

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING OCTOBER 2018

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 October 2018, 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. 2018CW3056, Water Division 2 and CASE NO. 2018CW3164, Water Division 1 - NATHAN HAMMEL, 3215 Pinehurst Circle, Colorado Springs, CO 80908**

(Please address all pleadings and correspondence regarding this matter to Applicant's attorney: Chris D. Cummins, Monson, Cummins, & Shohet, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation.

**EL PASO COUNTY**

**II. Summary of Application.** Applicant seeks to quantify all Denver Basin groundwater underlying Applicant's approximately 5.29 acre property in El Paso County, Colorado, and to obtain a plan for augmentation for the use of a not-nontributary Dawson aquifer well thereon to provide water service to a single family dwelling including domestic, landscape and garden irrigation, greenhouse irrigation, stock watering, and equipment and structure washing. **III. Application for Underground Water Rights.** **A. Location of Property and Well.** 1. Property Description. Applicant's property is located in the NW<sup>1</sup>/<sub>4</sub> of the NE<sup>1</sup>/<sub>4</sub> of Section 22, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, specifically described as Tract 24 of the Walden III subdivision which contains approximately 5.29 acres, more or less ("Applicant's Property"). See Exhibit A 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.) 2. Existing Well Permit. There is currently a well permit for an existing exempt well to the Dawson aquifer located on the Applicant's Property as described above, approximately 130 feet from the north section line and 2,320 feet from the east section line of said Section 22, El Paso County, Colorado permitted as Division of Water Resources Permit No. 213640. **B. Water Source.** 1. Not-Nontributary. The ground water to be withdrawn from the Dawson and Denver aquifers underlying Applicant's Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c) the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions, while augmentation requirements for wells in the Denver aquifer, being greater than one mile from contact with surface streams, will require replacement of 4% of pumping. 2. Nontributary. The groundwater that will be withdrawn from the Arapahoe, and Laramie-Fox Hills aquifers of the Denver Basin underlying the Applicant's Property is nontributary. **C. Estimated Rates of**

**Withdrawal and Ground Water Available.** 1. Estimated Rates of Withdrawal. Pumping from any well on Applicant's Property will not exceed 100 g.p.m. The actual pumping rate for any well will vary according to aquifer conditions and well production capabilities. Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available. Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

Groundwater Quantification								
Elevation: 7,450 ft			Acres: 5.29		NW¼ NE¼ Sec 22 T11S R66W			
Denver Basin Aquifer	Elevation (ft amsl)		Net Sand (ft)	Depth (feet)		Total (AF)	100 Year (AF)	300 Year (AF)
	Bottom	Top		Bottom	Top			
Dawson (NNT)	6485	7375	445	965	0	471	4.71	1.6
Denver (NNT)	5673	6485	560	1780	965	345	5.04	-
Arapahoe (NT)	5133	5618	247	2317	1830	235	2.22	-
Laramie Fox Hills (NT)	4412	4722	203	3038	2730	149	1.61	-

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **D. Requested Uses.** The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, commercial, indoor and outdoor irrigation, stock watering, recreation, wildlife, wetlands, fire protection, equipment and structure washing, and also for storage and augmentation purposes associated with such uses. Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct a well or use water from the not-nontributary Dawson and Denver aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c.5). **E. Well Fields.** Applicant requests that he be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells, should additional wells be approved in the future. Applicant request that these wells be treated as a well field. **F. Averaging of Withdrawals.** Applicant requests that he be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from the aquifers does not exceed the product of the number of

years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. **G. Name and Address of Owner of Land Upon Which Wells are to Be Located.** The land upon which the wells are and will be located is owned by the Applicant. **IV. Application for Approval of Plan for Augmentation.** **A. Structure to be Augmented.** The structure to be augmented is an existing well to the non-tributary Dawson aquifer along with any replacement along with and replacement well that may subsequently be constructed ("Hammel Well No. 1"). **B. Water Rights to be Used for Augmentation.** The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the non-tributary Dawson aquifer from Hammel Well No. 1 together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. **C. Statement of Plan for Augmentation.** Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the non-tributary Dawson aquifer proposed herein. Water use criteria and their consumptive use component for replacement of actual depletions for the lot is estimated as follows: 1. Use. The well will pump a maximum of 1.6 acre-feet of water per year from the Dawson aquifer for up to 100 years. Such use shall be a combination of household use, irrigation of lawn and garden, greenhouse irrigation, equipment and structure washing, and the watering of horses, chickens, or equivalent livestock. 2. Depletions. It is estimated that maximum stream depletions over a 100 year pumping period for the Dawson aquifer amounts to approximately 7.6% percent of pumping. Maximum annual depletions for total residential pumping from Hammel Well No. 1 is therefore 0.122 acre-feet in year 100. Should Applicant's pumping be less than the 1.6 acre-foot described herein, resulting depletions will be correspondingly reduced thereby maintaining proper replacement by non-evaporative septic return flows from household use as described below. 3. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of augmented wells to the Dawson aquifer. Wastewater from in-house uses will be treated via a non-evaporative septic system. As such, depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.25 acre-feet per residence per year, 0.225 acre-feet is replaced to the stream system per year as the house utilizes a non-evaporative septic system. Thus, during pumping for 100 years at a rate of 1.6 acre-foot per year, maximum annual stream depletions of 0.122 acre-feet will be adequately augmented. 4. Augmentation for Post Pumping Depletions. For the replacement of any injurious post pumping depletions which may be associated with the use of the Hammel Well No. 1, Applicant will reserve the Laramie-Fox Hills aquifer as a replacement source. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Applicant reserves the right in the future under the Court's retained jurisdiction to prove that post pumping depletions will be noninjurious. Upon entry of a decree in this case, Applicant will be entitled to apply for and receive a well permit for Hammel Well No. 1 for the uses in accordance with this Application and otherwise in

compliance with C.R.S. §37-90-137. **V. Remarks.** A. This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the South Platte River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter with the pending Division 1 application in Water Division 1 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient. B. Applicant requests a finding that he has complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary Dawson aquifer well upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). C. The term of this augmentation plan is for 100 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. D. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. E. Pursuant to C.R.S. §37-90-137, upon approval of the plan for augmentation requested herein, Applicant will file an application with the State Engineer's office to permit Hammel Well No. 1 for operation under the plan for augmentation. F. Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. G. All wells shall be installed and metered as reasonably required by the State and Division Engineer. Any well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. H. Applicant intends to waive the 600-foot well spacing requirement for any wells to be located upon the Applicant's Property. I. There are no lienholders on the Applicant's Property, and therefore the notice provisions set forth in C.R.S. §§37-92-302(2)(b) and 37-90-137(4)(b.5)(I), are inapplicable to this application.

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**CASE NO. 2018CW3057; Previous Case Nos. 2004CW101 and 2012CW45 - CHARLES I. CASTRO, 405 East Rosewood, San Antonio, TX 78212** (Please direct all pleadings and correspondence to David M. Shohet of Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921 (719) 471-1212).

Application for Finding of Reasonable Diligence

**PUEBLO COUNTY**

**Names of Conditional Water Rights.** Castro Pond 1 and Castro Pond 2. **Decree Information of Conditional Water Rights.** **Date of Original Decree.** May 23, 2006. **Case No.** 04CW101. **Court.** District Court, Water Division 2. **Description of Conditional Storage Rights.** **Legal Descriptions of Storage Rights.** Castro Pond 1

is an off-channel pond located in the SW 1/4 of Section 30, Township 23 South, Range 68 West of the 6<sup>th</sup> Principal Meridian, the center of the pond being within 200 feet of a point located approximately 1,318 feet north of the south section line and 1,674 feet east of the west section line of Section 30. Castro Pond 2 is an off-channel pond located in the SW 1/4 of Section 30, Township 23 South, Range 68 West of the 6<sup>th</sup> Principal Meridian, the center of the pond being within 200 feet of a point located approximately 2,285 feet north of the south section line and 1,075 feet east of the west section line of Section 30. **Amounts of Storage Rights.** Castro Pond 1 is decreed for 0.47 acre-feet, conditional, with the right to fill and refill. The maximum surface area of Castro Pond 1 is 0.14 acres. Castro Pond 2 is decreed for 0.50 acre-feet, conditional, with the right to fill and refill. The maximum surface area of Castro Pond 2 is 0.26 acres. **Source of Storage Rights.** The physical sources for filling, refilling, and topping off Castro Pond 1 are Castro Spring, Castro Diversion, and the Castro Well. The physical sources for filling, refilling, and topping off Castro Pond 2 are the Castro Well and the Castro Diversion. The location of these sources are as follows: **Castro Spring** Castro Spring is located in the SW 1/4 of Section 30, Township 23 South, Range 68 West of the 6<sup>th</sup> P.M., within 200 feet of a point located 2,000 feet east of the west section line and 1,237 feet north of the south section line of Section 30 and is decreed at a rate of 0.10 cfs for fill of Castro Pond 1. The source of Castro Spring is spring water tributary to an unnamed tributary of Willis Creek, tributary to the St. Charles River, tributary to the Arkansas River. **Castro Well.** Castro Well is located in the SW 1/4 of Section 30, Township 23 South, Range 68 West of the 6<sup>th</sup> Principal Meridian, approximately 2,360 feet north of the south section line and 704 feet east of the west section line of Section 30 and is decreed to fill both the Castro Pond 1 and 2 at a rate of 30 g. p.m. The source of Castro Well is alluvial groundwater tributary to an unnamed tributary of Willis Creek, tributary to the St. Charles River, tributary to the Arkansas River. **Castro Diversion.** The Castro Diversion is located in the SW 1/4 of Section 30, Township 23 South, Range 68 West of the 6<sup>th</sup> Principal Meridian, within 200 feet of a point located approximately 2,375 feet north of the south section line and 1,090 feet east of the west section line of Section 30 and is decreed to fill both the Castro Pond 1 and 2 at a rate of 1.0 c.f.s. The source of Castro Diversion is an unnamed tributary of Willis Creek, a tributary of St. Charles River, a tributary of the Arkansas River. **Uses of Storage Rights.** The uses for Castro Pond 1 and Castro Pond 2 are fire protection, recreational, piscatorial, fish and wildlife habitat, aesthetic, watering of domestic animals and livestock. In addition, Castro Pond 2 may be used for augmentation of out of priority diversions to Castro Pond 1 to replace evaporative losses to Castro Pond 1 in accordance with the decree entered in Case No. 04CW101. **Dates of Appropriation of Storage Rights.** The appropriation date for Castro Pond 1 and Castro Pond 2 is May 22, 2004. **Outline of Work Done Towards Completion of Appropriation and Application of Water to Beneficial Use.** In Case No. 04CW101, the Applicant obtained two conditional storage rights, Castro Pond 1 and Castro Pond 2. Case No. 04CW101 also decreed a plan for augmentation to replace out of priority depletions associated with the ponds using nontributary water diverted from the Hollyrood Wells. The decree entered in Case No. 04CW101 also decreed a conditional exchange of the augmentation water to Applicant's points of diversion. The conditional exchange was made absolute in Case No. 12CW45, decreed on October 12, 2012. During this diligence period, Applicant has

