DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING SEPTEMBER 2011

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 September 2011, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 10CW61 – PETROGLYPH OPERATING COMPANY, INC., P. O. Box 70019, Boise, ID 83707 (Direct all pleadings to: Steven J. Bushong, Thomas Korver, Porzak Browning & Bushong LLP, 929 Pearl Street, Suite 300, Boulder, CO 80302; (303) 443-6800)

Amendment to Application for Change of Water Rights and Augmentation Plan

HUERFANO COUNTY, COLORADO

2. Overview of Original Application and Amendment. Applicant's original application in the above-captioned matter was filed in September, 2010, and involved an augmentation plan to replace depletions associated with a methane remediation plan in Huerfano County, Colorado and a change of water rights (the "Original Application"). The methane remediation plan includes water production wells, recovery wells and injection wells and remains the same as in the Original Application. The principal amendment to the Application contained herein is simply to allow additional uses of the changed Coler Ditch and Reservoir System ("Coler System") water. This amendment also reflects the purchase contract being finalized regarding the Coler System water rights after Applicant exercised its option on those rights. **3 Description of Decreed Water Right for Which Change is Sought.** Applicant exercised an option to purchase Coler System water and is entering into a purchase contract with Colorado East Bank & Trust, Custodian for Davis L Wallerstein IRA ("Wallerstein") to purchase 1/8th of Wallerstein's 4/30th interest in the Coler System (referred to as "1/60th Interest"), but not to exceed 10 acre-feet of the historical consumptive use credit associated with the 1/60th Interest. Any and all historical consumptive use associated with the 1/60th Interest that exceeds 10 acre-feet will remain with Wallerstein. The Coler System is defined, established, and described by the Stipulation between the City of Walsenburg and George Habib and others, Civil Action No. 4468, District Court of Huerfano County, Colorado, dated February 5, 1975 (and other agreements mentioned therein). The Coler System was more particularly described as follows in the Original Application: A. Lake Miriam Ditch: (i) The headgate of the Lake Miriam Ditch, which diverts from the Cucharas River, is located in the NW ¼ of the SE ¼ of Section 32, Township 28 South, Range 67 West of the 6th P.M., Huerfano County, Colorado. The Lake Miriam Ditch is the feeder canal for Lake Miriam Reservoir, Lake Oehm Reservoir, and the Coler Seepage Reservoir. (ii) Lake Miriam Ditch was awarded a decree for a 20 cfs direct flow water right from the Cucharas River, with an appropriation date of March 1, 1884,

