

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING OCTOBER 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 rules promulgated by the State Engineer that were filed and/or ordered published during October 2017, in Water Division No. 2. The names and addresses of applicants, description of water rights, conditional water rights or rules involved, description of ruling sought, as reflected by said applications or rules are as follows:

**CASE NO. 2017CW13 - TIMOTHY PHELPS, 6255 Ashton Park Place, Colorado Springs, CO 80919; (719) 238-2739**

Application for Absolute Water Rights (Surface)

**TELLER COUNTY**

**Name of structures:** PK Ranch Spring No 1; PK Ranch Spring No 2; PK Ranch Spring No 3; PK Ranch Spring No 4. **Legal description of each point of diversion:**

UTM coordinates	Northing	Easting
PK Ranch Spring No 1	4294090	479478
PK Ranch Spring No 2	4293743	479405
PK Ranch Spring No 3	4293346	478862
PK Ranch Spring No 4	4293323	478704

UTM Zone 13S. Source of UTM's: Hand-held Garmin GPS. Accuracy of location displayed on GPS device: 10 feet

**Source:** PK Ranch Spring Nos 1 and 2: Unnamed tributary of Bernard Creek, tributary to Fourmile Creek, tributary to Arkansas River. PK Ranch Spring Nos 3 and 4: Unnamed tributary of Fourmile Creek, tributary to Arkansas River. **Date of appropriation:** PK Ranch Spring No 1: 12/31/1981 for livestock and wildlife uses. PK Ranch Spring No 2: 12/31/1981 for livestock and wildlife uses and 1925 for domestic purposes. PK Ranch Spring No 3: 12/31/2013 for livestock and wildlife uses. PK Ranch Spring No 4: 12/31/2013 for livestock and wildlife uses. **How appropriation was initiated:** PK Ranch Spring Nos 1 & 2 flows were placed in stock ponds and used for livestock and wildlife purposes. For domestic purposes, by original homestead use of PK Ranch Spring No 2 for domestic uses. PK Ranch Spring Nos 3 & 4 by use of springs for livestock and wildlife purposes. **Date water applied to beneficial use:** For livestock and wildlife uses: 12/31/1981 & 12/31/2013 and for domestic uses: 1925. **Amount claimed in gallons per minute:** PK Ranch Spring No 1: 2 gallons per minute absolute. PK Ranch Spring No 2: 4 gallons per minute absolute. PK Ranch Spring No 3: 1 gallon per minute absolute. PK Ranch Spring No 4: 1 gallon per minute absolute. To the applicant's knowledge, flows from these springs have been historically administered as being futile to downstream water rights. **List All Uses or Proposed Uses:** PK Ranch Spring Nos 1,3 & 4: Livestock and wildlife uses. PK Ranch Spring No 2: Livestock, wildlife and domestic uses. The four PK Ranch Springs have each been used for livestock and wildlife uses on the PK Ranch property. PK Ranch Spring No 2 has been additionally used to supply the original homestead domestic uses on the

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

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**CASE NO. 2017CW14 - COMPLAINT.** This case is a complaint and is listed in the resume to account for the case number in consecutive order.  
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**CASE NO. 2017CW3057 - KEVIN G. REIN, State Engineer and Director of COLORADO DIVISION OF WATER RESOURCES, 1313 Sherman Street, 8<sup>th</sup> Floor, Denver, CO 80203** (Please forward all correspondence and pleadings to the attorneys for the State Engineer and Director of Colorado Division of Water Resources: Jeffrey N. Candrian and Ema I. G. Schultz, Assistant Attorneys General, Colorado Attorney General, Natural Resources & Environment Section, 1300 Broadway, 7<sup>th</sup> Floor, Denver, CO 80203, Telephone: 720-508-6288 (Candrian), 720-508-6307 (Schultz), E-mail: [jeffrey.candrian@coag.gov](mailto:jeffrey.candrian@coag.gov); [ema.schultz@coag.gov](mailto:ema.schultz@coag.gov))

**Rules Governing the Review of a Substitute Water Supply Plan for the Lease, Loan, or Trade of a Decreed Agricultural Water Protection Water Right**

