

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING MAY 2020

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during May 2020, 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. 2019CW3062 – RANCH LAND DEVELOPMENT LLC, c/o William H. Peetz, 3925 Hill Circle Drive, Colorado Springs, CO 80904 (Please address all correspondence and inquiries regarding this matter to Applicant's attorneys: Paul L. Noto, Esq. and Jason M. Groves, Esq., Patrick, Miller & Noto, P.C., 197 Prospector Road, Ste. 2104A, Aspen, CO 81611, (970) 920-1030)

Amended Application for Surface Water Right, Underground Water Rights, Appropriative Right of Exchange, and for Approval of a Plan for Augmentation.

PUEBLO AND FREMONT COUNTIES

Summary of Amendments to Application: Applicant replaces claims for the Clevenger Well Field with two specific well locations within original well field. Amounts, uses, and point of depletion for the wells remain the same. **First and Third Claims:** No changes. See original application filed on September 30, 2019. **Second Claim:** Ranch Land Development Well No. 1 and Ranch Land Development Well No. 2. Legal Description: (Well 1) NE ¼ NW ¼ of Section 1, Township 21 South, Range 68 West of the 6th P.M., approximately 665 feet from the north section line and 2,230 feet from the west section line in Pueblo County, Colorado. UTM (NAD Zone 13) coordinates: Easting 504374.53, Northing 4234263.70; (Well 2) NE ¼ NW ¼ of Section 1, Township 21 South, Range 68 West of the 6th P.M., approximately 470 feet from the north section line and 2,070 feet from the west section line in Pueblo County, Colorado. UTM (NAD Zone 13) coordinates: Easting 504325.90, Northing 4234325.32. Source: Ground water tributary to Arkansas River. Date of Appropriation: September 30, 2019 by forming the intent to appropriate and taking the first step towards completing the appropriation, completing fieldwork at the well field, and by filing the application in this case. Amount: 0.11 c.f.s. (50 g.p.m.), 10 acre-feet annually combined with First Claim, conditional. Uses: Domestic, industrial, commercial, storage, fire protection (8 greenhouses and 2 support buildings, drinking and sanitary uses for up to 12 employees), and irrigation (50 acres outdoor drip irrigation and indoor irrigation in up to 8 greenhouses and 2 support buildings). Ranch Land Development Well Nos. 1 and 2 are alternate points of diversion for each other. **Fourth Claim (Plan for Augmentation):** Structures to be augmented: Clevenger Red Creek Spring, First Enlargement (described in First Claim) and Ranch Land Development Well No. 1 and Ranch Land Development Well No. 2 (described in Second Claim). Water rights used for augmentation: Pueblo Contract for 10 acre-feet of augmentation water by contract dated November 24, 2015. The Contract term: November 24, 2015 to November 24, 2035. Source: unspecified but may include Clear Creek Reservoir (located in Sec. 7 and 8, T.12S., R.79W., and Sec. 12, T.12S., R.80W., 6th P. M. in Chaffee County),

Turquoise Reservoir (located on Lake Fork Creek in Sec. 7, 8, 17, 18, 19, and 20, T.9S., R.80W., 6th P. M. and Sec. 10, 11, 12, 13, 14, and 15, T.9S., R.81W., 6th P. M., in Lake County), Twin Lakes Reservoir (located in all or portions of Sec. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in T. 11S., R.81W., 6th P. M., in Lake County), direct flow transmountain water or any other reservoir or place from which Pueblo Water may deliver water, as long as they are legally available for augmentation purposes. Sources of such water may include water rights decreed in Case Nos. 84CW177, Div. 2; 84CW177(B), Div. 2; 90CW370, Div. 5; W-1901, Div. 5; 95CW321, Div. 5; 90CW55, Div. 2; 04CW130, Div. 2. Statement of plan for augmentation: Applicant owns property shown on Exhibit A map 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.) and operates a licensed cannabis growing facility on property in in Section 1, Township 21 South, Range 68 West of the 6th P.M. in Pueblo County, Colorado. Applicant requests an augmentation plan to replace out-of-priority depletions from the augmented structures for indoor and outdoor water uses, using the augmentation sources described in the Application. Demands: Estimated to be 9.46 acre-feet (for 735 plants per greenhouse, 835 plants per support building, 50 acres outside irrigation for 3,200 plants, drinking and sanitary uses for up to 12 employees) as shown on Exhibit B. Spring depletions and return flows: All diversions considered 100 percent consumptive. Depletions will impact the stream within the same month depletions occur. Applicant will replace out-of-priority depletions within the same month depletions occur. Well depletions and replacement: When there is a call affecting the depletion point on the Arkansas River, daily net out-of-priority depletions shall be replaced at or above depletion point at Dakota Formation outcrop downstream of Pueblo Reservoir. See Exhibit D on file with the court. See Exhibit B for URF calculations. Replacement and Accounting: No downstream water rights on Red Creek between Clevenger Red Creek Spring and Confluence with Arkansas River, except for a spring right owned by Applicant. During a downstream call on Arkansas River below the confluence with Red Creek, Applicant will use Pueblo Contract water to replace out-of-priority depletions. Replacement water will be delivered to a point on the Arkansas River upstream of the confluence with Red Creek in Section 8, Township 20 South, Range 67 West of the 6th P.M. Applicant will account for transit losses from the point of release to the point of delivery as required by the Division Engineer. A map of water rights and place of use is on file with the court as Exhibit A. A copy of the Pueblo Contract is on file with the court as Exhibit C. Applicants own the land where water rights are located and where water is or will be put to beneficial use.

