

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during November 2017, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 2017CW3055 (Water Div. 2) and 2017CW3143 (Water Div. 1) - JAMES KREHBIEL and TAMMY KREHBIEL, P.O. Box 2593, Monument, CO 80132 (Please

direct all correspondence and inquiries regarding this matter to Applicant's attorney: Henry D. Worley, Worley Law Office LLC, 611 North Weber Street, Suite 104, Colorado Springs, CO 80903, email hank.worley@pcisys.net); phone 719.634.8330)

Amended Application for Plan for Augmentation

EL PASO COUNTY

1. Legal description of property: Applicants' property consists of two contiguous lots located in the NW1/4 Section 15, T. 11 S., R. 67 W., 6th P.M. in El Paso County. The addresses of the two lots are: (1) 18302 Faulkner Street, the legal description of which is "Lot 2 Fontenelle Subdivision No. 2, except parcel by order and decree CV#66671, signed October 29, 1971," and (2) an unassigned address on Peak View Boulevard, the legal description of which is "that part of Lot 2 Fontenelle Subdivision No. 2 by order and decree CV#66671, signed October 29, 1971" (the "Property"). The two parcels total 5.79 acres in size. A map of the Property was attached to the original application. **2.**

Statement of amended plan for augmentation. Under the amended plan for augmentation, Applicants seek to pump up to 1.791 acre feet annually from the not nontributary Denver aquifer for 110 years. They anticipate allocating 0.425 acre foot annually for each of two residential lots, and 0.941 acre foot annually for a lot on which a combination residence/bed and breakfast will be located. At the end of 110 years, Applicants' successors shall be required to construct one or more nontributary Arapahoe aquifer wells on the Property, which must pump at least 0.016 acre foot initially to replace post-pumping depletions caused by pumping the Denver aquifer, and will be allowed to continue pumping of up to 1.791 acre feet of Arapahoe aquifer annually for the remaining 190 year of El Paso County's 300 year water supply rule. In that case, septic system return flows from the Arapahoe aquifer pumping shall be sufficient to replace depletions for at least 300 years after commencement of pumping the Denver aquifer water. At the end of 300 years, Applicants' successors shall discontinue use of the Arapahoe aquifer for all uses except for replacement of Denver aquifer post-pumping depletions, and shall pump such Arapahoe aquifer water until the amount of decreed Arapahoe aquifer water has been pumped, or until the Arapahoe aquifer is depleted, whichever occurs first. Thereafter, Applicants' successor shall be required to construct a well in the nontributary Laramie-Fox Hills aquifer, and to replace continuing post-pumping depletions caused by pumping the not nontributary Denver

aquifer, until such time as the obligation to do so is terminated. All the Laramie-Fox Hills aquifer water shall be dedicated for that purpose, unless Applicants request that such post-pumping depletions may be replaced with any other judicially acceptable source of augmentation water, upon judicial approval after appropriate notice, and that request is granted. Water in the Denver and Arapahoe aquifers shall be approved for all beneficial uses except municipal uses; water in the Laramie-Fox Hills aquifer shall be decreed for augmentation purposes.

CASE NO. 2017CW3060; Previous Case No. 2009CW73 - DONALA WATER AND SANITATION DISTRICT, 15850 Holbein Drive, Colorado Springs, CO 80921 (Please

address all correspondence and inquiries to Applicant’s attorneys: Petrock & Fendel, P.C., Frederick A. Fendel, III #10476, Matthew S. Poznanovic #29990, 700 Seventeenth Street, Suite 1800, Denver, Colorado 80202, Telephone: (303) 534-0702)

Application to Make Absolute and for Finding of Reasonable Diligence

LAKE AND CHAFFEE COUNTIES

2. Description of conditional rights of exchange decreed November 2011 in Case No. 09CW73: **2.1** from the confluence of Rock Creek and Lake Fork Creek to Turquoise Reservoir, in Lake County (the “Turquoise Reservoir exchange”); **2.2** from the confluence of the Arkansas River and Lake Creek to Twin Lakes Reservoir, in Chaffee County (the “Twin Lakes exchange”); **2.3** from the confluence of the Arkansas River and Clear Creek to Clear Creek Reservoir, in Chaffee County (the “Clear Creek exchange”); **2.4 Priority date:** May 26, 2009; **2.5 Amount:** 3.66 cfs, less transit loss from the points of measurement on the Willow Creek Ranch to the point from which water is exchanged; **2.6 Uses:** All municipal uses, including domestic, irrigation, commercial, industrial, mechanical, fire protection, maintenance and replacement of storage losses, and disposition of return flows. The changed water rights may be fully consumed and may be used, reused, successively used or disposed of to extinction, after satisfaction of return flow obligations; **2.7 Source of substitute supply:** the water rights formerly used on the Willow Creek Ranch, originally decreed in CA 1127, Chaffee County District Court on June 19, 1890, changed to municipal use in Case No. 09CW73 (amounts, changed uses, and terms and conditions described in more detail in the 09CW73 decree) (the “WCR rights”), and summarized as follows:

<u>Ditch</u>	<u>Priority</u>	<u>Source</u>
Abbott Placer Ditch	3/10/1881	Willow Creek
Abbott Placer 1 st Enlargement	11/30/1881	Willow Creek
Willow Creek Ditch	4/15/1881	Willow Creek
Mitchell Ditches Nos. 1-4	5/31/1881	Willow Creek
Sites Ditch No. 1	4/30/1881	Little Willow Creek
Sites Ditch No. 2	4/30/1882	Little Willow Creek.