Priority No. 61, by the District Court of the Third Judicial District, Huerfano County, on June 12, 1889. B. Lake Miriam Reservoir (a/k/a Horseshoe Reservoir): (i) Lake Miriam Reservoir is located in the W ½ of Section 13 and the NW ¼ of Section 24, Township 28 South, Range 67 West of the 6th P.M., Huerfano County, Colorado. (ii) Lake Miriam Reservoir was awarded a storage decree for 50,000,000 cubic feet (1,148 acre-feet) of water from the Cucharas River with an appropriation date of April 14, 1901 by the Huerfano County District Court, Water District 16, on October 3, 1921. C. Lake Oehm Reservoir (a/k/a Martin Lake): (i) Lake Oehm Reservoir is located in the E ½ of Section 13, Township 28 South, Range 67 West of the 6th P.M. and the W ½ of Section 18, Township 28 South, Range 66 West of the 6th P.M., Huerfano County, Colorado. (ii) Lake Oehm Reservoir was awarded a storage decree for 100,000,000 cubic feet (2,296 acre-feet) of water from the Cucharas River with an appropriation date of April 30, 1901 by the Huerfano County District Court, Water District 16, on October 3, 1921. In addition, the Lake Oehm Reservoir Enlargement was decreed for 12,070,000 cubic feet (277 acre-feet) with an appropriation date of November 25, 1905 by the Huerfano County District Court, Water District 16, on October 3, 1921. D. The Coler Reservoir System Cucharas Delivery Flume: Water released to the Cucharas River from storage in the above-described reservoirs is delivered through the Coler Reservoir System Cucharas Delivery Flume, which is located in the NE ¼ of the SW ¼ of Section 17, Township 28 South, Range 66 West of the 6th P.M., Huerfano County, Colorado at a point approximately 1,600 feet from the West line and 2,150 feet from the South line of said Section 17. E. Civil Action Nos. 3266 and 3848: On December 30, 1966 in civil Action Nos. 3266 and 3844 (the "Ackerman Decree"), the Huerfano County District Court, Water District 16, entered a decree changing the above-described Coler System water rights to allow their use as follows: Not only for irrigation, but also for domestic and culinary use, for fire protection, for sewer flushing, for street sprinkling and flushing, for generation of steam and electricity, for manufacturing, for recreation, and for such other purposes and uses as are usual or customary for municipal purposes and for the welfare of the inhabitants of a municipality; PROVIDED, HOWEVER, that "irrigation" as used herein shall mean lawn and garden, park and other municipal irrigation and shall not mean rental or leasing by the City to farmers and ranches for irrigation of crops. F. Case No. 03CV80: The 1/60th Interest in the Coler System water rights was subject to the decree in Case No. 03CV80, District Court, Huerfano County, which, *inter alia*, quieted title to a 4/30th interest in the Coler System water rights in the name of Wallerstein. Applicant's purchase contract is for the lesser of 10 acre-feet or all of the historical consumptive use attributable to 12.5% of Wallerstein's 4/30th interest, which equals the 1/60th Interest. G. Case No. 02CW121: A portion of the Coler System water rights was changed to allow augmentation by decree entered in Case No. 02CW121, Water Division No. 2, dated March 18, 2005. H. A map showing the location of the structures described above is attached to the Amended Application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **4. Description of Proposed Change of Use:** Any and all uses associated with oil and gas operations in Huerfano County, including without limitation, exploration, production, post-production, remediation, reclamation, industrial, commercial, irrigation, exchange, replacement, storage, recharge, augmentation and exchange, all as additional permissible uses of the 1/60th Interest in the Coler System

water rights to the extent such uses are not already allowed under said rights. **5. Historical Use.** The summary of historical use under the Coler System, including historically irrigated lands and diversion records were included in the Original Application and remain unchanged. Applicant will quantify the transferable consumptive use associated with the subject 1/60th Interest in the Coler System water rights in order to ensure that no unlawful expansion of use results from the change of water rights sought herein. **6. Name and address of the owners, or reputed owners, of the land upon which any new diversion structure or storage structure, or modification to any existing diversion structure or storage structure, is or will be constructed:** The structures comprising the Coler System are located on land owned by the City of Walsenburg, 525 South Albert Avenue, Walsenburg, Colorado 81089. WHEREFORE, Applicant does hereby amend its original Application for Change of Water Rights and Augmentation Plan, and requests that the Court approve the augmentation plan and change of water rights as amended, and grant such other relief as may be appropriate.

CASE NO. 11CW57 - BOARD OF WATER WORKS OF PUEBLO, COLORADO, Attn: Alan C. Hamel, Executive Director, P. O. Box 400, Pueblo, CO 81003-0400; AND THE CITY OF PUEBLO, COLORADO, a municipal corporation, Attn: City Manager, 1 City Hall Place, Pueblo, CO 81003 (Please direct all pleadings and correspondence to: William A. Paddock and Leila C. Behnampour, Carlson, Hammond & Paddock, LLC, Attorneys for Board of Water Works of Pueblo, 1700 Lincoln Street, Suite 3900, Denver, CO 80203; (303) 861-9000, and Thomas J. Florczak, City Attorney, City of Pueblo, 503 North Main Street, Suite 203, Pueblo, CO 81003; (719) 562-3899.

