the Raton and/or Vermejo formations that is tributary to surface streams (areas where the withdrawal of ground water could, within one hundred years, deplete the flow of a natural stream, at an annual rate of greater than one-tenth of one percent of the annual rate of withdrawal). On January 8, 2010 Applicants filed a request with the State Engineer for a nontributary determination pursuant to Rule 17.5 of the Produced Nontributary Ground Water Rules, 2 CCR 402-17, for the portions of the Raton and Vermejo formations in the Central Raton Basin which the Model indicates contain nontributary ground water. On March 25, 2010 the State Engineer issued Findings of Fact, Conclusions of Law, and Final Order of the State Engineer in Docket No. 10SEO2, and made a determination of certain delineated areas of the Raton and Vermejo Formations where ground water is nontributary ground water as defined in C.R.S. § 37-90-103 (10.5), for purposes of CBM development. These areas are referred to herein as the "Nontributary Zones." Those areas of the Raton and Vermejo Formations that were not determined to contain nontributary ground water are presumed to be tributary for purposes of this Amended Application, and are referred to herein as "Tributary Zones." The boundaries for the Tributary Zones and Nontributary Zones of the Raton and Vermejo formations, respectively, are shown on Exhibits A-2 and A-3. The State Engineer expressly found that the Model was able to reproduce conditions in the Central Raton Basin to a reasonable degree of accuracy and scientific certainty. Ground water production associated with CBM gas extraction typically follows a pattern of relatively high initial ground water production rapidly reaching a maximum production level, and then declining through a roughly 30-year period to very minimal or zero ground water production flow. Work carried out in connection with the development of the Model demonstrates that stream contacts where CBM-related depletions can occur are generally limited to incised valleys where perennial flows comprised of baseflow contributions from the CBM-producing bedrock formations exist. These conditions exist along the mainstem and the North, Middle, and South Forks of the Purgatoire River and at Trinidad Reservoir. In addition, other streams identified in the National Hydrography Database ("NHD") as perennial and included in the Model include the tributaries of Burro Canyon, Reilly Canyon, Long Canyon, and two unnamed tributaries to the Purgatoire River; at certain areas along the Apishapa River and its tributary, Canyon del Agua; Guajatoya Creek and its tributaries; Raton Creek and McBride Creek; and perennial reaches of Gray Creek, San Miguel Creek, McCoy Canyon, San Francisco Creek, and Chicorica Creek and its tributaries. Applicants have determined that of the approximately 3,058 CBM wells operated by

Applicants within the Central Raton Basin, approximately 2,658 of those wells withdraw or have withdrawn tributary ground water (the "Tributary CBM Wells"). The approximate locations of Tributary CBM Wells completed in the Raton and/or Vermejo formations are shown on Exhibits B-1 through B-16. **4. Structures to be Augmented: A. Tributary CBM Wells and Planned New Wells:** Tributary CBM Wells completed in either the Raton or the Vermejo Formations (including dually-completed wells) are listed in Appendix 1 attached to the Amended Application. To the extent that areas that are claimed to be Nontributary Zones in this Application are ultimately determined to be located within tributary areas requiring augmentation of out-of-priority depletions, Applicants seek to cover any such wells within those areas pursuant to this plan for augmentation. Appendix 1 includes approximately 2,658 Tributary CBM Wells and 157 planned new tributary wells ("New Tributary CBM Wells") that are anticipated to be constructed by Applicants, which are identified for purposes of this Application by an "N" followed by a unique number. **(i) Are the structures decreed?** The Tributary CBM Wells are not decreed. The Tributary CBM Wells are subject to permits issued by the Colorado Oil and Gas Conservation Commission ("COGCC"). Surface discharge of produced water from some of the Tributary CBM Wells is subject to discharge permits issued by the Colorado Department of Public Health and Environment, Water Quality Control Division ("CDPHE"). In addition, Applicants have applied for and obtained water well permits from the State Engineer's Office for all of their operating CBM wells in the Central Raton Basin. **(ii) Are there other water rights diverting from the structures?** No. **(iii) Legal description of the structures.** The Tributary CBM Wells are located within Townships 31, 32, 33, 34, and 35 South, Ranges 64, 65, 66, 67, and 68 West, inclusive, of the 6th PM in Las Animas County, Colorado, as more particularly described in Appendix 1. Maps showing the locations of the Tributary CBM Wells are attached to the Amended Application as Exhibits B-1 through B-16. **B. Future Additional Wells (Well Field Wells):** In addition to the existing tributary CBM Wells and the planned New Tributary CBM wells referred to in paragraph 4.A above, Applicants may drill additional CBM wells in the Tributary Zones of the Raton and/or Vermejo formations in the future in order to fully develop the CBM resource. Applicants seek to have such future additional tributary CBM wells ("Well Field Wells") covered by this plan for augmentation, including all terms and conditions imposed in any final decree granted in this matter. In order to ensure that the augmentation plan decreed herein will be sufficient to replace depletions associated with such Well Field Wells, Applicants propose to use the Model to calculate potential depletions using geographic "Well Field Zones" and will seek to have the Well Field Zones approved in any final decree in this matter. Out-of-Priority depletions from Well Field Wells will be determined based on the depletion factors for the Well Field Zone where the well is located and will be replaced under the plan for augmentation claimed herein beginning when each Well Field Well is constructed. Applicants propose to provide notice to the State and/or Division Engineer and other interested and appropriate parties prior to the operation of any Well Field Wells under this plan which will set forth, among other things, the location of the Well Field Well(s), the projected pumping rate and annual volume produced from such Well Field Well(s) during its first year of operation (after which time actual pumping data will be used) and the Administrative Reach(es) (defined below) to which replacements of those depletions will be made, as well as any other information determined necessary.

**(i) Are the structures decreed?** The Well Field Wells are not decreed and do not yet have associated water well permits from the SEO. Appropriate permits will be obtained as necessary at the time of construction and/or prior to operation of any Well Field Wells under this plan. **(ii) Are there other water rights diverting from the structures?** No. **(iii) Legal descriptions of the structures.** The Well Field Wells to be included in this plan will be located within the Tributary Zones of the Raton and Vermejo formations or located within Townships 31, 32, 33, 34, and 35 South, Ranges 64, 65, 66, 67, and 68 West, inclusive, of the 6th PM in Las Animas County, Colorado, as generally depicted on Exhibits A-2 and A-3 to the Amended Application. **5. Water Rights to be Used for Augmentation:** **A. Produced Water from Nontributary CBM Wells:** Applicants operate CBM wells in the Central Raton Basin which produce nontributary ground water from the Raton and Vermejo formations. Surface discharge of water from certain of these wells (the “Nontributary Augmentation Wells”) is subject to discharge permits issued by CDPHE. Nontributary Augmentation Wells have water well permits from the State Engineer that include use for industrial and/or augmentation purposes. The Nontributary Augmentation Wells are generally located in the upper portions of the Central Raton Basin and are generally depicted on Exhibit G to the Amended Application. **B. Golden Eagle Mine Discharge (decreed nontributary):** **(i) Case Number & Adjudication Date:** Case No. 80CW110 (Water Div. 2), decree on December 19, 1986. **(ii) Name of Structure:** Golden Eagle Mine. **(iii) Legal Description of Point of Diversion:** Section 29, Township 33 South, Range 67 West of the 6th P.M., being 3620 feet south of the North line and 2720 feet west of the East line of Section 29. **(iv) Source:** Mine water exiting the portal of the Golden Eagle Mine, being nontributary developed mine water. **(v) Appropriation Date:** None set forth in decree. **(vi) Amount:** 180 gpm, nontributary. Up to 214 gpm may be diverted at such time that the Mine is discharging at least 41 gpm, of which the first 34 gpm discharged from the mine are considered tributary to the Purgatoire River and are not decreed for diversion for beneficial use. **(vii) Use:** For use, reuse, and successive use to extinction, and for lease, sale or other disposition to other water users for the following beneficial uses: domestic, industrial, manufacturing, mining, and agricultural purposes. **(viii) Remarks:** Colorado Parks and Wildlife asserts ownership of the 180 gpm Golden Eagle Mine Discharge water right decreed in Case No. 80CW110, Water Division 2, pursuant to a special warranty deed dated November 10, 1988, from Rocky Mountain Elk Foundation, Inc., recorded in the Clerk and Recorder’s Office in Las Animas County, Colorado at Reception No. 635048. The Golden Eagle Mine Discharge water right will not be used for augmentation purposes under the plan claimed in this application, unless and until Applicants obtain a written agreement with Colorado Parks and Wildlife approving such use. **C. Pioneer and XTO Augmentation Ponds:** In Case Nos. 09CW113 and 09CW114 (Water Div. 2), Pioneer and XTO adjudicated conditional water storage rights for ponds (“Augmentation Ponds”) located in the central and upper portions of the Central Raton Basin. Water may be stored in the Augmentation Ponds either directly when water is available under their 2009 and 2011 priorities, or by exchange as requested in paragraphs 7-12, below, or from any other legal source. Without limiting the foregoing, the ponds may be filled with nontributary ground water discharge from wells owned or controlled by Applicants either directly or from diversion of such nontributary ground water discharge from surface streams over which

Applicants have maintained dominion and control. The Augmentation Ponds are generally shown on Exhibit C, and are more specifically described as follows: **(i) Mid Fork 1 Pond:** **(a) Case Number and Date of Decree:** Case No. 09CW113, Water Division 2, decree dated November 15, 2011. **(b) Legal Description:** Located in the SW 1/4 of the SW 1/4 of Section 20, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 570 feet from the South Section Line and 1,290 feet from the West Section Line. **(c) Source:** Purgatoire River. **(d) Point of Diversion:** The planned point of diversion for Mid Fork 1 Pipeline is located in the NW 1/4 of the NW 1/4 of Section 29, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 300 feet from the North Section Line and 1,030 feet from the West Section Line. **(e) Appropriation Date:** September 30, 2009. **(f) Amount:** 11.3 acre-feet (conditional), to be filled either via the Mid Fork 1 Pipeline at a rate of fill of 3 c.f.s. (conditional) or by exchange, with the right to fill and refill the pond when in priority, up to three complete fills annually. **(g) Use:** Commercial, mining, manufacturing, construction, augmentation, livestock watering, wildlife, fire protection, road construction and maintenance, dust suppression, and industrial uses, directly or by exchange. **(ii) Lopez Canyon Pond:** **(a) Case Number and Date of Decree:** Case No. 09CW113, Water Division 2, decree dated November 15, 2011. **(b) Legal Description:** Located in the SW 1/4 of the SE 1/4 of Section 21, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 1,190 feet from the South Section Line and 1,530 feet from the East Section Line. **(c) Source:** Lopez Canyon streambed, tributary to the Purgatoire River. **(d) Point of Diversion:** The planned point of diversion for Lopez Canyon Pipeline is located in the SW 1/4 of the SE 1/4 of Section 21, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 1,270 feet from the South Section Line and 1,320 feet from the East Section Line. **(e) Appropriation Date:** September 30, 2009. **(f) Amount:** 7.5 acre-feet (conditional), to be filled either via Lopez Canyon Pipeline with a capacity of 1 c.f.s (conditional) or by exchange, with the right to fill and refill the pond when in priority, up to three complete fills annually. **(g) Use:** See above paragraph 5.C.(i)(g). **(iii) South Fork 1 Pond:** **(a) Case Number and Date of Decree:** Case No. 09CW113, Water Division 2, decree dated November 15, 2011. **(b) Legal Description:** UTM (meters) NAD83: 504177(x), 4102172(y). **(c) Source:** An unnamed tributary that flows into the South Fork of the Purgatoire River. The pond may be filled either from water flowing in the streambed of the unnamed tributary or water diverted from the South Fork of the Purgatoire River. **(d) Point of Diversion:** The point of diversion, in UTM (meters) NAD83, will be approximately 504156(x), 4102315(y). **(e) Appropriation Date:** September 30, 2009. **(f) Amount:** 11.3 acre-feet (conditional), to be filled either via South Fork 1 Pipeline with a rate of fill of 3 c.f.s. (conditional) or by exchange, with the right to fill and refill the pond when in priority, up to three complete fills annually. **(g) Use:** See above paragraph 5.C.(i)(g). **(iv) Lorencito 14-16 Pond:** **(a) Case Number and Date of Decree:** Case No. 09CW114, Water Division 2, decree dated November 25, 2012. **(b) Legal Description:** An off-channel pond located in the NW 1/4 of the SW 1/4 of Section 16, Township 34 South, Range 66 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 2,075 feet from the South Section Line and 500 feet from the West Section Line (This location