CASE NO. 2020CW3020 – ANGELVIEW LLC, a TEXAS LIMITED LIABILITY COMPANY, 5585 Hwy 82 Twin Lakes, CO 81251 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Alan G. Hill, and Ashley N. Pollock, Hill & Pollock, LLC, 1528 Wazee Street, Denver CO 80202, (303) 993-4452)

Amended Application for Conditional Underground water rights and for Approval of Plan for Augmentation

LAKE COUNTY

Applicant is an entity formed or registered under the law of Texas and has complied with all applicable requirements of the State of Colorado and is in good standing with the office of the Colorado Secretary of State. Applicant seeks conditional underground water rights

for nineteen (19) tributary wells to be located with property located in Section 18, Township 11 South, Range 80 West of the 6th P.M., in Lake County, Colorado (“AngelView Property”). See Exhibit A attached to the application, a map depicting the AngelView Property and the legal description is attached as Exhibit B to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). No part of the AngelView Property lies within a designated groundwater basin. The wells for which conditional underground water rights are sought herein will be used to provide water to residential lots, for domestic use, including, but not by way of limitation, inhouse use, lawn irrigation, stock watering, fire protection, and sanitary purposes. In addition, wells may be used for certain commercial purposes, including a community center, church, and emergency services. Applicant also seeks, in this application, approval of a plan for augmentation to augment the depletions associated with operation of the tributary wells located on the AngelView Property. The augmentation plan will augment net out-of-priority depletions associated with the well pumping, net of septic return flows and lawn grass irrigation return flows. The Water Court has jurisdiction over this application. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located within the AngelView Property. **FIRST CLAIM FOR RELIEF Conditional Underground Water Rights** Applicant seeks conditional underground water rights for each of 19 tributary wells to be located within the AngelView Property, each with a maximum pumping rate of 15 gallons per minute, for domestic or commercial purposes, including inhouse use, indoor use, lawn irrigation, stock watering, fire protection, and sanitary purposes. Applicant anticipates 17 residential lots, and three commercial use areas. The appropriation date claimed for each well is April 30, 2020, the date of the original application. Water has not yet been applied to beneficial use. The source of water is groundwater from Bartlett Gulch, tributary to Lake Creek via Twin Lakes, tributary to the Arkansas River and/or Lake Creek via Twin Lakes, tributary to the Arkansas River. The AngelView Property is approximately 70 acres on a tract of land in SE ¼ of Section 18, Township 11 South, Range 80 West of the 6th P.M. and is identified in the property records of Lake County Assessor as Parcel 2901-180-00-004. It bears the situs address of 5585 Highway 82, Twin Lakes, CO 80251. Records also include a variation of the address: 5585 Highway 82, Leadville, CO 80461. Individual lots are not yet assigned street addresses, lot, or block numbers. For purposes of this Application, lot numbers as assigned by the Applicant and depicted on Exhibit C serve only to identify proposed well locations on the AngelView Property. Legal description of wells (location information in UTM format):

Exhibit B Lot ID	Zone 13	
	Easting	Northing
1	381369.71	4327761.41
2	381276.20	4327916.80
3	381249.39	4327825.35
4	381253.51	4327696.78
5	381170.32	4327669.28
6	381149.69	4327883.11
7	381107.06	4327826.04
8	381054.81	4327920.92

9	380931.05	4327894.11
10	381076.12	4327657.59
11	381166.19	4327503.58
12	381086.44	4327427.94
13	380927.61	4327574.39
14	380935.17	4327475.39
15	380954.42	4327348.88
16	380940.67	4327254.68
17	381014.93	4327327.56
18	381079.56	4327687.15
19	381111.20	4327523.40

NOTE: Lots 18 and 19 do not exist. They are used to provide a reference for the chapel and emergency services well locations in ArcGIS. Source of UTM's: ArcGIS mapping; Geographic Coordinate System: GCS North American 1983; Datum: D North American 1983; Prime Meridian: Greenwich. Accuracy: Not Applicable – well sites are determined via ArcGIS mapping. The accuracy of the location in the field will depend on the method used to locate the provided well sites. Applicant requests that the court enter a decree for the conditional underground water rights claimed. **SECOND CLAIM FOR RELIEF**

Approval of Plan for Augmentation Names of Structures to be Augmented: The Applicant has plans to develop the AngelView Property described in Exhibit B to include various sized separate tracts or lots, with 17 anticipated residential lots, and 2 anticipated commercial lots. A tributary well will be completed on each lot to serve the domestic and irrigation demands of that lot, and the commercial demands, as described and limited herein. Well permit applications have not been submitted at the time of this application for a plan for augmentation. Applicant has not determined the specific locations for all the wells required to withdraw groundwater from the tributary aquifer; however, each well will be constructed within the AngelView Property and each well will be designed so that it withdraws water from the tributary aquifer. Applicant requests the right to locate the wells required to withdraw the groundwater from the tributary aquifer at any point within the AngelView Property without the necessity of republishing or petitioning the Court for the reopening of any decree. Applicant owns the AngelView Property described herein.