Application for Approval of a Plan for Augmentation

PUEBLO COUNTY

1. **Structure to be Augmented**: Lake Minnequa **a. Water Rights Decreed to Lake Minnequa: b. Case No.** CA2756, **Name of Court:** Pueblo County District Court, **Appropriation date:** Irrigation Priority No. 2, 1876. **Amount:** 60,000,000 cubic feet (1,377.4 acre-feet). **Source of water:** St. Charles River. **Decreed uses:** Irrigation and domestic. **c. Case No.** CA26461, **Name of Court:** Pueblo County District Court, **Appropriation date:** Non-irrigation Priority No. 1, 1876. **Amount:** 60,000,000 cubic feet (1,377.4 acre-feet). **Source of water:** St. Charles River. **Decreed uses:** Sanitary, boiler and manufacturing purposes. **d.** The Applicants are not relying upon these water rights for purposes of this application. **2. Legal description of structure**. Lake Minnequa is a natural lake located in Sections 11 and 14, T21S, R65W of the 6th P.M. There is no embankment at Lake Minnequa. **3. Water Rights to be Used for Augmentation.** The water rights to be used as sources of replacement water for this augmentation plan are the Pueblo Board of Water Works of Pueblo, Colorado's ("Board") ownership or contract rights in the sources of supply listed below. Any person reading this application should rely upon the following descriptions for purposes of inquiry notice only, and should rely upon the terms of the decrees adjudicating and changing the water rights when evaluating the claims made in this application. **a. The Ewing Placer Ditch** (as known as the Ewing Ditch). Ewing Placer Ditch diverts water from Piney Creek a tributary of the Eagle River, and carries the water across the Continental Divide into Tennessee Creek for delivery to the Arkansas River. The Ewing Placer Ditch was decreed a water right for 18.5 c.f.s. on November 13, 1911, with an

appropriation date of June 1, 1906, by the District Court, Eagle County, Civil Action No. 507. **(1) Decreed Point of Diversion**: The headgate of the ditch is located at a point on the left bank of said Piney Creek, whence the Northwest Corner of Sec. 14, T8S, R80W of the 6th P.M., bears South 72° 45' West 5436 feet. **(2) Decreed Use**: By decree dated November 15, 1993, the District Court for Water Division No. 5, in Case No. 90CW340, changed the use of the water right to include, in addition to the originally decreed uses of direct flow and storage for irrigation and agricultural use in the Arkansas River watershed, the Board's use of the water rights for all beneficial uses related to the Board's operation, including municipal, domestic, irrigation, commercial, industrial, mechanical, power generation and cooling, waste water treatment, recreation, fish and wildlife, replacement, exchange, augmentation, substitution, and storage in aid of the foregoing purposes, together with the right to use, reuse, and successively use to extinction as foreign water pursuant to C.R.S. § 37-82-106. **b. The Warren E. Wurtz Ditch** (also known as the Warren E. Wurts Ditch). Warren E. Wurtz Ditch diverts water from Bennett Creek, Mitchell Creek, and tributaries of those creeks, all of which are tributaries of the Eagle River. The ditch carries water across the Continental Divide into West Tennessee Creek for delivery to the Arkansas River. The Warren E. Wurtz Ditch was decreed a water right for a total of 85 c.f.s. on October 3, 1936, with an appropriation date of June 8, 1929, by the District Court, Eagle County, Civil Action No. 963. **(1) Decreed Points of Diversion: (a)** Headgate No. 1 is located at a point on the right bank of Bennett Creek, a tributary of the Eagle River, from which it derives 60 cubic feet per second of time of its supply of water, whence the S.E. corner of Sec. 32, T7S, R80W of the 6th P.M., bears S. 66° 58' E. 3307.9 ft. **(b)** Headgate No. 2 is located at a point on the right bank of the South Fork of Bennett Creek from which it derives 15 cubic feet per second of time of its supply of water, whence the S.E. corner of Sec. 32, T7S, R80W of the 6th P.M. bears S. 89° 3' 2547 ft. **(c)** Headgate No. 3 is located at a point on the right bank of Mitchell Creek, a tributary of the Eagle River, from which it derives 18 cubic feet per second of time of its supply of water, whence the S.W. corner of Sec. 8, T8S, R80W of the 6th P.M. bears S. 22° 23' W. 3902 ft. **(d)** Headgate No. 4 is located at a point on the right bank of a small tributary of said Mitchell Creek from which it derives 2 cubic feet per second of time of its supply of water, whence the S.W. corner of Sec. 8, T8S, R80W of the 6th P.M. bears S. 24° 3' W. 3800 ft. **(e)** Headgate No. 5 is located at a point on the right bank of the South Fork of said Mitchell Creek from which it derives 5 cubic feet per second of time of its water, whence the S.W. corner of Sec. 8, T8S, R80W of the 6th P.M. bears S. 50° 48' W. 2799 ft. **(3) Decreed Use:** By decree dated November 15, 1993, the District Court for Water Division No. 5, in Case No. 90CW340, changed the use of the water right to include, in addition to the originally decreed uses of irrigation of land for agricultural purposes in the Arkansas River Valley, the same new uses decreed to the Ewing Ditch described above. **c. The Wurtz Extension Ditch.** Wurtz Extension Ditch diverts water from Yoder Creek, East Fork of Yoder Creek, and Rule Creek, tributaries of the Eagle River. The ditch connects to the Warren E. Wurtz Ditch, which then carries water across the Continental Divide into West Tennessee Creek for delivery to the Arkansas River. The Wurtz Extension Ditch was decreed on October 21, 1982, with an appropriation date of October 26, 1953, by the District Court, Water Division No. 5, Case No. 80CW505. **(1) Decreed Points of Diversion. (a)** Headgate No. 1 is located on the right bank of Yoder Creek from which

