

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JUNE 2019  
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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 June 2019, 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:

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**CASE NO. 2018CW0006 - DOMINICK BUCCIARELLI, 1201 Socorro Place, Pueblo, CO 81006-1046; (719) 545-4590**

Amended Application for Absolute Underground Water Rights

**PUEBLO COUNTY**

**Name of structure:** Clear Springs Ditch Well. **Legal description of each point of diversion: UTM coordinates** Easting 535983 Northing 4232533, Zone 13S; **Source of UTM:** GPS unit, accuracy +/-20 feet. **Legal Description:** NW ¼ NW ¼ Sec. 8, T21S, R64W, 6<sup>th</sup> P.M., Pueblo County, approximately 380 feet from the North line and 20 feet from the West line. Irregular section, deference to UTM location. See Figure 1 attached to the application for a general location map. (All figures/exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). **Source of PLSS information:** USGS topographic map. **Source:** Groundwater tributary to the Arkansas River. **Depth of well:** 8-10 feet. **Date of appropriation:** August 2, 1917 for domestic and commercial uses. **How appropriation was initiated:** By construction of the well, water delivery system. **Date water applied to beneficial use:** August 2, 1917. **Amount claimed:** 0.5 cfs Absolute, 12-acre feet Absolute, equal to 325,900 gallons, Non-tributary groundwater. **List All Uses:** This well structure is used for domestic and commercial purposes. This well structure originally served up to 50 residences in the Salt Creek area with domestic water supplies including outside lawn/garden uses. This well structure has additionally been used to serve the commercial uses inside up to three businesses which have included a store, a gasoline station, a small office and a tavern. **Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new or existing diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Veronica Villanueva, P. O. Box 1280, Pueblo, CO 81002-1280. **Remarks:** This application is being amended from a surface water claim to a groundwater claim following consultation with the Division Engineer's Office. This well structure has been in continuous use since 1917. This period of use includes many periods of documented river calls junior to 1917. This structure is currently a member structure within the Arkansas Groundwater Users Association Annual Rule 14 Replacement Plan.

**CASE NO. 2017CW3069; LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION, c/o Donald F. Higbee, Manager, 310 South 6<sup>th</sup> Street, PO Box 1161, Lamar, CO, 81052** (Please address all pleadings and inquiries regarding this matter to Applicants' attorneys: Richard J. Mehren, Jennifer M. DiLalla, William D. Davidson,

Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Blvd., Suite 300, Boulder, Colorado 80302, 303-443-8782)

First Amended Application for Plan for Augmentation

**BENT AND PROWERS COUNTIES**

**2. Purpose of application:** LAWMA is a non-profit corporation organized for the purpose of, among other things, providing a means for its members to continue to make ground water diversions from wells and other structures with junior priorities and to continue to make surface water diversions from structures with junior priorities in the Arkansas River water rights regime. The purpose of this application is to include additional structures in LAWMA's plan for augmentation ("Augmentation Plan"), which was decreed on March 8, 2007 in Case No. 02CW181, Water Division No. 2 ("02CW181 Decree"). Pursuant to paragraph 43 of the 02CW181 Decree, LAWMA may add wells or other structures to the Augmentation Plan by filing a new application with the Water Court. 3.

**3. Purpose of amendment:** LAWMA files this First Amended Application to do the following: (i) clarify that certain of the Additional LAWMA Structures described in paragraph 4 below operate within LAWMA's Arkansas River Replacement Plan pursuant to Rule 14 of the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin ("Rule 14 Plan"), as annually approved by the Colorado State Engineer, and will continue to operate under the administratively approved Rule 14 Plan in addition to operating under LAWMA's Augmentation Plan under any decree to be entered in this case; and (ii) reduce, from 28 to 24, the number of the Additional LAWMA Structures described in paragraph 4 below.

**4. Description of structures to be augmented:** See Exhibit A attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). A total of twenty-four additional structures will be included in LAWMA's Augmentation Plan through this application: twenty wells owned by Arkansas River Farms, LLC ("ARF Wells"), and four wells owned by Colorado Dairy Partners, LLC ("Bent Dairy Wells"). The Additional LAWMA Structures are generally located north of the Arkansas River in Bent County and Prowers County, between Adobe Creek on the west and the Town of Wiley on the east.

**5. Water rights and other sources of water to be used for augmentation:** Those water rights and other sources of water identified in paragraph 40 of the 02CW181 Decree and in the decrees entered in Case Nos. 05CW52 and 10CW85, and those water rights and other sources of water that are added to the 02CW181 Decree pursuant to the terms and conditions of paragraph 41 of that decree. **5.1 Use of Fryingpan-Arkansas Project water and return flows as augmentation source:**

Water pumped by the Bent Dairy Wells will be used outside of the boundaries of the Southeastern Colorado Water Conservancy District ("Southeastern"). Accordingly, LAWMA will not use Fryingpan-Arkansas Project water to replace depletions caused by the Bent Dairy Wells. The ARF Wells are located within Southeastern's boundaries, and water pumped by the ARF Wells will be used within such boundaries. Accordingly, LAWMA will use Fryingpan-Arkansas Project water to replace depletions caused by the ARF Wells.

**6. Statement of plan for augmentation:** The amount, timing, and location of depletions from pumping of the Additional LAWMA Structures under the Augmentation Plan will be determined in accordance with the methodologies approved in the 02CW181 Decree, and LAWMA shall account for and fully replace all such depletions that are out of priority. LAWMA shall replace such out-of-

priority depletions under the Augmentation Plan with fully consumable water in accordance with the terms and conditions of the 02CW181 Decree and the decree to be entered in this case, in a manner that protects Colorado senior surface water rights from injury and ensures compliance with the Arkansas River Compact. **6.1 Integration into Case No. 02CW181 accounting and projection:** The accounting for operation of the Additional LAWMA Structures under the Augmentation Plan will be incorporated into the accounting and projection required by paragraphs 47.E and 47.I. of the 02CW181 Decree. Such accounting will include, without limitation, monthly diversions, monthly unlagged depletions, and monthly lagged depletions for each Additional LAWMA Structure, as well as the fully consumable water sources available for replacement of such depletions. Additionally, in accounting for operation of the Additional LAWMA Structures, LAWMA shall use the integrated accounting forms approved in the decree entered in Case No. 14CW3004 on August 1, 2017. **6.2 No modification of 02CW181 Decree:** This First Amended Application does not seek to change any provision of the 02CW181 Decree other than the inclusion of the Additional LAWMA Structures in the Augmentation Plan, does not seek a change of water right for any of the water rights identified in paragraph 40 of the 02CW181 Decree, and does not seek any change to those augmented structures or replacement water sources previously decreed to be included in the Augmentation Plan. Instead, this application seeks (i) the Court’s approval of LAWMA’s inclusion of the structures described in **Exhibit A** in the Augmentation Plan in accordance with the terms and conditions of the 02CW181 Decree; and (ii) accordingly, the Court’s confirmation that LAWMA will fully replace, so as to prevent injury to Colorado senior surface water rights and ensure compliance with the Arkansas River Compact, all out-of-priority depletions caused by pumping of the Additional LAWMA Structures under the Augmentation Plan. **6.3 Operation of ARF Wells under LAWMA’s Rule 14 Plan.** The ARF Wells also operate under LAWMA’s Rule 14 Plan as annually approved by the Colorado State Engineer. Depletions resulting from pumping of the ARF Wells under the Rule 14 Plan will be determined and replaced under the terms and conditions of the Rule 14 Plan as annually approved by the Colorado State Engineer. Depletions resulting from pumping of the ARF Wells under the Augmentation Plan will be determined and replaced under the terms and conditions of the 02CW181 Decree and any decree to be entered in this case. Pumping of the ARF Wells under the Augmentation Plan will be all pumping of the ARF Wells that is not authorized by the Colorado State Engineer under LAWMA’s Rule 14 Plan. **7. Name and address of owner of land upon which new diversion structures will be constructed:**

Owner	Structures	Address	City	State	ZIP
	Bent Dairy Well Nos. 1, 2, 3, & 4	34515 Road 15	Las Animas	CO	81054

WHEREFORE, LAWMA respectfully requests that this Court enter a decree approving this plan for augmentation and determining that such plan for augmentation will not cause injury to the vested or decreed conditional water rights of others and will not violate the Arkansas River Compact.

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**CASE NO. 2018CW003077 - COLORADO DIVISION OF PARKS AND WILDLIFE AND THE PARKS AND WILDLIFE COMMISSION, 6060 Broadway, Denver, CO 80216**  
(Please address all pleadings and inquiries regarding this matter to Applicants’ attorneys:

Heather A. Warren, (720) 508-6266; Elizabeth M. Joyce, (720) 508-6761 Vann A. Ellerbruch, (720) 508-6392, Assistant Attorneys General, 1300 Broadway, 7th Floor, Denver CO 80203.)

First Amended Application for Conditional and Absolute Ground Water Rights, Water Storage Rights, Appropriative Rights of Exchange, and Approval of Plan for Augmentation  
**TELLER, FREMONT, AND PUEBLO COUNTIES**

**1. Reason for Amendment.** Applicant filed its Application for Conditional and Absolute Ground Water Rights, Water Storage Rights, Appropriative Rights of Exchange, and Approval of Plan for Augmentation on December 31, 2018. On or about February 19, 2019, counsel for Applicant became aware that the caption of the Application in this matter did not include Fremont County, Colorado. Fremont County contains a portion of the claimed exchange reach from Pueblo Reservoir to Mt. Pisgah Reservoir, as described in Applicant's Fourth Claim for Appropriative Rights of Exchange in the Application. Counsel for these Opposers have provided the undersigned counsel with written consent to file this First Amendment in accordance with Rule 15, C.R.C.P. Therefore, in accordance with § 37-92-302, C.R.S. and W.C.R. 4, this First Amendment of the Application is hereby filed to correct the caption and to re-publish the Application in its entirety in Teller, Fremont, and Pueblo Counties, Colorado. Any Statements of Opposition filed as of the date of the filing of this First Amendment shall be of continuing force and effect, applicable to this First Amendment. The original Application is amended only to correct the caption and is otherwise unchanged. The entire Application is restated below. **2. Name, Address and Telephone Number and Email Address of Applicant.** Colorado Division of Parks and Wildlife ("CPW"), Attn: Ed Perkins, Water Rights Program Administrator, 6060 Broadway, Denver, Colorado 80216, (303) 291-7466, Ed.Perkins@state.co.us. **3. General Description of Application.** CPW owns and manages Mueller State Park, located west of Pikes Peak along State Highway 67, approximately 3.5 miles south of Divide, Colorado. CPW seeks absolute and conditional water rights for recreational, commercial and other beneficial uses for six ground water wells and six ponds at Mueller State Park and approval of a plan for augmentation and conditional appropriative rights of substitution and exchange to replace out-of-priority depletions resulting from operation of the wells and ponds located in the Park. **FIRST CLAIM – GROUND WATER RIGHTS. 4. Application for Ground Water Rights.** CPW seeks absolute and conditional ground water rights for the following wells for uses within Mueller State Park, including for fire protection (referred to collectively as the "Mueller SP Wells"). Mueller SP Wells deplete both Hay Creek and Fourmile Creek; CPW seeks rights to withdraw up to 10 AF annually from those wells depleting Hay Creek, and to withdraw up to 10 AF annually from those wells depleting Fourmile Creek, but CPW will not withdraw more than 10 AF annually from all wells combined. See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). The well permits are attached as **Exhibit B**. The Mueller SP Wells are not the subject of or included in any prior decree. **a. Shop Well:** Well Permit No. 295986. i. Legal description of point of diversion: NWNW Sec. 36, T13S, R70W, 6th P.M., Teller County, Colorado, feet from the Section Line and feet from the Section Line (UTM Coordinates: 1983 Zone 13 E: 484601; N: 4303722). ii. Source: Ground water tributary to Fourmile Creek, tributary to the Arkansas River. iii. Depth of well: 100 feet. iv. Date of appropriation: October 20, 2014. v. How appropriation was initiated: By

application of water to commercial use; for livestock watering, by CPW's formation of the intent to use the water and filing of the application in this case. vi. Amount claimed: 15.0 g.p.m. **ABSOLUTE** for commercial use; 15.0 g.p.m. **CONDITIONAL** for livestock watering. vii. Date water applied to beneficial use: October 20, 2014, for commercial use.

**b. Homestead Well No. 1**: Well Permit No. 277383. i. Legal description of point of diversion: SESE Sec. 26, T13S, R70W, 6th P.M., Teller County, Colorado (UTM Coordinates: 1983 Zone 13 E: 484230.7; N: 4304094.5). ii. Source: Ground water tributary to Hay Creek, tributary to the Arkansas River. iii. Depth of well: 400 feet. iv. Date of appropriation: May 2, 2008. v. How appropriation was initiated: By application of water to commercial use. vi. Amount claimed: 15.0 g.p.m. **ABSOLUTE**. vii. Date water applied to beneficial use: May 2, 2008.

**c. Homestead Well No. 2**: Well Permit No. 277385. i. Legal description of point of diversion: NWSE Sec. 26, T13S, R70W, 6th P.M., Teller County, Colorado (UTM Coordinates: 1983 Zone 13 E: 483776.5; N: 4304733.4). ii. Source: Ground water tributary to Hay Creek, tributary to the Arkansas River. iii. Depth of well: 150 feet. iv. Date of appropriation: May 2, 2008. v. How appropriation was initiated: By application of water to commercial use. vi. Amount claimed: 15.0 g.p.m. **ABSOLUTE**. vii. Date water applied to beneficial use: May 2, 2008.