Water Rights to Be Used for Augmentation: The source of augmentation water for Applicant's proposed augmentation plan is water derived from Applicant's ownership of two shares of Twin Lakes Reservoir and Canal Company stock. Each share of Twin Lakes stock represents a proportionate interest in Twin Lakes' native Arkansas River basin water rights and in Twin Lakes' Independence Pass Transmountain Diversion System water rights, which system diverts water from 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 Twin Lakes Reservoir. The water derived from Twin Lakes' Colorado River basin sources is legally available for one hundred percent consumptive use and reuse, including augmentation purposes. The Twin Lakes water rights are described as follows: **Colorado River Water Rights:** Decrees: Case No. 3082, District Court, Garfield County, Colorado August 25, 1936. Case No. W-1901, District Court, Water Division 5, May 12, 1976. Appropriation Date/Priority: August 23, 1930, Priority: No. 431 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. 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 conveyed to the Arkansas River basin and discharged into Lake Creek from which it enters Twin Lakes Reservoir. Tunnel No. 1 is located in the NW 1/4 of Section 24, Township 11 South, Range 83 West of the 6th P.M. The legal description of Twin Lakes Reservoir is described below in the Arkansas River Water Rights section. 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. 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. **Arkansas River Water Rights (Twin Lakes Reservoir) Decrees:** Case No. 2346, District Court, Chaffee County, Colorado, July 14, 1913. Case No. W-3965, District Court, Water Division 2, April 19, 1974. Appropriation Dates/Priorities: Twin Lakes Reservoir Priority No. 3, December 15, 1896 Twin Lakes Reservoir Priority No. 4, March 25, 1897 Source: Lake Creek and its tributaries tributary to the Arkansas River 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. Amount: 54,452 acre-feet Twin Lakes Reservoir Priority No.3: 20,645.3 acre-feet Twin Lakes Reservoir Priority No. 4: 33,806.7 acre-feet Location of Twin Lakes Dam and Reservoir: 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. Capacity of Reservoir: 54,452 acre-feet (Twin Lake's portion) Applicant seeks to use the Twin Lakes water rights originating from the Colorado River Basin for augmentation purposes in this application. Applicant reserves the right to make a future water court application for the purposes of quantifying the historical consumptive use associated with the Twin Lakes Arkansas River Water Rights represented by Applicant's two shares. Statement and Description of Plan for Augmentation: Applicant intends to measure and account for the pumping of the wells described herein, and to calculate the net out-of-priority depletions associated with that pumping (pumping less septic and lawn grass return flows). Twin Lakes water will augment the out-of-priority depletions at the time, in the amount and at the location required to prevent injury. Applicant seeks a determination by the court that the adequacy of replacements to Twin Lakes to augment well depletions may not be diminished or affected in any way by claims for future water rights filed after the date of this application. Use and Estimated Demand. The AngelView Property, depicted on Exhibit A, will be developed over time with residential homesites, and limited commercial buildings. The development will consist of approximately 17 home sites on

lots of varying acreages of land, each with its own tributary well and non-evaporative wastewater discharge (septic) system. Each lot will be limited, by restrictive covenant, to a specific area of lawn irrigation. In addition, certain commercial uses (community center, church and emergency services building) are contemplated. A preliminary engineering study indicates that full development of the property, employing standard in-house and lawn irrigation water use limitations, and standard commercial water use limitations for the commercial uses proposed, will have an annual demand of approximately 9 acre-feet per year. Total net depletions, after return flows, are calculated to be approximately 1.46 acre-feet per year. Augmentation and Replacement of Depletions. Stream Systems Affected: Bartlett Gulch, tributary to Lake Creek via Twin Lakes, tributary to the Arkansas River, and Lake Creek via Twin Lakes, tributary to the Arkansas River. Summary of Augmentation Plan. Applicant will dedicate the water rights associated with its two Twin Lakes shares (Colorado River) to the operation of the plan for augmentation. The consumptive use component associated with Applicant's two shares will be sufficient to augment all out-of-priority depletions from the pumping of Applicant's wells. Administration of Plan for Augmentation: The Applicant or any successor in interest shall install and maintain such measuring devices and maintain such accounting forms as necessary to demonstrate the adequacy of Applicant's augmentation efforts as a minimum requirement for administration of its augmentation obligations hereunder. Applicant shall make reports to the Division Engineer as required. Retained Jurisdiction: Applicant requests the Court to retain jurisdiction for a period to be determined after the entry of the decree to protect against injury to other water rights. Applicant requests that any party or entity invoking such retained jurisdiction must make a prima facie case that injury to its water rights has been actually caused by Applicant's withdrawals or operation of this plan for augmentation. Further, Applicant requests that the Court retain jurisdiction to resolve any controversy which may arise with respect to well construction, well location(s), and amount, timing, and location of replacements hereunder. WHEREFORE, Applicant prays for a decree adjudicating the conditional underground water rights described herein, and approving the plan for augmentation described herein; finding that the proposed plan for augmentation is contemplated by law and approving the plan; finding that the owners and users of vested water rights and conditional water rights will not be adversely affected by depletions from the underground water rights described herein if the proposed augmentation plan is operated under the terms and conditions of a decree entered herein; and for such further relief as the court deems proper.

CASE NO. 2020CW3021 – STATE ENGINEER AND WATER DIV 2 ENGINEER vs. JEFF DIETZ and REALMAD HOLDINGS & INVESTMENTS LLC – Verified Complaint for Injunctive Relief, Penalties, and Costs. This case is being listed in the resume to account for the case number in consecutive order.