CLAIM TO MAKE ABSOLUTE

3. Donala operated the Twin Lakes exchange pursuant to and in compliance with the 09CW73 decree in 2012 and 2013 at a maximum rate of 3.62 cfs. The exchange first operated May 1, 2012. The maximum rate of exchange first occurred June 4 – 14, 2013. The exchange was conducted in cooperation with the City of Aurora in 2012, and with Colorado Springs Utilities in subsequent years. Exchanged water was stored in Aurora’s and CSU’s storage space in Twin Lakes. The water exchanged into Aurora’s

space was then traded by a contract exchange for water in Pueblo Reservoir, which was subsequently delivered via CSU's system for use in Donala. The water exchanged into CSU's space was delivered via CSU's system for use in Donala. WHEREFORE, Donala requests that the Twin Lakes exchange be made absolute to the extent of 3.62 cfs, and for such other and further relief as is appropriate, or in the alternative for a finding of reasonable diligence for the Twin Lakes exchange.

CLAIM FOR FINDING OF REASONABLE DILIGENCE

4. During the diligence period, Donala undertook the following efforts related to its conditional rights of exchange and the underlying WCR rights: 4.1 Donala has used the WCR rights every year since the change decree in Case No. 09CW73 was entered, at a cost for diversion, storage, and delivery of approximately \$7,650,000, has maintained the facilities on the Willow Creek Ranch at a cost of approximately \$45,000 plus hundreds of hours of staff and management time, has worked on all ongoing aspects of securing the long-term ability to deliver and continue to use the water rights; 4.2 Donala entered into a contract with the City of Aurora in 2012 for a contract exchange under which Aurora took delivery of the WCR rights into Twin Lakes Reservoir, exercising the Twin Lakes exchange, and delivered a like amount to Donala in Pueblo Reservoir. 4.3 Donala entered into short-term agreements with Colorado Springs Utilities for use of the WCR rights and CSU facilities to deliver water to Donala and negotiated for a long-term agreement. The first short-term agreement was dated prior to the diligence period, May 2011, but was operated during the diligence period and twice extended through 2015. The second short-term agreement is dated December 22, 2015, and remains in effect. Under these agreements, Donala and CSU operated the Twin Lakes exchange in 2013, and delivered the water without operating the exchange every year since. Donala constructed a treated water connection with the CSU potable water distribution system in 2011 at a cost of approximately \$800,000 and has used the connection for delivery of the water every year since; 4.4 Donala applied for and pursued a Pueblo County 1041 permit to use the Southern Delivery System for long-term conveyance of the WCR rights; 4.5 Donala entered into annual excess capacity storage contracts with the United States Bureau of Reclamation for storage in Pueblo Reservoir each year since 2012, and applied for a long-term contract, conducted environmental analyses for NEPA compliance, paid in excess of \$200,000 to Reclamation for storage and Reclamation's conduct of NEPA analyses; 4.6 other activities, expenses, and planning. WHEREFORE, Donala requests a finding of reasonable diligence for each of its conditional exchange rights, that its conditional exchange rights be continued, and for such other and further relief as is appropriate.

CASE NO. 2017CW3061 - The filing made under this case number was rejected. Therefore, this case number does not exist in Water Division 2.

CASE NO. 2017CW3062; Previous Case Nos. 2001CW148; 2011CW44 - THE TOWN OF PONCHA SPRINGS, c/o Brian P. Berger, Town Administrative Officer, P. O. Box 190, Poncha Springs, CO 81242 (Please address all correspondence and inquiries regarding this matter to Applicant's attorneys: Steven T. Monson, #11329, David M. Shohet, #36675, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Suite 250, Colorado Springs, CO 80921, (719) 471-1212)

Application for Finding of Reasonable Diligence

CHAFFEE AND LAKE COUNTIES

III. Name of conditional water right: Town of Poncha Springs' Exchange. **IV. Description of conditional water right:** A. Type of conditional water right: Conditional exchange. B. Original decree: Case No. 01CW148, District Court, Water Division No. 2, decreed on June 17, 2005. C. Subsequent decrees awarding findings of diligence: Case No. 11CW44, District Court, Water Division No. 2, decreed on November 28, 2011. D. Amount of conditional exchange: 125 annual acre feet of water, at a maximum exchange rate of 10 cfs. E. Sources of exchange water: 1. McPherson Ditch. The historical stream depletion credits during the irrigation season from the 1.0 cfs of the McPherson Ditch as changed in Case No. 99CW183, Water Division 2 ("McPherson Water Right"). Pursuant to Case No. 99CW183, the McPherson Water Right is used, without limitation, as additional augmentation water within Applicant's existing augmentation plan decreed in Case No. 82CW104 and can be placed into upstream storage in O'Haver Reservoir for later use. The decreed amount of depletion credits in Case No. 99CW183 is 43.4 annual acre feet during the historical irrigation season with delayed return flow obligations of 8.2 acre feet, for a net consumptive use of 35.2 annual acre feet. The availability and timing of water under the McPherson Water Right is determined under the decree entered in Case No. 99CW183. 2. Fryingpan Arkansas Project Water. The Applicant's allocation of Fryingpan Arkansas Project Water purchased from the Southeastern District ("Project Water") described as follows: (a) West Slope Decrees: The Fryingpan Arkansas Project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County. The principal water rights were adjudicated by the decrees in Civil Action No. 4613 (District Court, Garfield County) dated June 20, 1958, and August 3, 1959; and were modified by the Decree in Case No. W 829 76 (District Court, Water Division No. 5) dated November 27, 1979; and were supplemented by the Decree in Case No. 83CW352 (District Court, Water Division No. 5) dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travels under the Continental Divide through Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, and applied to beneficial use within Southeastern's District boundaries. Because the water is imported from another river basin, it is fully consumable in Water Division 2. (b) East Slope Decrees: The Fryingpan Arkansas Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141 (District Court, Chaffee County) dated July 9, 1969; and Civil Action No. B 42135 (District Court, Pueblo County) dated June 25, 1962; and were modified and supplemented by the Decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed for reuse and exchange for beneficial use within Southeastern's District boundaries. Under these decrees, Turquoise Reservoir and Twin Lakes Reservoir may store native water or imported water, directly or by exchange with each other or with Pueblo Reservoir. F. Priority date of the conditional exchange: November 26, 2001. G.