BACA, BENT, CHAFFEE, CHEYENNE, COSTILLA, CROWLEY, CUSTER, ELBERT, EL PASO, FREMONT, HUERFANO, KIOWA, KIT CARSON, LAKE, LAS ANIMAS, LINCOLN, OTERO, PARK, PROWERS, PUEBLO, SAGUACHE AND TELLER COUNTIES

**TITLE:** The title of these rules is “Rules Governing the Review of a Substitute Water Supply Plan for the Lease, Loan, or Trade of a Decreed Agricultural Water Protection Water Right.” The short title of these rules is “Agricultural Water Protection Right Rules” and in this document the rules may be referred to as “Rules.” **AUTHORIZATION:** In order to comply with the requirements of section 37-80-123, C.R.S. (2016)<sup>1</sup>, it is necessary to adopt rules governing the review of a substitute water supply plan pursuant to section 37-92-308(12), C.R.S. The State Engineer’s authority to promulgate these Rules is based on section 37-80-102(g), C.R.S., which vests rulemaking authority for the Division of Water Resources in the State Engineer; section 37-80-123, C.R.S., which requires the promulgation of these rules according to the State Engineer’s own rule-making process; and section 37-92-501, C.R.S., which authorizes the State Engineer to adopt rules and regulations to assist in the performance of administration, distribution, and regulation of the waters of the state in accordance with the constitution of the State of Colorado and other applicable laws. **ORDER OF THE STATE ENGINEER: IT IS ORDERED** that the following Rules governing the review of a substitute water supply plan for the lease, loan, or trade of a decreed agricultural water protection water right are adopted by the State Engineer. **RULE 1 SCOPE:** These Rules apply to all applications for substitute water supply plans pursuant to section 37-92-308(12), C.R.S.: **RULE 2 DEFINITIONS:** The following definitions are applicable to these Rules: **2.1. “Agricultural Water Protection Water Right”** means a water right changed by a water court decree to allow the lease, loan, or trade of up to fifty percent

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<sup>1</sup> All statute references in this document are to C.R.S. (2016).

of the amount of water so decreed, subject to the allowances and limitations described in section 37-92-305(19), C.R.S. The Agricultural Protection Water Right is the total amount of the water right that was changed by the water court for agricultural water protection use. A portion of the Agricultural Protection Water Right may be Lease Water, as defined in Rule 2.6. **2.2. “Change Decree”** means the water court decree for the change of water right from an absolute decreed irrigation water right used for agricultural purposes to an Agricultural Water Protection Water Right. **2.3. “Criteria and Guidelines”** means the document developed by the Colorado Water Conservation Board for the establishment of Agricultural Water Protection Programs pursuant to section 37-92-305(19)(b)(IV)(B), C.R.S., to assure sufficient protection and monitoring of Agricultural Water Protection Water Rights. **2.4. “Final Decision”** means the approval or denial of a substitute water supply plan, as defined in Rule 2.9, which is issued after the reconsideration period, as described in Rule 6. **2.5. “Initial Decision”** is the State Engineer’s initial approval or denial of a substitute water supply plan, as defined in Rule 2.9, which may be reconsidered upon request as described in Rule 6. **2.6. “Lease Water”** means the portion of the historical consumptive use described in the Change Decree that is requested for lease, loan, or trade in the substitute water supply plan. The amount may be up to fifty percent of the quantified historical consumptive use portion of the Agricultural Water Protection Water Right described in the Change Decree. **2.7. “Person”** means an individual, a partnership, a corporation, a municipality, the state of Colorado, the United States, or any other legal entity, public or private. See section 37-92-103(8), C.R.S. **2.8. “Point of Diversion”** means either (a) the decreed location where the Lease Water will be diverted from the natural stream or (b) the decreed upstream location of a reach of the natural stream where the Lease Water will be put to beneficial use. **2.9. “Substitute water supply plan” or “SWSP”** means a one year plan for the use of Lease Water at a Point of Diversion, which is administratively approved by the State Engineer pursuant to section 37-92-308(12), C.R.S. **2.10. “SWSP Parties”** means applicant, all parties commenting on the SWSP application, and all parties to the Change Decree. **RULE 3 APPLICATION REQUIREMENTS AND CRITERIA THAT THE STATE ENGINEER WILL CONSIDER IN REVIEW OF A SUBSTITUTE WATER SUPPLY PLAN APPLICATION:** Rule 3 describes requirements for information to be included in any SWSP application and, as directed by section 37-80-123(1)(b)(II), C.R.S., criteria the State Engineer will consider in reviewing all applications. Much of the information included in the application will be information found in the Change Decree but will be necessary in the application to provide a complete picture of the proposed operation. Applications should be submitted no later than January 15 to allow for review prior to the irrigation season. Applications should be submitted as early as possible to allow adequate time for evaluation. **3.1. Information that must be included in the application<sup>2</sup>:** **3.1.1.** Applicant name and evidence that applicant is the owner of the Agricultural Water Protection Water Right. **3.1.2.** Evidence of written notice to the SWSP notification list, as required by section 37-92-308(12)(b)(A), C.R.S. **3.1.3.** Case number for the Change Decree. **3.1.4.** Person to whom the Lease Water will be leased, loaned, or traded. **3.1.5.** Copy of written lease,