CASE NO. 2020CW3022 – Previous Case No. 13CW3069; LYNNE A. BLYMIRE, 119 Mountain Drive, Andreas, PA 18211 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David M. Shohet, #36675, Emilie B. Polley, #51296, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, (719) 471-1212)
Application for Finding of Reasonable Diligence and to Make Absolute in Part

PUEBLO COUNTY

II. Name of Structures: Lynne's Ditch. **III. Description of Conditional Water Rights:**

A. Legal Description of Point of Diversion: The point of diversion is located in the Southwest 1/4 of Section 24, Township 24 South, Range 68 West of the 6th P.M., at a point located by G.P.S. at NAD 83, 13S-0504053 East, 13S-4199116 North. B. Source: Fischer Canon Creek, a tributary of Muddy Creek, a tributary of Greenhorn Creek, a tributary of the St. Charles River. C. Date of Initiation of Appropriation: November 1, 2009. D. Amount Decreed: 0.5 c.f.s, conditional. E. Use: Irrigation of approximately 20 acres, stock watering. A map is attached as Exhibit A showing the decreed irrigated acreage. F. Decree: Case No. 13CW3069, Water Court Division 2, decreed on May 20, 2014. **IV.**

Detailed Outline of Diligence: During this diligence period, the Applicant has outlaid the following expenditures or completed the following work related to Lynne's Ditch: A. Excavation, pipeline, and material costs to create the ditch of over \$585.00; B. Maintenance of the ditch, including annual dredging, cleaning, and digging for efficiency; C. Rental and use of heavy machinery for maintenance work plus related fuel costs; D. Legal costs and fees associated with Case No. 14CW3032, and subsequent quiet title action in Pueblo County District Court Case No. 16CV30483. **V. Claim to Make Absolute in Part:**

In light of the continuous diversion and application of water to beneficial use described in Section IV above, the Applicant seeks to make absolute a portion of the conditional water rights decreed in Case No. 13CW3069, as stated below: A. Date Water Applied to Beneficial Use: June 30, 2018. B. Amount: 50 g.p.m. C. Use: Irrigation, stock watering. D. Description of Place of Use Where Water is Applied to Beneficial Use. Applicant's property, located in the Southwest 1/4 of Section 24, Township 24 South, Range 68 West of the 6th P.M., Pueblo County, Colorado. **VI. Name and address of the owners of land on which structure is located:** Lynne's Ditch is located upon the land owned by the Applicant and use of Lynne's Ditch is upon Applicant's property. **See Exhibit A** attached to the application a map showing the Applicant's property and Applicant's irrigated acreage. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.).

CASE NO. 2020CW3023 – Previous Case Nos.12CW117, 05CW85, 93CW22, 85CW114; PUBLIC SERVICE COMPANY OF COLORAD, A COLORADO CORPORATION, 1800 Larimer Street, Suite 1300, Denver, CO 80202 (Please address

all pleadings and inquiries regarding this matter to Applicant's attorneys: Carolyn F. Burr, James M. Noble, Jens Jensen, WELBORN SULLIVAN MECK & TOOLEY, P.C., 1125 – 17th Street, Suite 2200, Denver, Colorado 80202, Telephone: (303) 830-2500)

Application for Finding of Reasonable Diligence for a Conditional Water Right

BENT COUNTY.

2. Name of Structure: Southeast Plant Reservoir. This application relates to the conditional water right decreed in Case No. 85CW114 for the Southeast Plant Reservoir.

3. Description of Conditional Water Right: The Southeast Plant Reservoir Water Right was originally decreed on April 29, 1987 by the Division No. 2 Water Court in Case No. 85CW114. Previous diligence decrees have been entered for this conditional water right in Division 2 Case No. 93CW22 on November 15, 1999, in Division 2 Case No. 05CW85 on November 29, 2006, and in Division 2 Case No. 12CW117 on May 20, 2014. The decree entered in Case No. 12CW117 required that PSCo file an application for finding

of reasonable diligence on or before the last day of May 2020, so long as PSCo desires to maintain this conditionally decreed water right or until a determination has been made that this conditional water right has become absolute by reason of the completion of the appropriation. 3.1. Legal Description: The Southeast Plant Reservoir will be an off-stream reservoir located in part of Section 31, Township 23 South, Range 51 West, of the 6th P.M., and part of Section 6, Township 24 South, Range 51 West, of the 6th P.M., Bent County, Colorado. 3.2. Source of Water: The source for the Southeast Plant Reservoir will be the Arkansas River. Water diverted from the Arkansas River will be carried in and delivered by the Las Animas Consolidated Canal (“Consolidated”) and the Consolidated Extension Canal (“Extension”); however, the only water right involved in this diligence Application is a conditional storage right; the water rights represented by PSCo’s shares in the Consolidated and Extension Canals are not the subject of this Application, nor are PSCo’s tributary groundwater rights, even though such rights are listed as additional sources of water in the 85CW114 Decree. 3.3. Appropriation Date: December 19, 1979. 3.4. Amount: 20,000 acre feet, CONDITIONAL. 3.5. Decreed Use: Water stored in the Southeast Plant Reservoir shall be used for all industrial purposes associated with the generation of electrical energy, including, without limitation: power generation, cooling, evaporation replacement, domestic, potable domestic, piscatorial, dust suppression, irrigation of lawns, trees and gardens adjacent to facilities owned by PSCo. Water that has not been fully consumed by PSCo may be successively used and reused to extinction at the Southeast Plant only. **4. Evidence of Reasonable Diligence Towards Completing Appropriation**: The Southeast Plant Reservoir is an integral part of PSCo’s ability to meet power generation requirements in the future. Work on the facilities is necessary to put the subject waters to their decreed beneficial uses and has progressed in the most efficient and expedient fashion possible under the circumstances. The following items are representative of the accomplishments of PSCo in the development of a storage facility for the water rights described above during the diligence period: 4.1. PSCo constructed a spillway during the winter of 2015-16 between the diversion structure and measurement flume for the Las Animas Consolidated Canal, which will be used to divert water for the Southeast Plant Reservoir water right. PSCo obtained a construction loan with the other shareholders of the Las Animas Consolidated Canal from the CWCB for the approximately \$490,000 cost of the project. In 2016, PSCo paid off about \$380,000 on the loan for its approximately eighty percent share of the costs. 4.2. During the diligence period PSCo participated as an objector in numerous Division 2 water court cases in order to protect, among others, its Southeast Plant Reservoir water right. Some of these cases have concluded, and others are ongoing. Some of the cases in which PSCo has participated as an objector during the diligence period include 10CW4, 12CW94, 13CW19, 15CW3067, 16CW3021, 16CW3076, 16CW3093, 16CW3094, 16CW3103, 17CW3037, 17CW3050, 17CW3068, 18CW3076, 19CW3036, and 20CW3001. 4.3. PSCo paid approximately \$429,000 in assessments to the Las Animas Consolidated Canal and the Consolidated Extension Canal during the diligence period in proportion to its pro rata interest in these mutual ditch companies. These structures will be used to deliver water diverted from the Arkansas River to the Southeast Plant Reservoir. 4.4. PSCo has paid substantial property taxes to Bent County during the diligence period for the properties and water rights that are the subject of this application. **5. Names and Addresses of 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: The Southeast Plant Reservoir will be located on land owned by PSCo, with the address listed in paragraph 1 above. WHEREFORE, PSCo requests that the Court enter a decree finding that PSCo has satisfied the statutory standard of steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all facts and circumstances, and that reasonable diligence was performed during the diligence period in development of the Southeast Plant Reservoir storage right.