Uses of the exchange water: Augmentation purposes in accordance with the Applicant's decreed plans for augmentation in Case Nos. 82CW104 and 99CW183. H. Exchange reach: On the mainstem of the Arkansas River from its confluence with the South Arkansas River in Section 4, Township 49 North, Range 9 East, N.M.P.M., and from this point, (1) up the mainstem of the Arkansas River to the confluence with the Lake Fork of the Arkansas River located in Section 5, Township 10 South, Range 80 West, 6th P.M., and from this point up the Lake Fork of the Arkansas River to the terminus of the exchange at Turquoise Reservoir formed by a dam across the Lake Fork of the Arkansas River in Lake County in Section 19, Township 9 South, Range 80 West of the 6th P.M., as described in the Decree in Case No. 80CW6; and (2) up the mainstem of the Arkansas River to the confluence with Lake Creek located in Section 24, Township 11 South, Range 80 West of the 6th P.M., and from this point up Lake Creek to the terminus of the exchange at Twin Lakes Reservoir formed by a dam across Lake Creek in Lake County in Section 23, Township 11 South, Range 80 West of the 6th P.M., as described in the decree in Case No. 80CW6. **V. Outline of work done towards completion of appropriation and application of water to beneficial use:** In Case No. 01CW148, the Applicant was awarded the Town of Poncha Springs' Exchange being a 10 c.f.s. conditional water right for the exchange of its McPherson Water Right and its allocation of Project Water into storage in Turquoise and Twin Lakes Reservoirs. The adjudicated depletion and consumptive use under the McPherson Water Right is available for exchange as a direct flow stream credit or as water placed into and released from storage in O'Haver Reservoir in accordance with the terms of the decree in Case No. 99CW183. The Applicant's purchased allocation of Project Water is available for this exchange as placed into and released from storage in O'Haver Reservoir, North Fork Reservoir, and Boss Lake under storage contract with the Upper Arkansas River Water Conservancy District. The use of the exchange water is for augmentation purposes in accordance with the Applicant's decreed plans for augmentation in Case Nos. 82CW104 and 99CW183. Accordingly, the Town of Poncha Springs' Exchange awarded to Applicant in Case No. 01CW148 is an integral part of Applicant's current and future municipal water supply system. During this diligence period, Applicant has performed significant work within its service boundaries and on its municipal water system to develop the decreed Town of Poncha Springs' Exchange as part of its integrated municipal supply system. This work, without limitation, includes significant time and effort updating its physical water supply delivery system, which included water main extension and loop across US Highway 50 and extension of water main eastward across the visitor's center property in preparation for US Hwy 285 water main loop to CR128. Applicant also made significant improvements to Poncha Well Nos. 3 and 4 and implemented a phosphate process for all wells for corrosion control. Applicant has also expended significant funds on a major water infrastructure improvement project, which will begin next year. This new project includes over 5,800 linear feet of new main lines, a new well and a 400,000 gallon elevated storage tank. Applicant also obtained final decrees in two water court applications, Case Nos. 07CW111 and 09CW138, which, in part, will provide the physical and legal water supply to the Friend Ranch annexation as well as the Applicant's current and future demands. As part of the Friend Ranch development, Applicant has restored the Mundlein and Velotta Ditches on the Friend Ranch from their headgates all the way to Friend Ranch

Reservoir, installed new augmentation stations and measuring devices, and installed a new gage station on the South Arkansas River. During this diligence period, the Applicant also participated with the Southeastern District for the use of excess capacity storage space and enlargement space in the Fryingpan Arkansas Project storage facilities consisting of Pueblo Reservoir, Turquoise Reservoir and Twin Lakes Reservoir. This participation included cooperation in the prior Preferred Storage Option Plan as well as the subsequent Excess Capacity Storage project. On December 1, 2016, Applicant executed an agreement with the Southeastern District for an Excess Capacity Storage contract. Participation in the Excess Capacity Storage will allow the Applicant to store its non-project water, such as the McPherson Water Right, in Project facilities, which storage will in part be implemented by the Town of Poncha Springs' Exchange. During this diligence period, the Applicant negotiated a renewal of its December 9, 1982 Agreement with the Upper Arkansas Water Conservancy District allowing the storage of water in O'Haver Reservoir, North Fork Reservoir and Boss Lake located in the upper reaches of the South Arkansas River and its tributaries above the Town of Poncha Springs. This renewal allows for the continued storage of Applicant's water rights and Project Water allocation in the South Arkansas River basin, which storage is an integral part of the Town of Poncha Springs' Exchange. As the decreed Town of Poncha Springs' Exchange is part of the Applicant's integrated water supply system, work performed on behalf of one component of this integrated system constitutes diligence on behalf of all structures, which are a part of this integrated system. Applicant expended a total of approximately \$520,000.00 on the work associated with its municipal water system during this diligence period. Applicant has also incurred legal, engineering, and administrative fees related to its water supply system consisting of, without limitation, water supply and distribution analysis, water rights planning, Water Court filings for the change of water rights and for the protection of its water rights, well permitting, and water rights administration matters. **VI. Additional Information:** No part of the conditional water right awarded in Case No. 01CW148 is requested to be made absolute herein at this time. **WHEREFORE**, Town of Poncha Springs requests a finding of continued diligence on the Town of Poncha Springs' Exchange for the decreed conditional exchange for augmentation uses.