is outside of the sections surveyed by the USGS, so interpreted sections were used). **(c) Source:** Lorencito Canyon, tributary to the Purgatoire River. **(d) Point of Diversion:** The planned point of diversion is located in the NW 1/4 of the SW 1/4 of Section 16, Township 34 South, Range 66 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 1,965 feet from the South Section Line and 380 feet from the West Section Line (This location is outside of the sections surveyed by the USGS, so interpreted sections were used). **(e) Appropriation Date:** August 1, 2011. **(f) Amount:** 20.7 acre-feet (conditional), to be filled either via the Lorencito Diversion with a rate of fill of 1 c.f.s. (conditional) or by exchange, with the right to fill and refill the pond when in priority, up to three complete fills annually. **(g) Use:** Commercial, mining, manufacturing, construction, augmentation, livestock watering, wildlife, fire protection, road construction and maintenance, dust suppression, and industrial uses, directly or by exchange. **(v) Warren McDonald Pond: (a) Case Number and Date of Decree:** Case No. 09CW114, Water Division 2, decree dated November 25, 2012. **(b) Legal Description:** An off-channel pond located in the NW 1/4 of the SE 1/4 of Section 36, Township 32 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 2,120 feet from the South Section Line and 2,178 feet from the East Section Line. **(c) Source:** Sarcillo Canyon, tributary to the Purgatoire River. **(d) Point of Diversion:** The planned point of diversion is located in the SW 1/4 of the NE 1/4 of Section 36, Township 32 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 2,480 feet from the North Section Line and 1,850 feet from the East Section Line. **(e) Appropriation Date:** September 30, 2009. **(f) Amount:** 25.0 acre-feet (conditional), to be filled either via the Lorencito Diversion with a rate of fill of 1 c.f.s. (conditional) or by exchange, with the right to fill and refill the pond when in priority, up to three complete fills annually. **(g) Use:** See above paragraph 5.C(iv)(g). **(vi) Margery Pond: (a) Case Number and Date of Decree:** Case No. 09CW114, Water Division 2, decree dated November 25, 2012. **(b) Legal Description:** An off-channel pond located in the SW 1/4 of the SE 1/4 of Section 14, Township 32 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 190 feet from the South Section Line and 1,840 feet from the East Section Line. **(c) Source:** Sarcillo Canyon, tributary to the Purgatoire River, diverted through the Margery Pipeline. **(d) Point of Diversion:** The planned point of diversion for Margery Pipeline is located in the SW 1/4 of the SE 1/4 of Section 14, Township 32 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 850 feet from the South Section Line and 1,851 feet from the East Section Line. **(e) Appropriation Date:** September 30, 2009. **(f) Amount:** 14.5 acre-feet (conditional), to be filled either via the Margery Pipeline with a rate of fill of 1 c.f.s. (conditional) or by exchange, with the right to fill and refill the pond when in priority, up to three complete fills annually. **(g) Use:** See above paragraph 5.C(iv)(g). **(vii) Stage Coach Pond: (a) Case Number and Date of Decree:** Case No. 09CW114, Water Division 2, decree dated November 25, 2012. **(b) Legal Description:** An off-channel pond located in the SE 1/4 of the NE 1/4 of Section 26, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 2,350 feet from the North Section Line and 530 feet from the East Section Line. **(c) Source:** Purgatoire River or Wet Canyon, tributary to the Purgatoire River. **(d) Point of Diversion:** The point of

diversion is located in the SE 1/4 of the NW 1/4 of Section 26, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 2,040 feet from the North Section Line and 1,930 feet from the West Section Line. An alternate point of diversion is located in the NE 1/4 of the NW 1/4 of Section 36, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 1000 feet from the North Section Line and 2,550 feet from the West Section Line. **(e) Appropriation Date:** September 30, 2009. **(f) Amount:** 47.5 acre-feet (conditional), to be filled either via the Stage Coach Pipeline or the alternate point of diversion described above, both with a rate of fill of 1 c.f.s. (conditional) or by exchange, with the right to fill and refill the pond when in priority, up to three complete fills annually. **(g) Use:** See above paragraph 5.C(iv)(g). **D. Hoehne Ditch and Lewelling-McCormick Ditch Water Rights:** Pioneer and XTO own portions of the water rights decreed to the Hoehne Ditch and the Lewelling-McCormick Ditch, which are currently decreed for diversion at the Model Ditch headgate and delivered through the John Flood Ditch. Applicants claim the right to use their interest in these water rights as an augmentation supply, subject to obtaining the necessary additional legal and administrative approvals. No change of water right is claimed in this case. **(i) Lewelling McCormick Ditch, Priority 13 (a) Date of Original Decree:** August 10, 1903. **(b) Legal Description of Point of Diversion:** This water right is presently diverted at the headgate of the Model Ditch, for delivery to the John Flood Ditch. The headgate of the Model Ditch is located on the north bank of the Purgatoire River at a point which N53 degrees West, 5,780 feet from the SE corner of Section 33, Township 32 South, Range 63 West of the 6th P.M., in Las Animas County. **(c) Source:** Las Animas River a/k/a Purgatoire River. **(d) Appropriation Date:** January 1, 1864. **(e) Amount:** 5.0 cfs, of which Applicants presently own or control .07125 cfs. **(f) Use:** Irrigation. **(ii) Hoehne Ditch, Priority No. 20. (a) Date of Original Decree:** August 10, 1903. **(b) Legal Description of Point of Diversion:** This water right is presently diverted at the headgate of the Model Ditch, for delivery to the John Flood Ditch. The headgate of the Model Ditch is located on the north bank of the Purgatoire River at a point which N53 degrees West, 5,780 feet from the SE corner of Section 33, Township 32 South, Range 63 West of the 6th P.M., in Las Animas County. **(c) Source:** Las Animas River a/k/a Purgatoire River. **(d) Appropriation Date:** October 7, 1865. **(e) Amount:** 25.0 cfs, of which Applicants own or control 1.14 cfs. **(f) Use:** Irrigation. **E. Water Obtained Pursuant to Agreement with Hill Ranches:** Applicants may use as augmentation supply water rights leased and/or purchased from Hill Ranches, Inc. or Hill Ranches, Ltd. (collectively, "Hill Ranches"), which may include fully consumable water associated with the following water rights. The water rights described in this paragraph 5.E will only be used by Applicants pursuant to such a lease or purchase agreement. **(i) Velasquez & Chacon No. 2 Ditch (a) Appropriation Date:** April 10, 1867. **(b) Adjudication Date:** August 10, 1903, by the District Court for Las Animas County, Colorado. **(c) Decreed Rate:** 2.0 cfs. **(d) Use:** Originally decreed for irrigation. **(e) Decreed Point of Diversion.** The decreed point of diversion for the Velasquez and Chacon No. 2 Ditch is not specifically stated in the said 1903 decree. The present point of diversion, which is believed to be the original and historic point of diversion, is on the south bank of the Purgatoire River in the NW/4 Section 4, T.34S., R.66W of the 6<sup>th</sup> P.M. Any locations within the Maxwell Grant are described according to the generally

accepted protraction of land in said Grant. **(f) Source:** Purgatoire River. **(g) Remarks:** The Velasquez and Chacon No. 2 Ditch is the subject of a pending water court application in Case No. 08CW38. Applicants' use of the Velasquez and Chacon No. 2 Ditch water rights as an augmentation source in this Application shall be in accordance with the terms and conditions decreed in Case No. 08CW38. **(ii) Ramon Torres Ditch, Priority No. 28 (a) Appropriation Date:** November 1, 1866. **(b) Adjudication Date:** August 10, 1903. **(c) Decreed Rate:** 7.0 cfs. **(d) Use:** Originally decreed for irrigation. **(e) Decreed Point of Diversion:** Case No. 83CW129, Water Division 2, indicates that the decreed point of diversion for the Ramon Torres was on the southeast side of the South Fork of the Purgatoire River in Township 34 South, Range 69 West, and on lands claimed and occupied by G.V. Enriques and other persons named in the application filed in the original decree. The Ramon Torres diverted, however, from the north bank of the South Fork of the Purgatoire River in the SE1/4 of the SE1/4 of Section 13, Township 34 South, Range 69 West, 6<sup>th</sup> P.M., Las Animas County, Colorado. **(f) Source:** South Fork of the Purgatoire River. **(g) Remarks.** The Ramon Torres Ditch was changed in Case No. 83CW129 for all beneficial uses to extinction at or above Trinidad Reservoir Dam. Case No. 83CW129 determined the historical consumptive use under the Ramon Torres Ditch to be 350 annual acre feet of which 175 annual acre feet is fully consumable and allows for the year round diversion of 1.0 cfs of the Ramon Torres Ditch water right for its changed uses. Applicants' use of the Ramon Torres Ditch as an augmentation source in this Application shall be in accordance with the terms and conditions decreed in Case No. 83CW129. **(iii) Leandro Duran & Martinez Ditch, Priority No. 28. (a) Appropriation Date:** November 1, 1866. **(b) Adjudication Date:** August 10, 1903. **(c) Decreed Rates:** 6.6 cfs. **(d) Use:** Originally decreed for irrigation. **(e) Decreed Point of Diversion:** The decree in Case No. 83CW130, Water Division 2, indicated that the decreed point of diversion for the Leandro Duran & Martinez Ditch was at a point on the southwest side of the South Fork of the Purgatoire River in the NW1/4 of Section 24, Township 34 South, Range 69 West of the 6<sup>th</sup> P.M., Las Animas County, Colorado. The Leandro Duran & Martinez Ditch, however, diverted and is currently being diverted at the Consolidated Ditch, located on the north bank of the South Fork of the Purgatoire River in the NE 1/4 of Section 22, Township 34 South, Range 69 West, 6<sup>th</sup> P.M., Las Animas County, Colorado. **(f) Source:** South Fork of the Purgatoire River. **(g) Remarks:** 1.0 cfs of the Leandro Duran & Martinez Ditch was changed in Case No. 83CW130 for all beneficial uses to extinction at or above Trinidad Reservoir Dam. Case No. 83CW129 determined the historical consumptive use under the Leandro Duran & Martinez Ditch to be 50 annual acre feet of which 25 annual acre feet is fully consumable and allows for the year round diversion of 1 cfs of the Leandro Duran & Martinez Ditch for its changed uses. Applicants' use of the Leandro Duran & Martinez Ditch as an augmentation water source in this Application shall be in accordance with the terms and conditions decreed in Case No. 83CW130. **(iv) Valerio & Torres Ditch, Priority No. 26. (a) Appropriation Date:** May 30, 1866. **(b) Adjudication Date:** August 10, 1903. **(c) Decreed Rate:** 5.0 cfs. **(d) Use:** Originally decreed for irrigation. **(e) Original Decreed Point of Diversion:** Case No. 83CW131, Water Division 2, indicates that the decreed point of diversion for the Valerio & Torres Ditch was at a point on the northeast side of the South Fork of the Purgatoire River on lands claimed by Sisto Trujillo near a large blazed pine tree southwest from the dam.