continued to fill both ponds with water diverted from Castro Spring, Castro Diversion, and the Castro Well. To fill the ponds and to keep them top-off, Applicant has exercised the Castro Exchange to its full decreed amount since 2008 for the operation of the decreed augmentation plan in Case No. 04CW101. Applicant is waiting for river conditions that will allow him to make these water rights absolute, which has not occurred since Applicant last obtained a finding of reasonable diligence towards these water rights. During this diligence period, Applicant has spent over \$25,000.00 on the maintenance and development of the conditional water rights and their application to beneficial use. Applicant has, therefore, devoted substantial efforts toward the development of his water rights, the present and further application of water from Castro Ponds 1 and 2 to beneficial use. **Claims to Make Absolute.** None. **Name and address of the owners of land on which structure is located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use.** All structures are on Applicant's property.

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**CASE NO. 2018CW3058 - GROGEO, LLC, c/o Anthony Mollins, 2177 57<sup>th</sup> Lane, Boone, CO 81025** (Please address all pleadings and correspondence regarding this matter to Applicant's attorney: Chris D. Cummins, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for Plan for Augmentation  
**PUEBLO COUNTY, COLORADO**

**II. Background and Summary of Plan for Augmentation.** Applicant is the owner of approximately 10 acres located in the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 19, Township 21 South, Range 61 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado ("Property"). The Property is shown on the 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.) The Property's address is 2177 57<sup>th</sup> Lane, Boone, Colorado 81025. The Applicant intends to utilize the Property for a commercial marijuana grow facility, and associated uses. The Applicant seeks a plan to augment an existing well located on the Property for the purposes of year-round cultivation and irrigation of a crop including cannabis (hemp and marijuana), and the associated commercial, domestic, drinking and sanitary needs for the grow facility. **III. Application for Approval of Plan for Augmentation.** **A. Structures to be Augmented.** The structure to be augmented consists of an existing well known as the "Tafoya Well No. 1", DWR Permit No. 59905-F-R (WDID 1405035) as decreed in Division 2 Case No. 03CW32, located in the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 19, Township 21 South, Range 61 West of the 6<sup>th</sup> P.M., Pueblo, Colorado (UTM 564108 Easting, 4228975 Northing). **B. Water Rights to be Used for Augmentation.** Water rights to be used for augmentation consists of fully consumable water leased from the Board of Water Works of Pueblo, Colorado ("Pueblo Water"). Applicant reserves the right to transfer this plan for augmentation to a well user group in the future. Applicant may also seek a term and condition in any final decree requesting the Water Court to retain perpetual jurisdiction over the plan for augmentation for the sole purpose to add new or additional sources of augmentation water pursuant to Section C.R.S. §37-92-305(8). 1. **Lease with Pueblo Board of Water Works.** Applicant has entered into a lease for 10 acre-feet of fully consumable water with Pueblo Water.

The water rights or sources of water that may be used for augmentation in this augmentation plan include the following: Fully consumable water owned or controlled by the Pueblo Water. All water to be used in this augmentation plan provided by Pueblo Water must be decreed or otherwise legally available for augmentation purposes. The source of such water may include Pueblo Water's water stored in Clear Creek Reservoir, from direct flow transmountain water, or from any other reservoir or place from which Pueblo Water may deliver water, the sources of which are at the option of Pueblo Water, as long as they are legally available for augmentation purposes. Water deliveries may include, without limitation, Clear Creek Reservoir (located in Sections 7 and 8, Township 12 South, Range 79 West, and Section 12, Township 12 South, Range 80 West, 6th P.M. in Chaffee County), and reusable return flows.

**C. Statement of Plan for Augmentation.**

**1. Diversions and Depletions.**

a. Uses. Indoor and outdoor cultivation and irrigation of a crop, including cannabis (hemp and marijuana), and the associated commercial, processing, industrial, domestic (including landscape irrigation and stock watering), drinking and sanitary needs for a grow facility.

b. Diversions. Diversions will occur year-round, with all uses generally increasing during the summer months. The anticipated maximum well diversions under this plan is up to 8.808 annual acre feet.

c. Depletions. Water diverted for all uses will be considered to be one-hundred percent consumptive.

d. Return Flows. As all uses are being considered one hundred percent consumptive Applicant is not claiming any return flows from diversions from the well, including septic and irrigation return flows. However, Applicant reserves the right to claim such return flows in the future.

**2. Location and Timing of Depletions.** Pumping of the Tafoya Well No. 1 will be entitled to occur on a year-round basis, resulting in year-round lagged depletions to the Arkansas River. Depletions from Tafoya Well No. 1 occur to the Huerfano River in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 24, Township 21 South, Range 62 West of the 6<sup>th</sup> P.M. Applicant's water resource engineer has generated a Unit Response Function (URF) for the wells using the Glover Method (Glover, 1954). The lagging analysis shows that over 95 percent of the depletions are expected to occur within 66 months of pumping.

**3. Replacement Water.** Replacement water to augment the Applicant's well depletions currently totals 10 acre-feet from the Lease, less any transit losses (estimated at 1.192 acre feet), or any such additional augmentation water applicant may acquire in the future. Current replacement water provided by Pueblo Board of Water Works is fully consumable and is available to the Applicant at the point of depletion on the Arkansas River caused by the pumping of any well under this plan.

**D. Name and Address of Owners of Land Upon Which Structures are Located.** The well to be augmented under this plan is located on land owned by Applicant's representative, Anthony Mollins, whose address is 2177 57<sup>th</sup> Lane, Boone, CO 81025.

**V. Remarks.**

A. Upon entry of a decree in this case, the Applicant shall be entitled to apply for and receive well permit(s) and all subsequent replacement or additional wells for use in accordance with any decree entered in this case.

B. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater and replacement of lagged depletions under the proposed augmentation plan.

C. The Tafoya Well No. 1 will be re-permitted under the terms and conditions of the augmentation plan requested herein, upon decree. The Tafoya Well No. 1 will be equipped with a totalizing flow meter and Applicant will submit diversion records to the Division Engineer on a monthly basis or as

otherwise requested by the Division Engineer. The Applicant will also provide Accountings to the Division Engineer and Water Commissioner to demonstrate compliance under this plan of augmentation. WHEREFORE, the Applicant requests this Application for Plan for Augmentation be granted as requested herein and for such other and further relief as the Court deems appropriate.

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**CASE NO. 2018CW3059 - COSPGS PROPS, LLC, 27960 Hatfield Pt., Calhan, CO**

**80808** (Please address all correspondence and inquiries to Applicant’s attorney: David M. Shoheit, #36675, Monson, Cummins & Shoheit, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212.)

Application for Adjudication of Denver Basin Groundwater

**ELBERT COUNTY**

**II. Application for Adjudication of Denver Basin Groundwater. A. Legal**

**Description.** Applicant seeks to adjudicate the Denver Basin groundwater underlying a property consisting of 160 acres, more or less, located in the Southwest 1/4 of Section 33, Township 11 South, Range 59 West of the 6th P.M., Elbert County, Colorado (the “Property”). The address of the Property is 12400 County Road 141, Simla, Colorado 80835, and is generally shown on the 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.)

**B. Water Sources.** The Dawson and Denver aquifers do not exist under the Property. The groundwater that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers of the Denver Basin aquifers underlying the Property are not-nontributary. **C. Estimated Rates of Withdrawal and Groundwater Available.**

1. **Estimated Rates of Withdrawal.** The actual pumping rates will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 2. **Estimated Average Annual Amounts of Groundwater Available.** Applicant requests an absolute water right for the withdrawal of all legally available groundwater in the Denver Basin aquifers underlying the Property. Said amounts may be withdrawn as set forth in C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying the Property:

<u>Aquifer</u>	<u>Saturated Thickness (Feet)</u>	<u>Depth (Feet)</u>	<u>Total Water Adjudicated (Acre Feet)</u>	<u>Annual Average Withdrawal (Acre Feet)</u>
Arapahoe	56.9	350	1,550	15.5
Laramie Fox Hills	185.2	700	4,440	44.4

Decreed amounts may vary based upon the State’s Determination of Facts. Pursuant to C.R.S. §37-92-305(11), Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. Applicant may reserve water from one or both aquifers for any current or future exempt wells on the Property. **D. Requested Uses.** The Applicant requests the right to use the groundwater for beneficial uses upon the Property consisting of domestic, commercial, irrigation, greenhouse, washing, industrial, stock water, recreation, wildlife, fire protection, indoor and outdoor cultivation and irrigation of a



crop, including cannabis (hemp and marijuana), and the associated commercial, domestic, drinking and sanitary needs for the grow facility, as well as central water supply for such uses, and also for exchange, recharge and augmentation purposes. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. **E. Well Diversions.** Information regarding the location of the wells will be provided when the Applicant submits a well permit application. Well permit applications for any wells to be drilled pursuant to this application and any subsequent decrees will be applied for prior to drilling into the Denver Basin aquifers. Applicant further requests that it be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed from the Denver Basin aquifer underlying the Property, so long as the sum of the total withdrawals from all wells do not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever occurs first, multiplied by the average annual volume of water which Applicant is entitled to withdraw from the aquifer underlying the Property. **F. Name and Address of Owner of Land Upon Which Wells are to Be Located.** All wells will be located on property owned by the Applicant. **III. REMARKS.** Additional remarks are as follows: 1. Applicant requests a finding that it has complied with C.R.S. § 37-90-137(4), and that the groundwater requested herein is legally available for withdrawal by the requested wells. 2. Excluding any exempt wells Applicant is entitled to drill, Applicant shall only construct a well or use water from the not-nontributary aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. § 37-90-137(9)(c). 3. Applicant may request the Court to retain jurisdiction over this matter to provide for the adjustment of the annual amount of groundwater withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. 4. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater. 5. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. WHEREFORE, the Applicant requests this Application for Adjudication of Denver Basin Groundwater be granted as requested herein and for such other and further relief as the Court deems appropriate.