CASE NO. 2017CW3063 - THE CITY OF WALSENBURG, 525 South Albert Street, Walsenburg, CO 81089-2296

(Please direct all correspondence and inquiries regarding this matter to Applicant's attorneys: Richard J. Mehren, Alison I.D. Gorsevski, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Boulevard, Suite 300, Boulder, Colorado 80302; (303) 443-8782)

Application for Appropriative Rights of Substitution and Exchange and Quantification of Reusable Return Flows

HUERFANO COUNTY

2. Description of application: The City of Walsenburg ("City") supplies water to its customers within the City's boundaries, as those boundaries exist or may be modified in the future, and to its customers outside of the City's boundaries pursuant to many decreed water rights that are diverted from the Cucharas River and its tributaries. A map depicting the City's current boundaries 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 City continues to develop its municipal water supply portfolio and, as a result, the City seeks to appropriate and adjudicate certain appropriative rights of substitution and exchange to facilitate operation of its municipal water supply system. The exchange-from and exchange-to structures and the river reaches associated with this application are shown in Exhibits B and C attached to the Application. **Appropriative rights of substitution and exchange** **3. Names of structures involved and legal descriptions:** **3.1 Exchange-From Points:** 3.1.1 Walsenburg Ditch headgate, is located in the NE¼ of Section 17, Township 28 South, Range 66 West of the 6th P.M. (UTM: 517751 East, 4163079 North). 3.1.2 Walsenburg Ditch Augmentation Station. The City will construct an augmentation station off of the Walsenburg Ditch and down-ditch of the Walsenburg Ditch headgate to release water to the Cucharas River in the NE¼ of the NE¼ of Section 17, Township 28 South, Range 66 West of the 6th P.M., within the reach shown on Exhibit B to the Application. 3.1.3 Coler Reservoir Outlet Ditch Outfall. Water is delivered through the Coler Reservoir System Cucharas Delivery Flume, located in the NE¼ of the SW¼ of Section 17, Township 28 S, Range 66 W of the 6th P.M., at a point approximately 1,350 feet from the West line and 2,400 feet from the South line of said Section 17, and from this point, to the confluence of the Coler Reservoir System outlet channel and the Cucharas River, located in the NE¼ of the SW¼ of Section 17, Township 28 S, Range 66 W of the 6th P.M., at a point approximately 1,600 feet from the West line and 2,150 feet from the South line of said Section 17. UTM coordinates for the confluence are as follows: 516904 East, 4162387 North. 3.1.4 Lake Miriam Ditch Outlet Outfall. Water is delivered through a flume located in the SE¼ of the NW¼ of Section 17, Township 28 S, Range 66 W of the 6th P.M. The confluence of the Lake Miriam Ditch Outlet channel and the Cucharas River is also located in the SE¼ of the NW¼ of Section 17, Township 28 S, Range 66 W of the 6th P.M. at the following UTM coordinates: 517240 East, 4162743 North. 3.1.5 Gomez Ditch headgate, in the SW¼ of the SW¼ of Section 9, Township 28 South, Range 66 West of the 6th P.M., Huerfano County, Colorado. UTM: 518098 East, 4163327 North. 3.1.6 Gomez Ditch Augmentation Station Outfall, at a point off of the Gomez Ditch and down-ditch of the Gomez Ditch headgate to release water to the Cucharas River in the SW¼ of Section 9, Township 28 South, Range 66 West of the 6th P.M., Huerfano County, Colorado. UTM: 518464 East, 4163370 North. 3.1.7 City of Walsenburg Wastewater Treatment Facility (WWTF) Outfall, releases water to the Cucharas River in the SW¼ of Section 2, Township 28 South, Range 66 West of the 6th P.M., Huerfano County, Colorado. UTM: 521624 East, 4165051 North. **3.2 Exchange-To Points:** 3.2.1 Walsenburg Pipeline, in the SW¼ of Section 28, Township 29 South, Range 68 West of the 6th P.M., Huerfano County, Colorado. UTM: 498642 East, 4149152 North. 3.2.2 Lake Miriam Ditch (a/k/a Coler Inlet Ditch), in the NW¼ of the SE¼ of Section 32, Township 28 South, Range 67 West of the 6th P.M., Huerfano County, Colorado. UTM: 508061 East, 4157924 North. 3.2.3 City Lake Inlet, a yet to be constructed inlet to the Walsenburg Reservoir (a/k/a City Lake), having a point of diversion on the north bank of the Cucharas River within a reach located in Sections 25, 26, 27, 28, 32, and 33, Township 28 S, Range 67 W, of the 6th P.M., and as shown on Exhibit C to the Application. **3.3 Exchange reach:** The claimed exchange reach extends on the Cucharas River from its furthest downstream terminus at the location of the City's WWTF Outfall, as described in paragraph 3.1.7,

above, upstream to the furthest upstream terminus at the location of the point of diversion for the Walsenburg Pipeline, as described in paragraph 3.2.1, above (“Exchange Reach”). The City requests the right to exchange water from any of the exchange-from points identified in paragraph 3.1, above, to any of the exchange-to points identified in paragraph 3.2, above. In addition, the City requests the right to exchange water between any existing or yet-to-be constructed facilities within this Exchange Reach.