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<sup>2</sup> A reference to the decree paragraph and/or page number may be sufficient to fulfill Rule 3.1 rather than transcribing long sections of the Change Decree; however, language from the Change Decree may be included in the application for clarity.

loan, or trade with end user of water<sup>3</sup>. **3.1.6. Proposed use of Lease Water:** **3.1.6.1.** The amount of Lease Water as a percentage (50 percent or less) of the Agricultural Water Protection Water Right and other amount limitations described in the Change Decree. Such limitations may include volumetric limits, which may vary by the percent of the Agricultural Water Protection Water Right being used, or limits that are a result of return flow percentages. **3.1.6.2.** The Point of Diversion of the Lease Water, case number and paragraph or page number where the Point of Diversion is decreed, and any WDIDs assigned by the Division of Water Resources. **3.1.6.3.** For a Point of Diversion that is upstream of the decreed point of diversion of the Lease Water, identify intervening water rights and describe how the upstream diversion can occur without injury. **3.1.6.4.** Type and place of use of Lease Water. If an augmentation plan allows for the temporary addition of replacement sources, Lease Water may be added only pursuant to the provisions of that augmentation plan and must be diverted at a previously decreed Point of Diversion and returned to the stream for credit. **3.1.7. Opt out of SWSP operation:** If applicant desires an SWSP with the option to opt out before the irrigation season begins, describe in detail the terms and conditions applicant requests. The Division Engineer must be notified no later than March 31 and before any diversions under the SWSP occur if the applicant elects to opt out. **3.1.8. Information on Dry Up:** **3.1.8.1.** A description of the historically irrigated land associated with the Lease Water that will not be irrigated by the Lease Water for the duration of the SWSP. **3.1.8.2.** A description of the method to ensure the dry up of the irrigated land associated with the Lease Water, any plans to irrigate with alternative water sources, and any additional dry up terms and conditions from the Change Decree. **3.1.9. Historical return flow obligations:** **3.1.9.1.** Restatement of return flow obligations by time, place, and amount from the Change Decree. Obligations are typically described as fractions of farm headgate deliveries, flow rates, or volumetric amounts. **3.1.9.2.** The amount of return flow obligation associated with the Lease Water. The amount of return flow obligation may vary with the percentage of the Agricultural Water Protection Water Right exercised (50 percent or less) and other limitations described in the Change Decree. **3.1.9.3.** The source(s) of water to be used to meet return flow obligations. **3.1.9.4.** Documentation of permission to use replacement water (copy of lease or contract) if not owned. **3.1.9.5.** The location(s) at which replacement water will be placed in the river to meet return flow obligations, and the river distance from the location water is placed in river to the location of the return flow obligation for calculating transit loss. **3.1.9.6.** Explanation of any exchange required to meet return flow obligations, the exchange rate, and exchange potential. **3.1.9.7. For replacement provided through recharge accretions:** **3.1.9.7.1.** Description of the timing, amounts, and locations of delayed accretions to the receiving stream. **3.1.9.7.2.** Table of estimated monthly deliveries, evaporation, other losses, releases, and accretions for the recharge facility. **3.1.9.8.** Table of monthly return flow obligations, available replacement water from each replacement source, and transit losses associated with each replacement source. The table should include all ongoing obligations as described in the Change Decree and available replacement water from each replacement source

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<sup>3</sup> Confidential information, which is commonly related to price, may be redacted from application materials as long as essential information such as term, renewal/termination dates, and any special operation clauses are shown.