**d. Cabin Well No. 1**: Well Permit No. 254253. i. Legal description of point of diversion: SENE Sec. 26, T13S, R70W, 6th P.M., Teller County, Colorado (UTM Coordinates: 1983 Zone 13 E: 484482; N: 4304773). ii. Source: Ground water tributary to Fourmile Creek, tributary to the Arkansas River. iii. Depth of well: 300 feet. iv. Date of appropriation: December 2, 2003. v. How appropriation was initiated: By application of water to commercial use. vi. Amount claimed: 15.0 g.p.m. **ABSOLUTE**. vii. Date water applied to beneficial use: December 2, 2003. viii. Other remarks: The well permit for this well erroneously states that the structure is located in Water Division 1; however, based on the UTM coordinates listed on the well permit this well is located in Water Division 2.

**e. Cabin Well No. 2**: Well Permit No. 24250. i. Legal description of point of diversion: NWSW Sec. 25, T13S, R70W, 6th P.M., Teller County, Colorado (UTM Coordinates: 1983 Zone 13 E: 484616; N: 4304691). ii. Source: Ground water tributary to Fourmile Creek, tributary to the Arkansas River. iii. Depth of well: 300 feet. iv. Date of appropriation: December 2, 2003. v. How appropriation was initiated: By application of water to commercial use. vi. Amount claimed: 15.0 g.p.m. **ABSOLUTE**. vii. Date water applied to beneficial use: December 2, 2003. viii. Other remarks: The well permit for this well erroneously states that the structure is located in Water Division 1; however, based on the UTM coordinates listed on the well permit this well is located in Water Division 2.

**f. Camper Services Well**: No well permit. i. Legal description of point of diversion: SWNE Sec. 26, T13S, R70W, 6th P.M., Teller County, Colorado (UTM Coordinates: 1983 Zone 13 E: 484020.6; N: 4304739.5). ii. Source: Ground water tributary to Hay Creek, tributary to the Arkansas River. iii. Depth of well: 150 feet. iv. Date of appropriation: January 5, 2018. v. How appropriation was initiated: By application of water to commercial use. vi. Amount claimed: 15.0 g.p.m. **ABSOLUTE**. vii. Date water applied to beneficial use: January 5, 2018. viii. Other remarks: This well does not have a well permit.

**SECOND CLAIM – WATER STORAGE RIGHTS. 5. Application for Water Storage Rights.** CPW seeks absolute and conditional water storage rights for the following ponds (referred to collectively as the “Mueller SP Ponds”). Maps depicting the locations of the Mueller SP Ponds are attached as **Exhibit A**. The Mueller SP Ponds are not the subject of or included in any prior decree. **CLAIM 1**: CPW claims **CONDITIONAL**

water storage rights for each of the Mueller SP Ponds for augmentation and exchange uses in the amount claimed for the capacity of each pond, with an appropriation date of December 31, 2018. Appropriation was initiated by CPW's formation of the intent to use the water for the claimed conditional uses and filing of the application in this case. **CLAIM 2:** CPW claims **ABSOLUTE** water storage rights for each of the Mueller SP Ponds for commercial, livestock watering, aesthetic, recreational, wildlife, piscatorial and fire protection uses, with an appropriation date of June 1, 1980. Appropriation was initiated by CPW's acquisition of the Mueller State Park property and ponds, and use of the ponds for the claimed absolute uses. Water was applied to the claimed absolute beneficial uses as of June 1, 1980. **a. Dragonfly Pond.** i. Location of dam centerline: NENW Sec. 36, T13S, R70W, 6th P.M., Teller County, Colorado (UTM Coordinates: 1983 Zone 13 E: 484964.9; N: 4303608.7). ii. Source: Unnamed tributary to Fourmile Creek, tributary to the Arkansas River. iii. Amount claimed: 1.15 acre-feet, with one refill. iv. Surface area of high water line: 0.41 acres. v. Total capacity: 1.15 AF (active capacity: 1.15 AF; dead storage: 0.00 AF). **b. Geer Pond.** i. Location of dam centerline: NWNW Sec. 35, T13S, R70W, 6th P.M., Teller County, Colorado (UTM Coordinates: 1983 Zone 13 E: 483033.3; N: 4303670.1). ii. Source: Unnamed tributary to East Hay Creek and Hay Creek, tributary to the Arkansas River. iii. Amount claimed: 4.40 acre-feet, with one refill. iv. Surface area of high water line: 1.23 acres. v. Total capacity: 4.40 AF (active capacity: 4.40 AF; dead storage: 0.00 AF). **c. Rock Pond.** i. Location of dam centerline: NESE Sec. 34, T13S, R70W, 6th P.M., Teller County, Colorado (UTM Coordinates: 1983 Zone 13 E: 482642.6; N: 4302911.3). ii. Source: Unnamed tributary to East Hay Creek and Hay Creek, tributary to the Arkansas River. iii. Amount claimed: 2.94 acre-feet, with one refill. iv. Surface area of high water line: 0.58 acres. v. Total capacity: 2.94 AF (active capacity: 2.94 AF; dead storage: 0.00 AF). **d. Brook Pond.** i. Location of dam centerline: NESE Sec. 34, T13S, R70W, 6th P.M., Teller County, Colorado (UTM Coordinates: 1983 Zone 13 E: 482895.0; N: 4302892.2). ii. Source: Unnamed tributary to East Hay Creek and Hay Creek, tributary to the Arkansas River. iii. Amount claimed: 5.02 acre-feet, with one refill. iv. Surface area of high water line: 0.84 acres. v. Total capacity: 5.02 AF (active capacity: 5.02 AF; dead storage: 0.00 AF). **e. Entrance Pond – East.** i. Location of dam centerline: SWSW Sec. 30, T13S, R69W, 6th P.M., Teller County, Colorado (UTM Coordinates: 1983 Zone 13 E: 486257; N: 4304109). ii. Source: Unnamed tributary to Four Mile Creek, tributary to the Arkansas River. iii. Amount claimed: .038 acre-feet, with one refill. iv. Surface area of high water line: 0.041 acres. v. Total capacity: 0.038 AF (active capacity: 0.038 AF; dead storage: 0.00 AF). **f. Entrance Pond – West.** i. Location of dam centerline: SWSW Sec. 30, T13S, R69W, 6th P.M., Teller County, Colorado (UTM Coordinates: 1983 Zone 13 E: 486228; N: 4304114.6). ii. Source: Unnamed tributary to Four Mile Creek, tributary to the Arkansas River. iii. Amount claimed: 0.055 acre-feet, with one refill. iv. Surface area of high water line: 0.051 acres. v. Total capacity: 0.055 AF (active capacity: 0.055 AF; dead storage: 0.00 AF). **THIRD CLAIM – PLAN FOR AUGMENTATION. 6. Description of Plan for Augmentation.** Applicant seeks to augment out of priority depletions arising from use of the Mueller SP Wells, as well as from any replacement wells or supplemental wells, and out of priority depletions arising from the Mueller SP Ponds or other storage structures located at Mueller State Park, to supply water for commercial, livestock watering, aesthetic, recreational, wildlife, piscatorial and fire protection uses at Mueller State Park. **a. Structures to be Augmented:** i. Mueller SP Wells: The Mueller SP Wells

are described above in ¶3. ii. Mueller SP Ponds: The Mueller SP Ponds are described above in ¶4. b. Sources of Replacement Water. i. Fully consumable Pueblo Reservoir water stored in Mt. Pisgah Reservoir: Through an agreement with the Board of Pueblo Water Works (“PBWW”), Applicant has the right to use fully consumable water stored in Pueblo Reservoir. The PBWW Water Exchange Agreement is attached as **Exhibit C**. Applicant also has an agreement to lease 10 acre-feet of storage space in Mt. Pisgah Reservoir from the Catlin Canal Company. The Catlin Canal Company Agreement for Lease of Storage Space is attached as **Exhibit D**. Applicant will store up to 10 acre-feet per year of its Pueblo Reservoir water in Mt. Pisgah Reservoir for use in the augmentation plan. Applicant’s Pueblo Reservoir water will be delivered to Mt. Pisgah Reservoir by use of a book-over or paper exchange of water from Pueblo Reservoir. Under the foregoing agreements, Applicant’s water stored in Pueblo Reservoir will be transferred on paper to Mt. Pisgah Reservoir and an equivalent amount of water will be stored in Mt. Pisgah Reservoir. The dam for Mt. Pisgah Reservoir is located across the natural stream bed of Four Mile Creek situated in the E1/2NW1/4 of Section 31, T14S, R70W, 6th P.M., Teller County, Colorado. 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 T20S, R66W, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, in T21S, R66W, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, 24 and 25, in T20S, R67W, 6th P.M., Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, T20S, R66W of the 6th P.M., from which the NE corner of said Section bears N 61° 21’ 20” E, a distance of 2,511.05’. ii. Mueller SP Ponds: Mueller SP Ponds are described above in ¶4. iii. Additional replacement sources. Water from additional and alternative sources may be used in this plan for augmentation if such sources are decreed or lawfully available for such use or are part of a substitute water supply plan approved by the State Engineer pursuant to §37-92-308, C.R.S., or an interruptible supply agreement approved under §37-92-309, C.R.S., or other applicable and/or successor statutes. c. **Augmentation Plan**. i. Out-of-priority depletions may occur as a result of: a) operation of the Mueller SP Wells; b) evaporative losses from the Mueller SP Ponds; and/or c) storage of natural inflows into the Mueller SP Ponds. Shop Well, Cabin Well No. 1, Cabin Well No. 2, Dragon Fly Pond, Entrance Pond – West, and Entrance Pond – East are located in the Fourmile Creek drainage basin and will deplete Fourmile Creek in the NW 1/4 of Section 31, Township 13 South, Range 69 West of the 6th P.M., Teller County, Colorado. Camper Services Well, Homestead Well No. 1 and Homestead Well No. 2 are located in the Hay Creek drainage basin and will deplete Hay Creek in the SE 1/4 of Section 26, Township 13 South, Range 70 West of the 6th P.M., Teller County, Colorado. Geer Pond is located on Hay Creek and will deplete Hay Creek in the NW 1/4 of Section 35, Township 13 South, Range 70 West of the 6th P.M., Teller County, Colorado. Rock Pond and Brook Pond are located on a tributary to Hay Creek. Rock Pond and Brook Pond will deplete Hay Creek in the SE 1/4 of Section 34, Township 13 South, Range 70 West of the 6th P.M., Teller County, Colorado. ii. Amount of depletions. Applicant estimated gross depletions (i.e., well pumping and pond evaporation) and gross accretions (i.e., septic disposal system returns) to each drainage basin to determine the net depletive effect to each drainage basin resulting from operation of the Mueller SP Wells and Mueller SP Ponds. Net depletions will be calculated by drainage basin by adding septic return flow accretions to gross well pumping and pond evaporative depletions. Estimates were based

on expected future water pumping at Mueller SP of 9.4 acre-feet per year, net depletions equal to approximately 1.0 acre-foot per year, and evaporative losses totaling approximately 8.1 acre-feet per year. Of the total depletion (approximately 9.1 acre-feet per year), approximately 7.1 acre-feet per year will occur to Hay Creek and approximately 2.0 acre-feet per year will occur to Four Mile Creek. iii. Timing of depletions. Monthly depletions from the Mueller SP Wells and the Mueller SP Ponds will be lagged to Hay Creek and Fourmile Creek using Glover Method as contained in the Alluvial Water Accounting System (AWAS) model and site specific parameter values. iv. Replacement of depletions. When calls senior to the priority dates of the water rights decreed herein are located below Mt. Pisgah Reservoir, CPW will release its stored water from Mt. Pisgah Reservoir or from Mueller SP Ponds on a daily basis, or on a frequency as requested by the Division Engineer or Water Commissioner, so as to replace the net depletions. When calls senior to the priority dates of the water rights decreed herein are located above Mt. Pisgah Reservoir on either Hay Creek or Four Mile Creek, Applicant will release water from one or more of the Mueller SP Ponds. More specifically, water stored in Dragonfly Pond, Entrance Pond – East, and Entrance Pond - West can be used to replace depletions on Fourmile Creek upstream of Mt. Pisgah Reservoir. Releases from Geer, Rock and Brook Ponds can be used to replace depletions on Hay Creek upstream of Mt. Pisgah Reservoir. v. Measurement of diversions. Mueller SP Ponds will be equipped with staff gages to determine storage volumes, exposed water surface area, and evaporative losses and structures capable of controlling and measuring outflows from the ponds. Inflows to the Mueller SP Ponds will be calculated using a mass balance approach. vi. Replacement water deliveries. CPW will release water from Mt. Pisgah Reservoir or from the Mueller SP Ponds to replace out of priority depletions. At the end of each year of operation, CPW will provide a report to the Division Engineer showing total diversions in that year and depletions caused by those diversions. vii. Transit losses. When replacement water is released at locations upstream of locations of depletions, transit losses will be assessed at the rate prescribed by the Division Engineer. viii. Accounting. CPW will account for the depletions and amounts of replacement water under this augmentation plan. An accounting report will be submitted to the Division Engineer no later than February 15 annually. The report will contain monthly summaries of the depletions from the Mueller SP Wells and Mueller SP Ponds. The report will also contain a follow-up Glover analysis, using the actual diversions from each year, specifying the actual depletion volumes and dates on which depletions will occur. During years in which replacement releases are made, an accounting report will be provided to the Division Engineer specifying the location, timing, rate, and volume of replacement water releases. ix. No change of water rights. CPW does not seek a change of water rights with this application. x. Appropriative rights of substitution and exchange. In order to operate the proposed plan of augmentation, exchanges will be necessary to move water from Mt. Pisgah Reservoir to the Mueller SP Ponds for subsequent release. The exchanges are claimed in ¶6 below. **FOURTH CLAIM – APPROPRIATIVE RIGHTS OF EXCHANGE. 7. Application for Conditional Appropriative Rights of Exchange. CLAIM 1:** CPW claims a **CONDITIONAL** appropriative right of exchange from Pueblo Reservoir to Mt. Pisgah Reservoir. **CLAIM 2:** CPW claims **CONDITIONAL** appropriative rights of exchange from Mt. Pisgah Reservoir to each of the Mueller SP Ponds. **CLAIM 3:** CPW



claims **CONDITIONAL** appropriative rights of exchange from Pueblo Reservoir to each of the Mueller SP Ponds. The exchange rates below are in CFS:

Exchange From	Exchange To						
	Mt Pisgah Reservoir	Rock Creek Pond	Brook Pond	Geer Pond	Dragon Fly Pond	Entrance Pond - West	Entrance Pond - East
Pueblo Reservoir	5.00	6.86	6.86	6.86	6.86	6.86	6.86
Mt Pisgah Reservoir	----	6.86	6.86	6.86	6.86	6.86	6.86

**a. Legal description of the structures from which substitute water supplies will be released (exchange from points) and the structures where water will be stored by exchange for subsequent release for augmentation purposes (exchange to points):**

Description	Structure Name	Lat/Long Coordinates	UTM Coordinates	PLSS Location
Exchange-From Point	Pueblo Reservoir	38.268533 -104.725341	E: 524026.8 N: 4235644.6	SWNE of Sec. 36, T20S, R66W
Exchange-From Point	Mt Pisgah Reservoir	38.793971 -105.271490	E: 476424 N: 4293948	SENE of Sec. 31, T14S, R70W
Exchange-To Point	Mt Pisgah Reservoir	38.793971 -105.271490	E: 476424 N: 4293948	SENE of Sec. 31, T14S, R70W
Exchange-To Point	Dragonfly Pond	38.881219 -105.173351	E: 484964.9 N: 4303608.7	SENE of Sec. 36, T13S, R70W
Exchange-To Point	Brook Pond	38.874720 -105.197199	E: 482895 N: 4302892.2	SENE of Sec. 34, T13S, R70W
Exchange-To Point	Rock Pond	38.874886 -105.200104	E: 482642.6 N: 4302911.3	SENE of Sec. 34, T13S, R70W
Exchange-To Point	Geer Pond	38.881733 -105.195627	E: 483033.3 N: 4303670.1	SENE of Sec. 35, T13S, R70W
Exchange-To Point	Entrance Pond – East	38.885746 -105.158466	E: 486257 N: 4304109	SENE of Sec. 30, T13S, R69W
Exchange-To Point	Entrance Pond – West	38.885799 -105.158800	E: 486228 N: 4304114.6	SENE of Sec. 30, T13S, R69W

**b. Exchange reaches:** The claimed exchange reaches are from Pueblo Reservoir to Mt. Pisgah Reservoir, from Mt. Pisgah Reservoir to the Mueller SP Ponds, and from Pueblo Reservoir to the Mueller SP Ponds described above in ¶6.a. **c. Date of initiation of appropriation for the proposed exchanges:** December 31, 2018. **d. How appropriation was initiated:** By formation of intent to appropriate this right of exchange, by filing of the application, and by public notice of the application. **e. Date exchange exercised:** Not applicable. **f. Physical exchange rate claimed.** The combined exchange amount for all structures identified in ¶8.a. will not exceed a combined maximum flow rate of 6.86 c.f.s., or a combined annual maximum volumetric limit of 37.21 acre-feet per year,

**CONDITIONAL.** The rate is based on the rate at which the combined storage in the Mueller SP ponds could be filled in a single day. The volume is based on a single exchange to Mt. Pisgah Reservoir (10.0 acre-feet), and exchanges to twice fill the Mueller SP ponds (27.21 acre-feet). **g. Use or Proposed Use.** The exchanged water will be used for all beneficial uses and purposes for which the water rights identified in ¶3 and ¶4 above are decreed. The substitute supply that the Applicant delivers to the downstream users becomes the water of the downstream users with the same legal characteristics of the water they would have received had the Applicant not conducted the exchanges. The water diverted by exchange by the Applicant will have the same legal characteristics as the water released by the Applicant at the points described above. **h. Substitute Water.** The substituted water identified herein is of a quality and continuity to meet the requirements for which the water of the senior appropriation normally has been used. **8. Integrated System.** The conditional ground water rights and water storage rights and appropriative exchange rights that are the subject of this Application are part of this integrated water system comprising all water rights decreed and used for operation of the Applicant's water supply system for Mueller State Park. Applicant requests that reasonable diligence in the development of one component of the system comprises reasonable diligence in the development of all components. **9. Names and addresses of owners or reputed owners of land upon which any new or existing diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing pool.** **a.** Applicant owns the lands upon which the Mueller SP Wells and Mueller SP Ponds are located. **b.** Mt. Pisgah Reservoir (a/k/a Wrights Reservoir) is located on lands owned by Pisgah Reservoir and Ditch Company, c/o Catlin Canal Company, P.O. Box 328, Rocky Ford, Colorado, 81067. **c.** Pueblo Reservoir is located on land owned by the U. S. Department of the Interior, Bureau of Reclamation, 11056 W. County Road, 18E, Loveland, Colorado 80537- 9711. WHEREFORE, CPW requests the Court to enter a decree approving the ground water rights, water storage rights, appropriative rights of exchange and plan for augmentation requested herein and determining that such claims for ground water rights, water storage rights, appropriative rights of exchange and plan for augmentation will not cause injury to any vested water right or decreed conditional water right.

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**CASE NO. 2019CW3036, LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION ("LAWMA") c/o Donald F. Higbee, Manager, 310 South 6th Street, P. O. Box 1161, Lamar, Colorado 81052** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: c/o Richard J. Mehren, Jennifer M. DiLalla, William D. Davidson, John E. Peckler, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Blvd., Suite 300, Boulder, Colorado 80302, 303-443-8782)

APPLICATION FOR CHANGE OF WATER RIGHTS AND ADDITION OF AUGMENTATION AND REPLACEMENT SUPPLIES TO PLAN FOR AUGMENTATION IN BENT, CHAFFEE, CROWLEY, EL PASO, KIOWA, LAKE, OTERO, PROWERS, PUEBLO, AND TELLER COUNTIES

**2. Overview of application:** LAWMA is a non-profit corporation organized for the purposes of replacing depletions caused by the pumping of its members' wells, as required by law, and providing water to its members directly or by means of augmentation

and replacement for all manner and types of uses. In 2017, LAWMA acquired 6,080 shares of stock (“Phase I Shares”) in the Fort Lyon Canal Company (“FLCC”) from Arkansas River Farms, LLC (“ARF”). As described in the letter of intent. See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) (“LOI”), LAWMA intends to acquire 1,429 additional shares of FLCC stock (“Phase II Shares”) from ARF in 2019. The Phase I Shares and Phase II Shares are referred to collectively in this Application as the “FLCC Shares.” In 2018, the City of Colorado Springs, acting through its enterprise, Colorado Springs Utilities (“CS-U”), acquired 2,500 shares of LAWMA common stock from ARF (“CS-U LAWMA Shares”), and LAWMA and CS-U entered into a Water Sharing Agreement under which, as part of an alternative transfer method (“ATM”), LAWMA will use water available to 3,303 of the Phase I Shares (“ATM Shares”) to make an allocation to the CS-U LAWMA Shares that will be shared by LAWMA and CS-U consistent with the Water Sharing Agreement. The ATM Shares are a subset of the Phase I Shares. The purposes of this Application are as follows: (i) to change the decreed type and place of use of the water rights associated with the FLCC Shares so that water available to those water rights may be used, both directly and after storage, for augmentation and replacement purposes within LAWMA’s various augmentation and replacement plans (“Comprehensive Change”); (ii) to add the water rights changed by the Comprehensive Change to LAWMA’s plan for augmentation decreed on March 8, 2007, in Division 2 Case No. 02CW181 (“02CW181 Decree”) as a permanent source of augmentation and replacement supply; and (iii) to further change the decreed type and place of use of the water rights associated with the ATM Shares, so that in addition to the changed uses under the Comprehensive Change, water available to those water rights may be used directly, by exchange, and after storage for all beneficial uses within CS-U’s existing and future service area (“ATM-Limited Change”). In years that CS-U takes delivery of water available under the CS-U LAWMA Shares, CS-U will seek to exchange the fully consumable water upstream into CS-U’s municipal system, including without limitation into the storage components of that system. This Application does not seek confirmation of appropriative rights of exchange. **3. Water rights to be changed:** The water rights associated with the FLCC Shares are a pro-rata portion of those water rights owned or controlled by FLCC, including without limitation the water rights described in paragraphs 3.1 through 3.5 below. Under the Comprehensive Change, LAWMA seeks to change the water rights associated with the 7,509 FLCC Shares, which amount to 7.99% of the 93,989.4166 shares outstanding of the capital stock of the FLCC. Under the ATM-Limited Change, LAWMA seeks an additional change in the water rights associated with the 3,303 ATM Shares, which amount to 3.51% of the outstanding capital stock of the FLCC. The 3.51% interest represented by the ATM Shares is included within and is not in addition to the 7.99% interest represented by the FLCC Shares. Ownership of the Phase I Shares (LAWMA) and Phase II Shares (ARF) is evidenced by the FLCC certificates identified on **Exhibit B**, which certificates represent LAWMA’s and ARF’s pro-rata interest in the water rights, ditches, canals, and other facilities for the delivery and use of water, and all other assets of the FLCC. The ARF LOI attached as **Exhibit A** authorizes LAWMA to change the Phase II Shares. CS-U does not own any of the FLCC Shares that are the subject of this Application. The structures associated with FLCC’s water rights are described in paragraph 4 below and

are located as shown on Exhibits C-1 and C-2. In accordance with § 37-92-302(2)(a), C.R.S., Exhibits C-1 and C-2 show the approximate location of the lands historically irrigated with the FLCC Shares (“Historically Irrigated Lands”), and Exhibits D-1 through D-5 summarize records of actual diversions of each water right described in paragraphs 3.1 through 3.5 below, to the extent such records exist. For all water rights described in paragraphs 3.1 through 3.5 below, the pro-rata interest represented by the ATM Shares is part of and not in addition to the pro-rata interest represented by the FLCC Shares. **3.1 Direct-flow water rights:** The direct-flow water rights decreed to the Fort Lyon Canal in the Adjudication of Priorities of Right to the Use of Water for Irrigation in Water District Number 17, dated April 8, 1905, in the District Court for Bent County (“District 17 General Adjudication”) and the pro-rata interest in those water rights being changed in this case are summarized in paragraphs **3.1.1 through 3.1.3 below.** **3.1.1** 164.64 cubic feet per second (“cfs”) from the Arkansas River with an appropriation date of April 15, 1884. Pro-rata interest being changed in this case: 13.15 cfs (FLCC Shares); 5.79 cfs (ATM Shares). **3.1.2** 597.16 cfs from the Arkansas River with an appropriation date of March 1, 1887. Pro-rata interest being changed in this case: 47.71 cfs (FLCC Shares); 20.99 cfs (ATM Shares). **3.1.3** 171.20 cfs from the Arkansas River with an appropriation date of August 31, 1893. Pro-rata interest being changed in this case: 13.68 cfs (FLCC Shares); 6.02 cfs (ATM Shares). **3.2 Horse Creek Reservoir and Adobe Creek Reservoir:** Storage water rights were decreed to Horse Creek Reservoir and Adobe Creek Reservoir in the District Court for Bent County on November 8, 1928, and allow FLCC to divert from the Arkansas River (via the Fort Lyon Storage Canal) and Horse Creek (via the Horse Creek Feeder Ditch or Supply Canal) for storage in Horse Creek Reservoir, and to divert from the Arkansas River (via the Fort Lyon Storage Canal) and Adobe Creek (via the Adobe Creek Feeder Ditch or Supply Canal) for storage in Adobe Creek Reservoir. The Horse Creek Reservoir and Adobe Creek Reservoir water rights and the pro-rata interest being changed in this case are summarized in Table 1 below.

**Table 1**  
**Storage Rights – Horse Creek Reservoir and Adobe Creek Reservoir**

Water right	Amount, source, and appropriation date	Pro-rata interest being changed – FLCC Shares	Pro-rata interest being changed – ATM Shares
Horse Creek Reservoir – Original Construction	2,000 cfs – Horse Creek (Aug. 15, 1900)	159.78 cfs	70.28 cfs
	840 cfs – Arkansas River (Jan. 25, 1906)	67.11 cfs	29.52 cfs
	1,466 cfs -Arkansas River (Mar. 1, 1910)	117.12 cfs	51.52 cfs
	Total volume: 11,400 acre-feet (“af”)	910.77 af	400.62 af
Horse Creek Reservoir 1st Enlargement	840 cfs – Arkansas River (Jan. 25, 1906)	67.11 cfs	29.52 cfs
	5,000 cfs – Horse Creek (Dec. 20, 1907)	399.46 cfs	175.71 cfs
	1,466 cfs – Arkansas River (Mar. 1, 1910)	117.12 cfs	51.52 cfs
	Total volume: 15,487 af	1,237.29 af	544.25 af

Horse Creek Reservoir 2nd Enlargement	5,000 cfs – Horse Creek (June 12, 1908) 840 cfs – Arkansas River (June 12, 1908) 1,466 cfs – Arkansas River (Mar. 1, 1910) Total volume: 1,113 af	399.46 cfs 67.11 cfs 117.12 cfs 88.92 af	175.71 cfs 29.52 cfs 51.52 cfs 39.11 af
Adobe Creek Reservoir Original Construction	8,631 cfs - Adobe Creek (Jan. 25, 1906) 840 cfs – Arkansas River (Jan. 25, 1906) 1,466 cfs - Arkansas River (Mar. 1, 1910) Total volume: 61,575 af	689.55 cfs 67.11 cfs 117.12 cfs 4,919.35 af	303.31 cfs 29.52 cfs 51.52 cfs 2,163.88 af
Adobe Creek Reservoir Enlargement	8,631 cfs – Adobe Creek (Dec. 29, 1908) 840 cfs – Arkansas River (Dec. 29, 1908) 1,466 cfs – Arkansas River (Mar. 1, 1910) Total volume: 25,425 af	689.55 cfs 67.11 cfs 117.12 cfs 2,031.25 af	303.31 cfs 29.52 cfs 51.52 cfs 893.49 af

**3.3 Thurston Reservoir, a/k/a Thurston Lake:** The storage water right decreed to Prince Reservoir in the District 17 Original Adjudication, with an appropriation date of August 12, 1889, was conditionally transferred to Thurston Reservoir by the decree entered on November 20, 1972, in Division 2 Case No. W-27 (“W-27 Decree”) and made absolute by the decree entered on January 11, 1980, in Division 2 Case No. 79CW085. This water right is decreed for diversion from the Arkansas River via the Fort Lyon Canal at a rate of 355.2 cfs, for storage of up to 1,515 af. Pro-rata interest being changed in this case: 28.38 cfs and 121.04 af (FLCC Shares); 12.48 cfs and 53.24 af (ATM Shares). **3.4 Thurston Pipeline:** A direct-flow water right was conditionally decreed to the Thurston Pipeline by the W-27 Decree, made partially absolute by the decree entered on March 4, 1986, in Case No. 83CW119, and made fully absolute by the decree entered on November 15, 2011, in Case No. 10CW069, all in Water Division No. 2. Thurston Pipeline is decreed for diversion of 25 cfs from Thurston Reservoir into the Fort Lyon Canal, with an appropriation date of July 15, 1969. The source of water is Thurston Lake, a/k/a Thurston Reservoir, with such water accumulated from springs in said lake, seepage flowing into the lake from all sides thereof, waste water from a canal of the FLCC, rainfall, and waste water flowing in the lake from land of owners adjoining the lake; said water is not tributary to any natural stream of the State of Colorado. Pro-rata interest being changed in this case: 2.0 cfs (FLCC Shares); 0.88 cfs (ATM Shares). **3.5 Additional water rights:** In addition to its direct-flow and storage water rights described in paragraphs 3.1 through 3.4 above, the FLCC owns, controls, and/or operates the water rights and water supply agreements summarized in Table 2 below.