4. Source:

4.1 Walsenburg Ditch No. 4, Priority No. 5: The City owns 27,081 of the 47,165 shares outstanding (57.42%) in the Walsenburg Ditch Company (the “Walsenburg Ditch Shares”). The Walsenburg Ditch No. 4, Priority No. 5 water right was decreed to the Walsenburg Ditch in the amount of 5.9 cfs in the “Read Decree,” a decree entered on June 12, 1889, in the Matter of Priority of Water Rights in Water District No. 16 in the District Court of the Sixth Judicial District of the State of Colorado. By the decree entered in Civil Action 4025, 0.295 cfs of 5.9 cfs decreed to the Walsenburg Ditch was transferred out of the ditch, leaving a total of 5.605 cfs of the 5.9 cfs originally decreed to the Priority No. 5 water right remaining in the Walsenburg Ditch. The City’s 57.42% ownership interest in the Walsenburg Ditch Company represents 3.22 cfs of the 5.605 cfs decreed to the Walsenburg Ditch No. 4, Priority No. 5 water right. The City will seek, in a separate application, to change the water rights represented by the Walsenburg Ditch Shares (the “Change Case”) to uses in addition to the decreed irrigation use, including but not limited to use by exchange.

4.2 Gomez Ditch, Priorities Nos. 10 and 124: The City owns a one-sixth (1/6th) interest in Priorities Nos. 10 and 124 in the Gomez Ditch (the “Gomez Ditch Water Rights”), which are decreed as follows:

4.2.1 Priority No. 10: 3.2 cfs, originally decreed in the “Read Decree,” a decree entered on June 12, 1889, in the Matter of Priority of Water Rights in Water District No. 16 in the District Court of the Sixth Judicial District of the State of Colorado. The City’s one-sixth (1/6th) interest in the Priority No. 10 water right represents 0.5334 cfs of the 3.2 cfs.

4.2.2. Priority No. 124: 7.0 cfs, originally decreed in the “Killian Decree,” a decree entered on February 23, 1898, in the Matter of the Adjudication of the Priorities to the Use of Water in Water District No. 16 in the District Court of Huerfano County, State of Colorado. The City’s one-sixth (1/6th) interest in the Priority No. 124 water right represents 1.167 cfs of the 7.0 cfs.

4.2.3 Subsequent decree: The City’s one-sixth (1/6th) interest in Priorities Nos. 10 and 124 were changed for the City’s uses in the decree entered in Case No. 11CW56, Water Division 2, State of Colorado, dated December 26, 2014.

4.3 Reusable Wastewater Treatment Plant Return Flows: The City’s initial use of the Gomez Ditch Water Rights for direct municipal uses pursuant to the decree entered in Case No. 11CW56 will not fully consume the amount of water yielded by the Gomez Ditch Water Rights. Similarly, the City’s initial use of the Walsenburg Ditch Shares for direct municipal uses pursuant to the Change Decree will not fully consume the amount of water yielded by the Walsenburg Ditch Shares. Accordingly, following a first use of the water in the City’s system, there will be reusable sewer effluent derived from the Gomez Ditch Water Rights and the Walsenburg Ditch Shares released to the Cucharas River from the City’s WWTF (“Reusable Return Flows”). The City’s WWTF releases water to the Cucharas River at the location described in paragraph 3.1.7, above.

5. Quantification of Reusable Return Flows: The City will determine in this application the methodology to be used to quantify the amount of Reusable Return Flows. Such Reusable Return