used to meet those obligations. **3.1.10. Required Maps.** All maps shall have scale, section, township, and range clearly identified. **3.1.10.1. Map 1:** All water infrastructure involved in the SWSP (streams, ditches, Point of Diversion, measuring structures, replacement sources, etc.). **3.1.10.2. Map 2:** Lands that will not be irrigated by the Lease Water for the SWSP. **3.1.10.3. Map 3:** Lands included in a conservation program or Agricultural Water Protection Program where the water decreed for agricultural water protection use but not leased, loaned or traded will continue to be used for agricultural purposes. **3.1.11.** A GIS shapefile outlining the land area that will not be irrigated by the Lease Water must be sent to the Division Office Accounting email<sup>4</sup> before an approval can be issued. The shapefile shall include the Change Decree case number, the name of the SWSP application, and any accompanying metadata. In addition, the datum must be NAD83 and the UTM projection must be Zone 13. **3.1.12.** Proof of permission<sup>5</sup> to use any structures required for the operation of the SWSP but not owned by applicant. **3.1.13.** Evidence of enrollment in a conservation program identified in section 37-92-305(19)(b)(IV)(A), C.R.S. or an Agricultural Water Protection Program for the lands identified in Map 3. **3.1.13.1.** Applicant shall verify that use of the water under an SWSP does not conflict with water requirements of the conservation program or Agricultural Water Protection Program. **3.1.14.** Detailed draft accounting table consistent with any applicable Division Office Accounting Protocol. **3.1.15.** Contact information (including phone number and email address) for the party that will be submitting accounting for the SWSP and the party(ies) who will be coordinating daily operations with the water commissioner(s). **3.2. Criteria that the State Engineer will consider in reviewing an application, as directed by section 37-92-308(12)(c), C.R.S. The State Engineer must:**

**3.2.1.** Verify that the proposed amount of Lease Water is consistent with the quantification and terms and conditions in the Change Decree and is no more than 50 percent of the historical consumptive use. **3.2.2.** Verify that the Point of Diversion is subject to an existing water court decree. **3.2.3.** Verify that the SWSP has correctly quantified the amount of replacement water associated with the Lease Water and that the SWSP will meet the return flow obligations in time, place, and amount to prevent material injury to other vested water rights and decreed conditional water rights in accordance with the Change Decree. **3.2.4.** Verify that the operation of the SWSP does not facilitate the diversion of water between water divisions by direct diversion, exchange, replacement, or other means. **3.2.5.** Consider written comments provided on the application in accordance with section 37-92-308(12)(b)(II), C.R.S. **3.2.6.** Verify that, with appropriate terms and conditions, the SWSP will prevent injury to vested water rights and complies with the Change Decree.

**RULE 4: TERMS AND CONDITIONS THAT THE STATE ENGINEER MAY IMPOSE THROUGH AN APPROVED SUBSTITUTE WATER SUPPLY PLAN:** As required by section 37-80-123(1)(b)(I), C.R.S., Rule 4 describes the terms and conditions that the State Engineer may impose on SWSP approvals pursuant to these Rules. Sections 37-92-308(12)(c)(VI) and (VII), C.R.S., specifically require SWSP terms and conditions for the use of Lease Water, including the return flow obligations in time, place, and amount that prevent material injury to other vested water rights and decreed conditional water rights and allow delivery to the Point of Diversion. All terms and conditions of the Change Decree apply

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<sup>4</sup> Currently, these are [DNR\\_Div1Accounting@state.co.us](mailto:DNR_Div1Accounting@state.co.us) and [DNR\\_Div2ground.water@state.co.us](mailto:DNR_Div2ground.water@state.co.us).