CASE NO. 2020CW3024 – SUGARLOAFIN’ LLC (formerly S & Z, LLLP), c/o Donald A. Seppi, Managing Member, 2665 County Road 4, Leadville, Colorado 80461

(Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Alperstein & Covell, P.C., Gilbert Y. Marchand, Jr., #19870, Cynthia F. Covell, #10169, Andrea L. Benson, #33176, 1600 Broadway, Suite 1070, Denver, CO 80202, (303) 894-8191)

Application for Finding of Diligence

LAKE COUNTY

1. Name, address, and telephone number of applicant: Sugarloafin’ LLC (formerly known as S & Z, LLLP), c/o Donald A. Seppi, Managing Member, 2665 County Road 4, Leadville, Colorado 80461, (719) 486-1031. **2. Names of structures and original decree information:** The structures involved in this application are Sugar Loafin’ Annex Well (“Annex Well”) (Permit No. 61579F); Sugar Loafin’ Irrigation Well (“Irrigation Well”) (Permit No. 61578F); and Twin Lakes Reservoir. Water rights for the Annex Well and Irrigation Well, along with an augmentation plan and appropriative right of exchange from Twin Lakes Reservoir to the Annex Well and Irrigation Well, were decreed on August 8, 2001 in Case No. 98CW182, District Court, Water Division No. 2. **3. Description of water rights for Annex Well and Irrigation Well: 3.A. Decreed legal descriptions of wells: 3.A.(1) Annex Well:** At or within 200 feet of a point 2500 feet from the east section line and 1600 feet from the south section line in the SW1/4 of the NW1/4 of the SE1/4 of Section 20, Township 9 South, Range 80 West, of the 6th P.M., Lake County, Colorado. See **Appendix 1** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). **3.A.(2). Irrigation Well:** At or within 200 feet of a point 1600 feet from the east section line and 1950 feet from the south section line in the NW1/4 of the SE1/4 of Section 20, Township 9 South, Range 80 West, of the 6th P.M., Lake County, Colorado. See **Appendix 1**. **3.B. Source:** Groundwater, tributary to Arkansas River. **3.C. Depths:** The decreed well depths are approximately 70 to 80 feet. **3.D. Appropriation Date:** March 8, 1995. **3.E. Amount: 3.E.(1) Annex Well:** 25 gpm, conditional, with an annual limit of 2 acre-feet. **3.E.(2) Irrigation Well:** 30 gpm, conditional, with an annual limit of 2 acre-feet. **3.F. Use: 3.F.(1) Annex Well:** Domestic in-house uses to supply water to 10 two-bedroom cabins and 10 RV/camp sites, all of which cabins and RV/camp sites are on a parcel of land known as “Sugar Loafin’ Annex” consisting of approximately 6.65 acres in the S1/2 of the NW1/4 of the SE1/4 of Section 20, Township 9 South, Range 80 West of the 6th P.M., Lake County, Colorado. The map in Appendix 1 depicts Sugar Loafin’ Annex. **3.F.(2) Irrigation Well:** Irrigation of approximately 1.66 acres located within

property known as Sugar Loafin' Park (also known as and referred to herein as "Sugar Loafin' Campground") consisting of approximately 14.8 acres located in the NW1/4 of the SE1/4 of Section 20, Township 9 South, Range 80 West, of the 6th P.M., Lake County, Colorado. The map in Appendix 1 depicts Sugar Loafin' Campground. **3.G.** Name and address of owner of land on which wells are located: Same as applicant described above.