Flows will be exchanged pursuant to the appropriative rights of exchange decreed herein and/or will be used for all decreed uses consistent with the applicable decree in Case No. 11CW56 or the Change Case; provided however, the City will not quantify or exchange Reusable Return Flows derived from water available to the Walsenburg Ditch Shares until entry of the Change Decree or approval of a substitute water supply plan pursuant to § 37-92-308, C.R.S. **6. Date of initiation of appropriations:** 6.1 Gomez Ditch Water Rights: 6.1.1 December 26, 2014, at a rate of 1.7 cfs (“2014 Exchanges”); and 6.1.2 November 7, 2017, at a rate of 26.8 cfs. 6.2. Walsenburg Ditch Shares and Reusable Return Flows: November 7, 2017, at a rate of 26.8 cfs. **7. How appropriation was initiated:** 7.1 2014 Exchanges: The City formed its intent to appropriate certain appropriative rights of exchange of the Gomez Ditch Water Rights during the pendency of the City’s Case No. 11CW56. The decree entered on December 26, 2014 in Case No. 11CW56, which incorporated the operation of exchanges as a mechanism for diversion of the Gomez Ditch Water Rights at upstream locations for the City’s subsequent beneficial use, constituted notice to interested parties of the City’s intent to exchange the Gomez Ditch Water. The 2014 Exchanges are claimed as existing exchanges for purposes of sections 37-92-302(1)(a) and 37-92-305(10), C.R.S. 7.2. 2017 Exchanges: For exchanges of the City’s Walsenburg Ditch Shares, certain exchanges of the Gomez Ditch Water Rights, and exchanges of Reusable Return Flows (“2017 Exchanges”), the Walsenburg City Council confirmed its intent to make the appropriation and approved the filing of this Application by passing a resolution on November 7, 2017 at its properly noticed public meeting. **8. Amount claimed:** 8.1 2014 Exchanges: 1.7 cfs, of which 0.75 cfs is claimed as ABSOLUTE, based on the City’s operation of that exchange at a rate of 0.75 cfs on May 18 through 20, 2015; and 0.95 cfs is claimed as CONDITIONAL. 8.2 2017 Exchanges: 26.8 cfs, CONDITIONAL. The maximum rate of flow for the various intermediate exchanges within the overall Exchange Reach is set forth in Exhibit D to the Application. **9. Use of exchanged water:** Water attributable to the Gomez Ditch Water Rights and the Reusable Return Flows derived therefrom that is diverted by exchange will be used consistent with the decreed uses under the decree entered in Case No. 11CW56. Water attributable to the Walsenburg Ditch Shares that is diverted by exchange, either directly for initial use or as Reusable Return Flows, will be used for all beneficial uses related to the City’s municipal water supply and distribution system as approved in the Change Case. Those uses include use, reuse and successive use to extinction for augmentation and replacement purposes, and for all municipal purposes, including but not limited to domestic, industrial, commercial, irrigation out of City’s municipal system, stock watering, recreation, fish and wildlife preservation and propagation, fire protection, aquifer recharge, sewage treatment, mechanical, manufacturing, street sprinkling, substitution, and exchange purposes. From time to time, to the extent that water diverted pursuant to the claimed exchanges is in excess of the City’s needs, it may make such water available for use by others who contract with the City. Water diverted by exchange may also be delivered to and stored in the following storage structures for subsequent use: 9.1 Lake Miriam Reservoir (a/k/a Horseshoe Reservoir): Located in the W½ of Section 13, SE¼ of Section 14, and the NW¼ of Section 24, Township 28 South, Range 67 West of the 6th P.M., Huerfano County, Colorado. 9.2 Lake Oehm Reservoir (a/k/a Martin Lake): Located in the E½ of Section 13, Township 28 South,

Range 67 West and W½ of Section 18, Township 28 South, Range 66 West of the 6th P.M., Huerfano County, Colorado. 9.3 Walsenburg Water System Reservoir (a/k/a Walsenburg Reservoir, a/k/a City Lake): Located in Section 23, Township 28 South, Range 67 West of the 6th P.M., Huerfano County, Colorado. 9.4 Wahatoya Lake Reservoir: Located in the N½ of the SW¼ of Section 22 and in the SE¼ of the NW¼ of Section 22, Township 29 South, Range 68 West of the 6th P.M., Huerfano County, Colorado. 9.5 Daigre Reservoir: Located in the S½ of the N½ of Section 22, Township 29 South, Range 68 West of the 6th P.M., Huerfano County, Colorado. **Appropriative right of intersystem substitution and exchange** 10. **Description**: The City operates a series of interconnected reservoirs that can be filled through the Walsenburg Pipeline or the Coler Inlet Ditch. Water diverted at the Walsenburg Pipeline flows by gravity first into Wahatoya Reservoir, then to Daigre Reservoir, then to Walsenburg Reservoir (a/k/a City Lake), and then into the Coler Reservoirs, which consists of Lake Miriam Reservoir (a/k/a Horseshoe Reservoir) and Lake Oehm (a/k/a Martin Lake) (collectively, the “Coler Reservoirs”). Water diverted at the Coler Inlet Ditch is delivered into the Coler Reservoirs. In order to deliver water into the City’s municipal water system, water must be in storage in Walsenburg Reservoir, where it is then taken into the City’s water treatment facility. Accordingly, pursuant to Colo. Rev. Stat. Sec. 37-80-120 and 37-83-104, the City seeks to substitute water derived from the Gomez Ditch Water Rights, Walsenburg Ditch Shares and/or Reusable Return Flows that is in storage in the Coler Reservoirs, for water in storage in Walsenburg Reservoir. The City will operate this appropriative right of substitution and exchange without making a physical release of water; instead, the City will demonstrate the transfer of water between the Coler Reservoirs and Walsenburg Reservoir as a book-over of water between the reservoirs through its accounting. 10.1 **Source of substitute supply**: Gomez Ditch Water Rights, Walsenburg Ditch Shares and/or Reusable Return Flows in storage in the Coler Reservoirs. 10.2 **Exchange reach**: Intersystem exchange from the Coler Reservoirs into Walsenburg Reservoir. 10.3 **Date of initiation of appropriation**: November 7, 2017. 10.4 **How appropriation was initiated**: The Walsenburg City Council confirmed its intent to make the appropriation and approved the filing of this Application by passing a resolution on November 7, 2017 at its properly noticed public meeting. 10.5 **Amount claimed**: Operation of the appropriative right of substitution and exchange decreed herein will not exceed the amount of water in storage in the Coler Reservoirs under the Gomez Ditch Water Rights, Walsenburg Ditch Shares and/or Reusable Return Flows. The operation of the appropriative right of substitution and exchange will be instantaneous, by booking-over the subject water supplies in storage in the Coler Reservoirs for water in storage in Walsenburg Reservoir. WHEREFORE, the City of Walsenburg respectfully requests the Court to enter a decree confirming the City’s claimed appropriative rights of substitution and exchange, quantifying the City’s Reusable Return Flows, confirming that the City can and will retain dominion and control over the Reusable Return Flows, and all such additional relief as the Court may determine necessary or desirable for the purpose of according full relief. A full copy of the application, including a list of the landowners potentially affected by this application, is available by contacting the City’s attorneys.