The Valerio & Torres Ditch, however, was transferred to the Maxwell No. 20 (Consolidated Ditch), located on the north bank of the South Fork of the Purgatoire River in the NE 1/4 of Section 22, Township 34 South, Range 69 West, 6<sup>th</sup> P.M., Las Animas County, Colorado. **(f) Source:** South Fork of the Purgatoire River. **(g) Remarks.** The Valerio & Torres Ditch was changed in Case No. 83CW131 for all beneficial uses to extinction at or above Trinidad Reservoir Dam. Case No. 83CW131 determined the historical consumptive use under the Valerio & Torres Ditch to be an average of 350 annual acre feet. Hill Ranches owns 1.6 cfs or 32% of the Valerio & Torres Ditch changed under Case No. 83CW131 and the Applicants only claim the right to use this proportionate amount of the changed Valerio & Torres Ditch, which amount is 112 annual acre feet. Pursuant to the decree in Case No. 83CW131, the Valerio and Torres Ditch water right may be diverted and stored at the alternate places of storage listed on Exhibit H attached to the Amended Application. This Application does not include the remaining portions of the Valerio & Torres Ditch not owned by Hill Ranches. The Applicants' use of the Valerio & Torres Ditch as an augmentation water source in this Application shall be in accordance with the terms and conditions decreed in Case No. 83CW131. **(v) Maxwell No. 11, Priority No. 36. (a) Appropriation Date:** July 1, 1867. **(b) Adjudication Date:** August 10, 1903. **(c) Decreed Rates and Uses:** 4.0 cfs. **(d) Use:** Originally decreed for irrigation. **(e) Decreed Point of Diversion:** On the south bank of the Middle Fork of the Purgatoire River at a point about the center of NW1/4 of Section 29, Township 33 South, Range 68 West, of the 6<sup>th</sup> P.M., Las Animas County, Colorado. **(f) Source:** Middle Fork of the Purgatoire River. **(g) Remarks.** The Maxwell No. 11 was changed in Case No. 83CW131 for all beneficial uses to extinction at or above Trinidad Reservoir Dam. Case No. 83CW131 determined the historical consumptive use under the Maxwell No. 11 to be an average of 130 annual acre feet. Hill Ranches only owns 3.0 c.f.s. of the Maxwell No. 11 changed under Case No. 83CW131. This Application does not include the remaining portions of the Maxwell No. 11 not owned by Hill Ranches. Pursuant to the decree in Case No. 83CW131, the Maxwell No. 11 water right may be diverted and stored at the alternate places of storage listed on Exhibit H attached to the Amended Application. Applicants use of the Maxwell No. 11 as an augmentation water source in this Application shall be in accordance with the terms and conditions decreed in Case No. 83CW131. **(vi) Antonio Lopez Ditch. (a) Appropriation Date:** November 1, 1861. **(b) Adjudication Date:** August 11, 1903. A transfer decree was entered on February 10, 1978 in Case No. W-4138, Water Division 2. **(c) Decreed Rates and Uses:** 0.75 cfs. **(d) Uses:** Agricultural and Irrigation. **(e) Present Point of Diversion:** A point on the south bank of the Middle Fork of the Purgatoire River from whence the north quarter corner of Section 30, Township 33 South, Range 68 West of the 6<sup>th</sup> P.M., bears north 40 degrees, 59 minutes east a distance of 1,381.92, a/k/a Maxwell No. 9 Ditch. **(f) Source:** Middle Fork of the Purgatoire River. **(g) Remarks.** The Antonio Lopez Ditch was changed in Case No. 83CW128 for all beneficial uses to extinction at or above Trinidad Reservoir Dam. **(vii) Segundo Ditch. (a) Appropriation Date:** March 1, 1866. **(b) Adjudication Date:** August 11, 1903. A transfer decree was entered on February 10, 1978 in Case No. W-4138, Water Division 2. **(c) Decreed Rates and Uses:** 0.33 cfs. **(d) Uses:** Agricultural and Irrigation. **(e) Present Point of Diversion:** A point on the south bank of the Middle Fork of the Purgatoire River from whence the north quarter corner of Section 30,

Township 33 South, Range 68 West of the 6th P.M., bears north 40 degrees, 59 minutes east a distance of 1,381.92, a/k/a Maxwell No. 9 Ditch. **(f) Source:** Middle Fork of the Purgatoire River. **(g) Remarks.** The Segundo Ditch was changed in Case No. 83CW128 for all beneficial uses to extinction at or above Trinidad Reservoir Dam. **(viii) Water Stored in Legend Lake, as claimed in pending Case No. 08CW38, Water Division 2.** Applicants may use as augmentation supply fully consumable water stored in Legend Lake, as described below. **(a) Appropriation Date:** February 8, 2007. **(b) Date Application was Filed:** June 26, 2008. **(c) Amount Claimed:** 121.25 acre feet, conditional. **(d) Rate of Diversion for Filling of Reservoir:** 10 cfs. **(e) Claimed Uses:** All municipal purposes including domestic, industrial, commercial, manufacturing, agricultural, irrigation, stock watering, recreational, piscatorial, fish and wildlife, fire protection, street washing, hydroelectric power production, for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of depletions resulting from use of water from other sources, for replacement of reservoir evaporation, for all augmentation purposes and for all other beneficial purposes. **(f) Location of Dam:** NE 1/4 of NE 1/4 of Section 4, Township 34 South, Range 66 West of the 6<sup>th</sup> P.M., Las Animas County, Colorado. The mid point of the reservoir is approximately 364 feet south of the north section line, and approximately 452 feet west of the east section line of said Section 4. **(g) Source:** Purgatoire River. **(h) Remarks:** Pursuant to the Amended Application in Case No. 08CW38, the historical consumptive use attributable to the water rights identified above in paragraphs 5.E.1 through 5.E.5 may be stored in Legend Lake and used for all beneficial purposes above Trinidad Dam. **(ix) Water Stored in Hill Ranches Augmentation Pond.** Applicants may use as augmentation supply fully consumable water stored in an augmentation pond to be located on Hill Ranches property, as described below. Legal supply for filling the pond may include the water rights described above in this paragraph 5.E. This pond has not yet been constructed, and no water rights are claimed herein. Water will only be stored and released pursuant to appropriate legal and administrative approvals. The approximate size and location of the pond is as follows: **(a) Location:** Located in the W 1/2 of Section 24, Township 34 South, Range 69 West of the 6th P.M., Las Animas County. **(b) Capacity:** Up to 20 acre feet. **(c) Source:** South Fork of the Purgatoire River. **F. Water Leased or Purchased from City of Trinidad.** Applicants may use as a replacement supply in this plan for augmentation water leased and/or purchased by Applicant from the City of Trinidad ("Trinidad") and released from Trinidad Reservoir, including any fully-consumable water lawfully stored in Trinidad Reservoir. Trinidad Reservoir is an on-channel reservoir located on the Purgatoire River. Trinidad Reservoir's dam is located in the SE1/4 NW1/4 of § 27, Township 33 South, Range 64 West of the 6<sup>th</sup> P.M., 2400 feet from north and 1800 feet from east Section Lines. Fully-consumable water lawfully stored in Trinidad Reservoir may include the following water rights. **(i) Direct Flow Water Rights Changed to Storage in Case No. 88CW61, District Court, Water Division No. 2, entered June 22, 2001.** In Case No. 88CW061, the Water Court changed the following irrigation priorities adjudicated for diversion by the John Flood Ditch and Model Land and Irrigation Company, owned by the City of Trinidad, to storage in Trinidad Reservoir: **(a) John Flood Direct Flow Water Rights owned by Trinidad: (1) Appropriations:**

District 19 Priority No.	Appropriation Date	Original Decree Date	Amount (cfs)	Trinidad Ownership (cfs)
5	03/20/1862	08/10/1903	4.00	2.00
9	01/01/1863	08/10/1903	1.28	0.877
15	04/10/1864	08/10/1903	5.10	2.343
20	10/07/1865	08/10/1903	24.00	3.391
27	05/31/1866	08/10/1903	2.25	1.541
145	10/20/1902	01/12/1925	100.00	68.50

**(2) Decreed Uses:** Municipal, industrial, maintenance of the Trinidad Reservoir permanent fishery pool, recreation and irrigation. Municipal includes all municipal uses, such as, but not by way of limitation, domestic, commercial, manufacturing, industrial, agricultural, watering of parks and lawns and gardens, fire protection, generation of electric power and power generally, recreation, fish and wildlife propagation, sewage treatment, street sprinkling, maintenance of adequate storage reserves, replacement, augmentation and exchange. **(3) Historic Use:** The historic use of these water rights was determined in Case No. 88CW61. These water rights may be used to extinction and are fully-consumable subject to the terms and conditions of the decree in Case No. 88CW61. **(b) Model Land and Irrigation Company Water Rights:(1) Appropriations:**

District 19 Priority No.	Appropriation Date	Original Decree Date	Amount	Trinidad Ownership
168	01/22/1908	01/12/1925	200.00 c.f.s.	That amount of water allocable to 373.7 acres under the Model Ditch which has been removed from irrigation.
—	01/22/1908	01/12/1925	20,000 a.f.	