**Table 2  
FLCC - Other Water Rights and Water Supply Agreements**

Water right	Case Number	Amount	Source	Pro-rata interest being changed – FLCC Shares	Pro-rata interest being changed – ATM Shares
Amity Mutual Irrigation Company – Neeskah (Queens) Res.	Decree of Feb. 3, 1927, Bent County District Court 80CW019 89CW076	5,483 af	Neeskah (Queens) Res. Horse Creek Res. Adobe Creek Res. John Martin Res.	438.05 af	192.68 af
John Martin Res. Change	79CW160 79CW161 80CW051	Cumulative 5,000 af	Horse Creek Res. Adobe Creek Res. Neeskah (Queens) Res.	399.46 af	175.71 af
Change in Diversion Point	79CW178	933 cfs	Horse Creek Res. Adobe Creek Res. John Martin Res.	74.54 cfs	32.79 cfs
Winter Water Storage Program	84CW179	38,160 af of the first 100,000 af and 38.16% of all water over 103,106 af	Pueblo Res. Horse Creek Res. Adobe Creek Res. Thurston Res.	3,048.68 af	1,341.03 af
John Martin Res. Exchange	90CW047	Absolute: 544 cfs, 15,288.95 af; conditional: 606 cfs	John Martin Res	43.46 cfs	0 cfs
John Martin Operating Plan 1980	Ark. River Compact Admin. April 24, 1980	20,000 af	John Martin Res.	1,597.84 af	0 af
Fryingpan-Arkansas Project		Varies			

**4. Legal description of points of diversion and locations of storage of FLCC’s water rights.** All UTM coordinates are NAD 83, Zone 13. LAWMA does not seek any change in the points of diversion for the water rights represented by the FLCC Shares. **4.1 Fort Lyon Canal** (WDID 1700553): The point of diversion is located on the north bank of the Arkansas River in the NE1/4 of Section 32, T23S, R55W of the 6th P.M., in Otero County, Colorado. UTM 623873.7 E, 4207975.0 N. **4.2 Fort Lyon Storage Canal** (WDID 1700648): The point of diversion is located on the north bank of the Arkansas River at a point in the NW1/4 SE1/4 of Section 20, T22S, R57W of the 6th P.M., in Crowley County, Colorado. UTM 604443.0 E, 4219543.8 N. **4.3 Horse Creek Supply Canal** (WDID 1700673): The point of diversion is located on the north bank of Horse Creek at a point in the SW1/4 of Section 6, T22S, R54W of the 6th P.M., in Otero County, Colorado. UTM 631616.9 E, 4224394.0 N. **4.4 Horse Creek Reservoir** (WDID 1703545): The reservoir is located in portions of Sections 29, 30, and 31 of T21S, R53W; Sections 6 and 7 of T22S, R53W; Sections 25 and 36 of T21S, R54W; and Sections 1, 2, and 12 of T22S, R54W; all of the 6th P.M., in Otero County, Colorado. The dam is located in Sections 6 and 7, T22S, R53W, and in Sections 1 and 12, T22S, R54W of the 6th P.M., in Bent and Otero counties, Colorado. UTM coordinates for dam: 640267.0 E, 4224384.0 N. **4.5 Adobe Creek Supply Canal** (WDID 1700674): The point of diversion is located on the

east bank of Adobe Creek in the NW1/4 of Section 26, T20S, R53W of the 6th P.M., in Kiowa County, Colorado. UTM 647655.0 E, 4238959.0 N. **4.6 Adobe Creek Reservoir** (WDID 1703546): The reservoir is located in portions of Sections 27, 28, 29, 32, 33, and 34 of T20S, R52W; and in portions of Sections 3, 4, 5, 6, 7, 8, 9, 17, and 18 of T21S, R52W; all of the 6th P.M., in Kiowa and Bent counties, Colorado. The dam is located in Sections 7, 17, and 18 of T21S, R52 W of the 6th P.M., in Bent County, Colorado. UTM coordinates for dam: 650655.6 E, 4233245.9 N. **4.7 Thurston Reservoir** (WDID 6703882): The reservoir is located in portions of Section 18 of T21S, R46W and Section 13 of T21S, R47W of the 6th P.M., in Prowers County, Colorado. UTM 707708.0 E, 4233253.0 N. **4.8 Thurston Pipeline** (WDID 6702500): The point of diversion is located at a point whence the section corner common to sections 7 and 18, T21S, R46W and Sections 12 and 13, T21S, R47W of the 6th P.M. bears north 0°41' west a distance of 1,680 feet, in Prowers County, Colorado. UTM 707247.6 E, 4234032.7 N. There is an alternate point of diversion located at a point whence the S1/4 corner of Section 18, T21S, R46W of the 6th P.M. bears south 10° east, 10' east a distance of 2,297 feet, in Prowers County, Colorado. UTM 707861.3 E, 4233072.5 N. **4.9 Neeskah Reservoir (a/k/a Queens Reservoir)** (WDID 6703513): The reservoir is located in T19S, T20S, and T21S, R46W, R47W and R48W of the 6th P.M., in Kiowa and Prowers counties, Colorado. UTM 706860.0 E, 4238570.0 N. **4.10 John Martin Reservoir** (WDID 6703512): The reservoir is located in all or portions of Sections 24, 25, 26, 27, 33, 34, 35, and 36, T22S, R51W; Sections 28, 29, 30, 31, 32, 33, 34, and 35, T22S, R50W; Sections 5, 6, 7, 8, 17, and 18, T23S, R49W; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, and 30, T23S, R50W; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, and 18, T23S, R51W; and Sections 1, 12, and 13, T23S, R52W; all of the 6th P.M., in Bent County, Colorado. The dam is located in Sections 5, 8, and 17 of T23S, R49W of the 6th P.M., in Bent County, Colorado. UTM coordinates for dam: 680795.0 E, 4215646.0 N. **4.11 Pueblo Reservoir** (WDID 1403526): The reservoir is located at a point at the intersection of Pueblo Dam axis and the Arkansas River whence the NE corner of Section 36, T20S, R66W of the 6th P.M. bears north 61°21'20" east a distance of 2,511.05 feet., in Pueblo County, Colorado. Said reservoir will inundate all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, T20S, R66W; Sections 1, 2, 3, 4, 5, 9, 10, and 11, T21S, R66W; and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, 24, and 25, T20S, R67W; all of the 6th P.M. in Pueblo County, Colorado. UTM coordinates for dam: 524076.0 E, 4235362.0 N. With the exception of the location of Pueblo Reservoir, which is shown on **Exhibit G**, the above-described locations are shown on **Exhibits C-1 and C-2**. **5. Detailed description of Comprehensive Change:** LAWMA will quantify the historical consumptive use of the water rights associated with the FLCC Shares and will determine the amount, timing, and location of return flows resulting from the historical use of those water rights. **5.1 Comprehensive Change in type of use:** LAWMA seeks to change the water rights associated with the FLCC Shares such that they may be used both directly and after storage for the new purposes described in paragraphs 5.1.1 through 5.1.5 below in addition to their currently decreed use of agricultural irrigation. **5.1.1** Augmentation or replacement of out-of-priority depletions to the Arkansas River or its tributaries caused by the "LAWMA Structures" included in LAWMA's plan for augmentation decreed on March 8, 2007, in Case No. 02CW181, Water Division No. 2, as that plan for augmentation has been expanded and modified by the decrees entered in Case Nos. 05CW52, 08CW18,

10CW85, 10CW91, 12CW37, 13CW3004, 13CW3065, 14CW3004, 15CW3014, 15CW3067, 16CW3018, 17CW3000, 17CW3001, and 17CW3035, and as it may be expanded or modified in pending Case Nos. 17CW3068, 17CW3069, and 18CW3072 and in other future cases (“Augmentation Plan”); **5.1.2** Augmentation or replacement of out-of-priority depletions caused by the wells included in LAWMA’s annual Arkansas River Replacement Plan pursuant to Rule 14 of the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin (“Rule 14 Plan”); **5.1.3** Replacement of historical seepage losses and/or return flows under any LAWMA-operated Compact Compliance Plan pursuant to Rule 10 of the Compact Rules Governing Improvements to Surface Water Irrigation Systems in the Arkansas River Basin in Colorado (“Rule 10 Plan”); **5.1.4** Replacement of historical return flows under the decree to be entered in this case, the decrees entered in Case Nos. 02CW181, 05CW52, 10CW85, and 15CW3067 (“Previous LAWMA Change Decrees”), and any future change of water rights decree that LAWMA obtains in this Court. **5.1.5** Provided that LAWMA replaces historical return flows associated with the FLCC Shares as described in paragraph 7 below, LAWMA will fully consume and use to extinction all water available to the FLCC Shares. **5.1.6** The new uses described in paragraphs 5.1.1 through 5.1.5 above are referred to collectively in this Application as “LAWMA’s New Uses.” Any use of the FLCC Shares for continuing agricultural irrigation purposes will be for the purpose of revegetating the Historically Irrigated Lands. The LAWMA Structures included the Augmentation Plan and the wells included in the Rule 14 Plan generally are used for irrigation; domestic and household purposes; commercial, municipal, and industrial purposes; generation of electric power and power generally; and fire protection, recreation, fish and wildlife preservation and propagation, agricultural uses, livestock watering, aquaculture, replacement of evaporation, maintenance of wetlands, and groundwater recharge. **5.2 Comprehensive Change in place of use:** LAWMA seeks to change the water rights associated with the FLCC Shares such that in addition to potential revegetation use on the Historically Irrigated Lands, they may be put to LAWMA’s New Uses at the locations at which LAWMA delivers augmentation or replacement water to the Arkansas River or its tributaries as required by the Augmentation Plan, Rule 14 Plan, any LAWMA-operated Rule 10 Plan, or the Previous LAWMA Change Decrees. **5.3 Comprehensive Change in places of storage:** LAWMA seeks to change the water rights associated with the FLCC Shares such that they may be put to LAWMA’s New Uses both directly and after storage in the locations described in paragraphs 5.3.1 through 5.3.4 below. All UTM coordinates are NAD 83, Zone 13. **5.3.1 West Farm Gravel Pit** (WDID TBD), located in the S1/2 of the SE1/4 of Section 28 and in the NE1/4 and the NE1/4 of the NW1/4 of Section 33, T22S, R46W of the 6th P.M., in Prowers, County, Colorado, as shown on **Exhibit E**. UTM 711697.4 E, 4219729.0 N. **5.3.2 Farm 110 Recharge Site** (WDID TBD), located in the NE1/4 SE1/4 of Section 11, T21S, R48W of the 6th P.M. in Bent County, Colorado, as shown on **Exhibit E**. UTM 695662.5 E, 4234446.6 N. The Farm 110 Recharge Site will be operated both as a recharge pond augmentation station and as a storage vessel under this Application. **5.3.3 Farm 114 Recharge Site** (WDID TBD), located in the NE1/4 NW1/4 of Section 11, T21S, R48W of the 6th P.M. in Bent County, Colorado, as shown on **Exhibit E**. UTM 695084.4 E, 4235009.6 N. The Farm 114 Recharge Site will be operated both as a recharge pond augmentation station and as a storage vessel under this Application. **5.3.4** The following



recharge sites, which will operate as storage vessels solely to the extent that the infiltration rate may result in water residing in the ponds for more than 72 hours before it is recharged, and the locations of which are shown on **Exhibit E**: (1) Farm 60 Recharge Site (WDID 1701001), located in the NW1/4 NW1/4 of Section 14, T23S, R54W of the 6th P.M., in Otero County, Colorado. UTM 637628.5 E, 4212801.7 N. (2) Farm 63 Recharge Site (WDID TBD) , located in the SW1/4 NW1/4 of Section 10, T22S, R47W of the 6th P.M., in Prowers County, Colorado. UTM 702771.2 E, 4225230.0 N. (3) Farm 65 Recharge Site (WDID 6701009), located in the SW1/4 SE1/4 of Section 25, T22S, R49W of the 6th P.M., in Bent County, Colorado. UTM 687650.9 E, 4219293.4 N. (4) Farm 132/133 Recharge Site (WDID 6701005), located in the NW1/4 NW1/4 of Section 36, T22S, R50W of the 6th P.M., in Bent County, Colorado. UTM 678319.1 E, 4217322.9 N.