CASE NO. 2017CW3064; Previous Case No. 2009CW113 - TIMBER CREEK ENERGY LLC, 1001 17th, Suite 1000, Denver CO 80202 (Please direct all pleadings and correspondence to Applicant's counsel: Christopher L. Thorne, Esq., William H. Caile, Esq., Holland & Hart LLP, 555 Seventeenth Street, Suite 3200, Post Office Box 8749 Denver, Colorado 80201-8749, Telephone: (303) 295-8000; email: whcaile@hollandhart.com;

Application for Finding of Reasonable Diligence

LAS ANIMAS COUNTY

2. Name of Structures: A. Mid Fork 1 Pond; B. Lopez Canyon Pond; C. South Fork 1 Pond. **3. Prior Decree:** The subject conditional water rights were decreed in Case No. 09CW113, Water Division 2, by decree dated November 15, 2011. **4. Description of Conditional Water Rights:** **A. Name of Reservoir: Mid Fork 1 Pond.** i. Legal Description: An off-channel pond 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. See location map submitted with the Application and on file with the Water Court. ii. Source: Purgatoire River. iii. Name of Pipeline (to fill reservoir): Mid Fork 1 Pipeline with a capacity of 3 c.f.s. (1) 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. See location map on file with the Water Court. iv. Appropriation Date: September 30, 2009. v. Amount: (1) 11.3 acre-feet (conditional), with the right to fill and refill when in priority, up to three complete fills annually. (2) Rate of diversion for filling Reservoir: 3 c.f.s. (conditional). vi. Use: Commercial, mining, manufacturing, construction, augmentation pursuant to the augmentation plan decreed in Case No. 10CW02, Water Division 2, or subsequent augmentation plans approved by the Water Court, livestock watering, wildlife, fire protection, road construction and maintenance, dust suppression, and industrial uses, directly or by exchange. No appropriative right of exchange is being decreed herein, and any exchange in which the water may be used must be separately decreed or administratively approved. vii. Surface area of high water line: approximately 1.50 acres. viii. Vertical height of dam: approximately 10-15 feet. ix. Length of dam: approximately 400 feet. x. Total Capacity of Reservoir in acre feet: 11.3 acre-feet (conditional). (1) Active capacity: 11.3 acre-feet; (2) Dead storage: None. xi. Place of Use: The place of use for water stored in the Mid Fork 1 Pond is the Colorado portion of the area known as the Central Raton Basin. See area map on file with the Water Court. The place of use for augmentation purposes shall be limited to those areas specifically described in Case No. 10CW02, Water Division No. 2 or subsequent augmentation plans approved by the Court and obtained by the same applicants or their successors, and for the same areas and types of uses, as identified in Case No. 10CW02. xii. Remarks: The Mid Fork 1 Pipeline is adjudicated only as a source of supply for the Mid Fork 1 Pond, and shall not be entitled to make diversions for direct flow uses. Rather, all diversions to the Mid Fork 1 Pipeline, whether native flows or other sources of supply adjudicated in Case No. 10CW02 shall be diverted to storage in Mid Fork 1 Pond, with uses therefrom, as

adjudicated herein. No out of priority diversion of water to storage in Mid Fork 1 Pond shall be made other than subject to the plan for augmentation decreed in Case No. 10CW02, Water Division 2, or subsequent augmentation plans which may be approved by the water court. **B. Name of Reservoir: Lopez Canyon Pond.** i. Legal Description: An off-channel pond 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. See location map on file with the Water Court. ii. Source: Lopez Canyon stream, tributary to the Purgatoire River. iii. Name of Pipeline (to fill reservoir): Lopez Canyon Pipeline with a capacity of 1 c.f.s. (1) 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. See location map on file with the Water Court. iv. Appropriation Date: September 30, 2009. v. Amount: (1) 7.5 acre-feet (conditional), with the right to fill and refill the pond when in priority, up to three complete fills annually. (2) Rate of diversion for filling Reservoir: 1 c.f.s. (conditional). vi. Use: See above paragraph 4.A.vi. vii. Surface area of high water line: approximately 1.0 acre. viii. Vertical height of dam: approximately 10-15 feet. ix. Length of dam: approximately 300 feet. x. Total Capacity of Reservoir in acre feet: 7.5 acre-feet (conditional). (1) Active capacity: 7.5 acre-feet. (2) Dead storage: None. xi. Place of Use: See above paragraph 4.A.xi. xii. Remarks: The Lopez Canyon Pipeline is adjudicated only as a source of supply for the Lopez Canyon Pond, and shall not be entitled to make diversions for direct flow uses. Rather, all diversions to the Lopez Canyon Pipeline, whether native flows or other sources of supply adjudicated in Case No. 10CW02, shall be diverted to storage in Lopez Canyon Pond, with uses therefrom, as adjudicated herein. No out of priority diversion of water to storage in Lopez Canyon Pond shall be made other than subject to the plan for augmentation decreed in Case No. 10CW02, Water Division 2, or subsequent augmentation plans which may be approved by the water court. **C. Name of Reservoir: South Fork 1 Pond.** i. Legal Description: UTM (meters) NAD83: 504177(x), 4102172(y). See location map on file with the Water Court. ii. Source: South Fork 1 Pond is an on-channel pond located in an unnamed tributary that flows into the South Fork of the Purgatoire River. The pond may be filled either from the unnamed tributary or from the South Fork of the Purgatoire River. iii. Name of Pipeline (to fill reservoir): South Fork 1 Pipeline with a capacity of 3 c.f.s. (1) Point of Diversion: The point of diversion, in UTM (meters) NAD83, will be approximately 504156(x), 4102315(y). See location map on file with the Water Court. iv. Appropriation Date: September 30, 2009. v. Amount: (1) 11.3 acre-feet (conditional), with the right to fill and refill the pond when in priority, up to three complete fills annually. (2) Rate of diversion for filling Reservoir: 3 c.f.s. (conditional). vi. Use: See above paragraph 4.A.vi. vii. Surface area of high water line: approximately 1.50 acres. viii. Vertical height of dam: approximately 10-15 feet. ix. Length of dam: approximately 400 feet. x. Total Capacity of Reservoir in acre feet: 11.3 acre-feet (conditional); (1) Active capacity: 11.3 acre-feet; (2) Dead storage: None. xi. Place of Use: See above paragraph 4.A.xi. xii. Remarks: The South Fork 1 Pipeline is adjudicated only as a source of supply for the South Fork 1 Pond, and shall not be entitled to make diversions for direct flow uses. Rather, all