4. Description of appropriative right of exchange decreed in Case No. 98CW182:

4.A. Names and legal descriptions of exchange structures: Water is decreed for diversion by exchange at the Annex Well and Irrigation Well, the decreed legal descriptions of which are described above in paragraphs 3.A.1 and 3.A.2. Substitute or replacement water is decreed for release from (i.e., exchange from) Twin Lakes Reservoir, the legal description of which is described below in paragraph 4.B.2.f. **4.B.**

Sources and water rights used in exchanges: The source of water diverted by exchange at the Annex Well and Irrigation Well is groundwater tributary to the Arkansas River. The water rights and sources of the substitute or replacement water released or exchanged from Twin Lakes Reservoir are two shares of Twin Lakes Reservoir and Canal Company represented by Stock Certificate No. 8351 (two shares). Applicant is the owner of such shares. The shares are and/or will be used in a manner that is consistent with the articles and by-laws of the Twin Lakes Reservoir and Canal Company. Further, the use of such shares shall be consistent with paragraph 20 of the decree in Case No. 98CW182. The decrees and physical sources for Applicant's Twin Lakes shares are described as follows: The ownership of such shares represents a pro rata interest in certain Arkansas River water rights described below and in the Independence Pass transmountain diversion system which diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County for storage in Twin Lakes Reservoir in southern Lake County, Colorado. Twin Lakes shares consist of direct flow and storage rights including water diverted from another basin which is available for 100% consumptive use and reuse and is available for augmentation. The water rights producing the pro rata interest owned by Applicant are described as follows: **4.B.(1)** Colorado River Water Rights (Independence Pass Transmountain Diversion System): **4.B.(1)(a)** Decree: **4.B.(1)(a)(i)** Case No. 3082, District Court, Garfield County, August 25, 1936. **4.B.(1)(a)(ii)** Case No. W-1901, District Court, Water Division No. 5, May 12, 1976. **4.B.(1)(b)** Priority: August 23, 1930, No. 431. **4.B.(1)(c)** Source: Roaring Fork River and its tributaries, all of which are tributaries of the Colorado River in Water Division No. 5, as more fully set forth in the above-referenced decrees. **4.B.(1)(d)** 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 Independence Pass Transmountain Diversion System Tunnel No. 1 and is carried to the eastern slope and discharged in Lake Creek, from which it enters Twin Lakes Reservoir, whose legal description is stated in paragraph 4.B.2.f. below. Tunnel No. 1 is located in the NW1/4 of Section 24, Township 11 South, Range 83 West, of the 6th P.M. **4.B.(1)(e)** Use: Direct flow and storage purposes, for irrigation, domestic, commercial, industrial, municipal and all beneficial uses at any sites capable of being served by deliveries from either the discharge portal or Tunnel No. 1 into Lake Creek or from storage in Twin Lakes Reservoir in Lake County. Water from this system may be used, reused and successively used and disposed of after use. **4.B.(1)(f)** Amount: Direct flow amount for diversions 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. **4.B.(2)** Arkansas River Water Rights (Twin Lakes Reservoir and Twin Lakes Reservoir Enlargement): **4.B.(2)(a)** Decree: **4.B.(2)(a)(i)** Original decree, Case No. 2346, District Court, Chaffee County, July 14, 1913. **4.B.(2)(a)(ii)** Modified, Case No. W-3965, District Court, Water Division No. 2, April 19, 1974. **4.B.(2)(b)** Priorities: December 15, 1896, Reservoir Priority No. 3, and March 29, 1897, Reservoir Priority No. 4. **4.B.(2)(c)** Source: Lake Creek and its tributaries, tributary to the Arkansas River. **4.B.(2)(d)** Use: Storage for irrigation, domestic, commercial, industrial and municipal purposes on any sites in the Arkansas River Basin of Colorado below Twin Lakes Reservoir which are capable of being served water by diversion from said Arkansas River. **4.B.(2)(e)** Amount: 54,452 acre-feet (20,645.3 acre-feet - Priority No. 3; 33,806.7 acre-feet - Priority No. 4). **4.B.(2)(f)** 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 in paragraph 4.B.1. above): 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 3803.10 feet, as more particularly described in the decree in Civil Action No. 5141, District Court, Chaffee County, Colorado. **4.B.(2)(g)** Capacity of reservoir: 54,452 acre-feet. **4.C. Appropriation Date:** March 8, 1995. **4.D. Use:** **4.D.(1)** Annex Well: domestic as described in paragraph 3.F. above. **4.D.(2)** Irrigation Well: irrigation as described in paragraph 3.F. above. **4.E. Exchange reach:** **4.E.(1) Upstream point:** At or near a point in the Arkansas River where Turquoise Lake Road bridge crosses the river in the NE1/4 of the SE1/4 of Section 20, Township 9 South, Range 80 West, 6th P.M., which point is believed to be the most upstream point where pumping of the Annex Well and the Irrigation Well will deplete the Arkansas River. **4.E.(2) Downstream point:** From the outlet of Twin Lakes Reservoir, whose location is described above in paragraph 4.B.2.f., into Lake Creek to the confluence of Lake Creek and the Arkansas River, which confluence is in the NW1/4 of the SE1/4 of Section 24, Township 11 South, Range 80 West, of the 6th P.M., Lake County, Colorado. **4.F. Amount:** In Case No. 98CW182, the rate of exchange was decreed as 0.05 cfs, conditional, maximum combined rate of exchange to both wells. In Case No. 07CW89, 0.02 cfs was decreed as absolute, leaving 0.03 cfs as conditional. The decree in Case No. 07CW89 also made absolute the full volumetric amount of the two Twin Lakes shares which are the "exchange from" and replacement water source. **4.G. Description of exchange:** When there is a valid call being administered such that the Annex Well water right, the Irrigation Well water right, or both, are not in priority, Applicant will replace out-of-priority depletions resulting from pumping the wells by releasing water available under the two Twin Lakes shares described herein from Twin Lakes Reservoir in amounts necessary to replace such depletions. The amount and timing of such releases will be in the discretion of the Division Engineer. The estimated depletions from decreed uses of the Annex Well and the Irrigation Well are described in the decree in Case No. 98CW182. If there is a valid call for water being administered for a water right in the exchange reach described herein, whose priority is senior to that of the exchange described herein, the State Engineer shall curtail the pumping of the Annex Well and the Irrigation Well and shall also curtail the