**(2) Decreed Uses:** Municipal, industrial, maintenance of the Trinidad Reservoir permanent fishery pool, recreation, fish propagation and irrigation. **(3) Historic Use:** The historic use of these water rights was determined in Case No, 88CW61. These water rights may be used to extinction and are fully-consumable subject to the terms and conditions of the decree in Case No. 88CW61. **(ii) Direct Flow Water Rights from Priority 13 and Priority 20 Changed to Storage in Case No. 06CW78, District Court, Water Division No. 2, by decree entered on November 25, 2012:(a) Appropriations:**

District 19 Priority Number	Appropriation Date	Original Decree Date	Decreed Amount (cfs)	Trinidad Ownership (cfs)
13	01/01/1864	08/10/1903	5.00	0.538
20	10/07/1865	08/10/1903	24.00	0.86

**(b) Uses Decreed in Case No. 06CW78:** Municipal, industrial, maintenance of the Trinidad Reservoir permanent fishery pool, recreation and irrigation. Municipal includes all municipal uses, such as, but not by way of limitation, domestic, commercial, manufacturing, industrial, agricultural, watering of parks and lawns and gardens, fire protection, generation of electric power and power generally, recreation, fish and wildlife

propagation, sewage treatment, street sprinkling, maintenance of adequate storage reserves, replacement, augmentation and exchange. **(c) Historical Use:** These water rights were historically used to flood irrigate 88 acres located in the South 1/2 of § 6 and the North 1/2 of the North 1/2 of Township 32 South, Range 62 West of the 6<sup>th</sup> P.M., as more fully described in Case No. 06CW78. **(iii) Direct Flow Water Rights to Be Changed to Storage in Case No. 08CW101, District Court, Water Division No. 2, pending.** In Case No. 08CW101, Trinidad seeks to change the following irrigation priorities adjudicated for diversion by the John Flood Ditch, owned by the City of Trinidad, to storage in Trinidad Reservoir: **(a) Appropriations owned by Trinidad:**

District 19 Priority Number	Appropriation Date	Original Decree Date	Decreed Amount (cfs)	Trinidad Ownership (cfs)
9	01/01/1863	08/10/1903	1.28	0.048
15	04/10/1864	08/10/1903	5.10	0.128
20	10/07/1865	08/10/1903	7.35	0.586
27	05/31/1866	08/10/1903	2.25	0.084
145	10/20/1902	01/12/1925	100.00	3.750

**(b) Uses Requested in Case No. 08CW101:** Same as paragraph 5.F(ii)(b). **(e) Historical Use:** These water rights were historically used to flood irrigate 128.4 acres located in the East ½ of § 25 and the South ½ of § 36, Township 31 South, Range 63 West of the 6<sup>th</sup> P.M., and in the West ½ of Section 30, Township 31 South, Range 62 West of the 6<sup>th</sup> P.M. as more fully described in Case No. 08CW101. **(iv) Transbasin Water Stored in Trinidad Reservoir.** Applicants may utilize any fully-consumable transbasin water exchanged to Trinidad Reservoir with approval of the Division Engineer pursuant to a contract or lease with a third party. **G. Gonzales Ditch, Apishapa River Basin:** Operation of certain of the Tributary CBM Wells are believed to cause small depletions to the Apishapa River. Applicants propose to replace out-of-priority depletions to the Apishapa River using water attributable to shares in the Gonzales Ditch Company, subject to obtaining the necessary legal and administrative approvals. Water attributable to such shares may be delivered directly to the Apishapa River, or stored for later delivery. No change of water right or storage water rights are claimed in this case. **(i) Original Decree:** Entered on March 12, 1887, by the District Court of Bent County, Colorado. **(ii) Legal Description of Point of Diversion:** A point on the north bank of the Apishapa River in the SW 1/4 of Section 34, Township 30 South, Range 65 West of the 6<sup>th</sup> P.M. **(iii) Source:** Apishapa River. **(iv) Priority Number, Appropriation Date and Amount:** (a) Priority No. 1: October 31, 1866 for 7.31 cfs. (b) Priority No. 18: April 29, 1869 for 14.69 cfs. **(v) Use:** Irrigation. **(vi) Remarks:** In the decree in Case No. W-3611, Water Division 2, entered on August 3, 1979, 0.3631 cfs of the 7.31 cfs decreed to the Gonzales Ditch as Priority No. 1 and 0.7296 cfs of the 14.69 cfs decreed to the Gonzales Ditch as Priority No. 18 were transferred out of the Gonzales Ditch by the Town of Aguilar to alternate points of diversion, leaving 6.9469 cfs of Priority No. 1 and 13.96504 cfs of Priority No. 18 in the Gonzales Ditch for allocation to shareholders of the Gonzales Ditch. In pending Case No. 05CW103, the Town of Aguilar has requested a change of water right for an additional 29 shares of total 288 outstanding shares in the Gonzales Ditch Company. Specific shares of the Gonzales Ditch Company may only be utilized as an

augmentation supply in the plan for augmentation requested herein pursuant to Applicants' lease and/or purchase of such shares, or other agreement with the owner(s) of such shares. **H. Addition of Alternate or Supplemental Sources of Replacement Water.** Upon notice to objectors and the Division Engineer, and subject to obtaining the necessary legal and administrative approvals, Applicants claim the right to include additional and/or alternative sources of augmentation supply, as permitted by law. **6. Complete Statement of Plan for Augmentation: A. Determination of Depletions:** The amount, timing, and location of stream depletions from the Tributary CBM Wells and any Well Field Wells will be calculated using the Model. Applicants propose to determine Model-calculated depletions using designated model zones ("Model Zones"). The current Model Zones are set forth in Table 1, below ("Model Zones"), and include all of the areas where a formation outcrops and a NHD perennial stream exists. A map showing the Model Zones is attached to the Amended Application as Exhibit D. These Model Zones are subject to change in the future based on updated technical information.

**Table 1- Summary of Model Zones**

<b>Model Zone</b>	<b>Model Zone Description</b>
1	Guajatoya Creek and Tributaries
2	North Fork to Purgatoire
3	Middle Fork to Purgatoire
4	South Fork above Apache Canyon 50
5	South Fork below Apache Canyon 50 to Purgatoire
6	Purgatoire River from North Fork to Golden Eagle Mine
7	Purgatoire River from Golden Eagle Mine to South Fork
8	Purgatoire from South Fork to Burro Canyon
9	Purgatoire from Burro Canyon to Trinidad Reservoir
10	Trinidad Reservoir
11	Unnamed Tributary 1
12	Burro Canyon
13	Unnamed Tributary 2
14	Reilly Canyon
15	Long Canyon
16	Sarcillo Canyon
17	Raton/McBride Creeks above Hawton and Romero Ditch
18	Raton Creek below Hawton and Romero Ditch
19	Apishapa River – Lower Reach
20	Canyon del Agua
21	Apishapa River – Above Raton/Poison Canyon Formation
22	Rito Seco and Jarosa Canyon
23	South Fork Trujillo Creek

The resultant Model-calculated depletion amounts will reflect the total amount of produced water that is tributary to a surface stream. However, because a large portion of the produced tributary water is not consumed and is returned to surface streams

through the Discharge Points, Applicants propose to reduce the Model-calculated depletions by the amount of tributary water discharged from the Discharge Points to arrive at actual (net) depletions, as discussed below. The net depletions will then be replaced in time, location, and amount pursuant to this plan for augmentation. Applicants' Model shows lagged depletions occurring after the cessation of CBM production from the Tributary CBM Wells. Annual runs of the Model will continue to include Tributary CBM Wells that are no longer pumping, but from which lagged depletions continue to accrue to the stream system to ensure replacement of those depletions. Following cessation of CBM production from all Tributary CBM Wells, including Well Field Wells, covered under this plan, Applicants will calculate the remaining obligation to replace lagged depletions for a period of time into the future as necessary to replace these lagged depletions in location, time and amount sufficient to prevent injury to vested senior water rights pursuant to this plan for augmentation. **(i) Credit for Tributary Produced Water Discharge:** A portion of the water produced from Tributary CBM Wells and Well Field Wells is discharged to the surface and returns directly to surface streams pursuant to CDPHE permits ("Tributary Discharge"). In determining the replacement water requirement (net depletions) under this plan for augmentation, Applicants propose to measure, account, and take a credit for the amount of Tributary Discharge that is returned to surface streams and available to satisfy the requirements of vested senior water rights, so long as such amount of Tributary Discharge is also available at the time and location to prevent injury to such vested senior water rights. The Discharge Points identified in Table 2, below discharge water from Tributary CBM Wells. Tributary CBM Wells that currently discharge to each of the Discharge Points are set forth in Table 3, below, and are legally described in Appendix 1. Permitted points of surface discharge of produced water from Applicants' CBM Wells exist at multiple locations throughout the Central Raton Basin. The currently identified discharge points for use in this plan discharge only tributary produced water and are set forth in Table 2, below (collectively referred to as "Discharge Points"). The Discharge Points do not directly discharge to a flowing perennial surface stream, but do discharge to live flowing streams that reach perennial surface streams. Applicants propose to apply a transit loss to the discharge volumes in order to calculate a tributary discharge credit. The location of the Discharge Points are described below and shown on Exhibit C attached to the Amended Application.

**Table 2 Legal Locations of Each Discharge Point**

Discharge Point	Quarter/ Quarter	Section, Township, Range	Approx. Distance from N/S Section Line	Approx. Distance from E/W Section Line
Apache Canyon 049	SWSW	S24, T34S, R68W	900 ft from N	685 ft from W
Golden Eagle 043	NESW	S35, T33S, R67W	2360 ft from S	2440 ft from W
Jaguar 183	SESE	S35, T32S, R66W	410 ft from S	900 ft from E
Joyce 057	SENE	S30, T32S, R65W	1725 ft from N	2525 ft from W
Kennedy Discharge 241	SWSW	S34, T32S, R68W	1075 ft from S	1310 ft from W
Montoya 245	SESE	S1, T33S, R68W	1180 ft from S	2600 ft from W
Montoya 005	SWNE	S1, T 33S, R68W	1730 ft from N	2670 ft from E

Note: In regions where official Township, Range, and Section lines do not exist, interpreted Township, Range and Section boundaries were used to determine legal locations.