it derives its supply of water at a point whence the West quarter-corner of Sec. 29, T7S, R80W of the 6th P.M. bears North 51 degrees, 25 minutes West a distance of 424.16 feet. **(b)** Headgate No. 2 is located on the right bank of the East Fork of Yoder Creek from which it derives its supply of water at a point whence the West quarter-corner of Sec. 29, T7S, R80W of the 6th P.M. bears North 53 degrees, 17 minutes West a distance of 1,665.31 feet; **(c)** Headgate No. 3 is located on the right bank of Rule Creek from which it derives its supply of water at a point whence the West quarter-corner of Sec. 28, T7S, R80W of the 6th P.M. bears South 86 degrees, 19 minutes West a distance of 2,487.75 feet. **(2) Decreed Use:** The uses of the water are for municipal purposes, including, but without limiting the generality of the foregoing term, domestic, manufacturing, power, mechanical, industrial, irrigation of lawns, trees, gardens, and parks, sewage disposal, flushing of sewers, street sprinkling and flushing thereof, and fire protection and storage for the aforesaid purposes. **d. The Busk-Ivanhoe System.** Busk-Ivanhoe System diverts water from Hidden Lake Creek, Pan Creek, Lyle Creek, and Ivanhoe Creek, all tributaries of the Fryingpan and Roaring Fork Rivers, and carries such water through the Continental Divide for delivery into the headwaters of the Arkansas River. The System was decreed by absolute decree of the District Court, Garfield County, in Case No. 2621 dated January 9, 1928, with appropriation dates differing for various components of the system as more fully set forth in the referenced decree. Other absolute decrees were entered in Civil Actions No. 3082 and 4033. The decrees were entered by the District Court, Garfield County. The Board owns an undivided one-half interest in these water rights. **(1) Decreed Points of Diversion: (a)** Ivanhoe Reservoir**:** is formed by a dam approximately 21 feet high across the natural bed of Ivanhoe Creek, a tributary of Frying Pan Creek, and situated in the SE¼ SW¼ of Sec. 12 in T9S of R82W of the 6th P.M. with its northeasterly end located at or about a point from which the S.E. Corner of Sec. 13 in the township and range aforesaid bears S 26° 45' E, 7,021.3 feet, and by a bulkhead dam approximately 10 feet high at the upper end of said reservoir situated in the SE¼ NE¼ of Sec. 13 in the township and range aforesaid and with its southerly end located at or about a point from which the S.E. Corner of said Sec. 13 bears S 8° 11' E, 2,739.2 feet, it overflows all or portions of the SE¼ SW¼ and SW¼ SE¼ of Sec. 12 and the NE¼ NW¼ and NE¼ of Sec. 13. The Lyle, Pan and Hidden Lake Creek Ditches, which divert from the points described below, all flow into Ivanhoe Reservoir. **(b)** Ivanhoe Tunnel**:** has its westerly portal at or about a point from which the SE corner of Sec. 13, T9S, R81W,6th P.M., bears S 8° 11' E, 2,739.2 feet, runs from thence S 54° 25' E a distance of approximately 9,400 feet to its easterly portal in the NE¼ SW¼ of Sec. 20 in T9S of R81W of the 6th P.M., crosses in its course all or parts of the SE¼ NE¼ and the NE¼ SE¼ of Sec. 13 in T9S of R82W of the 6th P.M. and the SW¼ and SW¼ SE¼ of Sec. 18 and the NE¼ of Sec. 19 and the S½ NW¼ and the N½ SW¼ of Sec. 20 all in T9S of R81W of the 6th P.M. **(c)** Lyle Ditch: diverts from Lyle Creek, a tributary of Ivanhoe Creek at or about a point on the southeast bank of said stream in the NW¼ NE¼ of Sec. 2 in T9S of R82W of the 6th P.M. from which the S.E. Corner of Sec. 13 in township and range aforesaid bears S 23° 19' E, 16,607.2 feet, runs from thence in southeasterly direction a distance of about 2 miles to said Ivanhoe Reservoir. **(d)** Pan Ditch: diverts from Pan Creek, a tributary of South Fryingpan Creek at the north bank of said stream in the NW¼ of NE¼ of Sec. 24 in T9S of R82W of the 6th P.M. from which the SE Corner of Sec. 13 in said township