<sup>5</sup> If permission is pending, an explanation on the status may be provided.

to the SWSP. All SWSP terms and conditions shall be consistent with the Change Decree to the extent the Change Decree addresses any aspect of the operation. Should a conflict arise between the Change Decree and the SWSP, the terms and conditions of the Change Decree supersede any conflicting Standard SWSP Terms and Conditions or other conflicts between the SWSP and Change Decree. **4.1.** The following Standard Terms and Conditions shall be included in every SWSP approval, but can be modified by the State Engineer in an SWSP approval. Applicants may suggest modifications to Standard Terms and Conditions in the application if necessary. **4.1.1.** This SWSP shall be valid for the period of one year, as specified in the Final Decision unless otherwise revoked or superseded. Any change in the use of the Lease Water, return flow replacement, or operations of the SWSP requires submittal of a new application pursuant to section 37-92-308(12), C.R.S. **4.1.2.** If the terms and conditions of the SWSP remain unchanged, the applicant may renew the SWSP two times within three years of the original beginning date by notifying the State Engineer by electronic mail (to the Division Office Accounting Email<sup>6</sup>) or first-class mail (to the State Engineer's Office) that the terms and conditions remain unchanged. The notice must describe the requested period of renewal (beginning date through end date), not to exceed one year, and a copy of the renewed lease, loan, or trade agreement, if applicable. Notice should be provided at least 35 days prior to the requested beginning date. **4.1.3.** The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will likely occur as a result of the operation of this SWSP or if the applicant fails to comply with the SWSP conditions of approval. Should this SWSP expire without renewal or be revoked, all use of water under this SWSP must cease immediately. However, all ongoing obligations from operation under this SWSP, such as historical return flow replacements, must continue to be fulfilled. **4.1.4.** Approval of this SWSP is contingent on the non-irrigation of the specified portion of the applicant's property as shown on Map 2. **4.1.5.** This SWSP is only valid if the lands shown on Map 3 continue to participate in a program as required in section 37-92-305(19)(b)(IV), C.R.S. **4.2.** Pursuant to section 37-92-308(12)(c)(VI), C.R.S., additional terms and conditions not listed in Rule 4.1 will be included in each SWSP approval to allow for administration and prevention of injury based on the specific operation of each SWSP. **4.3.** The State Engineer may include terms and conditions submitted by commenting parties pursuant to section 37-92-308(12)(b)(II), C.R.S. **RULE 5 ADDITIONAL INFORMATION TO BE INCLUDED IN THE DECISION OF THE STATE ENGINEER:** The decision of the State Engineer, either an approval or denial of the SWSP application, must include the following information as required by section 37-92-308(12)(f), C.R.S.: **5.1.** Detailed statement of the basis and rationale for the decision. If the decision is an approval, the approval must include a complete explanation of the terms and conditions imposed to prevent injury to other water rights (see Rule 4) and why the terms and conditions are imposed. **5.2.** Description of the consideration given to any written comments that were filed by other parties. **RULE 6 RECONSIDERATION AND APPEAL OF STATE ENGINEER'S DECISION:** Section 37-80-123(1)(b)(IV), C.R.S., requires that the Rules provide procedures for the State Engineer to reconsider a decision and section 37-92-308(12)(h), C.R.S., describes the SWSP appeal process. Reconsideration and appeal

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<sup>6</sup> Currently, these are [DNR\\_Div1Accounting@state.co.us](mailto:DNR_Div1Accounting@state.co.us) and [DNR\\_Div2ground.water@state.co.us](mailto:DNR_Div2ground.water@state.co.us).