**Table 3 Tributary CBM Wells Discharging to Discharge Points**

<b>Name of Discharge Point</b>	<b>Contributing Wells</b>	<b>Well Number</b>	<b>API</b>
Apache Canyon 049	Apache Canyon 14-16V	05-071-07204-00	
	Apache Canyon 19-12	05-071-06347-00	
	Apache Canyon 19-14	05-071-08927-00	
	Apache Canyon 23-01	05-071-08822-00	
	Apache Canyon 23-09	05-071-06131-00	
	Apache Canyon 23-16	05-071-08686-00	
	Apache Canyon 24-02V	05-071-07186-00	
	Apache Canyon 24-03V	05-071-07188-00	
	Apache Canyon 24-04	05-071-08687-00	
	Apache Canyon 24-08	05-071-08820-00	
	Apache Canyon 24-10V	05-071-07187-00	
	Apache Canyon 24-12	05-071-06132-00	
	Apache Canyon 24-16	05-071-08926-00	
	Apache Canyon 25-01	05-071-09283-00	
	Apache Canyon 25-04	05-071-06133-00	
	Apache Canyon 25-11V	05-071-07557-00	
	Apache Canyon 26-01	05-071-06134-00	
	Apache Canyon 26-02	05-071-08813-00	
	Apache Canyon 26-08V	05-071-07559-00	
	Apache Canyon 26-16V	05-071-07558-00	
Golden Eagle 043	Apache Canyon 30-07	05-071-09876-00	
	Apache Canyon 30-06	05-071-09282-00	
	Apache Canyon 34-08	05-071-08541-00	
	Apache Canyon 35-05	05-071-08542-00	
	Apache Canyon 35-06	05-071-08540-00	
	Apache Canyon 35-07	05-071-09320-00	
Jaguar 183	Apache Canyon 35-10	05-071-09212-00	
	Golden Eagle 34-07	05-071-08816-00	
	Jaguar 44-35	05-071-06854-00	
Joyce 057	Lamborghini 14-36	05-071-06839-00	
	Rambler 23-36	05-071-09092-00	
	Christine Federal 23-19	05-071-09179-00	
	Halibut Federal 22-25	05-071-09172-00	
	Highlands 41-25	05-071-07059-00	
	Hammerhead 24-24	05-071-06638-00	
	Hammerhead 24-24Tr	05-071-08669-00	
Jenners Pond Federal 13-19	05-071-09157-00		
Joyce 22-30	05-071-06437-00		

<b>Name Discharge Point</b>	<b>of Contributing Wells</b>	<b>Well Number</b>	<b>API</b>
	Joyce 22-30 Tr	05-071-06771-00	
	Quickdraw 43-24	05-071-06510-00	
	Rock Island 44-24	05-071-08154-00	
	Rock Island 44-24 Tr	05-071-08680-00	
	Rockfish 11-30	05-071-09595-00	
	Rockfish 11-30 Tr	05-071-08585-00	
	Toltek 31-25	05-071-09255-00	
Kennedy 241	Kennedy 11-34	05-071-09019-00	
	Kennedy 14-27	05-071-09540-00	
	Kennedy 14-21	05-071-08998-00	
	Kennedy 14-34	05-071-09541-00	
	Kennedy 21-28	05-071-09542-00	
	Kennedy 23-28	05-071-09052-00	
	Kennedy 34-34	05-071-09021-00	
	Kennedy 43-28	05-071-09071-00	
Montoya 245	Alibi 23-2	05-071-09799-00	
	Cody 44-11R	05-071-08872-00	
	Cody 44-11V	05-071-08192-00	
	Djembe 21-12	05-071-09814-00	
	Kosar 21-11	05-071-09861-00	
	Montoya 24-1R	05-071-08875-00	
	Montoya 24-1V	05-071-08194-00	
	North Fork Ranch 11-12R	05-071-08265-00	
	North Fork Ranch 11-12V	05-071-08261-00	
	North Fork Ranch 14-1R	05-071-08870-00	
	North Fork Ranch 14-1V	05-071-08871-00	
	Rullestad 13-12R	05-071-08968-00	
	Rullestad 13-12V	05-071-08967-00	
	Wood 31-2	05-071-09091-00	
	Wood 43-2V	05-071-09008-00	
Montoya 005	Furu 23-6R	05-071-08266-00	
	Furu 23-6V	05-071-08270-00	
	Montoya 11-1V	05-071-08141-00	
	Montoya 11-6R	05-071-08884-00	
	Montoya 11-6V	05-071-08913-00	
	Montoya 14-6R	05-071-08242-00	
	Montoya 14-6V	05-071-08020-00	
	Montoya 21-1R	05-071-08957-00	
	Montoya 21-1V	05-071-08536-00	
	Montoya 22-1R	05-071-08537-00	
	Montoya 22-1V	05-071-08171-00	
	Montoya 31-6R	05-071-08826-00	



Name of Discharge Point	Contributing Wells	Well Number	API
	Montoya 31-6V	05-071-08827-00	
	Montoya 41-1R	05-071-08876-00	
	Montoya 41-1V	05-071-08144-00	
	Montoya 42-1R	05-071-08883-00	
	Montoya 42-1V	05-071-08882-00	
	Montoya 44-1R	05-071-08239-00	
	Montoya 44-1V	05-071-08142-00	
	Silva 22-6V	05-071-08143-00	
	Silva 43-1R	05-071-08372-00	
	Silva 43-1V	05-071-08371-00	

Applicants propose to annually calculate, based on actual production and discharge data and measured discharges from the prior year, the anticipated volume of Tributary Discharge available as a credit against Model-calculated depletions for the upcoming augmentation year. A process for doing so will be developed in cooperation with the Water Commissioner and Division Engineer. **(ii) No credit for salvaged water:** In conformance with C.R.S. § 37-92-103(9) and the standard articulated by the Colorado Supreme Court in *City of Aurora v. Simpson*, 105 P.3d 595 (Colo. 2005), Applicants do not claim in this Application any credit or water right for any salvaged water that may be determined to result from operation of Applicants' CBM wells in the Central Raton Basin. **B. Administrative Reaches:** Based on the location where stream depletions occur according to the Model, Applicants propose to provide augmentation water to various locations within or upstream of individual stream segments ("Administrative Reaches"), which specific location may be adjusted within each Administrative Reach based on the location of then-calling senior water rights. Administrative Reaches with legal descriptions of their upstream and downstream extents are set forth in Table 4, below and are based on the locations of diversion points for vested senior water rights, discharge points, replacement sources, and locations of depletions. The Administrative Reaches do not exactly match the Model Zones, because there are not vested senior water rights in each Model Zone that will require replacement of out-of-priority depletions under this plan for augmentation. Therefore, in some cases, more than one Model Zone has been combined to create an Administrative Reach for purposes of making replacements of out-of-priority depletions under this plan. Applicants propose the following Administrative Reach Nos. A through Q:

**Table 4 Legal Locations of Upstream and Downstream Points of Each Administrative Reach**

Admin Reach	Defined Point	Quarter/Quarter	Section, Township, Range	Approx. Distance from N/S Section Line	Approx. Distance from E/W Section Line
A	Upstream	SESE	S32, T32S, R68W	640 ft from S	1270 ft from E
	Downstream	SENE	S24, T33S, R68W	2465 ft from N	780 ft from E
B	Upstream	SWSE	S20, T33S, R68W	585 ft from S	1370 ft from E
	Downstream	SENE	S24, T33S, R68W	2465 ft from N	780 ft from E
C	Upstream 1	NWSE	S28, T34S, R68W	2590 ft from S	2395 ft from E
	Downstream 1	SWNW	S36, T33S, R67W	1350 ft from N	875 ft from W

	Upstream 2	NENW	S28, T34S, R68W	1250 ft from N	1410 ft from W
	Downstream 2	NENW	S28, T34S, R68W	1305 ft from N	1540 ft from W
D	Upstream	SENE	S24, T33S, R68W	2465 ft from N	780 ft from E
	Downstream	NENW	S29, T33S, R67W	125 ft from N	2290 ft from W
E	Upstream	NENW	S29, T33S, R67W	125 ft from N	2290 ft from W
	Downstream	SWNW	S36, T33S, R67W	1350 ft from N	875 ft from W
F	Upstream	SWNW	S36, T33S, R67W	1350 ft from N	875 ft from W
	Downstream	SWSW	S35, T33S, R65W	440 ft from S	220 ft from W
G	Upstream	SWSW	S35 T33S, R65W	440 ft from S	220 ft from W
	Downstream	SWNW	S36, T33S, R65W	2360 ft from N	520 ft from W
H	Upstream	NWSW	S6, T33S, R65W	2250 ft from S	430 ft from W
	Downstream	SWSW	S35, T33S, R65W	440 ft from S	220 ft from W
I	Upstream 1	SWNE	S4, T33S, R65W	2490 ft from N	2095 ft from E
	Downstream 1	SESE	S25, T33S, R65W	725 ft from S	445 ft from E
	Upstream 2	NWNW	S31, T33S, R64W	15 ft from N	530 ft from W
	Downstream 2	NWNW	S31, T33S, R64W	295 ft from N	465 ft from W
J	Upstream	SESE	S22, T34S, R65W	290 ft from S	825 ft from E
	Downstream	NENE	S31, T33S, R64W	1250 ft from N	370 ft from E
K	Upstream	SWNW	S36, T33S, R65W	2360 ft from N	520 ft from W
	Downstream	SWNE	S27, T33S, R64W	1625 ft from N	1710 ft from E
L	Upstream 1A	SWSE	S10, T35S, 63W	608 ft from S	1945 ft from E
	Upstream 1B	NENE	S18, T35S, 63W	955 ft from N	940 ft from E
	Downstream 1	SENE	S11, T34S, R64W	1400 ft from N	270 ft from E
	Upstream 2	SENE	S33, T34S, R63W	1850 ft from N	1150 ft from E
	Downstream 2	SWSW	S32, T34S, R63W	545 ft from S	1105 ft from W
	Upstream 3	SESE	S21, T34S, R63W	1000 ft from S	235 ft from E
	Downstream 3	NESE	S20, T34S, T63W	2165 ft from S	1180 ft from E
M	Upstream 1	SENE	S11, T34S, R64W	1400 ft from N	270 ft from E
	Downstream 1	NWSW	S26, T33S, R64W	2240 ft from S	1130 ft from W
	Upstream 2	SWNW	S26, T33S, R64W	2256 ft from N	1130 ft from W
	Downstream 2	NWNW	S26, T33S, R64W	1130 ft from N	1144 ft from W
N	Upstream	NWSE	S24 T31S, R66W	2430 ft from S	1670 ft from E
	Downstream	SWNE	S34, T30S, R65W	1435 ft from N	1640 ft from E
O	Upstream	SESE	S19, T31S, R67W	1353 ft from S	645 ft from E
	Downstream	NWSE	S24 T31S, R66W	2430 ft from S	1670 ft from E
P	Upstream 1	SWNE	S26, T31S, R68W	1945 ft from N	1810 ft from E
	Downstream 1	SWSW	S35, T31S, R67W	275 ft from S	1230 ft from W
	Upstream 2	SWNE	S28, T31S, R68W	2030 ft from N	1440 ft from E
	Downstream 2	NENE	S6, T32S, R67W	1015 ft from N	0 ft from E

Q	Upstream	NESE	S16, T31S, R67W	2010 ft from S	470 ft from E
	Downstream	NWSE	S15, T31S, R67W	2050 ft from S	2240 ft from E

Note: In regions where official Township, Range, and Section lines do not exist, interpreted Township, Range and Section boundaries were used to determine legal locations.