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**CASE NO. 2018CW3060 - ART VIEW, LLC, 27960 Hatfield Point, Calhan, CO 80808**

(Please address all pleadings and correspondence regarding this matter to Applicant's attorney: David M. Shohet, #36675, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater

**EL PASO COUNTY**

**II. Application for Adjudication of Denver Basin Groundwater.** **A. Legal Description.** Applicant seeks to adjudicate the Denver Basin groundwater underlying a property consisting of 163.52 acres, more or less, located in the South 1/2 of the Southwest ¼ of Section 34, Township 13 South, Range 61 West of the 6th P.M., and North ½ of the Northwest ¼ of Section 3, Township 14 South, Range 61 West of the 6th

P.M., all in El Paso County, Colorado (the “Property”). The Property is generally shown on the 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.)

**B. Water Sources.** The Dawson aquifer does not exist under the Property. Groundwater withdrawn from a portion of the Arapahoe aquifer underlying the Property is not-nontributary. The entirety of the Denver, a portion of the Arapahoe and the entirety of the Laramie-Fox Hills aquifers of the Denver Basin aquifers underlying the Property are nontributary. **C. Estimated Rates of Withdrawal and Groundwater Available.**

1. Estimated Rates of Withdrawal. The actual pumping rates will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 2. Estimated Average Annual Amounts of Groundwater Available. Applicant requests an absolute water right for the withdrawal of all legally available groundwater in the Denver Basin aquifers underlying the Property. Said amounts may be withdrawn as set forth in C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying the Property:

<u>Aquifer</u>	<u>Saturated Thickness (Feet)</u>	<u>Total Water Adjudicated (Acre Feet)</u>	<u>Annual Average Withdrawal (Acre Feet)</u>
Denver	5.1	70	0.7
Arapahoe (NNT)	95	1,320	13.2
Arapahoe (NT)	91.6	1,280	12.8
Laramie Fox Hills	195	4,800	48

Decreed amounts may vary based upon the State’s Determination of Facts. Pursuant to C.R.S. §37-92-305(11), Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. Applicant may reserve water from one or both aquifers for any current or future exempt wells on the Property. **D. Requested Uses.** The Applicant requests the right to use the groundwater for beneficial uses upon the Property consisting of domestic, commercial, irrigation, greenhouse, washing, industrial, stock water, recreation, wildlife, fire protection, indoor and outdoor cultivation and irrigation of a crop, including cannabis (hemp and marijuana), and the associated commercial, domestic, drinking and sanitary needs for the grow facility, as well as central water supply for such uses, and also for exchange, recharge and augmentation purposes. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. **E. Well Diversions.** Information regarding the location of the wells will be provided when the Applicant submits a well permit application. Well permit applications for any wells to be drilled pursuant to this application and any subsequent decrees will be applied for prior to drilling into the Denver Basin aquifers. Applicant further requests that it be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed from the Denver Basin aquifer underlying the Property, so long as the sum of the total withdrawals from all wells do not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever

occurs first, multiplied by the average annual volume of water which Applicant is entitled to withdraw from the aquifer underlying the Property. **F. Name and Address of Owner of Land Upon Which Wells are to Be Located.** All wells will be located on property owned by the Applicant. **III. REMARKS.** Additional remarks are as follows: 1. Applicant requests a finding that it has complied with C.R.S. § 37-90-137(4), and that the groundwater requested herein is legally available for withdrawal by the requested wells. 2. Excluding any exempt wells Applicant is entitled to drill, Applicant shall only construct a well or use water from the not-nontributary aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. § 37-90-137(9)(c). 3. Applicant may request the Court to retain jurisdiction over this matter to provide for the adjustment of the annual amount of groundwater withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. 4. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater. 5. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. WHEREFORE, the Applicant requests this Application for Adjudication of Denver Basin Groundwater be granted as requested herein and for such other and further relief as the Court deems appropriate.

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**CASE NO. 2018CW3061 - PHILLYPROPS, LLC, 27960 Hatfield Point, Calhan, CO 80808** (Please address all pleadings and correspondence regarding this matter to Applicant's attorney: David M. Shohet, #36675, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater

**EL PASO COUNTY**

**II. Application for Adjudication of Denver Basin Groundwater.** **A. Legal Description.** Applicant seeks to adjudicate the Denver Basin groundwater underlying a property consisting of 246.94 acres, more or less, located in the South ½ of Section 12, Township 12 South, Range 60 West of the 6th P.M., El Paso County, Colorado, except for the most westerly 73.6 acres of said south half (the "Property"). The address of the Property is 41470 Hoot Owl Road, Calhan, Colorado 80808, and is generally shown on the 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.) **B. Water Sources.** The Dawson and Denver aquifers do not exist under the Property. The groundwater that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers of the Denver Basin aquifers underlying the Property are not-nontributary. **C. Estimated Rates of Withdrawal and Groundwater Available.** 1. **Estimated Rates of Withdrawal.** The actual pumping rates will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 2. **Estimated Average Annual Amounts of**

Groundwater Available. Applicant requests an absolute water right for the withdrawal of all legally available groundwater in the Denver Basin aquifers underlying the Property. Said amounts may be withdrawn as set forth in C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying the Property:

<u>Aquifer</u>	<u>Saturated Thickness (Feet)</u>	<u>Depth (Feet)</u>	<u>Total Water Adjudicated (Acre Feet)</u>	<u>Annual Average Withdrawal (Acre Feet)</u>
Arapahoe	62.8	350	2,640	26.4
Laramie Fox Hills	190.9	700	7,070	70.7

Decreed amounts may vary based upon the State’s Determination of Facts. Pursuant to C.R.S. §37-92-305(11), Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. Applicant may reserve water from one or both aquifers for any current or future exempt wells on the Property. **D. Requested Uses.** The Applicant requests the right to use the groundwater for beneficial uses upon the Property consisting of domestic, commercial, irrigation, greenhouse, washing, industrial, stock water, recreation, wildlife, fire protection, indoor and outdoor cultivation and irrigation of a crop, including cannabis (hemp and marijuana), and the associated commercial, domestic, drinking and sanitary needs for the grow facility, as well as central water supply for such uses, and also for exchange, recharge and augmentation purposes. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. **E. Well Diversions.** Information regarding the location of the wells will be provided when the Applicant submits a well permit application. Well permit applications for any wells to be drilled pursuant to this application and any subsequent decrees will be applied for prior to drilling into the Denver Basin aquifers. Applicant further requests that it be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed from the Denver Basin aquifer underlying the Property, so long as the sum of the total withdrawals from all wells do not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever occurs first, multiplied by the average annual volume of water which Applicant is entitled to withdraw from the aquifer underlying the Property. **F. Name and Address of Owner of Land Upon Which Wells are to Be Located.** All wells will be located on property owned by the Applicant. **III. REMARKS.** Additional remarks are as follows: 1. Applicant requests a finding that it has complied with C.R.S. § 37-90-137(4), and that the groundwater requested herein is legally available for withdrawal by the requested wells. 2. Excluding any exempt wells Applicant is entitled to drill, Applicant shall only construct a well or use water from the not-nontributary aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. § 37-90-137(9)(c). 3. Applicant may request the Court to retain jurisdiction over this matter to provide for the adjustment of the annual amount of groundwater withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. 4. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of

groundwater. 5. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. WHEREFORE, the Applicant requests this Application for Adjudication of Denver Basin Groundwater be granted as requested herein and for such other and further relief as the Court deems appropriate.

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**CASE NO. 2018CW3062 - RIVERVIEW, LLC, 27960 Hatfield Point, Calhan, CO**

**80808** (Please address all pleadings and correspondence regarding this matter to Applicant’s attorney: David M. Shohet, #36675, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater

**EL PASO COUNTY**

**II. Application for Adjudication of Denver Basin Groundwater. A. Legal**

**Description.** Applicant seeks to adjudicate the Denver Basin groundwater underlying a property consisting of 628.73 acres, more or less, located in the East ½ (including government lots 1 and 2) of Section 4 and East ½ of Section 9, all in Township 14 South, Range 61 West of the 6th P.M., El Paso County, Colorado, excluding 14.64 acres previously conveyed for tracts in the Southeast ¼ of the Southeast ¼ of Section 9, bordering Hwy 94 and North Yoder Road (the “Property”). The address of the Property is 32550 Highway 94, Yoder, Colorado 80864, and is generally shown on the 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.)

**B. Water Sources.** The Dawson and Denver aquifers do not exist under the Property. The groundwater that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers of the Denver Basin aquifers underlying the Property are nontributary.