exchange herein to the extent it is no longer necessary to replace out-of-priority depletions below the exchange reach. **4.H. Name and address of owners of land on which exchange structures are located:** **4.H.(1)** Annex Well and Irrigation Well: Same as Applicant. **4.H.(2)** Twin Lakes Reservoir: U.S. Bureau of Reclamation, 11056 W. County Rd. 18E, Loveland, Colorado 80537-9711. **5. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** During the diligence period, actions that have been taken toward completion of the appropriations include the following: Additional water has been pumped from the Irrigation Well and placed to irrigation use. The well has pumped 23,160 gallons since approximately August 8, 2007. The pump for the Annex Well was pulled for inspection in approximately June of 2015. No power has been brought to the well so no pumping was done. Applicant has continued to pay assessments on its two shares of Twin Lakes Reservoir and Canal Company, and the two shares remain dedicated to this augmentation plan. The two shares were placed in the State Engineer's Twin Lakes account and administered by the Office of the Division Engineer, Division 2. Applicant believes that the two shares remain in the account and continue to be so administered. The two shares were released for augmentation purposes in accordance with the normal release procedures applicable to the State Engineer's Twin Lakes account for augmentation plans. Applicant believes that the two shares continue to be so released. Applicant incurred various costs and fees in connection with the foregoing. Information concerning expenditures related to the foregoing is available upon request to attorney for Applicant. **6. Names and addresses of owners 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:** The name and address of the owners of the structures that are the subject of the decrees in Case Nos. 98CW182 and 07CW89 are described above. WHEREFORE, Applicant requests the Court to grant this application and enter a decree finding that Applicant has shown reasonable diligence toward the completion of the appropriations associated with the water rights for the Irrigation Well, Annex Well, and appropriative right of exchange described herein, and granting such other relief as may be appropriate.

CASE NO. 2020CW3025 - CUCCHARAS SANITATION & WATER DISTRICT, c/o Leslie Cordova, 16925 State Highway 12, Cuchara, CO 81055-9775 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Stuart B. Corbridge, Esq. Vranesh and Raisch, LLP, 5303 Spine Road, Suite 202, Boulder, CO 80301 Telephone: (303) 443-6151)

Application for Findings of Reasonable Diligence

HUERFANO COUNTY

2. Name of Structures. A. Deadman Creek Feeder B. South Fork Feeder C. Britton Reservoir No. 2 D. Britton Reservoir No. 3 **3. Description of Conditional Water Rights.** A. Prior Decrees: (I) Original Decree: (a) Date of Entry: June 19, 1987 (b) Case Number: 1985CW136 (c) Court: District Court, Water Division 2, State of Colorado (II) Diligence Decrees: The conditional water rights for Deadman Creek Feeder, South Fork Feeder, Britton Reservoir No. 2, and Britton Reservoir No. 3 were continued in full force and effect

by the decrees entered in Case Nos. 1993CW37, 2000CW01, 2007CW10, and 2013CW3056. B. Legal Description: (I) Deadman Creek Feeder: NW1/4 SE1/4 of Section 22, Township 31 South, Range 69 West, 6th P.M., Huerfano County, approximately 2,200 feet from the east section line and 2,500 feet from the south section line of Section 22. (II) South Fork Feeder: SW1/4 NE1/4 of Section 22, Township 31 South, Range 69 West, 6th P.M., Huerfano County, approximately 1,700 feet west of the east 1/4 corner of Section 22. (III) Britton Reservoir No. 2: SW1/4 NE1/4 of Section 22, Township 31 South, Range 69 West, 6th P.M., Huerfano County, approximately 175 feet north and 1,979 feet west from the east 1/4 corner of Section 22. (IV) Britton Reservoir No. 3: SW1/4 NE1/4 of Section 22, Township 31 South, Range 69 West, 6th P.M., Huerfano County, approximately 300 feet north and 1,999 feet west from the east 1/4 corner of Section 22. (V) See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). C. Sources: (I) Deadman Creek Feeder: Deadman Creek (II) South Fork Feeder: South Fork of the Cucharas River (III) Britton Reservoir No. 2: Deadman Creek Feeder and South Fork Feeder, Cucharas River (IV) Britton Reservoir No. 3: Deadman Creek Feeder and South Fork Feeder, Cucharas River D. Appropriation Dates: For all four structures – July 15, 1985 E. Amounts: (I) Deadman Creek Feeder: 1.5 cfs, conditional (II) South Fork Feeder: 5.0 cfs, conditional (III) Britton Reservoir No. 2: 3.0 acre feet, conditional (IV) Britton Reservoir No. 3: 6.0 acre feet, conditional F. Uses: For all four structures – Irrigation, domestic, industrial, piscatorial, and all other beneficial uses served by Cucharas' water system. Britton Reservoir Nos. 2 and 3 may also be used for augmentation purposes. **4. Outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the previous diligence period.** The Cucharas Sanitation and Water District ("Cucharas" or "District") provides water delivery and water treatment services to an area in the general vicinity of Cuchara, Colorado, which area is adjacent to the Cucharas River and several of its tributaries. Britton Reservoir No. 2, Britton Reservoir No. 3, the Deadman Creek Feeder, and the South Fork Feeder are components in Cucharas' integrated water supply system, not only for the diversion of the water rights described in Paragraph 3, above, but also as structures used in water operations associated with other decrees and water rights owned and used by Cucharas, including but not limited to the District's Ballejos Ditch exchange decreed in Case No. 1982CW215, and its plan for augmentation decreed in Case No. 1985CW136. As such, the District's work on other components of its integrated system can be considered with respect to all components of the system. During the subject diligence period from November 30, 2013, through the date of filing of the application in this case, Cucharas made diversions under its various water rights when the rights were in priority, and it has otherwise managed its water supply system so as to best utilize its water rights, both absolute and conditional, to supply its customer base. The following activities and expenditures during the subject diligence period are relevant to Cucharas' integrated water supply system and the development of the Britton Reservoir No. 2, Britton Reservoir No. 3, Deadman Creek Feeder, and South Fork Feeder conditional water rights. The activities and costs identified in this application are not all inclusive, and Cucharas reserves the right to provide evidence of other work done and costs incurred during the subject diligence period during the proceedings for this application. A.