5.3.5 Accounts available in John Martin Reservoir for storage of the FLCC Shares, including without limitation the Offset Account. The location of John Martin Reservoir is described in paragraph 4.10 above and shown on **Exhibit E**.

**6. Detailed Description of ATM-Limited Change:**

**6.1 ATM-Limited Change in type of use:** LAWMA seeks to change the water rights associated with the ATM Shares such that they may be used, reused, successively used, and used to extinction by CS-U directly, after storage, and/or by exchange, using any structure now existing or hereafter constructed that is lawfully available for use by CS-U, for all beneficial uses, including without limitation municipal, industrial, domestic, agricultural, commercial, irrigation, stock watering, fire protection, recreation, in-reservoir fish and wildlife preservation and propagation, recharge of aquifers, exchange purposes, replacement of historical return flows, replacement of depletions resulting from the use of water from other sources, relinquishment pursuant to § 37-90-137(9)(b), C.R.S., and all augmentation purposes (“CS-U’s New Uses”). CS-U’s New Uses under the ATM-Limited Change are in addition to and not in place of the New Uses under the Comprehensive Change. In addition to the structures identified in paragraphs 4.6 and 4.11 above and shown on **Exhibit G**, CS-U may store water attributable to the ATM Shares in or exchange such water to the structures identified in **Exhibit H**, and any other point of storage or diversion now existing or hereafter constructed and available for use by CS-U. Any such exchange will be made pursuant to the decrees entered in Division 2 Case Nos. 05CW96 and 07CW122, the decree pending in Division 2 Case No. 16CW3056, or future administratively or judicially approved plans for substitution and exchange.

**6.2 ATM-Limited Change in place of use:** LAWMA seeks to change the water rights associated with the ATM Shares such that they may be used for CS-U’s New Uses within CS-U’s service area as it exists now and as it may exist in the future, including any areas served by CS-U by extraterritorial agreement or other contract; for replacement of depletions on Fountain Creek accruing between the City of Colorado Springs and the confluence of Fountain Creek and the Arkansas River; and in any location within the Arkansas River Basin for which water may be delivered by CS-U for augmentation, sale, or lease, and for such other uses as may be allowed by law. CS-U’s current service area is located as shown on **Exhibit F**. The new place of use under the ATM-Limited Change is in addition to and not in place of the new places of use under the Comprehensive Change, as described in paragraph 5.2 above.

**7. Replacement of historical return flows:** LAWMA will replace to the Arkansas River system, in the amounts, times, and locations necessary to prevent injury to Colorado water rights and violation of the Arkansas River Compact, the historical return flows

associated with the FLCC Shares. LAWMA will replace the historical return flows with water available to the FLCC Shares or with any other fully consumable water legally available to LAWMA for that purpose. **8. FLCC approvals:** As required by the FLCC's Bylaws, LAWMA applied to the FLCC Board of Directors ("FLCC Board") for approval of LAWMA's proposed changes of use of the FLCC Shares and additional changes of use of the ATM Shares. With respect to the Comprehensive Change, the FLCC Board issued its Amended Decision on December 20, 2016 ("2016 FLCC Approval"), approving the proposed changes of use and authorizing LAWMA's filing of this Application on the terms and conditions given in that decision. With respect to the ATM-Limited Change, the FLCC Board issued its Decision on November 14, 2018 ("2018 FLCC Approval"), approving the additional proposed changes of use and authorizing LAWMA's filing of this Application on the terms and conditions given in that decision. A copy of the 2016 FLCC Approval is attached as **Exhibit I**, and a copy of the 2018 FLCC Approval is attached as **Exhibit J**. In both FLCC approvals, the FLCC Board reserved the right to participate in this case as an objector, consistent with the approvals. **9. Revegetation terms and conditions of Bent County 1041 Permit:** In compliance with the Bent County 1041 Permit issued to LAWMA and ARF on April 11, 2018, nunc pro tunc April 3, 2018, LAWMA requests that the revegetation terms and conditions included in Exhibit C to that permit be incorporated into any decree entered in this case. Exhibit C to the Bent County 1041 Permit is attached as **Exhibit K**. **10. Addition of FLCC Shares to Augmentation Plan:** Paragraph 41.A of the 02CW181 Decree provides that LAWMA may add permanent sources of augmentation and replacement water to the Augmentation Plan by filing an application with this Court. By this Application, LAWMA seeks to add the FLCC Shares to the Augmentation Plan as a permanent source of augmentation and replacement water. **11. Augmentation stations:** The maps attached as **Exhibits L-1** and **L-2** show the locations of the augmentation stations that LAWMA will use to measure water delivered to the FLCC Shares for return to the river. LAWMA may develop other augmentation stations for that purpose and seeks the court's approval to add such new augmentation stations under the decree to be entered in this case. **12. Names and addresses of owners or reputed owners of land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure, is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** 12.1 West Farm Gravel Pit: GP Aggregates, LLC, c/o Karl Nyquist, 7991 Shaffer Pkwy., Ste. 200, Littleton, CO 80127. 12.2 Horse Creek Reservoir, Adobe Creek Reservoir, and Thurston Reservoir: FLCC, 750 Bent Ave., Las Animas, CO 81047. 12.3 Neeskah (Queens) Reservoir: Amity Mutual Irrigation Company, P.O. Box 187, Holly, CO 81047. 12.4 Pueblo Reservoir: U.S. Department of Interior, Bureau of Reclamation, Great Plains Region, P.O. Box 36900, Billings, MT 59107-6900. 12.5 John Martin Reservoir: U.S. Army Corps of Engineers, Reservoir Manager, 29955 County Road 25.75, Hasty, CO 81044. 12.6 Structures identified in Exhibit H: 12.6.1 Structures identified in Exhibit H paragraphs A-K: The City of Colorado Springs, 30 S. Nevada Ave., Colorado Springs, CO 80903. 12.6.2 Structures identified in Exhibit H paragraphs L-N: U.S. Department of Interior, Bureau of Reclamation, Great Plains Region, P.O. Box 36900, Billings, MT 59107-6900. 12.6.3 Structures identified in Exhibit H paragraphs O and P: The City of Colorado Springs, 30 S. Nevada Ave., Colorado Springs, CO 80903; and the City of Aurora, 15151 E. Alameda Pkwy., Aurora, CO 80012. 12.6.4 Structure

identified in Exhibit H paragraph Q: Lake Meredith Reservoir Company, P.O. Box 8, Ordway, CO 81063. 12.6.5 Structure identified in Exhibit H paragraph R: City of Pueblo, 1 City Hall Place, Pueblo, CO 81003; U.S. Bureau of Land Management, Royal Gorge Field Office, 3028 East Main St., Canon City, CO 81212; United States Forest Service, Pike and San Isabel National Forest, 2849 Kachina Dr., Pueblo, CO 81008; and Circle A of Colorado, LLC, 33 N. Central Ave., Phoenix, AZ 85004. 12.6.6 Structures identified in Exhibit H paragraphs S, Y, and CC: Holbrook Mutual Irrigating Company, P.O. Box 34, Cheraw, CO 81030; William Stewart Carle, 3 Mirada Rd., Colorado Springs, CO 80906; State of Colorado, Colorado Attorney General, Colorado Department of Law, Ralph L. Carr Judicial Building, 1300 Broadway, 10th Floor, Denver, CO 80203; Holbrook Drainage District, P.O. Box 228, La Junta, CO 81050; Colorado Water Protective and Development Association, 1220 E. 3rd St., La Junta, CO 81050; Dale L. and Muriel M. McClelland, 14102 E. Linvale Pl., Apt. 112, Aurora, CO 80014-3710; Larry N. and Nancy A. McElroy, P.O. Box 471, Swink, CO 81077. 12.6.7 Structures identified in Exhibit H paragraphs T and X: Holbrook Mutual Irrigating Company, P.O. Box 34, Cheraw, CO 81030; Quarter Circle LT, Inc., 2475 Ln. 16, Ordway, CO 81063; Raymond E. and Frances A. Carter, 17248 County Rd. HH.50, Rocky Ford, CO 81067; Frank Minor Blackford, P.O. Box 293, La Junta, CO 81050. 12.6.8 Structure identified in Exhibit H paragraph U: Steven L. Fossel, 708 Soda Creek Dr., Evergreen, CO 80439; Glenda L. Wright, 1521 State Hwy. 209, Boone, CO 81025-9735; Timothy J. Sigler and Vestal V. Sigler, 2660 Nepesta Rd, Fowler, CO 81039-9619. 12.6.9 Structure identified in Exhibit H paragraph V: Martin Marietta Materials, Inc., P.O. Box 8040, Ft. Wayne, IN 46898-8040. 12.6.10 Structure identified in Exhibit H paragraph W: Colorado Canal Company, 331 Main St, Ordway, CO 81063. 12.6.11 Structure identified in Exhibit H paragraph Z: James H. and Mary E. Kirkland, P. O. Box 354, Rye, CO 81069. 12.6.12 Structure identified in Exhibit H paragraph AA: Lake Henry Reservoir Company, 331 Main St., Ordway, CO 81063. 12.6.13 Structure identified in Exhibit H paragraph BB: Lake Meredith Reservoir Company, 331 Main St., Ordway, CO 81063. 12.6.14 Structure identified in Exhibit H paragraph DD: Stonewall Springs Quarry, LLC, 3707 Parkmoor Village Dr., Ste 103, Colorado Springs, CO 80917. WHEREFORE, LAWMA respectfully requests that this Court enter a decree approving this Application for Change of Water Rights and Addition of Augmentation and Replacement Supplies to Plan for Augmentation, and granting all such other and further relief, whether legal or equitable, as the Court may determine necessary or desirable.

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**CASE NO 2019CW3037; Water Division 2 and CASE NO 2019CW3112, Water Division 1 – SCOTT E SCHNAKE, JOLEEN E. SCHNAKE, AND KEVIN CHALFANT, 1165 Garlock Ln, Colorado Springs, CO 80918** (Please address all pleadings and inquiries regarding this matter to Applicants’ attorneys: Ryan W. Farr, Emilie B. Polley, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921, 719-471-1212)

Application for Adjudication of Denver Basin Groundwater and For Approval of Plan for Augmentation  
EL PASO COUNTY

**\*\*Note: Resume is being published by Water Div 1\*\***

**II. Summary of Application.** The Applicant seeks to construct two non-exempt wells to

the not-nontributary Dawson aquifer to provide water service to two lots. Applicant therefore seeks to quantify the Denver Basin groundwater underlying the Applicant's Property, and approval of a plan for augmentation for the use thereof. **III. Application for Underground Water Rights. A. Legal Description of Wells. 1. Property Description:** All wells will be located on the Applicant's two properties totaling approximately 16.3 acres ("Applicant's Property"). Applicant's Property is located in the NE1/4 of the NW1/4, the NW1/4 of the NE1/4, and the SW1/4 of the NE1/4 of Section 3, Township 11 South, Range 67 West of the 6<sup>th</sup> P.M. and known as 20255 and 20285 Indi Drive, Monument Colorado 80132. See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **2. Proposed Wells:** The Applicant proposes that two wells (one well per lot) will be located on the Applicant's Property at specific locations not yet determined ("Schnake Wells Nos. 1 and 2"), to be constructed to the Dawson aquifer. **B. Water Source. 1. Not-Nontributary:** The ground water to be withdrawn from the Dawson aquifer underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. **2. Nontributary:** The groundwater that will be withdrawn from the Denver, Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's Property is nontributary. **C. Estimated Rates of Withdrawal and Ground Water Available. 1. Estimated Rates of Withdrawal:** Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The 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. Said amounts may be withdrawn over the 100-year life requirement pursuant to 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 Applicant's Property:

Table 1 - 20255 Indi Drive, containing 8 acres

AQUIFER	NET SAND (Feet)	Avg. Specific Yield	Total Appropriation (Acre Feet)	Annual Avg. Withdrawal 100 Years (Acre Feet)
Dawson (NNT)	470.70	20%	753.12	7.53
Denver (NT)	440.60	17%	599.22	5.99
Arapahoe (NT)	406.70	17%	553.11	5.53
Laramie Fox Hills (NT)	188.60	15%	226.32	2.26

Table 2 – 20285 Indi Drive, containing 8.29 acres

AQUIFER	NET SAND (Feet)	Avg. Specific Yield	Total Appropriation (Acre Feet)	Annual Avg. Withdrawal 100 Years (Acre Feet)
Dawson (NNT)	471.20	20%	781.25	7.81
Denver (NT)	451.40	17%	636.16	6.36
Arapahoe (NT)	408.10	17%	575.14	5.75
Laramie Fox Hills (NT)	188.90	15%	234.90	2.35

Decreed amounts may vary from the above to conform with 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 groundwater for beneficial uses upon the Applicant’s Property consisting of domestic, irrigation of lawn and garden, greenhouse and hoop house, stock watering, hot tub, equipment and structure washing, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. The 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 wells or use water from the not-nontributary Dawson aquifer 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:** The Applicant requests that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. **F. Averaging of Withdrawals:** The Applicant requests that they 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 all the wells in 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 the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. **G. Owner of Land Upon Which Wells are to Be Located:** The land and underlying groundwater upon which the wells are and will be located is owned by the Applicant. **IV. APPLICATION FOR PLAN FOR AUGMENTATION.** **A. Structures to be Augmented:** The structures to be augmented are the Schnake Wells Nos. 1 and 2, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson aquifer of the Denver Basin underlying the Applicant's Property as requested and described herein. **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 not-nontributary Dawson aquifer from Schnake Wells Nos. 1 and 2, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. **C. Statement of Plan for Augmentation:** The Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by two wells proposed herein, and any replacement or additional wells, for two lots. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: **1. Uses.** The wells will pump a maximum of 2.0 acre feet of water per year from the Dawson aquifer for up to 100 years. Such use shall be a combination of domestic household use, irrigation of lawn and garden, greenhouse and hoop house irrigation, stock watering, hot tub, equipment and structure washing, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. **2. Depletions.** Applicant's consultant has determined that maximum stream depletions over the 100 year pumping period for the Dawson aquifer amounts to approximately 6.88% of pumping. Maximum annual depletions for total pumping from all wells are therefore 0.138 acre feet in year 100. Should Applicant's pumping be less than the 2.0 acre feet total, 1.0 acre feet per lot, per year described herein, resulting depletions and required replacements will be correspondingly reduced. **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 the two residential wells. Applicant's consultant has determined that 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, total of 0.50 acre feet, 0.450 acre feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be more than 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 Schnake Wells Nos. 1 and 2, the Applicant will reserve water from the Denver aquifer underlying the Applicant's Property as a replacement source, less the amount replaced during the plan pumping period. The 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. Even though this reservation is made, under the Court's retained jurisdiction, the Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Denver groundwater will be used to replace any injurious post pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a new well permit for the Schnake Wells Nos. 1 and 2 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 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.** The Applicant requests a finding that they have 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 wells 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.** The 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. **F.** 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 the Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. **G.** The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. **H.** The Applicant will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), and such notice will be sent within 14 days of the filing of this application.