diversions to the South Fork 1 Pipeline, whether native flows or other sources of supply adjudicated in Case No. 10CW02, shall be diverted to storage in South Fork 1 Pond, with uses therefrom, as adjudicated herein. No out of priority diversion of water to storage in South Fork 1 Pond shall be made other than subject to the plan for augmentation decreed in Case No. 10CW02, Water Division 2, or subsequent augmentation plans which may be approved by the water court. **5. Integrated System:** In Case No. 09CW113, by decree entered on November 15, 2011, this Court adjudicated conditional water rights for the Mid Fork 1 Pond, Lopez Canyon Pond, and the South Fork 1 Pond. The Court concluded that: “The conditional water storage rights decreed herein are individual components of Applicant’s integrated water supply system as described in more detail in the Application for Approval of Plan for Augmentation, Including Exchanges, filed jointly by Applicant and other parties in Case No. 10CW02, Water Division 2. Consequently, in subsequent diligence proceedings, work on any one feature of Applicant’s supply system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of Applicant’s water supply system.” C.R.S. § 37-92-301(4)(b). **6. Detailed outline of the work and expenditures done toward or for the completion of the appropriations and application of water to beneficial use:** A. Applicant Timber Creek Energy LLC purchased the subject conditional water rights from XTO Energy Inc. (“XTO”), effective October 2, 2017. B. Applicant operates coal bed 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 wells typically produce small amounts of groundwater (sometimes referred to as “produced water”) from groundwater aquifers. C. During the relevant diligence period, Applicant and/or its predecessor XTO undertook the following activities in support of the development of the subject conditional water rights and completion of the appropriations. i. Prosecuted an Application for Approval of Plan for Augmentation, Including Exchanges, in Case No. 10CW02, Water Division 2, to obtain approval of a basin-wide augmentation plan to augment out-of-priority depletions from CBM wells that withdraw tributary produced water in the Central Raton Basin. The Water Court entered a final decree in Case No. 10CW02 on January 30, 2017. The subject conditional water rights are included in the final decree as water rights to be used for augmentation in that plan. ii. Obtained annual Substitute Water Supply Plan approvals pursuant to C.R.S. § 37-92-308(4) during the pendency of proceedings in Case No. 10CW02. iii. Developed and implemented plans for compliance with the Arkansas River Basin Well Measurement Rules. Met with the State and Division Engineers Office on numerous occasions to develop and implement plans for accounting, measurement, reporting and administration of the produced water withdrawals and plan for augmentation decreed in Case No. 10CW02. iv. Conducted numerous technical analyses, investigations and evaluations in support of the above-described activities, including without limitation the ongoing refinement and operation of a calibrated, multi-layered numerical model of groundwater flow systems in the Central Raton Basin using the MODFLOW computer code developed by the United States Geological Survey. v. Negotiated and entered into a Water Supply Agreement dated June 9, 2017 with the City of Trinidad, for the long-term provision of augmentation water supplies. vi. Participated in proceedings for judicial review of the State Engineer’s

Produced Nontributary Ground Water Rules, 2 CCR 402-17, in both the Water Court and the Colorado Supreme Court. vii. Participated in proceedings before the Colorado Water Quality Control Commission and the Water Quality Control Division regarding permitting of produced water discharges. viii. Reviewed water court resumes and applications for water rights in the Purgatoire River basin, and filed statements of opposition where necessary to protect the subject conditional water rights. ix. Engaged the services of attorneys, engineers, and technical consultants to assist with the above-described activities. D. The list of activities above is not intended to be exhaustive, and Applicant reserves the right to present additional evidence as appropriate. Total expenditures in connection with the above-referenced activities during the diligence period are difficult to calculate, but are conservatively estimated to be in excess of \$1,000,000. **7. Names and addresses of owners of land upon which any new diversion and storage structures will be located or upon which water will be stored:** A. Applicant; B. Colorado Parks & Wildlife, Attn: Area Wildlife Manager, 600 Reservoir Road, Pueblo, CO 81005.

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 January 2018, (forms available at Clerk's office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 12th day of December, 2017.

Mardell R. DiDomenico



Mardell R. DiDomenico, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
501 N. Elizabeth Street, Suite 116
Pueblo, CO 81003; (719) 404-8832

(Court seal)
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