Cucharas continued to develop its integrated water supply system, working to complete its appropriations and place the conditional water rights to beneficial use. Work during the subject diligence period included general maintenance work related to Britton Reservoir Nos. 1, 2, and 3, including the completion of work projects related to the delivery pipelines for Britton Reservoir Nos. 2 and 3 and extensive renovation of Britton Reservoir No. 1. The District also engaged in general planning and field trips concerning additional updates to and maintenance on the Britton Reservoirs and their related diversion and delivery structures. B. Cucharas did work and incurred costs related to its integrated water supply system as follows: (I) Updates to the main water plant control system during the period from 2017-2019. This work included changes to both the hardware and software in use at the plant, at a cost of approximately \$100,000.00. (II) Updates to the District's water delivery pipelines, commencing in 2017 and ongoing. This work includes installation of new water system mains and other piping, upgrades to the system water meters, and general repairs of the water delivery system, at an expected total cost of approximately \$1,600,000.00. (III) Initiation of and pre-work planning for maintenance on the District's primary 100,000 gallon water storage tank, commencing in August 2019 and ongoing, at an expected total cost of approximately \$40,000.00. (IV) Maintenance and updates on the pressure regulators in the District's water delivery system during the period from October to December 2019, at a cost of approximately \$15,000.00. C. From 2015 onward, the District has been an active participant in the Cucharas Basin Collaborative Storage Study project. This participation has included collaboration with other project participants on the development of the technical studies related to the project, with associated costs during the subject diligence period of approximately \$17,000.00, and also participation as a co-applicant in the water court application filed in Case No. 2017CW3075 for new water storage rights and appropriative rights of exchange to implement the findings of the Cucharas Basin Collaborative Storage Study project. The Britton Reservoirs are included in that application as structures associated with the project and the claimed appropriative rights of exchange. The District has incurred legal and engineering fees and other costs in conjunction with Case No. 2017CW3075. D. In order to protect its various water rights and water operations, including the water rights decreed to Britton Reservoir No. 2, Britton Reservoir No. 3, the Deadman Creek Feeder, and the South Fork Feeder as described in Paragraph 3, above, Cucharas was or is currently an opposer in the following water court cases in Water Division 2: 1997CW108(C), 2014CW3045, 2015CW3048, 2016CW3046, 2017CW3049, 2017CW3063, and 2019CW3070. The District has incurred legal and engineering fees and other costs in conjunction with its participation in these cases. In addition, Cucharas was the applicant in the following water court cases in Water Division 2, and incurred legal and engineering fees and other costs related to these cases: 1997CW166, 2013CW3055, 2013CW3056, and 2016CW3022. E. Cucharas staff also worked on other items necessary for the development of the conditional water rights during the subject diligence period and continued to monitor its overall water supply system to evaluate the best process and timelines for developing its water resources to meet current and future committed demands. F. The Britton Reservoir No. 2, Britton Reservoir No. 3, Deadman Creek Feeder, and South Fork Feeder conditional water rights are junior water rights. The reservoirs and related diversion and delivery structures have been constructed. However, because of administrative conditions and requirements on the Arkansas, Huerfano, and Cucharas Rivers, opportunities to divert water for beneficial

use during the subject diligence period have not occurred. Cucharas is a relatively small sanitation and water district, and the development of its integrated water supply system can only advance in stages. This development is tied to the best use of its water resources, based on current water demands and future water service commitments. Cucharas will divert water and use it for the decreed beneficial purposes in the future when its water rights are in priority, and maintains its intent to complete the appropriations for the water rights described in Paragraph 3. **5. 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. Cucharas Sanitation and Water District, 16925 State Highway 12, La Veta CO 81055-9775 B. Robert Beck, 405 Olympia Fields, Meadow Lakes, TX 78654 C. United States Department of Agriculture, U.S. Forest Service, Rocky Mountain Region, c/o Current Water Rights Coordinator, Current Regional Hydrologist, 740 Simms St., Golden, CO 80401 D. San Carlos Ranger District, c/o District Ranger, 3028 E. Main St., Canon City, CO 81212 WHEREFORE, Cucharas requests that the court enter a decree finding that Cucharas has exercised reasonable diligence in completing the appropriations and placing the conditional water rights described in this application to beneficial use, and ordering that the conditional water rights remain in full force and effect for another diligence period.

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 2020, (forms available at Clerk's office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$192.00). 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 2nd day of June 2020.

Michele Santistevan

Michele M. Santistevan, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
501 N. Elizabeth Street, Suite 116
Pueblo, CO 81003; (719) 404-8749



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