A map showing the Administrative Reaches is attached to the Amended Application as Exhibit E. **C. Replacement of Depletions**: On a monthly basis or as otherwise determined by the Division Engineer, Applicants propose to make replacement to such appropriate location within an affected Administrative Reach(es) using the various augmentation sources set forth in paragraph 5, above, directly and/or by exchange, as claimed in paragraphs 7-12 below, in amount, timing, and location necessary to prevent material injury to vested water rights. For any locations where Applicants' augmentation sources cannot directly supply or are not available for replacement by exchange, Applicants propose to deliver replacement water via tanker truck as directed by the Water Commissioner, and pursuant to tanker truck operation agreements among the Applicants, as may be reasonably necessary to protect vested senior water rights from injury. **D. Accounting, Projection**: Applicants propose to maintain a monthly accounting for the augmentation plan during the April-October months and once in March covering the November-March months, or such modified schedule as may be otherwise approved herein, and will make regular reports as required by the State/Division Engineers. In order to ensure that sufficient replacement water will be available to replace all future out-of-priority depletions from the Tributary CBM Wells and Well Field Wells, Applicants will develop and maintain a projection of such future depletions matched with available replacement sources. On a monthly basis, Applicants will compare actual water production, by formation, to the estimated water production. So long as estimated tributary water production exceeds the actual tributary water production and replacements have been made to meet those estimated depletions, no injury will occur. In the event that actual pumping exceeds the projected pumping volume in any month, the calculation of depletions using the Model will be updated based on actual Tributary CBM pumping and revised depletion projections will be used for the remainder of the year. These revised depletions projections shall include the replacement of depletions owed from the prior month in the next month or as otherwise directed by the Water Commissioner and/or Division Engineer. Any water due to the stream will be replaced as required by the Water Commissioner and/or Division Engineer. **Second Claim – Appropriative Rights of Exchange 7. Background**: Applicants claim appropriative rights of exchange in the Purgatoire River and its tributaries, as described herein. Applicants are requesting these appropriative rights of exchange for use as a part of Applicant's proposed plan for augmentation. Applicants generally seek the right to operate exchanges for two purposes: (1) to replace depletions accruing upstream of the location of available replacement water sources, to any Administrative Reaches where augmentation may be required to prevent injury resulting from out-of-priority depletions; and (2) to divert legally-available water available into storage when water is available by exchange. **8. Exchange Reaches**: Discrete appropriative rights of exchange are requested from each of the "Exchange From Points" to each of the "Exchange To Points," as more particularly described in paragraphs 9 and 10. These Exchange From and Exchange To Points are

shown on the map attached to the Amended Application as Exhibit F and more particularly described in Appendix 2, which also specifies the proposed rates of exchange. **9 Exchange from Points, Including Source of Exchanged Water: A. Pioneer and XTO Augmentation Ponds:** The location and sources of the Pioneer and XTO Augmentation Ponds are more particularly described in paragraph 5.C, above. These Exchange From Points and sources of exchange water may include the following additional Exchange From Points located downstream of those identified above, see *also* Appendix 2, identified and legally described as follows:

<b>Additional Downstream Exchange From Points</b>	<b>Quarter/Quarter</b>	<b>Section, Township, Range</b>	<b>Approx. Distance from N/S Section Line</b>	<b>Approx. Distance from E/W Section Line</b>
Confluence of Burro Canyon with Purgatoire	SWSW	S 35, T33S, R65W	440 ft from S	220 ft from W
Confluence of Long Creek with Purgatoire	SENE	S 31, T33S, R64W	2330 ft from N	370 ft from E
Confluence of Raton Creek with Purgatoire	SESE	S 22, T33S, R64W	100 ft from S	560 ft from E
Confluence of Reilly Canyon with Purgatoire	NWNW	S 31, T33S, R64W	120 ft from N	515 ft from W
Confluence of Sarcillo Canyon with Purgatoire	SWSE	S 34, T33S, R66W	1000 ft from S	1340 ft from E
Confluence of South Fork with Purgatoire	SENE	S 36, T33S, R67W	1370 ft from N	875 ft from W
Confluence of Lopez Canyon with Purgatoire	NWSW	S 27, T33S, R67W	1700 ft from S	1180 ft from W
Confluence of unnamed tributary with Purgatoire	NENW	S 36, T33S, R67W	890 ft from N	2650 ft from E
Confluence of Wet Canyon with Purgatoire	NWNW	S 36, T 33S, R 67W	1180 ft from N	20 ft from W
Confluence of Lorencito Canyon with Purgatoire	NWNW	S 3, T 34S, R 66W	175 ft from N	1280 ft from W

**B. Trinidad Reservoir:** Trinidad Reservoir's dam is located in the SE1/4 NW1/4 of § 27, Township 33 South, Range 64 West of the 6<sup>th</sup> P.M., 2400 feet from north and 1800 feet from east Section Lines. **C. Legend Lake:** As more fully described in paragraph 5.E(viii), above. **D. Hill Ranches Augmentation Pond:** As more fully described in paragraph 5.E(ix), above. **E. Golden Eagle Mine Discharge Point:** The Golden Eagle Mine Discharge as more particularly described in paragraph 5.B.10. **Exchange to Points:** **A. Pioneer and XTO Augmentation Ponds:** Described in paragraph 5.C, above. **B. The Top of Administrative Reaches A through M:** The highest extent of Administrative Reaches A through M, or such other point within each Administrative Reach at which depletions covered by the augmentation plan requested herein must be replaced to prevent injury to vested senior water rights. The legal descriptions of the upstream and downstream extent of each Administrative Reach are set forth in Table 4. **C. Legend Lake:** As more fully described in paragraph 5.E(viii), above. **D. Hill Ranches Augmentation Pond:** As more fully described in paragraph 5.E(ix), above. **11. Exchange Rates:** A separate appropriative right of exchange is requested for an exchange between each of the Exchange To Points and the Exchange From Points that are identified in Appendix 2, with the requested rate of exchange for that Exchange. Exchange rates decreed herein will be subject to a determination of reasonable transit

losses as determined by the Division Engineer and Water Commissioner. **12. Date of Appropriation:** February 1, 2010, based on the filing of the original application herein. **13. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** **A. Tributary CBM Wells:** See Appendix 3.B. **Pioneer and XTO Augmentation Ponds:** (i) Applicant XTO. See paragraph 1, above. (ii) Colorado Parks & Wildlife 6060 Broadway Denver, Colorado 80216 (iii) Hill Ranches, Ltd. 3794C Highway 67 West Glen Rose, Texas 76043 (iv) Bernard Parsons P.O. Box 70 Weston, Colorado 81091 (v) Warren McDonald 16403 County Rd. 41.7 Weston, Colorado 81091 **C. Golden Eagle Mine Discharge:** (i) Applicant XTO. See paragraph 1, above. (ii) Colorado Parks & Wildlife 6060 Broadway, Denver, Colorado 80216 **D. Legend Lake:** Hill Ranches, Inc. See paragraph 13.B(iii), above. **E. Hill Ranches Augmentation Pond:** Hill Ranches, Inc. See paragraph 13.B(iii), above.

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**CASE NO. 2013CW3011 – MOUNTAIN FRONT RANCH, 7340 S. Xanthia Way, Centennial, CO 80112** (Direct all pleadings to Andrea L. Benson and Robert T. Donald, Alperstein & Covell, P.C., Attorneys for Applicant, 1600 Broadway, Suite 900, Denver, CO 80202, email: [alb@alpersteincovell.com](mailto:alb@alpersteincovell.com); robert@alpersteincovell.com; 303-894-8191)

Second Amended Application for Water and Storage Rights

**FREMONT COUNTY**

Applicant hereby amends paragraph 13(a) and (b) and 14(b) of Original Application, to correct the total amount/capacity and surface area of the storage ponds named in the Application as Mountain Front Ranch Pond No. 1 and Mountain Front Ranch Pond No. 2. The correct amounts are as follows: **13. Amount/total capacity in acre-feet:** a. Mountain Front Ranch Pond No. 1: 1.0 acre-foot, with right to fill and re-fill when in priority, absolute. b. Mountain Front Ranch Pond No. 2: 2.96 acre-feet, with right to fill and re-fill when in priority, absolute. **14. Surface area of high water line:** b. Mountain Front Ranch Pond No. 2: 0.76 acres. Except as herein amended, the Original Application filed on May 30, 2013, as amended by the First Amended Application dated August 30, 2013, remain unchanged. All statements of opposition heretofore filed shall be deemed applicable to this Second Amended Application without the need to file additional or supplemental statements of opposition and all issues concerning relation back to the original application are preserved for trial. The ponds are located in Section 27, T19S, R70W, 6th P.M.

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**CASE NO. 2014CW10 – Application of MATTHEW GEISER.** The Water Judge did not order publication of this case in May 2014.

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**CASE NO. 2014CW11; Previous Case No. 2004CW108 – MARY HUND-SNYDER, 973 Clennin Road, Rye, CO 81069; (719) 489-2528**

Application to Make Absolute in Whole or in Part

**HUERFANO COUNTY**

**Name of structure:** Kouba Ditch. **Describe conditional water right:** **Date of original decree:** 10/10/2007; **Case No.:** 04CW108; **Court:** Water Division 2. **Legal description:** NW ¼ SE ¼ Section 18, Township 25 South, Range 67 West, 6<sup>th</sup> P.M., Huerfano County, Colorado, 2100 feet from south line and 2000 feet from east line of Section 18. **Source of water:** spring, ditch; [The ruling and decree entered in Case No. 04CW108 indicates source of water is spring draw tributary to Little Graneros Creek. **Appropriation Date** 10/10/2007 [Ruling and decree entered in Case 04CW108 indicates that the priority date is June 30, 1992]; **Amount:** 0.3 c.f.s. **Use:** Irrigation. **Provide a detailed outline of what has been toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed:** Underground water line was placed at diversion (1) to a hydrant for irrigation of top field; (2) underground pipeline continued to (3) to irrigate lower filed. 40 acres of land within the SE ¼ NE ¼ and the NE ¼ SE ¼ Section 18, Township 25 South, Range 67 West, 6<sup>th</sup> P.M., Huerfano County, Colorado. **If claim to make absolute:** **Date water applied to beneficial use:** 10/10/2007; **Amount:** 0.3 c.f.s. **Use:** irrigation. Diversion records are attached to the Application and are available for inspection at the Office of the Clerk of this court. **Description of place of use where water is applied to beneficial use:** 40 acres within the SE ¼ NE ¼ and the NE ¼ SE ¼ Section 18, Township 25 South, Range 67 West, 6<sup>th</sup> P.M., Huerfano County, Colorado. **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:** N/A.

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**CASE NO. 2014CW3024 – RESURRECTION MINING COMPANY, Attn: Larry Fiske 6363 S. Fiddler's Green Circle, Suite 800, Greenwood Village, Colorado 80111**

(Please direct all correspondence and pleadings to: James S. Witwer and April H. Killcreas, Trout, Raley, Montañó, Witwer and Freeman, P.C., 1120 Lincoln Street, Suite 1600, Denver, Colorado 80203, Telephone: 303-861-1963, Fax: 303-832-4465, jwitwer@troutlaw.com; akillcreas@troutlaw.com).

Application For Approval Of Plan For Augmentation, Including Appropriative Right Of Exchange, And For Absolute Surface Water Right

**LAKE COUNTY**

**Introduction:** Applicant, Resurrection Mining Company (“Resurrection”), is a mining company which presently operates a water treatment facility in Lake County, Colorado, pursuant to a Final Consent Decree issued in *State of Colorado v. ASARCO Incorporated, et al.*, Civ. Action No. 83-C-2388 (D.Colo. 2008) and *United States v. Apache Energy and Minerals, et al.*, Civ. Action No. 86-C-1675 (D.Colo. 2008) (“Consent Decree”). Resurrection’s treatment facility, known as the Yak Tunnel Water Treatment Plant, is located in California Gulch, which is less than one mile southeast of

Leadville, Colorado. From 2006-2013, total out-of-priority depletions to that gulch and associated with the plant ranged from approximately 3.0 to 7.7 acre-feet per year. This application seeks approval of a permanent plan for augmentation to replace such depletions using water available under shares of stock in Twin Lakes Reservoir and Canal Company (“Twin Lakes”), together with a related appropriative right of exchange.