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**CASE NO. 2019CW3038; RIVER ROOTS, LLC, a Colorado Limited Liability Company, 52719 East Highway 50, Boone, CO 81025** (Please address all pleadings

and inquiries regarding this matter to Applicants' attorneys: David M. Shohet, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921 (719) 471-1212).

Application for Plan for Augmentation

## **PUEBLO COUNTY**

**II. Background and Summary of Plan Augmentation:** Applicant currently leases 5 acres for a commercial cannabis grow operation located at 52711 East US Hwy 50, Boone, Colorado 81025 ("East 5 Acre Parcel"). Applicant could also lease an additional 27.3 acres located at 52825 East US Hwy 50, Boone, Colorado 81025 ("23.7 Acre Parcel"), and is interested in purchasing the neighboring property located at 52629 East US Hwy 50, Boone, Colorado 81025 ("West 5 acre Parcel"). All three properties (collectively, the "Properties") are located in the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$ , the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$ , NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$ , and the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 11, Township 21 South, Range 62 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado. See Exhibit A attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). The Applicant seeks a plan to augment up to two wells on the Properties for both indoor and outdoor cultivation and irrigation of a crop including cannabis (hemp and marijuana) on the Property, and the associated industrial, commercial, processing, domestic, cooling, drinking and sanitary needs for the operation and any grow facilities.

**III. Application for Approval of Plan for Augmentation:** Structures to be Augmented: The structures to be augmented consist of one existing well and one well to be drilled in the future. The existing well, Well Permit No. 281253 (WDID 1406632), is located in the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 11, Township 21 South, Range 62 West of the 6<sup>th</sup> P.M., Pueblo, Colorado. All wells will be located on the Properties and their source is the alluvium of the Arkansas River. Water Rights to be Used for Augmentation: Applicant is a member of the Arkansas Groundwater Users Association ("AGUA"). The water rights to be used for augmentation consists of the following fully consumable water based on Applicant's status as a member of AGUA: Excelsior Ditch. AGUA's primary source of replacement water is consumptive use credits from AGUA's Excelsior Ditch shares changed in District Court, Water Division 2, Case No. 04CW62, which may be delivered through AGUA's augmentation station or recharge ponds. AGUA owns 1,792 and Stonewall Water, LLC owns 1,541 of the 3,333 shares in the Excelsior Irrigating Company. AGUA may lease some or all of the 1,541 shares owned by Stonewall Water, LLC. Fully Consumable Water. AGUA also leases fully consumable water from various water providers. Fully consumable water that may be leased includes, without limitation, the following: Board of Water Works of Pueblo, Colorado ("Pueblo Water"). Fully consumable water from Pueblo Water decreed or legally available for augmentation use under this plan including such stored water, direct flow water, reusable municipal effluent, reusable irrigation return flows and reusable lawn irrigation return flows delivered to the Arkansas River. Reusable effluent may be released from Pueblo Municipal Wastewater Treatment Plant. This plant currently discharges treated wastewater to the Arkansas River at a point in the Northeast quarter of Section 5, Township 21 South, Range 64 West of the 6<sup>th</sup> P.M. The approximate latitude of said point is 38°15'22" North and the approximate longitude is 104°34'20" West. Pueblo Water's reusable irrigation return flows accrue to the Arkansas River in the reach from Fountain Creek to John Martin Reservoir following the lease of Pueblo Water's fully consumable



water to irrigation ditch companies for irrigation use. Pueblo Water's reusable lawn irrigation return flows accrue to the Arkansas River upstream of the confluence of the Arkansas River and St. Charles River. Triview Metropolitan District. Fully consumable water from the Triview Metropolitan District. Triview Metropolitan District water is treated and discharged to Monument Creek from the Upper Monument Creek Regional Wastewater Treatment Facility located in the SW ¼ Section 35, Township 11 South, Range 67 West of the 6th P.M. The return flows are derived from Triview's Denver Basin not nontributary groundwater water rights, which are described in the Decrees in Case Nos. 95CW153, 98CW134 and 88CW23(A). Uses. Indoor and outdoor cultivation and irrigation of a crop, including cannabis (hemp and marijuana), and the associated commercial, industrial, processing, industrial, cooling, domestic, drinking and sanitary needs for Applicant's operation and grow facility. Diversions. Diversions will occur year-round, with all uses generally increasing during the summer months. The anticipated total maximum well diversions under this plan is up to 10 annual acre feet. Depletions. Unless separate meters are installed, all water diverted from any wells under this plan for augmentation will be considered 100% percent depletive. Applicant may install a separate meter for the indoor sanitary uses. If applicant installs such a meter, Applicant may claim a 90% return flow for such uses as Applicant's return flows are treated and returned to the Arkansas River by a septic system on site. Return Flows. As discussed above, Applicant may claim return flows associated with the indoor commercial uses from diversions from the wells under this plan. Applicant does not claim credit for return flows from irrigation uses under this Application. Applicant, however, reserves the right to claim such return flows in the future. Location and Timing of Depletions. Pumping of the Applicant's wells will be entitled to occur on a year-round basis, resulting in year-round lagged depletions to the Arkansas River. Depletions from the Applicant's wells occur to the Arkansas River at a point in the N ½ of Section 11, 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 wells' depletions are expected to occur within 27 months of pumping. Replacement Water. AGUA will provide the replacement water described above to augment the Applicant's wells. The replacement water provided by AGUA shall be fully consumable and will be available to replace the Applicant's well depletions at the point of depletion on the Arkansas River. Name and Address of Owners of Land Upon Which Structures are Located. The wells to be augmented under this plan and the place of use of the wells are located on land owned by Shela & Jason Higley and William Higley (owners of the East 5 Acre Parcel), whose address is 52711 East US Hwy 50, Boone, Colorado 81025, Ben Wilhelm (owner of the 23.7 Acre Parcel), whose address is 52825 East US Hwy 50, Boone, Colorado 81025, and Nationstar Mortgage, LLC, (owner of the West 5 Acre Parcel), whose mailing address is 8950 Cypress Waters Blvd., Coppell, Texas 75019-4620. **Remarks:** Upon entry of a decree in this case, the Applicant shall be entitled to apply for and receive well permits and all subsequent replacement or additional wells for use in accordance with any decree entered in this case. 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. The Applicant will install meters on all wells as required by the State Engineer. 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 any decreed plan of augmentation. Applicant may seek to transfer this plan for augmentation to a well user group in the future. Applicant will 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 37-92-305(8), C.R.S.

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**CASE NO. 2019CW3039; CLIFFORD H. AND NICOLE T. TELLE, 12730 Bridle Bit Road, Colorado Springs, CO 80908.**

(Please direct all pleadings and correspondence to Chris D. Cummins and/or Emilie B. Polley of Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921 (719) 471-1212).

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

**EL PASO COUNTY**

**Summary:** The Applicant seeks to re-permit and construct an additional non-exempt well to the not-nontributary Dawson aquifer to provide water service to two lots, based on an anticipated subdivision of the Applicant's 10-acre parcel. The Applicant therefore seeks to quantify the Denver Basin groundwater underlying the Applicant's Property, and approval of a plan for augmentation for the use thereof. **Legal Description of Wells:**

**Property Description.** All wells will be located on the Applicant's approximately 10.12 acre property ("Applicant's Property") anticipated to be subdivided into two lots containing 5.055 acres and 5.066 acres. See Exhibit A attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). Location described as follows: A tract in the SE ¼ SE ¼, Section 10, Township 12 South, Range 66 West of the 6<sup>th</sup> P.M, better known as Lot 4, Bridle Bit Subdivision a/k/a 12730 Bridle Bit Road, Colorado Springs, CO 80908

**Existing Wells.** There is an existing well on the Property. Well with Permit No. 116298 ("Telle Well 1") is located 1200 feet South and 970 feet East from the Section Line, is constructed to the not-nontributary Dawson aquifer, and is allocated 0.9 acre feet per year. The Applicant proposes that the well be re-permitted for non-exempt uses upon entry of a decree approving the plan for augmentation requested herein. **Proposed Wells.**

The Applicant proposes that up to one well (one well per lot) will be located on the Applicant's Property at a specific location not yet determined to be constructed to the Denver aquifer ("Telle Well 2"). **Water Source: Not-Nontributary.** The ground water to be withdrawn from the Dawson, Denver, and Arapahoe aquifers underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the not-nontributary aquifers will require the replacement of actual stream depletions. **Nontributary.** The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicant's Property is nontributary.

**Estimated Rates of Withdrawal.** Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The 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. **Estimated Average Annual Amounts of Ground**

Water Available. The Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code §8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to 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 Applicant's Property:

<b>AQUIFER</b>	<b>NET SAND (Feet)</b>	<b>Total Appropriation (Acre Feet)</b>	<b>Annual Avg. Withdrawal 100 Years (Acre Feet)</b>	<b>Annual Avg. Withdrawal 300 Years (Acre Feet)</b>
Dawson (NNT)	120	243	2.10 <sup>1</sup>	0.7 <sup>2</sup>
Denver (NNT)	490	843	8.43	2.81 <sup>3</sup>
Arapahoe (NNT)	245	421	4.21	-
Laramie Fox Hills (NT)	185	281	2.75 <sup>4</sup>	-. <sup>5</sup>

Decreed amounts may vary from the above to conform with 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. Requested Uses. The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, irrigation, stock water, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. The 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. The Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, that the Applicant shall only be entitled to construct wells 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). Well Fields. The Applicant requests that he be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying the Applicant's Property through any combination of

<sup>1</sup> This number reflects the total amount available minus the amount used for thirty-seven years under Well Permit No. 116298.

<sup>2</sup> All water in the Dawson aquifer underlying the property will belong to the lot with the existing house and well with Permit No. 116298.

<sup>3</sup> The water underlying the property in both the Denver and the Arapahoe aquifers will be separated by the lots.

<sup>4</sup> This number reflects the total amount available based on 100 years of depletion minus 2%.

<sup>5</sup> The water within the Laramie Fox Hills aquifer will be owned by both lots as an undivided 50% interest.

wells. The Applicant requests that these wells be treated as a well field. Averaging of Withdrawals. The Applicant requests that they 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 all the wells in 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 the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. The land and underlying groundwater upon which the wells are and will be located is owned by the Applicant. Structures to be Augmented. The structures to be augmented are the Telle Well No. 1 as is currently constructed to the not-nontributary Dawson aquifer, and as will be permitted pursuant to this plan for augmentation, and Telle Well No. 2, to be constructed to the Denver aquifer, along with any replacement or additional wells associated therewith, of the Denver Basin underlying the Applicants' Property as requested and described herein. 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 not-nontributary Dawson and Denver aquifers from Telle Wells Nos. 1 and 2, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. Statement of Plan for Augmentation. The Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson and Denver aquifers by two wells proposed herein for two residential lots. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: Household Use Only: 0.25 acre feet annually within single family dwellings on up to 2 lots, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for each lot will therefore be 0.025 acre feet per well, with return flows of 0.225 acre feet per lot. Landscape Irrigation: 0.05 acre feet annually per 1,000 square feet (2.18 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre feet. Horses (or equivalent livestock): 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. Hot Tub Use: 0.006 acre feet (2100 gallons) annually, based upon six fillings per year, with a 50% consumptive use rate. The annual consumptive use for each hot tub is therefore 0.003 acre feet (1050 gallons). Each well will pump a maximum of 0.458 acre feet of water per year per residence for a maximum total of 0.458 acre feet being withdrawn from each of the Dawson and Denver aquifers per year. Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.25 acre feet of water per year per residence with the additional 0.225 acre feet per year per residence available for irrigation of lawn and garden and the watering of up to four horses or equivalent livestock on each residential lot. Depletions. The Applicant's consultant has determined that maximum stream depletions over the 300 year pumping period for the Dawson aquifer amounts to approximately 27.6% of pumping. Maximum annual depletions for total residential pumping from the Dawson well is therefore 0.12 acre feet in year 300. Pumping from the Denver well will require 4% replacement of the pumped

amount, or 0.028 acre feet in year 300. Should Applicant's pumping be less than the 0.458 total from each of the Dawson and Denver aquifers, per year described herein, resulting depletions and required replacements will be correspondingly reduced.

Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5), the Applicant is required to replace actual stream depletions attributable to pumping of the two residential wells. The Applicant's consultant has determined that 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, total of 0.50 acre feet, 0.45 acre feet is replaced to the stream system per year, utilizing two non-evaporative septic systems. Thus, during pumping, stream depletions will be more than adequately augmented.

Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Telle Wells Nos. 1 and 2, the Applicant will reserve up to the entirety of the nontributary Laramie Fox Hills aquifer, accounting for actual stream depletions replaced during the plan pumping period, to replace any injurious post pumping depletions. The 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. Even though this reservation is made, under the Court's retained jurisdiction, the Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a new well permit for the Telle Wells Nos. 1 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. **Remarks:** 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 Arkansas River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter with pending Division 2 application in Water Division 2 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 Arkansas River as set forth herein, and for a finding that those replacements are sufficient. The Applicant requests a finding that they have 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 wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). The term of this augmentation plan is for 300 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. 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. The 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. 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 the Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property.