**C. Estimated Rates of Withdrawal and Groundwater Available.** 1. Estimated Rates of Withdrawal.

The actual pumping rates will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 2. Estimated Average Annual Amounts of Groundwater Available. Applicant requests an absolute water right for the withdrawal of all legally available groundwater in the Denver Basin aquifers underlying the Property. Said amounts may be withdrawn as set forth in C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying the Property:

<u>Aquifer</u>	<u>Saturated Thickness (Feet)</u>	<u>Depth (Feet)</u>	<u>Total Water Adjudicated (Acre Feet)</u>	<u>Annual Average Withdrawal (Acre Feet)</u>
Arapahoe	74.4	286	8,420	84.2
Laramie Fox Hills	194.2	769	18,315	183.15

Decreed amounts may vary based upon the State’s Determination of Facts. Pursuant to C.R.S. §37-92-305(11), Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from

each aquifer. Applicant may reserve water from one or both aquifers for any current or future exempt wells in any final decree. **D. Requested Uses.** The Applicant requests the right to use the groundwater for beneficial uses upon the Property consisting of domestic, commercial, irrigation, greenhouse, washing, industrial, stock water, recreation, wildlife, fire protection, indoor and outdoor cultivation and irrigation of a crop, including cannabis (hemp and marijuana), and the associated commercial, domestic, drinking and sanitary needs for the grow facility, as well as central water supply for such uses, and also for exchange, recharge and augmentation purposes. The Applicant also request that the nontributary groundwater may be used, reused, and successively used to extinction, both on and off the Property. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. **E. Well Diversions.** Information regarding the location of the wells will be provided when the Applicant submits a well permit application. Well permit applications for any wells to be drilled pursuant to this application and subsequent decree will be applied for prior to drilling into the Denver Basin aquifers. Applicant further requests that it be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed from the Denver Basin aquifer underlying the Property, so long as the sum of the total withdrawals from all wells do not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever occurs first, multiplied by the average annual volume of water which Applicant is entitled to withdraw from the aquifer underlying the Property. **F. Name and Address of Owner of Land Upon Which Wells are to Be Located.** The property is owned by Applicant. **III. REMARKS.** Additional remarks are as follows: 1. Applicant requests a finding that it has complied with C.R.S. §37-90-137(4), and that the groundwater requested herein is legally available for withdrawal by the requested nontributary wells. 2. Applicant will comply with C.R.S. §37-90-137(9)(b) for the withdrawal of nontributary groundwater. 3. The Applicant may request the Court to retain jurisdiction over this matter to provide for the adjustment of the annual amount of groundwater withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. 4. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater. 5. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. WHEREFORE, the Applicant requests this Application for Adjudication of Denver Basin Groundwater be granted as requested herein and for such other and further relief as the Court deems appropriate.

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**CASE NO. 2018CW3063; Previous Case No. 2001CW145 - THE CITY OF AURORA, COLORADO, a municipal corporation of the Counties of Adams, Arapahoe and Douglas, acting by and through its Utility Enterprise (“Aurora” and “Applicant”), 15151 East Alameda Avenue, Suite 3600, Aurora, Colorado 80012-1555** (Please address all pleadings and correspondence regarding this matter to Applicant’s Attorneys: John M. Dingess and Teri L. Petitt, Hamre, Rodriguez, Ostrander & Dingess, P.C., 3600 S. Yosemite Street, Suite 500, Denver, Colorado 80237-1829, phone (303) 779-0200, fax (303) 779-3662, [mail@hrodlaw.com](mailto:mail@hrodlaw.com), [jdiness@hrodlaw.com](mailto:jdiness@hrodlaw.com), [poolteri@hrodlaw.com](mailto:poolteri@hrodlaw.com).)

Application for Finding of Reasonable Diligence

**LAKE, CHAFFEE, FREMONT, PUEBLO, CROWLEY AND OTERO COUNTIES**

This Application seeks a finding of reasonable diligence on the rights of exchange to the proposed Box Creek Reservoir that were originally decreed in Water Division 2, Case No. 01CW145. The exchanges are on the Arkansas River extending from Pueblo Reservoir, the Meredith Outlet Canal, and the confluence of Lake Creek and the Arkansas River to Box Creek Reservoir, the Arkansas River intake for that Reservoir, the Upper River Ditch, the Derry No. 1 Ditch and Twin Lakes Reservoir. Sources of supply for the exchanges include Aurora’s Rocky Ford Ditch water, Colorado Canal water, and Lake County water. **2. NAME OF STRUCTURES** (shown 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.): **2.1. Pueblo Reservoir.** The Pueblo Reservoir is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 in Township 20 South, Range 66 West, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, in Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, 24 and 25, in Township 20 South, Range 67 West, all in the 6<sup>th</sup> P.M. in Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6<sup>th</sup> P.M., from which the Northeast corner of said Section bears North 61° 21' 20" East, a distance of 2,511.05', all more particularly described in the decree in Case No. B-42135, District Court, Pueblo County, Colorado. **2.2. The Arkansas River at the Lake Meredith Reservoir Outlet Canal (“Outlet Canal”).** Waters released from Lake Meredith Reservoir are carried through the Lake Meredith Reservoir Outlet Canal to a point in the South Half of Section 21, Township 22 South, Range 57 West of the 6<sup>th</sup> P.M., where they can be released to the Holbrook Canal and/or discharged into the Fort Lyon Storage Canal whence they are carried southeasterly approximately one-half mile in the Fort Lyon Storage Canal to a point at which they either continue in said Fort Lyon Storage Canal or are discharged through a headgate on its Southerly bank in the Southwest Quarter of Section 22, Township 22 South, Range 57 West of the 6<sup>th</sup> P.M., in Crowley County, Colorado whence they travel South-Southeast approximately one mile to discharge into the Arkansas River in the NW1/4 of the SE1/4 of Section 22, Township 22 South, Range 57 West of the 6<sup>th</sup> P.M., in Otero County, Colorado. **2.3. Lake Meredith Reservoir.** Lake Meredith Reservoir is described in the decree in Water Division 2, Case No. 84-CW-63 as located in all or portions of Sections 15, 16, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32 and 33 in Township 21 South, Range 56 West, Sections 1, 6 and 12 in Township 22 South, Range 57 West, and in Sections 24, 25 and 36 in

Township 21 South, Range 57 West, all from the 6<sup>th</sup> P.M., in Crowley County, Colorado. Lake Meredith Reservoir dam axis and the centerline of the outlet canal intersect at a point located in the NW¼ of the SW¼ of Section 12, Township 22 South, Range 57 West of the 6<sup>th</sup> P.M., at a point from which the West Quarter Corner of said Section 12 bears North 27°14' West a distance of 564.30 feet. Recent mapping shows the following description: all or portions of Sections 15, 16, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32 and 33 in Township 21 South, Range 56 West, Sections 1 and 12 in Township 22 South, Range 57 West, Section 6 in Township 22 South, Range 56 West, and in Sections 24, 25 and 36 in Township 21 South, Range 57 West, all from the 6<sup>th</sup> P.M., in Crowley County, Colorado. Lake Meredith Reservoir dam axis and the centerline of the outlet canal intersect at a point located in the NW¼ of the SW¼ of Section 12, Township 22 South, Range 57 West of the 6<sup>th</sup> P.M., at a point from which the West Quarter Corner of said Section 12 bears North 27° 14' West a distance of 564.30 feet. **2.4. Lake Henry Reservoir.** Lake Henry Reservoir is located in all or portions of Sections 31 and 32, Township 20 South, Range 56 West, and Sections 5 and 6, Township 21 South, Range 56 West, all from the 6<sup>th</sup> P.M., in Crowley County, Colorado; the primary outlet works for Lake Henry Reservoir are located in the South Half of said Section 6 and the Lake Henry Reservoir dam axis and the centerline of the outlet canal intersect at a point on the West line of the Southeast Quarter of said Section 6 a distance of 512 feet South of the center of Section 6, Township 21 South, Range 56 West of the 6<sup>th</sup> P.M., in Crowley County, Colorado. **2.5. Twin Lakes Reservoir.** Twin Lakes Reservoir is located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 Township 11 South, Range 80 West, and Sections 24 and 25, Township 11 South, Range 81 West, all from the 6<sup>th</sup> P.M., in Lake County, Colorado. The Twin Lakes dam axis and the centerline of Lake Creek intersect at a point whence the SE corner of Section 23, Township 11 South, Range 80 West of the 6<sup>th</sup> P.M. bears south 54 degrees, 13 minutes, 8 seconds East, a distance of 3,803.10 feet, as more particularly described in the decree in Civil Action No. 5141, District Court, Chaffee County, Colorado. **2.6. Box Creek Reservoir.** Box Creek Reservoir will be constructed on the channel of Box Creek, and will include all or portions of Sections 32 and 33, Township 10 South, Range 80 West, 6<sup>th</sup> P.M. and Sections 4 and 5, Township 11 South, Range 80 West, 6<sup>th</sup> P.M., in Lake County, Colorado. The exact location of Box Creek Reservoir Dam is subject to change based upon refinement of engineering analyses, however, Aurora anticipates that the Box Creek dam axis will intersect the centerline of the Box Creek valley within 500 feet of a point approximately 2000 feet west and 300 feet south of the northeast corner of said Section 4, Township 11 South, Range 80 West, 6<sup>th</sup> P.M. **2.7. Arkansas River Intake (to Box Creek Reservoir).** The Intake is to be located in Sections 22, 27 and 34, Township 10 South, Range 80 West and Section 3, Township 11 South, Range 80 West, of the 6<sup>th</sup> P.M., in Lake County, Colorado. **2.8. Derry Ditch No. 1.** The headgate for the Derry No. 1 Ditch is on the Right bank of the Arkansas River at a point whence the ¼ corner of Section 16, T 10 S, R 80 W, of the 6<sup>th</sup> P.M. bears S. 22 degrees, 1 minute E 3,753 feet, in Lake County, Colorado. **2.9. Upper River Ditch.** The point of diversion for the Upper River Ditch is on the west bank of the Arkansas River at point whence the S.E. corner of Section 16, T 10 S., R. 80 W., of the 6<sup>th</sup> P.M. bears S. 23 degrees, 28 minutes E, 2008.5 feet, in Lake County, Colorado. **2.10. Confluence of Lake Creek and the Arkansas River (“LC/AR Confluence”).** This confluence is