of the State Engineer's decision shall be in accordance with the following: **6.1. Initial Decision and Reconsideration.** **6.1.1.** The State Engineer shall serve<sup>7</sup> a copy of the Initial Decision, whether an approval or denial, on all SWSP Parties. The Initial Decision may be reconsidered within 14 days of the date of service of the Initial Decision. **6.1.2.** Any party may request that the State Engineer reconsider the Initial Decision during the 14-day reconsideration period by providing information not available to the State Engineer when the Initial Decision was made, by identifying or explaining information the State Engineer failed to consider, or by identifying clerical errors in the Initial Decision. The requesting party shall serve a copy of the request on all SWSP Parties and the State Engineer. **6.1.2.1.** The State Engineer will review the information provided by the party requesting reconsideration and will provide a response to all SWSP Parties within a reasonable time. **6.1.3.** If no reconsideration is requested, the State Engineer will issue a Final Decision 14 days after the Initial Decision. If any party requests reconsideration, the State Engineer will issue the Final Decision after reconsideration. The State Engineer will serve a copy of the Final Decision on all SWSP Parties. The SWSP may be operated only after the State Engineer issues the Final Decision. **6.2. Appeal of State Engineer's Final Decision.** **6.2.1.** Any appeal of the Final Decision must be made within thirty-five days of the date of service of the Final Decision. Any appeal must be filed under the Change Decree case number. **RULE 7 AGRICULTURAL WATER PROTECTION WATER RIGHT SUBSTITUTE WATER SUPPLY PLAN DATABASE:** Rule 7 establishes procedures for creating a database that tracks and inventories SWSPs and for making that information available to the public as required by section 37-80-123(1)(b)(V), C.R.S. **7.1. Database creation:** **7.1.1.** The existing database used to track SWSP status will be modified to include the information listed in Rule 7.2. **7.2. Database information requirements:** **7.2.1.** Change Decree case number. **7.2.2.** SWSP name. **7.2.3.** Approved date of operation for the original SWSP: the date that operation may begin for the first SWSP pursuant to an application, as opposed to a request for a renewal. **7.2.4.** SWSP recent renewal date: the date that operation may begin for the one-year renewal of the SWSP, as allowed by section 37-92-308(12)(d), C.R.S. **7.2.5.** Status (approved, denied, pending, etc.). **7.2.6.** Decreed beneficial use(s) of the Lease Water prior to the Change Decree. **7.2.7.** Type of SWSP: "308(12) – Agricultural Water Protection," which also describes the decreed beneficial use of the water under the Change Decree. **7.2.8.** Beneficial use of the Lease Water in the SWSP. **7.2.9.** Amount of Lease Water in the SWSP. **7.2.10.** Location(s) of use of the Lease Water in the SWSP including water division, water district, and section, township, and range. **7.3. Database accessibility:** **7.3.1.** The public will have access to the information in Rule 7.2 through the Colorado Information Marketplace. **RULE 8 SEVERABILITY:** If any portion of these rules is found to be invalid, the remaining portion of the rules shall remain in force and in effect. **IT IS FURTHER ORDERED** that these rules shall take effect sixty days after publication in accordance with section 37-92-501, C.R.S., and will thereafter remain in effect until amended as provided by law. In the event that protests are filed with respect to these Rules pursuant to section 37-92-501, C.R.S., the effective date of these Rules is the date on which all protests have been resolved. Any person desiring to protest these rules may do so in the manner

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<sup>7</sup> Any service required by these Rules shall be by electronic mail (including via Colorado Courts E-Filing) or by First-Class mail, if a party has so elected.

provided in section 37-92-501, C.R.S. Any such protest to these rules must be filed by the end of the month following the month in which these rules are published.

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**CASE NO. 2017CW3058 - FALCON HIGHLANDS METROPOLITAN DISTRICT, 8390**

**E. Crescent Parkway, #500, Greenwood Village, CO 80111** (Please address all correspondence and inquiries regarding this matter to Applicant's attorney: James J. Petrock, Petrock & Fendel, P.C., 700 17<sup>th</sup> Street, #1800, Denver, CO 80202; (303) 534-0702)

Application for Change of Water Right

**EL PASO COUNTY**

**Decree and Groundwater information for which change is sought:** 49.1 acre-feet per year of nontributary Laramie-Fox Hills aquifer groundwater decreed in Case No. 01CW65, on December 11, 2001, and 64.55 acre-feet per year of nontributary Laramie-Fox Hills aquifer groundwater decreed in Case No. 83CW134, on May 5, 1987. The groundwater decreed in Case No. 01CW65 is associated with 183 acres generally located in part of the SW1/4 of Section 2 and the SE1/4 of Section 3, T13S, R65W, and the groundwater decreed in Case No. 83CW134 is associated with 179 acres generally located in part of the N1/2 of Section 11, T13S, R65W of the 6th P.M., as shown on Attachment A to the Application. (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Proposed change:** Pursuant to the original decrees, the Laramie-Fox Hills aquifer groundwater decreed in each case is to be withdrawn through wells located on the land associated with that decree. Applicant requests that all or parts of the total combined annual amounts of Laramie-Fox Hills aquifer groundwater described above, be withdrawn through wells located on the land which is the subject of either Case No. 01CW65 or 83CW134, including through existing well Permit No. 66364-F. No other parts of the original decrees are changed herein. Further, Applicant prays that this Court grant the application and for such other relief as seems proper in the premises.

