

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING MAY 2014

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:

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; 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.

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

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, 6th 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 field. 40 acres of land within the SE ¼ NE ¼ and the NE ¼ SE ¼ Section 18, Township 25 South, Range 67 West, 6th 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, 6th 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.

**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 1/4 of the Southwest 1/4 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 1/2 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 1/4 of the Southwest 1/4 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 1/4 of the Southeast 1/4 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 1/4 of the Southwest 1/4 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 appropriate 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.

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 6th 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 6th 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.

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., 6th 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 40th 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).

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, 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.

Witness my hand and the seal of this Court this 4th day of June, 2014.



Mardell R. DiDomenico

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