located in the NW1/4, SE1/4, Section 24, Township 11 South, Range 80 West, of the 6<sup>th</sup> P.M., in Lake County, Colorado. **3. DESCRIPTION OF CONDITIONAL WATER RIGHTS.** **3.1. Date of Original Decree.** October 30, 2012, Case No. 01CW145, District Court Water Division 2, Colorado (“Original Decree”). **3.2. Date of Subsequent Diligence Decree.** None. **3.3. Legal Descriptions.** See paragraph 2 above. **3.4. Sources of Exchange Water.** 3.4.1. Rocky Ford Ditch Transfer I. The historic consumptive use water diverted and stored in Pueblo Reservoir under 466.48 shares of the Rocky Ford Ditch Company. The water right represented by the 466.48 shares is Priority No. 1, decreed in the original adjudication for former Water District 17, on April 8, 1905, for 111.76 cfs with an appropriation date of May 15, 1874. These shares were decreed for a water rights change in Water Division 2, Case No. 83-CW-18 (decreed and amended on November 3, 1986), and also subsequently decreed for exchange in Water Division 2, Case No. 87-CW-63 (decreed on March 22, 1994). 3.4.2. Rocky Ford Ditch Transfer II. The historic consumptive use water diverted and stored in Pueblo Reservoir, and diverted at the Colorado Canal Headgate and stored in Lake Henry Reservoir or Lake Meredith Reservoir under 288.274 shares of the Rocky Ford Ditch Company. The water rights represented by the 288.274 shares are a portion of Priority No. 1, decreed in the original adjudication for former Water District 17, on April 8, 1905, for 111.76 cfs with an appropriation date of May 15, 1874, and Priority No. 14, decreed in the same adjudication for 96.54 cfs with an appropriation date of May 6, 1890. These water rights are also the subject of the following cases in Water Division 2: The change of water rights decreed in Case No. 99CW169(A) (decreed January 28, 2004; amended September 21, 2015), and the exchange decrees entered in Cases No. 99CW170(A) (decreed June 27, 2005) & 99CW170(B) (decreed July 28, 2005). 3.4.3. Colorado Canal System. The water rights associated with 14,225.38 shares of Colorado Canal Company stock, 13,061.8 shares of Lake Meredith Reservoir Company stock and 1,163.58 shares of Lake Henry Reservoir Company Stock owned by Aurora. The water rights associated with each of the three companies were the subject of Water Division 2, Case Nos. 84CW62, 84CW63 and 84CW64 (decreed October 21, 1985), which actions permitted *inter alia*, storage thereof at Pueblo Reservoir, Lake Henry and Lake Meredith. 3.4.4. Upper Arkansas Ranch Rights. The consumptive use associated with the historic irrigation of several ranches in the upper Arkansas River basin. These water rights are further described in the decrees in Cases No. W-4799 and 82CW182 (decreed June 29, 1984), 89CW42 (decreed March 27, 1992), 98CW137(A) (decreed May 4, 2004) and 98CW137(B) (decreed June 13, 2005), all in Water Division No. 2. **3.5. Exchange Reaches and Amounts.** Aurora will operate appropriative rights of exchange from each of the following Exchange-From Points to each of the following Exchange-To Points, the locations of which are more specifically described above: 3.5.1. Exchange-From Points. 3.5.1.1. Pueblo Reservoir. 3.5.1.2. Outlet Canal (the point of release for waters placed in Lakes Henry and Meredith). 3.5.1.3. LC/AR Confluence. 3.5.2. Exchange-To Points. 3.5.2.1. Box Creek Reservoir. 3.5.2.2. Arkansas River Intake. 3.5.2.3. Upper River Ditch. 3.5.2.4. Derry No. 1 Ditch. 3.5.2.5. Twin Lakes Reservoir. 3.5.3. Maximum Rates of Exchange. Aurora is not seeking to change any of the terms and conditions contained in the Original Decree, including those pertaining to maximum rates of exchange. 3.5.3.1. Exchanges on the Arkansas River mainstem, being those from the Outlet Canal, Pueblo Reservoir, and/or LC/AR

Confluence to the Arkansas River Intake, the Upper River Ditch, and/or the Derry No. 1 Ditch, shall be limited to no more than 200 c.f.s. 3.5.3.2. Exchanges that extend up Lake Creek, involving diversions at Twin Lakes Reservoir, shall be limited to no more than 200 c.f.s. 3.5.3.3. Exchanges that extend up Box Creek, involving diversions at Box Creek Reservoir itself, shall be limited to no more than 50 c.f.s. **3.6. Appropriation Date.** December 17, 2001. **3.7. Uses.** The water diverted by exchange may be used for any purpose for which the water given as a substitute supply was decreed. These uses include municipal and domestic purposes including, but not limited to, fire protection, sanitary, irrigation, commercial, manufacturing, mechanical and industrial use, recreational purposes, creation and maintenance of wetlands, stock watering, fish and wildlife propagation, allowable in-stream uses, if any, snowmaking, revegetation, storage and maintenance of storage reserves, for augmentation, further exchange and replacement purposes, and for use and reuse until extinction. **3.8. Place of Use.** As stated in the Original Decree, the water rights that are the subject of this Application are intended for use in or for the benefit of Aurora's municipal service areas, as they may exist from time to time, and any place capable of being served from the Box Creek Reservoir or Box Creek Reservoir Arkansas River Intake. The lands identified in the Original Decree as being within Aurora's then municipal boundaries are located in the South Platte Basin and lie within Township 3 South, Ranges 64, 65, 66 and 67 West, 6<sup>th</sup> P.M., in Adams County; Townships 4 and 5 South, Ranges 65, 66 and 67 West, 6<sup>th</sup> P.M. in Arapahoe County; and Township 6 South, Ranges 65 and 66 West, 6<sup>th</sup> P.M., in Douglas County. **3.9. Reuse Activities.** Aurora has diligently pursued its plans to reuse, directly or by exchange, its return flows attributable to reusable water sources to the extent allowed by law. **4. DETAILED OUTLINE OF WHAT HAS BEEN DONE TOWARD COMPLETION OR FOR COMPLETION OF THE APPROPRIATIONS AND APPLICATION OF WATER TO A BENEFICIAL USE AS CONDITIONALLY DECREED.** During the diligence period of October 30, 2012 through October 31, 2018, Aurora performed the following work and made the following expenditures toward completion of the appropriations and application of the water rights decreed in the Original Decree to beneficial use (Expenditure numbers are rounded to the nearest \$1000): **4.1. Project Specific Efforts.** Aurora has done at least the following project specific work toward completion of the appropriations and application of the conditional water rights decreed in Case No. 01CW145 to beneficial use: **4.1.1. Engineering Related Activities.** **4.1.1.1.** During the diligence period Aurora spent \$2,684,000 on engineering design work for the Box Creek Reservoir and dam, which was performed by Jacobs, formerly CH2M. The engineering design work has included engineering early designs of the dam, river diversion, conveyance pipeline to the reservoir, outlet structure and conveyance out of the reservoir, groundwater modeling and analysis, and dam break analysis and inundation mapping. **4.1.1.2.** Aurora spent \$430,000 during the diligence period on a preliminary engineering design conducted by URS Corporation. The preliminary design included analysis of alternatives for the diversion structure, forebay structures, dam, and outlet, as well as geotechnical and geophysical investigations of the site. Preliminary design work totaling \$41,000 was also conducted by Hydrogeo for work related to design alternatives and feasibility for a diversion structure to supply the proposed Box Creek Reservoir. **4.1.2. Land Acquisition.** During the diligence period, Aurora conducted negotiations with local property owners, as well

as State and Federal Agencies, and spent \$2,812,000 on land acquisitions, easements, and related activities to support the development of Box Creek Reservoir. 4.1.3. Mining Leases. In 2018 Aurora and the Colorado State Land Board entered into a 10 year mining lease with Titan Au to explore minerals around the proposed Box Creek Reservoir site. In 2015 Aurora entered into a 2 year mining lease with Cathedral Mining to explore minerals at the site. 4.1.4. Land Exchange. Aurora entered into a Cooperative Agreement with the U.S. Forest Service in September 2018 and spent \$48,000 to pursue a land exchange for lands located within the Box Creek Reservoir site. 4.1.5. Jurisdictional Determination. Aurora has spent \$339,000 during the diligence period to obtain a jurisdictional determination of whether potential waters of the U.S. and wetlands are located within the proposed Box Creek Reservoir site, which is a necessary step toward initiating permitting for the project. This work has included outside legal consultation and wetlands investigations conducted by GEOSUAS and ERO that included wetland delineations and vegetative surveys. In 2016 Aurora requested the U.S. Army Corps of Engineers (USACE) make a jurisdictional determination regarding potential waters of the U.S. located at the proposed Box Creek Reservoir site, but supplemental investigations by GEOSUAS were deemed necessary. A decision by the USACE has not yet been rendered. 4.1.6. Wetlands Banking. In 2015 Aurora completed construction of the Hayden River Parcel wetlands bank located in Lake County and has conducted ongoing wetlands monitoring. Aurora has spent at least \$285,000 thereon during the diligence period. 4.1.7. Historic American Building Survey. During this diligence period, Aurora paid Colorado Mountain College approximately \$11,000 for a Historic American Building Survey explaining the cultural resources at the proposed reservoir site. 4.1.8. Rocky Mountain Fen Research Project. Aurora has spent \$217,000 during the diligence period as a partner in the Rocky Mountain Fen Research Project to study mitigation of potentially impacted fen wetlands. The funds were used to construct a fen wetland test site and to pay for monitoring activities. 4.1.9. PILT Payments. Aurora paid approximately \$19,000 to Lake County during the diligence period for Payment in Lieu of Taxes (PILT) for properties Aurora owns in Lake County that are related to the Box Creek Reservoir project. 4.1.10. Lake County Open Space Initiative. Aurora participated as a member of the Lake County Open Space Initiative (LCOSI) and spent \$11,000 on LCOSI membership and other related activities during the diligence period. Aurora participated by providing assistance in the development of LCOSI's Ecosystem Management Plan report. 4.1.11. Community Relations. Aurora spent \$243,000 during the diligence period on Lake County community relations related work and activities associated with the Box Creek Reservoir project. 4.1.12. Colorado Division of Parks and Wildlife. In 2017 Aurora entered into an access agreement with the Colorado Division of Parks and Wildlife to allow public access to Aurora's Hayden Ranch parcels in Lake County. 4.1.13. Payment for Rocky Ford Ditch shares. Aurora spent more than \$2,183,000 during this diligence period for repayment of bonds and payments to note sellers, including principal and interest that were issued or refunded for purchase of Applicant's share of the subject Rocky Ford Ditch Company shares that are a source of water for the exchanges herein. 4.1.14. Otero IGA. Aurora and Otero County entered into an Intergovernmental Agreement on February 22, 1994 (amended on October 29, 2001) under which Aurora agreed to make annual payments to Otero County concerning the