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**CASE NO. 2017CW3059 - SECURITY WATER DISTRICT, c/o Roy Heald, Manager, 231 Security Boulevard, Colorado Springs, CO 80911**

(Please address all correspondence and inquiries regarding this matter to Applicant's attorneys: MONSON, CUMMINS & SHOHET, LLC. Steven T. Monson, #11329, Ryan W. Farr, #39394, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, CO 80921, (719) 471-1212)

Application for Findings of Reasonable Diligence and to Make Absolute in Part

**EL PASO COUNTY, COLORADO**

**II. Summary of Application:** Security seeks a finding of reasonable diligence and to make partially absolute the conditional exchange adjudicated in Case No. 06CW126, District Court, Water Division 2 ("Decree"). **III. Conditional Exchange:** A. Description of Conditional Exchange: The Decree adjudicated a conditional exchange from the exchange from point of the Chilcott Ditch headgate, located in the SE1/4 of Section 25, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M. as administered through the Chilcott Ditch augmentation station as shown on Exhibit A attached to the Application, to the exchange to points of: 1. The point of depletion on Fountain Creek of the wells Security owns or leases in the Widefield Aquifer and Windmill Gulch Aquifer as decreed in Case Nos. W-103, W-104, W-105, W-106, W-107, W-108, W-109, W-110, W-111, W-112, W-



346, W-400, W-664, W-3174, W-4766, W-1551, 81CW225, 84CW130, and 91CW33, as covered in Security's existing plans for augmentation in Case Nos. W-4212, 90CW28, 07CW51, 01CW149, and 09CW92. The place of the Security's well depletions to Fountain Creek is generally located in the NE1/4 of Section 25, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., as generally depicted on Exhibit A to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 2. The Fountain Mutual Ditch headgate located in the SW1/4 of Section 20, Township 14 South, Range 66 West of the 6<sup>th</sup> P.M., also as generally shown on Exhibit A to the Application. 3. The Stubbs and Miller Ditch headgate located in the NE1/4 of the SW1/4 of Section 3, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., also as generally shown on Exhibit A to the Application. The above being collectively referred to as the "Exchange." B. Date of Decree: The Decree was entered on October 12, 2011 in Case No. 06CW126, District Court, Water Division 2. C. Source for Exchange: The water that is the subject of the Exchange is the stream depletion credits adjudicated to Security's 10.25 shares in the Chilcott Ditch Company under the terms and conditions of the August 11, 2009 Judgment and Decree in Case No. 06CW119, District Court, Water Division 2 ("Chilcott Change Decree"). The Chilcott Ditch water rights are described as follows: 1. Priority No. 27. Fountain Creek Priority No. 27 for 27.0 c.f.s., with an appropriation date of March 21, 1866, as described in the decree for the original adjudication for former Water District 10, District Court, entered by the District Court, El Paso County on February 15, 1882. Security's pro-rata share of the Priority No. 27 water right equals 2.635 c.f.s. 2. Priority No. 39. Fountain Creek Priority No. 39 for 20.63 c.f.s., with an appropriation date of March 21, 1874 as described in the decree for the original adjudication for former Water District 10, District Court, entered by the District Court, El Paso County on February 15, 1882. Security's pro-rata share of the Priority 39 water right equals 2.014 c.f.s. 3. Change of Water Rights. The Chilcott Change Decree changed the water associated with 20.5 shares of the Chilcott Ditch Company, including Security's 10.25 shares, from irrigation use to all municipal uses, including, but not limited to, domestic, irrigation, commercial, industrial, recreational, fishery, piscatorial, wildlife, augmentation, replacement, substitution, exchange, and storage for later use. 4. Decreed Point of Diversion. The point of diversion for the Chilcott Ditch water rights is at a point on the north bank of Fountain Creek in the SE1/4 of Section 25, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., in El Paso County, Colorado. 5. Source. The source for the Chilcott Ditch water rights is Fountain Creek, Tributary to the Arkansas River. D. Appropriation Date of Exchange: The appropriation date for the Exchange is December 29, 2006. E. Amount of the Exchange: The amount of the Exchange is the annual stream depletion credits from Security's 10.25 shares in the Chilcott Ditch Company based upon its pro-rata share of the Chilcott Ditch water rights under the terms and conditions of the Chilcott Change Decree with a maximum exchange rate of 2.0 c.f.s. F. Uses of Exchange Water: In accordance with the Decree, the water will be used for augmentation and replacement of Security's depletions as a result of the pumping of the Widefield Aquifer wells and Windmill Gulch Aquifer wells. Security may also divert the exchanged water at the Fountain Mutual Ditch headgate or the Stubbs and Miller Ditch headgate for treatment and application to direct municipal use and reuse. Additionally, Security may divert the exchanged water at the Fountain Mutual Ditch headgate or the Stubbs and Miller