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**CASE NO. 2019CW3040; Previous Case No. 09CW138 – TOWN OF PONCHA SPRINGS, c/o Ralph B. Scanga, Mayor, P.O. Box 190, 333 Burnette Ave., Poncha Springs, CO 81242.**

(Please address all pleadings and inquiries regarding this matter to Applicants' attorneys: 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

**CHAFFEE AND SAGUACHE COUNTIES**

**Name of Conditional Water Rights:** Town of Poncha Springs Case No. 09CW138 Exchanges. **Decree Description for Conditional Water Rights:** Date of Original Decree: July 12, 2013. Case No.: 09CW138. Court: District Court, Water Division 2.

**Sources of Exchanged Water. B1. Project Water.** The Town's annual allocation of Project Water and non-sewered return flows after the Town's use of Project Water which is to be exchanged are described as follows: **a. West Slope Decrees:** The Fryingpan-Arkansas Project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County. The principal water rights were adjudicated by the decrees in Civil Action No. 4613 (District Court, Garfield County) dated June 20, 1958, and August 3, 1959; and were modified by the Decree in Case No. W-829-76 (District Court, Water Division No. 5) dated November 27, 1979; and were supplemented by the Decree in Case No. 83CW352 (District Court, Water Division No. 5) dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travels under the Continental Divide through Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, and applied to beneficial use within Southeastern's District boundaries. Because the water is imported from another river basin, it is fully consumable in Water Division 2. **b. East Slope Decrees:** The Fryingpan-Arkansas Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont, and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141 (District Court, Chaffee County) dated July 9, 1969; and Civil Action No. B-42135 (District Court, Pueblo County) dated June 25, 1962; and were modified and supplemented by the Decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed for reuse and exchange for beneficial use within Southeastern's District boundaries. Under these decrees, Turquoise Reservoir and Twin Lakes Reservoir may store native water or imported water, directly or by exchange with each other or with Pueblo Reservoir. The Applicant is eligible to receive annual allocations of Project Water from The Southeastern Colorado Water Conservancy District ("Southeastern District"). Poncha is also eligible, and has the first right of refusal, to

purchase any return flows generated from its use of Project Water therefrom. The Southeastern District allocates Project Water annually based on its principles, policies, rules, and regulations. Any and all use of Project Water and return flows will be pursuant to and subject to the above-referenced decrees for the Fryingpan-Arkansas Project, and to all lawful rules, regulations, policies, and contract obligations of the Southeastern District. Any decree entered in this case will not give Applicant any rights to use Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocations of Project Water or return flows therefrom, but will not alter the existing rights, including allocation rights, held by Applicant. Applicant will use Project Water and return flows therefrom only if, and when, and to the extent they have purchased Project Water after it is allocated to them by the Southeastern District. **B2. McPherson Ditch Water Rights**. The McPherson Ditch was decreed on June 19, 1890, District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11. The decreed point of diversion in the original decree for the McPherson Ditch is on the north bank of the South Arkansas River, a tributary to the Arkansas River, 400 feet due south of the quarter corner between Sections 9 and 10, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. The McPherson Ditch's source of water is the South Arkansas River, a tributary of the Arkansas River, Chaffee County, Colorado. By Decree Changing Point of Diversion dated July 5, 1956, in Case No. 4502, Chaffee County District Court, State of Colorado, the point of diversion for the entire 1.0 cfs of water decreed to the McPherson Ditch, was changed from the original decreed point of diversion, as set forth above, to the headgate of the Murray Ditch. The headgate of the Murray Ditch as fixed by decree dated February 1, 1902, Case No. 1735, in Chaffee County District Court, is described at a point located on the north bank of the South Arkansas River, a tributary to the Arkansas River, at a point whence the northeast corner of Section 10, Township 49 North, Range 8 East, of the N.M.P.M. bears north 39 degrees east, a distance of 5,200 feet in Chaffee County, Colorado. Applicant, under Case No. 99CW183, changed the McPherson Ditch for dedication and use under the Applicant's existing plan for augmentation and exchange as previously decreed in Case No. 82CW104, to augment Applicant's municipal uses. The Court in Case No. 99CW183 found that the total historical depletions of the McPherson Ditch were 43.4 annual acre feet. The historical depletions from the McPherson Ditch water right were also changed for storage at O'Haver Reservoir for use under and in accordance under the Applicant's existing augmentation decree. **B3. Friend Ranch Water Rights**. Under Case No. 07CW111, the Applicant was awarded a change of the historical stream depletions of the Friend Ranch Water Rights from irrigation use to municipal, and augmentation uses for the Applicant's existing and future service areas ("Friend Ranch Decree"). The Applicant's Friend Ranch Water Rights available for exchange are described as the historical average stream depletions of 61.3 acre feet of the Little Cochetopa Water Rights (Huntzicker Ditch and the Hensie Ditch No. 1), 60.7 annual acre feet of the Mundlein Ditch No. 2, and 89.0 annual acre feet of the Pass Creek Water Rights (Boon Ditch No. 2 and the Hensie Ditch No. 2) available during the historical irrigation season of April through October, as quantified under the final decree entered in Case No. 07CW111. The amount and availability of the Friend Ranch Water Rights available for exchange in accordance

with the terms and conditions of the Friend Ranch Decree after the Friend Ranch Water Rights have already been exchanged into O'Haver Reservoir, North Fork Reservoir or Boss Lake ("South Arkansas Reservoirs"), and then released from the South Arkansas Reservoirs for the operation of this exchange. **C. Reach of Exchanges.** **1. Project Water.** The appropriative right of exchange for Project Water begins at the confluence of Little Cochetopa Creek and the South Arkansas River located in Section 8, Township 49 North, Range 8 East, N.M.P.M., up Little Cochetopa Creek to the confluence of Little Cochetopa Creek and Pass Creek located in the NW1/4 of the NE1/4, Section 18, Township 49 North, Range 8 East, N.M.P.M., then up Pass Creek to the headgate of the Velotta Ditch No. 1 located at a point on the north bank of Pass Creek, whence the East Quarter Corner of Section 13, Township 49 North, Range 7 East, of the N.M.P.M., bears South 74°45' East, 1760 feet. **2. Non-Sewered Project Water Return Flows.** Applicant's appropriative right of exchange of non-sewered Project Water return flows is from Little Cochetopa Creek and the South Arkansas River, to the confluence of Little Cochetopa Creek and Pass Creek, then up Pass Creek to the headgate of the Velotta Ditch No. 1, all as described above. **3. McPherson Ditch.** The reach of Applicant's appropriative right of exchange for the McPherson Ditch operates from the headgate of the McPherson Ditch on the South Arkansas River to the confluence of Little Cochetopa Creek and the South Arkansas, up Little Cochetopa Creek to the confluence of Little Cochetopa Creek and Pass Creek, then up Pass Creek to the headgate of the Velotta Ditch No. 1. All of these points are described above. The Applicant also stores the McPherson Ditch Water Right depletion credits in O'Haver Reservoir pursuant to the decree entered in Case No. 99CW183. The Applicant is entitled to release its stored McPherson Ditch Water Right depletion credits from O'Haver Reservoir to Poncha Creek, which returns to the South Arkansas at the confluence with Poncha Creek located in SW1/4 of the SW1/4, Section 10, Township 49 North, Range 8 East, N.M.P.M., which is above the McPherson Ditch headgate. The Applicant can therefore utilize the same appropriative right of exchange for any fully consumable McPherson Ditch Water Right it stores and releases from O'Haver Reservoir. **4. Stored Friend Ranch Water Rights.** The Applicant's appropriative right of exchange of its adjudicated historical depletions from the Friend Ranch Water Rights as released from storage in the South Arkansas Reservoirs operates from the confluence of Little Cochetopa Creek and the South Arkansas, and from this point up Little Cochetopa Creek to the confluence of Little Cochetopa Creek and Pass Creek, then up Pass Creek to the headgate of the Velotta Ditch No. 1. When the Friend Ranch Water Rights depletion credits are released from O'Haver Reservoir, the exchange operates from the confluence of the South Arkansas River and Poncha Creek to the confluence of the South Arkansas River and Little Cochetopa Creek then up to the confluence of Little Cochetopa Creek and Pass Creek, then up Pass Creek to the headgate of the Velotta Ditch No. 1. **D. Appropriation Date.** November 23, 2009. **E. Amounts:** **1. Project Water.** The amount of the exchange of Project water and Project water return flows within the exchange reach on the South Arkansas River (for Project water return flows), Little Cochetopa Creek and Pass Creek shall be limited to the amount of Applicant's available Project Water, with an annual maximum of 70 acre feet of water, at a maximum exchange rate of 2.0 c.f.s., conditional. **2. McPherson Ditch.** The amount of the exchange of the McPherson Ditch Water adjudicated historical depletions within the exchange reach on the South Arkansas River, Little Cotchetopa Creek, and Pass



Creek is an annual maximum of 70 acre feet of water, at a maximum exchange rate of 2.0 c.f.s., conditional, for combined storage releases from O'Haver Reservoir and direct exchanges of historical depletion credits from the McPherson Ditch. However, consistent with the average annual historical depletions of the McPherson Ditch determined in 99CW183, direct exchange of the McPherson Ditch water right surface diversions, not including as placed into storage, shall always be limited to the 43.4 acre feet of average annual historical depletions at a rate not to exceed 1.0 cfs and subject to such other limitations as exist in 99CW183. **3. Stored Friend Ranch Water Rights.** The amount of the exchange of Friend Ranch Water Rights historical depletions within the exchange reach of the South Arkansas River, Little Cochetopa Creek, and Pass Creek, as released from storage in the South Arkansas Reservoirs, is an annual maximum of 70 acre feet of water, at a maximum exchange rate of 2.0 c.f.s., conditional. The total amount of all exchanges under this decree do not exceed a combined 70 annual acre feet which is the storage capacity of the Friend Ranch Reservoir. The total rate of all exchanges under this decree do not exceed 6.0 c.f.s. **F. Uses.** The use of the exchanged water is for all municipal uses as part of Applicant's integrated water supply system for its existing and future service area, including, without limitation, domestic, irrigation, fire protection, recreational purposes, fish and wildlife propagation, commercial and industrial, and for augmentation, exchange and replacement purposes, in accordance with the Applicant's decreed plans for augmentation in Case Nos. 82CW104, 99CW183, and 07CW111. Such uses may be for immediate application or placed into storage for subsequent beneficial use. These beneficial uses include use, reuse, and successive use to extinction. **Detailed Outline of Diligence.** The Town of Poncha Springs Case No. 09CW138 Exchanges are part of Applicant's integrated water supply system, which consist of surface water rights and storage water rights. Pursuant to C.R.S. § 37-92-301(4)(b), work on one component of an integrated system shall be considered in finding that reasonable diligence has been shown for all components of the integrated system. During this diligence period, Applicant has performed significant work within its service boundaries and on its municipal water system to develop the decreed Town of Poncha Springs Case No. 09CW138 Exchanges as part of its integrated municipal supply system. Applicant has entered into a contract with Southeastern Colorado Water Conservancy District on December, 1, 2016, for 10 acre-feet of excess capacity water storage rights in Pueblo Reservoir, which was subsequently increased to 50-acre feet in 2018. This account will help facilitate the use of the Friend Ranch Water Rights. Applicant also negotiated a renewal of its December 9, 1982 Agreement with the Upper Arkansas Water Conservancy District allowing the storage of the exchanged Friend Ranch Water Rights in O'Haver Reservoir, North Fork Reservoir, and Boss Lake. Applicant has also restored the Mundlein and Velotta Ditches from their head gates to Friend Ranch Reservoir, installed new augmentation stations and measuring devices, and installed a new gauge station on the South Arkansas River. During this diligence period, Applicant has also performed significant work within its service boundaries and on its municipal water system. This work included extending a water main across US Highway 50 and extension of water main eastward across the visitor's center property in preparation for US Hwy 285 water main loop to CR128. This work also including improving Poncha Well Nos. 3 and 4 and implementing a phosphate process for all wells for corrosion control. Poncha Springs has also expended significant funds on a major water infrastructure improvement

project, which included over 5,800 linear feet of new main lines, a new well and a 400,000 gallon elevated storage tank. The total cost of these actions was approximately \$2,250,000.00, including material, labor, and consulting costs. This is in addition to routine maintenance of all Applicant's water rights. Poncha Springs has also incurred legal, engineering, and administrative fees related to its water supply system consisting of, without limitation, water supply, and distribution analysis, water rights planning, Water Court filings, well permitting, and water rights administration matters. Furthermore, the Applicant has actively cooperated with the Division Engineer to maintain and improve its integrated water system. **Name and address of the owners of land on which structures are located.** The Velotta Ditch No. 1 is located upon land owned by the Bureau of Reclamation, whose address is c/o Signe Snortland, Area Manager, Eastern Colorado Area Office, 11056 W. County Road 18E, Loveland, Colorado 80537-9711.

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**CASE NO. 2019CW3041; Previous Case Nos. 94CW73, 02CW83 and 09CW31 – WOODMOOR WATER AND SANITATION DISTRICT NO. 1, P.O. Box 1407, Monument, Colorado 80132.** (Please address all correspondence and pleadings to Applicant's counsel: Paul F. Holleman and Bradley N. Kershaw, Buchanan Sperling & Holleman PC, 1525 Spruce Street, Suite 200, Boulder, Colorado 80302, Phone 303-431-9141).