subject Rocky Ford Ditch Company shares that are a source of water for the exchanges herein. During this diligence period, Aurora made payments of over \$243,000. 4.1.15. Lake County IGA. On April 18, 2014, Aurora and Lake County amended an Intergovernmental Agreement (dated June 20, 2011) under which Aurora agreed to make annual payments to Lake County concerning the water rights associated with the Hayden Ranch that are a source of water for the exchanges herein. 4.1.16. Pueblo Reservoir Storage. During this diligence period, Aurora paid the Bureau of Reclamation more than \$4,156,000 for storage use of Pueblo Reservoir necessary to operate these exchanges, for long-term storage, as well as for consultants and legal fees for the long-term storage contract. 4.1.17. Assessments Paid for Use of Twin Lakes, Lake Henry/Lake Meredith, Rocky Ford Ditch. During this diligence period, Aurora paid at least the following in annual assessments: \$363,000 for Twin Lakes Company (necessary for storage); \$1,727,000 for the Colorado Canal/Lake Henry/Lake Meredith (necessary for storage); \$1,074,000 for the Rocky Ford Ditch for the shares attributable to the subject Rocky Ford Ditch Water Right. 4.1.18. Intergovernmental Agreement with SECWCD. On October 3, 2003, Aurora entered into an Intergovernmental Agreement with the Southeastern Colorado Water Conservancy District (“SECWCD”), replacing an agreement between the parties dated December 7, 2001. Under this new IGA, Aurora and SECWCD agreed to support proposed federal legislation relating to the Fryingpan-Arkansas Project to include, among other things, re-operations of the existing water storage facilities, studies for enlargements to Pueblo and Turquoise Reservoirs, and confirming the authority of the Bureau of Reclamation to enter into contracts with Aurora for use of the facilities including long-term contracts. Aurora’s ability to use Fryingpan-Arkansas facilities is expanded under this IGA and Aurora is obligated to make certain payments to SECWCD in consideration for the expanded use. During this diligence period, Aurora made payments of approximately \$1,064,000 to SECWCD under this IGA. 4.1.19. Legal Activities. During the subject diligence period, Aurora spent in excess of \$40,000 on legal activities connected to the development of these water rights. **4.2. System-wide Efforts**. Pursuant to the Original Decree, these exchanges are part of a unified extensive system for the collection, treatment and distribution of water operated by Aurora. For the purposes of showing diligence as to completion of the appropriate rights of exchange originally decreed in Case No. 01CW145, diligence as to any part of the Aurora water rights system used to operate or benefiting from these exchanges shall be diligence as to the completion of the exchanges. During this diligence period, Aurora has done at least the following systemwide work that will be used to operate or benefit the conditional exchanges: 4.2.1. Intergovernmental Agreement with LAVWCD. Pursuant to an Intergovernmental Agreement with the Lower Arkansas Valley Water Conservancy District (“LAVWCD”), Aurora paid approximately \$1,375,000 to LAVWCD for the identification and implementation of infrastructure improvements, research, and investigations designed to assist in the permitting or implementation of water leasing programs in the Lower Arkansas Valley. 4.2.2. Agreements for Use of the Holbrook System Facilities. On March 1, 2005, Aurora entered into two agreements pertaining to the use of the diversion, conveyance and storage facilities of the Holbrook Mutual Irrigating Company (“Holbrook”). Aurora and Holbrook extended this agreement on February 2, 2010. These agreements implement a program to recapture and store yield from foregone diversions of senior water rights.

Aurora completed structural modifications to the Holbrook system facilities and filed a Substitute Water Supply Plan necessary to implement the program. An Amended Agreement was entered into on April 21, 2016. Aurora initiated a study to examine enlargement of the Holbrook Reservoir to further facilitate operations. During this diligence period, Aurora made payments of approximately \$159,000 to Holbrook under this Agreement.

4.2.3. Recovery of Yield (“ROY”). On August 17, 2016, Aurora, along with Colorado Springs, the Pueblo Board of Water Works, the City of Fountain, and the Southeastern Colorado Water Conservancy District, obtained a decree in WD-2, Case No. 06CW120 adjudicating exchanges necessary as a result of the 2004 Regional Intergovernmental Agreement (“IGA”) between the various water providers and the City of Pueblo, whereby the water providers agreed to allow certain of their senior flows to pass through Pueblo’s RICD reaches on the condition those flows could be removed downstream and exchanged back upstream. Aurora entered into a purchase Option Agreement with LaFarge West, Inc. in 2003 for development of the LaFarge Rich Pit for use by Aurora as the AGPR storage facility upon completion of gravel mining/mineral extraction by LaFarge. This Agreement has been extended several times. The ROY participants have also made efforts to investigate and negotiate alternative storage facilities for the AGPR. Recent negotiations include those with Stonewall Springs Ranch and Southwest Sod Farms. Aurora has expended approximately \$200,000 on these efforts during the diligence period.

4.2.4. Metro Wastewater Reclamation District Charges. Aurora expended at least \$146,681,000 during this diligence period for fees for wastewater treatment of its water at the Metro Wastewater Reclamation facility. Such treatment is necessary for release of this water into the South Platte River Basin. This work is necessary for reuse within the South Platte River Basin of the water that is the subject of the exchanges herein and also to comply with water reuse requirements.

4.2.5. Sand Creek Water Reuse Plant Improvements. Aurora operates this 5-million-gallon per day facility that provides treated water used for irrigation throughout the City and for discharge into Sand Creek. Improvements to this facility completed during this diligence period cost at least \$2,685,000. Aurora also expended an additional \$7,048,000 in operating costs for the Sand Creek plant. This work is necessary for reuse within the South Platte River Basin of the water that is the subject of the exchanges herein and also to comply with water reuse requirements.

4.2.6. Griswold Water Treatment Plant Renovations. This facility treats a portion of the raw water exchanged under the Original Decree and then transported to the South Platte Basin and to Aurora, before it is delivered to Aurora’s customers. More than \$5,910,000 was spent by Aurora during this diligence period for improvements to this facility necessary to accommodate the water that is the subject of the exchanges herein. This includes expenditures directly by Aurora for renovation of the facility.

4.2.7. Wemlinger Water Treatment Plant Expansion. During this diligence period, Aurora spent more than \$30,008,000 for improvements to the Wemlinger Water Treatment Plant. This facility treats a portion of the raw water exchanged under the Original Decree and then transported to the South Platte Basin and to Aurora, before it is delivered to Aurora’s customers.

4.2.8. Prairie Waters Project. The Prairie Waters Project is a large comprehensive water supply, storage and treatment project in which return flows to the South Platte River from Aurora’s water sources, including the water that is the subject of the exchanges herein, may be rediverted for subsequent reuse. To facilitate this project

Aurora obtained various decrees in Case Nos. 06CW104, 03CW414, and 03CW415, Water Division 1. This project allows further reuse of much of the water decreed to Aurora. During the diligence periods, Aurora obtained a decree in Case No. 13CW3088, WD-1, finding reasonable diligence for the water rights decreed conditionally in 03CW414 (decreed April 22, 2014), Aurora obtained a decree in Case No. 14CW3065, WD-1, finding reasonable diligence for the water rights decreed conditionally in 03CW415 (decreed March 2, 2015), and Aurora obtained a decree in Case No. 15CW3064, finding reasonable diligence for the water rights decreed conditionally in Case No. 06CW104 (decreed December 1, 2017). Aurora has expended at least \$40,978,000 on several elements of the Prairie Waters Project during this diligence period.

4.2.9. Lawn Irrigation Return Flows (LIRFs) Credits. Aurora obtained a decree in Case No. 02CW341, Water Division 1, on September 25, 2008, quantifying LIRFs from its municipal system (and subsequent requantifications as required by the Decree in 02CW341), generated as a result of use of transmountain water rights, fully consumable in-basin water rights, decreed and permitted non-tributary sources and any other fully consumable water available to Aurora. Water that is transported under the exchanges herein and used in Aurora's service area can be reused under the decree in Case No. 02CW341. During this diligence period, Aurora has expended over \$252,000 in engineering costs completing periodic requantifications of the LIRFs adjudicated in Case No. 02CW341 that are available for exchange. In addition to the engineering costs, Aurora expended over \$11,000 in legal fees regarding required LIRF requantification studies.

4.2.10. Rampart Reservoir and Delivery System. More than \$17,296,000 was spent by Aurora during this diligence period for improvements to the Rampart Reservoir delivery system. This reservoir is used to store the water that has been exchanged from the Arkansas River Basin and transported to the South Platte River before it is transported through parallel 54" and 40" pipelines to Aurora. Rampart Reservoir is important for regulation of the flow through these parallel pipelines.

4.2.11. Improvements to Extend and Improve Water Service in and to Aurora. More than \$28,393,000 was spent by Aurora during this diligence period for extension and upgrade of its water transmission system necessary to deliver the water that is the subject of the exchanges herein to Aurora's customers.

4.2.12. Improvements to Sanitary Sewer System. More than \$47,950,000 was spent by Aurora during this diligence period for extension and upgrade of its sanitary sewer system necessary for wastewater treatment and reuse within the South Platte River Basin of the water that is the subject of the exchanges herein.

4.2.13. Automated Meter Reading System. Aurora spent more than \$1,109,000 during this diligence period for updates to its automated utility reading system. This is needed for efficient operation of Aurora's water supply and delivery system, including use of the water that is the subject of the exchanges herein.

4.2.14. Binney Water Purification Facility. This state-of-the-art water purification and recycling plant owned and operated by Aurora treats water for use throughout the City. Over \$16,003,000 was spent by Aurora during the diligence period for improvements to this facility, including a filters addition.