headgate for treatment and then used and reused as a supplemental source of Widefield Aquifer recharge and augmentation. G. Ownership of Exchange Source: Security is the owner of the water source for the Exchange. **IV. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** In the Decree, Security was awarded a conditional appropriative right of exchange. The conditional appropriative right of exchange is a component part of Security's integrated water system, which consists of storage water rights, plans for augmentation, appropriative rights of exchange, surface water rights, groundwater rights, as well as both a physical and administrative infrastructure to operate the system. Pursuant to § 37-92-301(4)(b), C.R.S., work on one component of the integrated system shall be considered in finding that reasonable diligence has been shown for all components of the integrated system. A. During the diligence period occurring on August 21, 22, and 23, 2015, Security exchanged 1.70 c.f.s. of the maximum 2.0 c.f.s. of the Exchange to the Fountain Mutual Ditch headgate as described in Paragraph III.A.2 above whereby it was stored in Big Johnson Reservoir and later released for beneficial uses. B. During the diligence period, Security has completed the following work and outlaid the following expenditures related to the integrated water system: 1. Security has pursued the adjudication of an additional plan for augmentation and change of water right in Case No. 12CW99, District Court, Water Division 2 (Clear Springs Wells). 2. Security has filed statements of opposition to many Water Court applications in order to protect Security's water rights, including the exchange that is subject of this case. 3. Security has investigated and purchased additional water rights. 4. Security has filed and is pursuing a case for the change of water rights and plan for augmentation in Case No. 16CW3055, District Court, Water Division 2. 5. Due to the presence of perfluorooctane sulfonate and perfluorooctane acid in greater amounts than that of the advisory levels of the United States Environmental Protection Agency in the water pumped by Security's wells, Security has invested in and constructed two service pipelines in order to be able to provide only surface water diversions to all of its customers to eliminate any use of water from the wells while the advisory levels are exceeded. Security has also constructed a new potable water line connection with Colorado Springs Utilities in order to meet peak water supply demands from sources other than its wells. Security has also paid for additional temporary capacity in the Southern Delivery System in order to deliver surface water supplies until the groundwater from Security's wells can be provided to customers after effective means of treatment are established. 6. From November 2009 through September 2015, Security has outlaid the following expenditures: a. \$76,812.00 in plant repairs and maintenance; b. \$1,770,490.00 in capital well improvements; c. \$25,168,740.00 in total operations and maintenance expenses for the entire water system; and d. \$19,762,125.00 in total for all water system capital expenditures and acquisitions. 7. Security has continually operated the integrated water system in order to provide water services to the residents of the district. **V. Claim to Make Absolute** Security seeks to make absolute the exchanged amount of 1.70 c.f.s. of the maximum 2.0 c.f.s of the Exchange as set forth in Section IV.A above. WHEREFORE, Security requests the Court find that Security has made a portion of the conditional water right

absolute and has maintained diligence for the remaining portion, and for such other relief as the Court deems appropriate under these circumstances.

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THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT AND PROTEST WITHIN THE TIME PROVIDED BY STATUTE, OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application or protest the rules may file with the Water Clerk a verified statement of opposition or protest to the rules setting forth facts as to why the application or rules should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition or protest must be filed by the last day of December 2017, (forms available at Clerk's office or at [www.courts.state.co.us](http://www.courts.state.co.us), after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, 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. A copy of the proposed rules may be obtained at the office of the Clerk for Water Division No. 2, at the address shown below, or electronically at [https://www.courts.state.co.us/userfiles/file/Court\\_Probation/Water\\_Courts/Water%20Division%202/Rules.pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/Water_Courts/Water%20Division%202/Rules.pdf)

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Witness my hand and the seal of this Court this 7<sup>th</sup> day of November, 2017.

*Mardell R. DiDomenico*



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(Court seal)  
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