**Application for Approval of Appropriative Right of Exchange: A. Description of**

**Appropriative Right of Exchange:** Pursuant to the augmentation plan for which Resurrection seeks approval herein, water available under Resurrection’s Twin Lakes shares will be released from Twin Lakes Reservoir and delivered to the confluence of Lake Creek and the Arkansas River, located as more particularly described below. Because the points of depletion for Resurrection’s water uses are located on California Gulch and other water sources located upstream of the Lake Creek-Arkansas River confluence, Resurrection seeks the right to divert water available under Resurrection’s Twin Lakes Rights by exchange at such points of depletion. **B. Legal Description of Exchange Reaches:** **1. Exchange-From Point (downstream point of exchange):**

a. **Confluence of the Twin Lakes Reservoir and Lake Creek:** The Twin Lakes Reservoir is located in all or portions of Sec. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30, all in Township 11 South, Range 80 West of the 6th P.M., Lake County, Colorado, on Lake Creek, tributary to the Arkansas River. Water released from the Twin Lakes Reservoir will be carried in Lake Creek to its confluence with the Arkansas River, located in the NE 1/4 SE 1/4 of Section 24, Township 11 South, Range 80 West, 6th P.M., Lake County. **2. Exchange-To Points (upstream points of exchange):**

a. **Yak Tunnel Portal:** The Yak Tunnel Portal is presently located in the Northwest ¼ of the Southwest ¼ of Section 30, Township 9 South, Range 79 West, 6th P.M., Lake County. The UTM Coordinates for the Yak Tunnel Portal are 4343728 northing, 390339 easting, in Zone 13N. b. **Yak Surge Pond:** ASARCO constructed the Yak Tunnel Water Treatment Plant Surge Pond (the “Yak Surge Pond”) in 1989 as a temporary storage location adjacent to its treatment plant, described below. The Yak Surge Pond is located in the North ½ of Section 25, Township 9 South, Range 80 West, 6th P.M., Lake County. The UTM Coordinates for the Yak Surge Pond are 4344116 northing, 389274 easting, in Zone 13N. c. **Oregon Gulch Seepage Collection System:** Water collected from the Oregon Gulch Seepage Collection System is held in storage tanks in Oregon Gulch and is pumped into the Yak Surge Pond multiple times per day. This system is located in the Northeast ¼ of the Southwest ¼ of Section 25, Township 9 South, Range 80 West, 6th P.M., Lake County. The UTM Coordinates for the Oregon Gulch Seepage Collection System are 4344003 northing, 389190 easting, in Zone 13N. d. **Hillside Spring:** The Hillside Spring is located on the hillside adjacent to the Yak Treatment Plant described below. Water from the Hillside Spring is sent directly to the Yak Surge Pond before being pumped into the plant to be treated and delivered to California Gulch. The Hillside Spring is located in the Northwest ¼ of the Southeast ¼ of Section 25, Township 9 South, Range 80 West, 6th P.M., Lake County. The UTM Coordinates for the Hillside Spring are 4343911 northing, 389414 easting, in Zone 13N. e. **Yak Tunnel Water Treatment Plant:** To treat the water held in the Yak Surge Pond, ASARCO constructed the Yak Tunnel Water Treatment Plant (“Yak Treatment Plant”) in 1992, downstream of the Yak Tunnel on California Gulch. The Yak Treatment Plant is located in the Northeast ¼ of the Southwest ¼ of Section 25, Township 9 South, Range 80 West, 6th

P.M, Lake County. The UTM Coordinates for the Treatment Plant are 4343812 northing, 389424 easting, in Zone 13N. A map of the points of exchange 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 exchange reaches are further described in the matrix attached to the Application as Exhibit B. **C. Source of Water Diverted By Exchange:** The source of water to be diverted by exchange is water available to Resurrection pursuant to its Twin Lakes shares, as described more fully below: Water rights represented by ten (10) shares of stock in Twin Lakes and evidenced by Twin Lakes Stock Certificate No. 8735; Water rights represented by two (2) shares of stock in Twin Lakes and evidenced by Twin Lakes Stock Certificate No. 8741; Water rights represented by two (2) shares of stock in Twin Lakes and evidenced by Twin Lakes Stock Certificate No. 8742; Water rights represented by two (2) shares of stock in Twin Lakes and evidenced by Twin Lakes Stock Certificate No. 8743; Water rights represented by two (2) shares of stock in Twin Lakes and evidenced by Twin Lakes Stock Certificate No. 8744; Water rights represented by two (2) shares of stock in Twin Lakes and evidenced by Twin Lakes Stock Certificate No. 8745; Water rights represented by two (2) shares of stock in Twin Lakes and evidenced by Twin Lakes Stock Certificate No. 8746; and Water rights represented by any additional shares of stock in Twin Lakes that Resurrection may acquire or lease in the future. Such water rights described above are hereinafter referred to as “Resurrection’s Twin Lakes Rights.” Resurrection’s Twin Lakes Rights currently consist of 22 shares of Twin Lakes stock. Resurrection has included the twelve shares represented by Twin Lakes Stock Certificates No. 8741, 8742, 8743, 8744, 8745, and 8746, on a provisional basis. Nothing contained in this Application shall preclude Resurrection from either removing these twelve shares from the Application or from otherwise obtaining water from these shares for other originally decreed uses without application of additional terms and conditions for the additional uses of Resurrection’s Twin Lakes Rights which may be decreed herein. Each share of Twin Lakes stock represents a proportionate interest in native Arkansas River diversions and the Independence Pass Transmountain Diversion System, which system diverts water from the headwaters of the Roaring Fork River and its tributaries (which are tributary to the Colorado River) in Pitkin County, Colorado, for direct flow and storage in the Twin Lakes Reservoirs (which release water to the Arkansas River) in southern Lake County, Colorado. The water associated with Twin Lakes Shares is available for one hundred percent consumptive use and reuse, including augmentation purposes. The water rights producing the *pro rata* interest owned by Resurrection are described as follows: 1. Colorado River Water Rights (Independence Pass Transmountain Diversion System): i. Decree: a. Case No. 3082, District Court, Garfield County, Colorado August 25, 1936. b. Modified, Case No. W-1901, District Court, Water Division 5, May 12, 1976. ii. Appropriation Date/Priority: a. Date: August 23, 1930. b. Priority: No. 431. iii. Source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Division 5, as more fully set forth in the above referenced decrees. iv. Legal Description: This diversion system consists of collection ditches, tunnels, and flumes in Pitkin County, Colorado, on the Roaring Fork River and its tributaries. Water collected in these systems enters the Independence Pass Transmountain Diversion System Tunnel No. 1 and is carried to the eastern slope and discharged into Lake Creek, from which it enters Twin Lakes



Reservoir, whose legal description is described below in Paragraph III(C)(2)(vi). Tunnel No. 1 is located in the NW 1/4 of Section 24, Township 11 South, Range 83 West of the 6th P.M. v. **Use:** Direct flow and storage purposes, for irrigation, domestic, commercial, industrial, municipal, and all beneficial uses at any site that is capable of being served by deliveries from either the discharge portal of Tunnel No. 1 into Lake Creek or from storage in Twin Lakes Reservoir. Water from this system may be used, reused, and successively used and disposed of after use. vi. **Amount:** Direct flow amount for diversion through transmountain tunnels of 625 cfs with an annual limit of 68,000 acre-feet, a running ten year limit of 570,000 acre-feet, and other limitations set forth in the Decrees. 2. **Arkansas River Water Rights (Twin Lakes Reservoir and Twin Lakes Reservoir Enlargement):** i. **Decree:** a. Original Decree, Case No. 2346, District Court, Chaffee County, Colorado, July 14, 1913. b. Modified, Case No. W-3965, District Court, Water Division 2, April 19, 1974. ii. **Appropriation Dates/Priorities:** a. Twin Lakes Reservoir Priority No. 3. i. Date: December 15, 1896. ii. Priority: No. 3: a. Twin Lakes Reservoir Priority No. 4. i. Date: March 25, 1897. ii. Priority: No. 4. iii. **Source:** Lake Creek and its tributaries tributary to the Arkansas River. iv. **Use:** Storage for irrigation, domestic, commercial, industrial, and municipal purposes on any site in the Arkansas River Basin of Colorado below the Twin Lakes Reservoir which are capable of being served water by diversion from said Arkansas River. v. **Amount:** 54,452 acre-feet. a. Twin Lakes Reservoir Priority No. 3: 20,645.3 acre-feet; b. Twin Lakes Reservoir Priority No. 4: 33,806.7 acre-feet. vi. **Location of Dam and Reservoir (point of diversion for Arkansas River Water Rights and place of storage for those water rights and for the transmountain water rights described above in Paragraph III(C)(1)(i)-(vi):** In all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 30, all in Township 11 South, Range 80 West of the 6th P.M., in Lake County, Colorado, on Lake Creek, tributary to the Arkansas River. The Twin Lakes Dam axis and centerline of Lake Creek intersect at a point whence the SE corner of Section 23, Township 11 South, Range 80 West, of the 6th P.M. bears South 54°13'8" East, a distance of 3808.10 feet, as more particularly described in the decree in Civil Action No. 5141, District Court, Chaffee County, Colorado. vii. **Capacity of Reservoir:** 54,452 acre-feet. **D. Appropriation Date:** On or before July 18, 1989. Pursuant to C.R.S. § 37-92-305(10), Resurrection claims recognition and preservation of the original priority date of this existing exchange. **E. How Appropriation was Initiated:** Formation of intent and taking overt acts that constituted the first step toward diversion and application of the claimed appropriative right of exchange to a beneficial use. Such acts included ASARCO's lease of 35 shares of Twin Lakes stock and written request for approval of a temporary substitute supply plan for the initial fill of the Yak Surge Pond and evaporation associated therewith. **F. Amount:** 1.0 cubic feet per second (cfs), absolute. **G. Uses:** Augmentation and replacement purposes, by direct flow or via storage in and/or subsequent release from storage from the Yak Surge Pond, and mining reclamation and remediation associated with operation of the Yak Treatment Plant and related facilities. **Application for Plan for Augmentation: A. Overview:** Resurrection seeks approval of a plan for augmentation to replace out-of-priority depletions resulting from the continued operation of its Yak Water Treatment Plant and related facilities. On June 1, 1956, Resurrection entered into a joint venture agreement with American Smelting and Refining Company Inc. ("ASARCO") to develop mining

properties near Leadville. In 1989, ASARCO constructed the Yak Surge Pond to help manage mine drainage from the Yak Tunnel. That same year, pursuant to a substitute water supply plan approved by the Colorado Division of Water Resources (“CDWR”), ASARCO first began replacing out-of-priority depletions associated with the Yak Surge Pond, and eventually related depletions associated with the Yak Treatment Plant. These replacements initially relied on water rights represented by Twin Lakes shares that ASARCO leased for that purpose. In December 1994, ASARCO purchased ten shares of stock in Twin Lakes and began relying on these purchased shares as the basis for future annual replacements of out-of-priority depletions. Since 1989, ASARCO and/or Resurrection has made water available to CDWR under Twin Lakes shares to replace out-of-priority depletions related to the operation of the Yak Water Treatment Plant and the Surge Pond. However, replacement of such out-of-priority depletions via releases of water under Twin Lakes shares has sometimes occurred in years during which no substitute water supply plan has been submitted to, or formally approved by, the CDWR. Following ASARCO’s bankruptcy in 2005, Resurrection assumed title to the Yak Treatment Plant, Yak Surge Pond, and the ten Twin Lakes shares then used as a replacement water supply for out-of-priority depletions. Since the joint venture between ASARCO and Resurrection terminated in 2008, Resurrection’s previously purchased Twin Lakes shares have continued to serve as the replacement supply for out-of-priority depletions associated with the Yak Water Treatment Plant and the Surge Pond. The CDWR approved Resurrection’s most recent Substitute Water Supply Plan, for the period of June 15, 2013 through June 14, 2014, on July 8, 2013. Concurrent with the submission of this Application, Resurrection has submitted its request for renewal of this Substitute Water Supply Plan. By this Application, Resurrection seeks approval of a permanent plan to augment out-of-priority depletions associated with the operation of the Yak Surge Pond, Yak Treatment Plant, and related structures through the use of water rights represented by shares of Twin Lakes stock. To support this plan for augmentation, Resurrection also seeks approval of an appropriative right of exchange of water available under such shares from their present points of delivery up to the several points of diversion associated with the plan.