**4.3. Non-Basin Specific Efforts.**

4.3.1. Study of Aurora's Water Needs. During this diligence period, Aurora spent more than \$3,662,000 toward engineering and planning studies to assist in determining the City's future water needs and a plan to meet those need, including treatment and distribution studies, various conservation studies, and on developing its Non-Potable System

Master Plan. 4.3.2. Aurora Raw Water System Model. During this diligence period, Aurora spent more than \$337,000 for consultant fees to develop and support a computer model of Aurora's raw water system. These costs are in addition to the modeling efforts included in the engineering and planning studies identified in paragraph 4.3.1., above. 4.3.3. Protection Efforts. During this diligence period, Aurora spent in excess of \$869,000 participating in water cases in Water Divisions 1 and 2 to protect the rights and interests of Aurora with regard to its water supply system, including the subject exchanges. 4.3.4. Aurora reserves the right to identify additional relevant efforts that may be later discovered or to make upward adjustments to amounts expended on certain projects. Aurora has an extensive water rights portfolio, an extensive and complex water supply, collection, treatment and reuse system, and an extensive number of agreements, contracts, leases, etc. related to its facilities and the use, reuse and storage of its water rights. It is involved in many legal actions related to the collection, treatment, reuse and protection of its water rights. Further, the management, protection, and operation of the water rights and the facilities system involve numerous City of Aurora departments and staff members throughout the state. Aurora made diligent efforts with regard to this application to determine and quantify all efforts made by the City toward completion of the appropriations and application of the water rights decreed in the Original Decree to beneficial use. However, it is reasonably possible that relevant efforts or expenditures may have been overlooked or need further upward adjustment.

**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 OR EXISTING STORAGE POOL IS OR WILL BE CONSTRUCTED OR UPON WHICH WATER IS OR WILL BE STORED:** Box Creek Reservoir: The Reservoir is proposed to be built on Hallenbeck Ranch lands, owned by the City of Aurora. Depending on the final reservoir configuration and location, it may also inundate lands owned by the U.S. Forest Service, the State of Colorado, and additional private entities. City of Aurora, 15151 East Alameda Street, Suite 3600, Aurora, CO 80012-1555; Bureau of Land Management, U.S. Dept. of Interior, 3028 East Main St., Canon City, CO 81212; U.S. Forest Service, P.O. Box 970, Leadville, CO 80461; State of Colorado, 1313 Sherman St, Rm 618, Denver, CO 80203; Dennis Smith, 4961 South Boston Street, Greenwood Village, CO 80111; Bobby and Jolene Wood, P.O. Box 1351, Leadville, CO 80461; Mt Elbert Mining Co. LLC, 32460 Inverness Drive, Evergreen, CO 80439. Arkansas River Intake to Box Creek Reservoir: City of Aurora, 15151 East Alameda Street, Suite 3600, Aurora, CO 80012-1555; State of Colorado, Division of Parks, 1313 Sherman Street, Denver, CO 80203. Pueblo Reservoir and Twin Lakes Reservoir: U.S. Department of the Interior, Bureau of Reclamation, 11056 W. County Road, 18E, Loveland, CO 80537-9711. Lake Meredith/Lake Henry and Outlet Canal: The City of Aurora owns shares in both the Lake Henry and Lake Meredith Reservoir Companies, so has a right to use the Outlet Canal, City of Aurora, 15151 East Alameda Street, Suite 3600, Aurora, CO 80015-1555; Lake Henry and Lake Meredith Reservoir facilities are owned by The Colorado Canal Companies, 331 Main Street, P.O. Box 8, Ordway, CO 81063. Derry Ditch No. 1 headgate: Smith Ranch, Attn: Pdraic Smith, 134 County Road 44, Leadville, CO 80461. Upper River Ditch headgate: State of Colorado, 1313 Sherman Street, Suite 620, Denver, CO 80203. **Prayer for Relief:** Wherefore, Applicant respectfully requests

that the Court find diligence in the development of the appropriative rights described herein, and continue the conditional decree for said structures and remaining conditional amounts for the statutory period, and provide any other relief it finds just and appropriate in these circumstances.

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**CASE NO. 2018CW3064, Water Division 2, and CASE NO. 2018CW3185, Water Division 1 - PRI #2, LLC, 6385 Corporate Drive, Suite 200, Colorado Springs, CO 80919**

(Please forward all correspondence or 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)

Application for Approval of Second Amendment to Plan for Augmentation Decreed in Case No. 16CW3190, Division 1 for Use of Not Nontributary Groundwater

**EL PASO COUNTY**

Applicant, PRI #2, LLC, by and through its attorneys, Hill & Pollock, LLC, for its Application for Approval of Second Amendment to Plan for Augmentation Decreed in Case No. 16CW3190, Division 1 for Use of Not Nontributary Groundwater, states as follows: The name and address of the Applicant is: PRI #2, LLC 6385 Corporate Drive, Ste. 200, Colorado Springs, Colorado 80919. Applicant owns certain groundwater rights underlying approximately 701 acres, more or less, located generally in Sections 30 and 31, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M., in El Paso County ("701-acre parcel"), which were decreed in Case No. 94CW023(B), Water Division No. 1 (entered June 12, 1996), which amended an original decree in Case No. 85CW446, Water Division No. 1. A map depicting the 701 acres is attached to the Application as Exhibit A, and the legal description is attached to the Application as Exhibit B. (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 701 acres lies within a designated groundwater basin. Applicant also owns approximately 640 acres, more or less, located generally in Section 36, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., in El Paso County ("640-acre parcel"). Applicant's predecessor-in-interest entered into a Groundwater Production Lease, No. OT-109328, with the State Board of Land Commissioners, pursuant to which Applicant leased the not nontributary and nontributary groundwater underlying the 640 acres, decreed in Case No. 04CW098, Water Division No. 1 (entered May 24, 2005) through February 27, 2048. On that date, all of the groundwater rights revert to the Applicant. A map depicting the 640 acres is attached to the Application as Exhibit C, and the legal description is attached to the Application as Exhibit D. No part of the 640 acres lies within a designated groundwater basin. In addition, Applicant owns certain groundwater rights to be included in the Augmentation Decree, as defined below, underlying approximately 71 acres, more or less, located generally in Sections 34 and 35, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., in El Paso County ("71-acre parcel"), which were decreed in Case No. 85CW131, Water Division No. 2 (entered May 18, 1988). A map depicting the 71 acres is attached to the Application as Exhibit E, and the legal description is attached to the Application as Exhibit F. No part of the 71 acres lies within a designated groundwater basin. The contiguous 701-acre parcel, the 640-acre parcel and the 71-acre parcel constitute "Applicant's Property." Applicant seeks, in this application, to amend the decree entered in Case No. 16CW3190, Water Division No. 1 (which was combined with Case No.



16CW3097, Water Division No. 2 by order of the Panel on Consolidated Multidistrict Litigation date April 4, 2017) (“Augmentation Decree”). Applicant seeks to add 13.2 acre-feet per year (1,320 acre-feet) from the Dawson aquifer not nontributary groundwater underlying the 71-acre parcel provide water for 15 residential lots located within the 71-acre parcel. There will not be any additional pumping over the 198 acre-feet of Dawson aquifer not nontributary groundwater approved in the Augmentation Decree. Applicant will augment the depletions associated with the operation of not nontributary Dawson aquifer wells located on the 701-acre parcel, the 640-acre parcel and 71-acre parcel through septic return flows. The Water Court has jurisdiction over this application pursuant to §§ 37-90-137(4) and 37-90-137(9), C.R.S. **Names of Structures to be Augmented:** A. The structures to be augmented are the same as those decreed in the Augmentation Decree, which include individual Dawson aquifer wells within the 701-acre parcel, 640-acre parcel and 71-acre parcel described in Exhibits B, D and F to the Application, with a maximum of 283 residential lots. Pursuant to this amendment, 15 of these 283 residential lots will be located within the 71-acre parcel. In addition, open space and other landscape features on the 71-acre parcel utilize Dawson aquifer groundwater. A well into the Dawson aquifer will be completed on each lot to serve the domestic and irrigation demands of that lot. B. Well permit applications have not been submitted at the time of this application for amendment of the Augmentation Plan. Applicant has not determined the specific locations for all the wells required to withdraw groundwater from the Dawson aquifer; however, each well will be constructed within the Applicant’s Property and each well will be designed so that it withdraws water from the Dawson aquifer. Applicant requests the right to locate the wells required to withdraw its entitlement from the Dawson aquifer at any point within the Applicant’s Property without the necessity of republishing or petitioning the Court for the reopening of any decree. See 2 CCR 402-7, Rule 11. C. Applicant owns Applicant’s Property described herein. To the extent Applicant’s Property is not free and clear of all liens or encumbrances, Applicant shall provide certification of its compliance with the lienholder notice provisions set forth in C.R.S. § 37-92-302(2)(b) and § 37-90-137(4)(b.5)(l). **Previous Decrees for Water Rights To Be Used for Augmentation Source: A.** The decree in Case No. 94CW023(B), Water Division 1, adjudicating rights in nontributary and not nontributary groundwater including the 701-acre parcel which are to be used as a sources of replacement water in this augmentation plan, is summarized as follows: (1) Decree Entered: June 12, 1996. (2) Court: District Court, Water Division 1. (3) Type of Water Right: Vested property right to withdraw all groundwater underlying the property in specified aquifers, pursuant to §§ 37-90-137(4) and -137(9), C.R.S. (4) Legal Description: The decreed groundwater rights underlie parts of Sections 30 and 31, Township 11 South, Range 65 West of the 6th P.M., El Paso County, consisting of 701 acres, more or less. (5) Sources and Amounts of Groundwater Decreed:

Aquifer	Type	Annual Average Amount
Dawson	Not Nontributary	201 AF
Laramie-Fox Hills	Nontributary	204 AF

(6) Decreed Uses: Reuse and successive uses for all beneficial purposes including municipal, domestic, industrial, commercial, irrigation, stock watering, recreation, fish and wildlife, fire protection, and sanitary purposes, including the right to use, reuse, and successively use such water to extinction. Further, such water may be stored for subsequent use and may be used for augmentation, exchange, and replacement purposes. **B.** The decree in Case No. 04CW098, Water Division 1, adjudicating rights in nontributary and not nontributary groundwater including the 640-acre parcel which are to be used as a sources of replacement water in this augmentation plan, is summarized as follows: (1) Decree Entered: May 24, 2005. (2) Court: District Court, Water Division 1. (3) Type of Water Right: Vested property right to withdraw all groundwater underlying the property in specified aquifers, pursuant to §§ 37-90-137(4) and -137(9), C.R.S. (4) Legal Description: The decreed groundwater rights underlie Section 36, Township 11 South, Range 66 West of the 6th P.M., El Paso County, consisting of 640 acres, more or less. (5) Sources and Amounts of Groundwater Decreed:

Aquifer	Type	Annual Average Amount
Dawson	Not Nontributary	515 AF
Denver	Not Nontributary	577 AF
Arapahoe	Nontributary	239 AF
Laramie-Fox Hills	Nontributary	182 AF

(6) Decreed Uses: Reuse and successive uses for all beneficial purposes including municipal, domestic, industrial, commercial, irrigation, stock watering, recreation, fish and wildlife, fire protection, and sanitary purposes, including the right to use, reuse, and successively use such water to extinction. Further, such water may be stored for subsequent use and may be used for augmentation, exchange, and replacement purposes. **C.** The decree in Case No. 85CW131, Water Division 2, adjudicating rights in nontributary and not nontributary groundwater including the 71-acre parcel which are to be used as a sources of replacement water in this augmentation plan, is summarized as follows: (1) Decree Entered: May 18, 1988. (2) Court: District Court, Water Division 2. (3) Type of Water Right: Vested property right to withdraw all groundwater underlying the property in specified aquifers, pursuant to §§ 37-90-137(4) and -137(9), C.R.S. (4) Legal Description: The decreed groundwater rights underlie parts of Sections 25, 26, 34, 35 and 36, Township 11 South, and parts of Sections 2 and 3, Township 12 South all in Range 66 West of the 6th P.M., El Paso County, consisting of 2,230 acres, more or less. Applicant is the owner of 71 acres along the northern line of Sections 34 and 35. (5) Sources and Amounts of Groundwater Decreed: The decree in Case 85CW131 quantifies the not non-tributary Dawson aquifer groundwater at 1,710 acre-feet per year. The original decree was amended in 1996 to determine the ownership of the decreed groundwater. Pursuant to the amended decree, Shamrock SS, LLC owned 65 acre-feet per year of Dawson aquifer groundwater underlying the northern 350 acres of Section 34 and 36, Township 11 South, Range 66 West. (6) Applicant owns a pro-rata share of the 65 acre-feet of the Dawson aquifer water rights decreed in Case 85CW131, underlying Applicant's 71-acre parcel. Applicant believes it has ownership of 13.2 acre-feet per year from the Dawson not nontributary aquifer. 7) Decreed Uses: Used, reused,

and successively used and otherwise disposed of for all municipal purposes including domestic, industrial, commercial, irrigation, stock watering, recreational, fish and wildlife, fire protection, and sanitary purposes. This water will be produced for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of depletions resulting from the use of this groundwater or of water from other sources, and for augmentation purposes. **Statement and Description of Plan for Augmentation: A. Source of Augmentation Water.** (1) The augmentation sources for this plan will be the fully augmented not nontributary groundwater in the Dawson aquifer and the nontributary groundwater in the nontributary Laramie-Fox Hills aquifer, including such nontributary groundwater underlying Applicant's Property, described in Exhibits B, D and F to the Application, all as provided in the Augmentation Decree. Such sources may be available by direct discharge to the stream system, by percolation and return to the stream system after domestic use. All of the terms and conditions of the Augmentation Decree shall remain in full force and effect, and shall not be modified by this application, other than to add the additional uses claimed herein. (2) The average amounts of groundwater available for augmentation purposes are those amounts decreed in the above-referenced decrees. **B. Use and Estimated Demand.** (1) Total average Dawson aquifer amounts available for the development, and decreed in the Augmentation Decree, are 198 acre-feet per year, based on a projected 300-year life of the Dawson aquifer (729.2 acre-feet per year from the Dawson aquifer based on a 100-year aquifer life, 238.7 acre-feet per year based on a 300-year aquifer life). **C. Augmentation and Replacement of Depletions.** (1) Stream Systems Affected: Cherry Creek, tributary to the South Platte River, and Monument Creek, tributary to the Arkansas River. (2) Replacement of Depletions During Pumping Period. (a) Assuming that the development will achieve return flows of 90% of the water used in-house and a minimum of 10% of the water used for irrigation purposes, the total combined return flows at full build-out will exceed the required augmentation amount, including the amounts claimed herein for stock watering. (b) The domestic return flows will be adequate in quantity to replace depletions caused by the withdrawals of not nontributary groundwater from the Dawson aquifer during the period addressed by this plan. (c) Excess Return Flows: To the extent that lawn irrigation and domestic effluent returns exceed the quantities needed to fully augment all projected stream depletions, Applicant reserves the right to apply for alluvial wells in the Cherry Creek and Monument Creek basins to recapture and reuse such excess returns. (3) Replacement of Depletions During the Post-Pumping Period. (a) Applicant reserves the right to claim and demonstrate that the impact of post-pumping depletions are wholly de minimis and non-injurious and need not be replaced under the law. § 37-90-137(9), C.R.S. (b) Assuming that such additional depletions may be determined to be injurious and replacement is required, Applicant will reserve for such purpose the nontributary groundwater in the Laramie-Fox Hills aquifer underlying the property, as such groundwater is decreed in Case No. 94CW023(B), Water Division No. 1 and Case No. 04CW098, Water Division No. 1. Such quantity is sufficient to fully replace all water withdrawn under this plan for augmentation. (4) Summary of Augmentation Plan. (1) The planned development will require up to 198 acre-feet per year to be produced from the Dawson aquifer. The additional 13.2 acre-feet per year of Dawson aquifer groundwater described in paragraph 8.A.(4) above does not alter any terms and

conditions of the Augmentation Decree. Return flows from uses of such groundwater will exceed the annual depletions and will, therefore, adequately replace all projected depletions. (2) To the extent that a "short fall" in actual return flows occurs in any given time period during the first 300 years of operation, adequate nontributary groundwater reserves exist to compensate for such short fall. 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. Application Filed in Water Divisions 1 and 2: This Application is being filed in Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the South Platte River system where the majority of stream depletions will occur. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient. Retained Jurisdiction: A. 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. B. 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. C. Finally, Applicant requests the Court to retain jurisdiction to allow Applicant to file a separate application for the recapture and reuse of the excess return flows. WHEREFORE, Applicant asks the Court to enter a decree in this matter: (1) Granting the application sought herein. (2) Specifically determining that (a) Applicant's Dawson aquifer groundwater withdrawals for stock watering may be augmented with return flows from domestic and lawn irrigation uses of such groundwater; (b) Return flows from such uses will be adequate to replace any and all injurious stream depletions caused by pumping of such groundwater; (c) Granting this application will not injuriously affect the owners or persons entitled to use water under vested water rights or decreed conditional water rights; (e) Jurisdiction will be retained on the question of injury and as further requested herein; and (f) this Court grant this and such other relief as it deems proper and necessary.

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**CASE NO. 2018CW3065, Previous Case Nos. 1995CW194, 2005CW100; 2012CW48 - JOHN HIGHTOWER, P.O. Box 1000, 232 F St., Salida, CO 81201** (Please address all pleadings and correspondence regarding this matter to Applicant's attorney: MacDougall & Woldridge, P.C., Julianne M. Woldridge, 1586 So. 21<sup>st</sup> St., Suite 200, Colorado Springs, CO 80904, (719) 520-9288)

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

**2. Names of structure and description of conditional water right:** Hightower Spring No. 1. **a. Original decree:** Case No. 95CW194, Water Div. No. 2, December

13, 1999. Subsequent findings of diligence were entered on May 15, 2006, Case Nos. 05CW100, Water Div. No. 2, and on October 22, 2012, Case No. 12CW48, Water Div. No. 2; **b. Location:** A point in the SE1/4 of Sec. 27, T.49N., R.9E., NMPM, Fremont County, CO, from which the ¼ corner of Sections 27 and 34 bears South 43° 15' West a distance of 1,457 feet. A map showing the general location is attached to the Application as Exhibit 1 (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.); **c. Source:** an unnamed tributary of Bear Creek, a tributary of the Arkansas River; **d. Appropriation Date:** May 3, 1995; **e. Amount:** 0.15 c.f.s., conditional; **f. Uses:** livestock, irrigation, fish culture, recreation, and wildlife; **g. Land irrigated:** ten acres within a portion of the W1/2 of the NE1/4NE1/4NE1/4, Sec. 27, T.49N., R.9E., NMPM. **3.** Applicant seeks a determination that 0.15 c.f.s. of this water right has been made absolute for livestock, fish culture, recreation, and wildlife purposes. During the diligence period, Applicant has stocked the spring channel with fish for fish culture purposes. Every year of the diligence period Applicant performed earthwork and cleaned and cleared the spring of debris to develop the appropriation, livestock and wildlife have drunk from the spring, and Applicant has enjoyed the flows of the spring for fishing and recreational purposes. Beginning on May 1, 2018, Applicant captured water originating from the spring in a pond pursuant to a substitute water supply plan placing the water to beneficial use. Applicant has applied for a separate water storage right for that pond in Case No. 18CW3014. **4.** Applicant seeks findings that it has been reasonably diligent toward or for completion of the conditional appropriation for irrigation purposes and for any of the other decreed uses not made absolute as a result of this application. Since the entry of the decree in Case No. 12CW48, Applicant has performed the work described above in development of this appropriation. **5. Names and addresses of owners of land upon which the diversion structures has been constructed:** Applicant and his wife, Melissa Hightower, same address. Applicant requests a determination that 0.15 c.f.s. of this water right is absolute for livestock, fish culture, recreation, and wildlife purposes, or in the alternative a determination that he has exercised reasonable diligence in the development and completion of the conditional water right for those purposes, and a finding that he has exercised reasonable diligence in the development and completion of the conditional water right for irrigation purposes, and continuing the water right for all remaining conditional uses in full force and effect.

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

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of December 2018, (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, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

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Witness my hand and the seal of this Court this 6th day of November, 2018.

*Mardell R. DiDomenico*



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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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