Application for Finding of Reasonable Diligence

**EL PASO COUNTY**

**2. Name of structure:** Woodmoor Monument Creek Exchange. **3. Description of conditional water right from previous decrees:** **A. Date of original decree:** Case No. and Court: June 4, 1996, Case No. 94CW073, District Court, Water Division No. 2. **B. Subsequent decrees:** A decree finding reasonable diligence was entered in Case No. 02CW83, on February 27, 2003, and a decree finding reasonable diligence and making portions of the conditional water right absolute was entered in Case No. 09CW31, on June 14, 2013. **C. Legal Description:** (1) Point of diversion (exchange-to point): On the east bank of Monument Creek at a point in the SW1/4 SE1/4, Section 22, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado, located approximately 800 feet north of the south section line and 1900 feet west of the east section line of said Section 22. (2) Point of introduction of substitution and exchange supply (exchange-from point): On Monument Creek at the outfall of the Tri-Lakes Wastewater Treatment Facility located in the NW1/4 NE1/4 of Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado. **D. Source:** (1) Water diverted by substitution and exchange at exchange-to point: Monument Creek. (2) Water used for substitution and exchange at exchange-from point: Fully consumable return flows from Applicant's not nontributary and nontributary Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifer wells decreed in Case Nos. W-2647, W-4544, 80CW169, 81CW230 and 81CW231, all District Court, Water Division No. 2. **E. Appropriation Date:** May 5, 1992. **F. Amount:** 2.23 cfs (1,000 gpm), of which 2.08 cfs (935 gpm) was made ABSOLUTE in Case No. 09CW31, leaving 0.15 cfs (65 gpm) CONDITIONAL. **G. Use:** All municipal purposes, including domestic, agricultural, industrial, commercial, irrigation, stockwatering, fire protection, recreation, fish and wildlife preservation and propagation and for all other beneficial purposes, including recharge of Denver Basin aquifers, exchange purposes, replacement of depletions resulting from the use of water from other sources, relinquishment pursuant

to § 37-90-137(9)(b), C.R.S., and all augmentation purposes. The water diverted by substitution and exchange will be fully consumable and may be used, reused, successively used and completely disposed of for the above-described purposes. **4. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures**: The subject exchange is one of the components of Applicant's water supply system. During the diligence period, Applicant has added more than 500 new water taps to its water system and has expended more than \$1,335,714.00 for other improvements to its water supply, treatment and water distribution system. During the diligence period, Applicant has continued to operate the subject exchange. The maximum rate at which the subject exchange was exercised during the diligence period was 2.01 cfs (904 gpm), which occurred on March 20, 2019. The water so diverted by exchange was placed to beneficial use within Applicant's water supply system. The operation of the subject exchange during the diligence period has been with the knowledge and approval of the Water Commissioner and reports concerning it have been prepared by Applicant and filed regularly with the Water Commissioner and Division Engineer. Applicant's further efforts toward development of the subject conditional water right during the diligence period include, but are not limited to, the activities described below. This list is not intended to be comprehensive and may be supplemented by additional evidence: A. The exchange-to point pump station has been continually maintained and improved. Applicant replaced both pumps and motors at the exchange-to point pump station. Applicant also replaced the surface water valve and actuator at Applicant's South Water Treatment Facility to better utilize the exchanged water in Applicant's water supply system. Applicant spent over \$196,000 on these efforts. B. Applicant has incurred substantial expense in obtaining decrees for water rights that are part of its unified water supply system and for participating as an objector in various Water Court cases to protect its water rights, including the subject conditional water right, from injury due to claims of other water users. C. Applicant continues to rely upon the subject water right and has no intention to abandon same. **5. If claim to make absolute in whole or in part**: Not applicable. **6. Name(s) and address(es) of owner(s) of 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**: No new diversion or storage structures will be constructed or modified as part of this application. Water diverted under the subject water right is stored in Lake Woodmoor, which is owned by Applicant. WHEREFORE, Applicant requests the Court to enter a decree finding that Applicant has exercised reasonable diligence in the development of the subject conditional water right and continuing the remaining portion of the subject conditional water right in full force and effect for an additional diligence period.

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**CASE NO. 2019CW3042; Previous Case No. 08CW106 – UPPER ARKANSAS WATER CONSERVANCY DISTRICT (“UAWCD”), P.O. Box 1090, Salida, Colorado 81201,** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Law of the Rockies, Kendall K. Burgemeister, Atty. Reg. No. 41593, 525 North Main Street, Gunnison, CO 81230, (970) 641-1903)  
Application for a Finding of Reasonable Diligence

## CHAFFEE COUNTY

UAWCD seeks a finding of reasonable diligence for the 08CW106 Stream Exchange, originally decreed in Case No. 08CW106, District Court, Water Division 2, June 25, 2013, and more particularly described as follows: **08CW106 Stream Exchange Reach:** The 08CW106 Stream Exchange Reach is those portions of Cottonwood Creek, South Cottonwood Creek, and Middle Cottonwood Creek located between the Lower Terminus and the Upper Termini, as defined below: **Lower Terminus:** That point on Cottonwood Creek where the headgate of the Trout Creek Ditch Company Ditch (the "TCDC Ditch") is located, to wit: On the south bank of Cottonwood Creek 200 yards easterly of the junction of the Denver, South Park and Pacific Railroad and the Denver and Rio Grande Railroad south of Buena Vista, Chaffee County, Colorado. The ditch is located on the south bank of Cottonwood Creek in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 16, Township 14 South, Range 78 West, 6th P.M., Chaffee County. **Upper Termini:** (1) Cottonwood Lake Reservoir, which is located on South Cottonwood Creek, a tributary of Cottonwood Creek, a tributary of the Arkansas River, in the SE $\frac{1}{4}$ , Section 36, Township 14 South, Range 80 West, 6th P.M., Chaffee County; and (2) Rainbow Lake, which is located on Middle Cottonwood Creek, a tributary of Cottonwood Creek, a tributary of the Arkansas River in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30, Township 14 South, Range 79 West, 6th P.M., and the point of diversion of which is at a point whence the SE corner of Section 19, same Township and Range, bears South 80° 34.0' East, 2,110.3 feet, Chaffee County. **Appropriation Date:** December 30, 2008. **Exchange Amount:** 2.0 cubic feet per second ("cfs") (conditional). **Use:** As a source of augmentation water pursuant to UAWCD's existing plans for augmentation decreed in Case Nos. 92CW84 and 94CW5, both as amended by Case No. 06CW32 (the "UAWCD Plans"), for all beneficial uses set forth in the UAWCD Plans, including, but not limited to, domestic, irrigation, livestock watering, municipal, industrial, piscatorial, and recreational. Water appropriated via the 08CW106 Stream Exchange will be stored in Cottonwood Lake Reservoir and Rainbow Lake for subsequent release to augment depletions pursuant to the UAWCD Plans. **Source of Substitute Supply:** The substitute supply for the 08CW106 Stream Exchange will be provided to Cottonwood Creek at the headgate of the TCDC Ditch. The source of the substitute supply is the operation of the 08CW106 Ditch Exchange, as described in the 08CW106 Decree. **3. Detailed outline of what has been done toward completion of the appropriation:** UAWCD is developing this exchange as part of its integrated system of water rights and augmentation plans. During the diligence period, the following activities occurred: **a.** UAWCD fulfilled its contractual obligations under the Moltz Agreement, as referenced in the 08CW106 Decree; **b.** UAWCD undertook various activities related to re-issuance of a special use permit for Cottonwood Lake Reservoir, which is one of the exchange termini; **c.** UAWCD completed reconnaissance and engineering regarding the UAWCD-Moltz Well location including groundwater yield research, the design of the pipeline between the UAWCD-Moltz Well and the UAWCD-Moltz Well Delivery Point, the design of the "Moltz/CDOC Splitter Measurement Structure" and the "CDOC Measurement Structure" as referenced in Paragraph 27(a) of the 08CW106 Decree, and the design of a new splitter box at the expense of approximately \$3700; **d.** UAWCD completed operations, studies, maintenance and repairs related directly to Cottonwood Lake Reservoir and Rainbow Lake; **e.** UAWCD continued to augment and offer to augment, for UAWCD constituents,

out-of-priority depletions, pursuant to the UAWCD Plans; **f.** As part of those operations, UAWCD stored water in Cottonwood Lake Reservoir and Rainbow Lake, and released water for augmentation use; **g.** UAWCD prosecuted applications for and obtained decrees for findings of reasonable diligence will respect to various conditional water rights, including appropriative rights of exchange, owned by UAWCD; **h.** UAWCD applied for and exercised excess capacity storage contracts in Pueblo Reservoir; **i.** UAWCD enrolled additional structures in its plans for augmentation, including many structures in the Cottonwood Creek drainage area; **j.** UAWCD routinely performed inspection, maintenance, and operation activities at its facilities, such as internal inspections, channel and spillway clearing, installation, maintenance, and operation of measurement and recording devices and systems; **k.** UAWCD obtained approval of, and operated, annual Rule 14 replacement plans each year; **l.** UAWCD pursued and completed purchases or other agreements for the use of water resources, including but not limited to purchase of annual allocations of Fryngpan-Arkansas Project Water, for use for augmentation including by exchanges; **m.** UAWCD defended UAWCD's and its constituents' water rights by participation as an opposer in water court applications filed by others; **n.** Under C.R.S. § 37-92-301(4)(b), "[w]hen a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system;" **o.** The foregoing activities and expenditures do not reflect each and every activity undertaken by UAWCD to place the conditional water rights described herein to beneficial use, but are illustrative of UAWCD's reasonable diligence in applying such water rights to a beneficial use in accordance with the standards set forth in C.R.S. § 37-92-301(4); **p.** Additional work may be performed and additional expenses may be incurred between the date this Application is filed and the entry of any decree in this matter. **4. Names(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** **a.** UAWCD-Moltz Well: Paul Moltz, PO Box 1914, Buena Vista, CO 81211; **b.** Rainbow Lake: Rainbow Lake Resort Inc., PO Box 17450, Oklahoma City, OK 73136-1450; **c.** Cottonwood Lake Reservoir: United States Department of Agriculture, Forest Service, 5575 Cleora Road, Salida, Colorado 81201.

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**CASE NO. 2019CW3043; STONE POINT FUND I, LLC, c/o Dan Carless Sr., Manager, 251 Stone Point Trail, Castle Rock, CO 80109 (719) 505-4605.** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Ryan W. Farr, c/o Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921 (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater

**EL PASO COUNTY**

**Summary:** Applicant seeks to quantify all Denver Basin groundwater in each aquifer underlying the property as described below in order to vest such water rights in anticipation of future uses thereof. No plan for augmentation for the use of the non-tributary groundwater is sought herein, but rather may be the subject of a subsequent and separate application. **Application for Underground Water Rights: A. Property**

Description: Applicant’s property is legally described as the N1/2 of Section 23, Township 14 South, Range 64 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, which contains approximately 308.39 acres, more or less (“Applicant’s Property”). See Exhibit A as Parcel E outlined in red, attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). **B. Water Source. Not-Nontributary.** The groundwater to be withdrawn from the Arapahoe aquifer of the Denver Basin underlying Applicant’s Property is not-nontributary. Pursuant to § 37-90-137(9)(c.5)(I)(C), C.R.S., the augmentation requirements for wells on the Applicant’s Property constructed to the Arapahoe aquifer will require replacement of four percent (4%) of pumping, and no such withdrawals shall be made of the not-nontributary groundwater in the Arapahoe aquifer sought to be quantified herein absent a subsequently decreed plan for augmentation. **Nontributary.** The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer of the Denver Basin underlying Applicant’s Property is nontributary. **C1. Estimated Rates of Withdrawal:** The actual pumping rates for any well will vary according to aquifer conditions and well production capabilities. 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. **C2. Estimated Average Annual Amounts of Groundwater Available:** Applicant requests a vested right for the withdrawal of all legally available groundwater in the Denver Basin aquifers underlying Applicant’s Property. Said amounts may be withdrawn over the 100-year life of the aquifers pursuant to § 37-90-137(4), C.R.S. Applicant’s estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant’s Property.

<b>Aquifer</b>	<b>Sand Thickness (Feet)</b>	<b>Specific Yield</b>	<b>Total Volume (Acre-Feet)</b>	<b>Annual Average Withdrawal – 100 Years (Acre-Feet)</b>
Arapahoe (NNT)	133.9	0.17	7,020	70.2
Laramie Fox Hills (NT)	193	0.15	8,928	89.3

Decreed amounts of quantified groundwater underlying Applicant’s Property may vary based upon the State’s Determination of Facts. **D. Requested Uses.** Applicant requests the right to use the groundwater for beneficial uses both on and off the Applicant’s Property consisting of domestic, commercial, municipal, industrial, indoor and outdoor irrigation, stock water, agricultural, recreational, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. Applicant also requests that the nontributary groundwater may be used, reused, and successively used to extinction, subject, however, to the requirement of § 37-90-137(9)(b), C.R.S., that no more than ninety-eight percent (98%) of the amount withdrawn annually shall be consumed. Applicant seeks to 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 non-tributary Arapahoe aquifer pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such non-tributary Arapahoe aquifer in accordance with § 37-90-137(9)(c.5), C.R.S. **E. Well Fields.** Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. **F. Averaging of Withdrawals.** Applicant requests that it be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed to the aquifers underlying Applicant's Property, so long as the sum of the total withdrawals from all the wells in 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 Applicant's Property. **G. Owner of Land.** The land upon which the wells will be located, and under which lies the herein requested Denver Basin water is owned by the Applicant free and clear of any liens or encumbrances and that no other person or entity has a financial interest in the land. **Remarks:** Applicant requests a finding that it has complied with § 37-90-137(4), C.R.S. and that the not-nontributary groundwater requested herein is legally available for withdrawal, as conditioned only upon the entry of a subsequent decree approving an augmentation plan pursuant to § 37-90-137(9)(c.5), C.R.S. Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater subject of this Application. The Court will 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. Any well-constructed shall be installed and metered as reasonably required by the State and Division 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. Applicant intends to waive the 600-foot well spacing requirement for any wells to be located upon Applicant's Property.

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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 August 2019, (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 \$192.00). The foregoing are resumes and the entire application, amendments,

exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

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Witness my hand and the seal of this Court this 11th day of July 2019.



*Michele Santistevan*

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Michele M. Santistevan, 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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