**B. Name and Description of Structures to be Augmented:**

1. Yak Tunnel Portal, as described above in Paragraph III(B)(2)(a). The Yak Tunnel historically delivered water to California Gulch, but water from the tunnel now flows into the Yak Treatment Plant and/or the Yak Surge Pond for treatment prior to its delivery into the Gulch. No depletions from this structure occur prior to the water being delivered to the Yak Treatment Plant or the Yak Surge Pond.
2. Yak Surge Pond, as described above in Paragraph III(B)(2)(b). Water sent to the Yak Treatment Plant may temporarily be held in the Yak Surge Pond prior to its treatment and eventual release into California Gulch. Net out-of-priority depletions from precipitation capture and evaporative loss from the Yak Surge Pond will be augmented under this plan.
3. Oregon Gulch Seepage Collection System, as described above in Paragraph III(B)(2)(c). No depletions from this structure occur prior to the water being delivered to the Yak Surge Pond.
4. Hillside Spring, as described above in Paragraph III(B)(2)(d). No depletions from this structure occur prior to the water being delivered to the Yak Surge Pond.
5. Yak Treatment Plant, as described above in Paragraph III(B)(2)(e). Depletions from the Yak Treatment Plant include minor evaporation from free-water surfaces in tanks located within the plant and water in the treatment residuals

transported away from the plant. The Yak Treatment Plant also currently treats water delivered via two decreed alternate points of diversion for the Iowa Gulch branch of the Blow Ditch (Blow Ditch). Diversion and treatment of such water under such priority is authorized under the decrees entered in Case Nos. 89CW043 and 1856, and is not the subject of this application. **C. Water Rights to be Used for Augmentation:** Resurrection's Twin Lakes Rights will provide the source of augmentation water. These Rights are more particularly described in Paragraph III(C). Numerous prior decrees approving the use of Twin Lakes shares in plans for augmentation have found the firm yield for such each such share to be 0.78 acre-foot per year. **D. Statement of Plan for Augmentation:** As described elsewhere in this application, Resurrection will augment out-of-priority depletions associated with operation of the Yak Treatment Plant and related structures described herein in amount, time and location. This plan for augmentation includes an appropriative right of exchange to facilitate the use of Resurrection's Twin Lakes Rights hereunder. **E. Name and Address of Owner or Reputed Owner of the Land Upon Which Any New or Existing Diversion or Storage Structure is Located:** All structures and points of diversion are located upon land owned and maintained by Resurrection Mining Company. **Application for Absolute Surface Water Right:** **A. Name of Structure:** Hillside Spring. **B. Legal Description:** As described above in Paragraph III(B)(2)(d), the Hillside Spring is located on the hillside adjacent to the Yak Treatment Plant, in the Northwest ¼ of the Southeast ¼ of Section 25, Township 9 South, Range 80 West, 6th P.M, Lake County. The UTM Coordinates for the Hillside Spring are 4343911 northing, 389414 easting, in Zone 13N. **C. Source:** Water tributary to California Gulch that historically discharged from a spring, later developed for mining reclamation and remediation purposes, consistent with C.R.S. § 37-90-103(21)(b), which provides: "Well" does not include a naturally flowing spring or springs where the natural spring discharge is captured or concentrated by installation of a near-surface structure or device less than ten feet in depth located at or within fifty feet of the spring or springs' natural discharge point and the water is conveyed directly by gravity flow or into a separate sump or storage, if the owner obtains a water right for such structure or device as a spring pursuant to article 92 of this title [the Water Right Determination and Administration Act of 1969]. **D. Date of Appropriation:** On or before July 18, 1989. **E. How Appropriation was Initiated:** Formation of intent and taking overt acts that constituted the first step toward diversion and application of the claimed water right to a beneficial use. Such acts included ASARCO's lease of 35 shares of Twin Lakes stock and written request for approval of a temporary substitute supply plan for the initial fill of the Yak Surge Pond and evaporation associated therewith. **F. Amount:** 350 gallons per minute (gpm), absolute. **G. Uses:** Mining reclamation and remediation. **H. Name and Address of Owner or Reputed Owner of the Land Upon Which Any New or Existing Diversion or Storage Structure is Located:** All structures and points of diversion are located upon land owned and maintained by Resurrection Mining Company. WHEREFORE, Applicant, Resurrection Mining Company, requests that this Court enter a judgment and decree which provides as follows: (1) Approves and confirms the Application for Appropriative Right of Exchange as described in Section III above; (2) Approves the Application for Plan for Augmentation as described in Section IV above; (3) Approves the Application for Absolute Surface Water Right as described in Section V above; and

(4) Finds that, as a result of Resurrection's applications, there will be no injury to any owner of, or person entitled to use water under, any vested or decreed conditional water right.

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**CASE NO. 2014CW3025 – JOHN A. PINELL, JR. (1/6 interest), 2400 Virgo Drive, Colorado Springs, CO 80906-1048; CHARLES J. PINELL (1/6 interest), 1355 Chartwell View, Colorado Springs, CO 80906-6716; and JOHN T. and SHIRLEY J. BICKETT (1/6 interest), 1932 Hills Court, Colorado Springs, CO 80906-3241** (Direct all pleadings and correspondence to: Linda McMillan, BuxmanKwitek, P.C., Attorneys for Applicants, 601 N. Main Street, Suite 200, Pueblo, CO 81003; (719) 544-5081  
Application for Change of Water Right

**FREMONT COUNTY**

**Decreed water right for which change is sought: Name of structure:** Renfrow Well #1; **Date of original and all relevant subsequent decrees:** 3/15/1974; **Case No.:** W-2768; **Court:** Water Div. 2. **Legal description of structure as described in most recent decree that adjudicated the location:** SE ¼ SW ¼ of Sec. 4, T. 19 S., R 70 W. of the 6<sup>th</sup> P.M., in Fremont County, Colorado, 1700 feet East of the West line of and 1000 feet north of the South line of said Section 4. **Decreed source of water:** none noted. **Appropriation Date:** December 12, 1952; **Total amount decreed to structure:** 2000 gpm Absolute; **Decreed use:** Irrigation. **Amount of water Applicants intend to change:** 1000 gpm Absolute. **Name of Structure:** Renfrow Well #2. **Date of original and all relevant subsequent decrees:** 3/15/1974; **Case No.:** W-2768; **Court:** Water Div. 2. **Legal description of structure as described in most recent decree that adjudicated the location:** NW ¼ NE ¼ of Sec. 9, T. 19 S., R 70 W. of the 6<sup>th</sup> P.M., in Fremont County, Colorado, 2100 feet West of the East line of and 200 feet South of the North line of said Section 9. **Decreed source of water:** None noted. **Appropriation Date:** November 1, 1956; **Total amount decreed to structure:** 1200 gpm Absolute; **Decreed use:** Irrigation. **Amount of water Applicants intend to change:** 600 gpm Absolute. **Detailed description of proposed change:** Applicant wishes to change this right from tributary to non-tributary (see reports of hydrologist and geologist attached to the application). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court. Applicant also desires to change the use to include domestic. **Location Information in UTM format (UTM coordinates; Zone 13; NAD83): Renfrow Well #1:** Northing 4252473 N; Easting 479487 E. **Renfrow Well No. 2:** Northing 4252146 N; Easting 480380 E. **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:** Rocky Mountain Equestrian Center, P. O. Box 1702, Colorado Springs, CO 80901-1702.

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**CASE NO. 2014CW3026 – INTIVA REAL ESTATE – COLORADO, LLC, Attn: Josh Greenberg, 3773 S. Cherry Creek Drive, Suite 575, Denver, CO 80209** (Henry D.

Worley, Worley Law Firm, LLC, Attorney for Applicant, 611 North Weber Street, Suite 104, Colorado Springs, CO 80903; (719) 634-8330)

Application for Nontributary Ground Water

**PUEBLO COUNTY**

**2. Well information.** The well is unnamed. Its permit no. is 138227. It is located in the NW1/4 NW1/4 Section 14, T. 22 S., R. 63 W., 6<sup>th</sup> P.M., 1200 feet from the north section line and 700 feet from the west section line. The address of the property upon which the well is located is 3998 40<sup>th</sup> Lane, Avondale, CO 81022. The well is currently permitted as an exempt well for domestic and livestock uses, and therefore does not need to be, and is not, augmented. The well is 1300 feet deep. The aquifer into which it is constructed is unknown to Applicant. **3. Nontributary status.** Based on a statement in the SEO file for this well and on the statement of an unidentified employee of the Division of Water Resources in Pueblo, Applicant claims that the well is nontributary. **4. Amount claimed:** 15 gpm, 1.5 acre foot annually, absolute. Pursuant to the holding in *East Cherry Creek Valley Water and Sanitation District v. Rangeview Metropolitan District*, 105 P.3d 154 (Colo. 2005) that the anti-speculation doctrine does not apply to nontributary water rights outside of designated basins, Applicant claims approval for all beneficial uses other than augmentation and municipal uses. If the Court determines that the East Cherry Creek Valley case applies to nontributary Denver Basin water but not to other nontributary water, then Applicant claims 1.5 acre feet annually absolute for domestic and livestock use, and claims 1.5 acre feet annually (but for a total of only 1.5 acre feet, not a cumulative total of 3.0 acre feet) conditional for commercial uses (greenhouse and associated processing and office facilities).

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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 July 2014, (forms available at Clerk's office or at [www.courts.state.co.us](http://www.courts.state.co.us), must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

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Witness my hand and the seal of this Court this 13th day of June, 2014.



*Mardell R. DiDomenico*

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Mardell R. DiDomenico, Clerk  
District Court, Water Div. 2  
Pueblo County Judicial Building  
320 W. 10th Street  
Pueblo, CO 81003; (719) 583-7048

(Court seal)  
Published: June \_\_\_\_\_, 2014