and range bears N 52° 14' E, 2,022.1 feet, will run thence in a northwesterly direction a distance of about 1.6 miles to said Ivanhoe Reservoir. **(e)** Hidden Lake Creek Ditch: diverts from Hidden Lake Creek a tributary of Ivanhoe Creek at the east bank of said stream in the NE¼ SW¼ of Sec. 11, T9S, R82W of 6th P.M. from which the S.E. Corner of Sec. 13 in said township and range bears S 46° 14' E, 11,392.5 feet, will run thence in a southeasterly direction a distance of about 1.1 miles to said Ivanhoe Reservoir. **(2) Sources:** Ivanhoe Creek, Hidden Lake Creek, Pan Creek and Lyle Creek, all tributary to the Fryingpan River. This water is carried across the continental divide and delivered into the Board's storage space in Turquoise Reservoir. **(3) Appropriation Dates:** Ivanhoe Reservoir: June 27, 1921; Ivanhoe Tunnel: June 27, 1921; Lyle Ditch: September 28, 1924; Pan Ditch: October 5, 1924; Hidden Lake Creek Ditch: August 30, 1927. **(4) Amounts:** Ivanhoe Reservoir: 1200 acre-feet; Ivanhoe Reservoir and Tunnel: 35 c.f.s.; Lyle Ditch: 50 c.f.s.; Pan Ditch: 25 c.f.s.; Hidden Lake Creek Ditch: 70 c.f.s., all subject to the limitations contained in the decree dated November 15, 1993, the District Court for Water Division No. 5, in Case No. 90CW340. **(5) Decreed Use:** By decree dated November 15, 1993, the District Court for Water Division No. 5, in Case No. 90CW340, changed the use of the water right to include, in addition to the originally decreed uses of irrigation of lands along Lake Fork Creek and the Arkansas River, the same new uses decreed to the Ewing Ditch described above. **e. The Homestake Project** diverts water from the headwaters of tributaries of the Eagle River in Eagle County. The water rights were conditionally adjudicated by the decree in Civil Action No. 1193 (District Court, Eagle County) dated June 8, 1962. These water rights have an appropriation date of September 22, 1952. These water rights have been made absolute in part, and the remaining conditional components have been the subject of subsequent diligence findings. The legal descriptions of certain of the remaining conditional water rights of the Homestake Project were corrected, and alternate points of diversion added, by the Decree entered by the District Court in and for Water Division No. 5 in Cases No. 85CW151, 85CW582 and 85CW583 on August 10, 1988. By an assignment of interest from the City of Aurora, the Board has the annual right to receive 2,500 acre-feet of Homestake Project Water delivered at Turquoise Lake. Due to its length, the specific details on the Homestake Project water rights are attached to the Application as Exhibit 1. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **f. The Independence Pass Transmountain Diversion System ("IPTDS")** diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County in Water Division No. 5, and delivers the same to Twin Lakes Reservoir in Water Division No. 2. The water rights were adjudicated by a decree in Civil Action No. 3082 (District Court, Garfield County) dated August 25, 1936, and were modified by a decree in Case No. W-1901 (District Court, Water Division No. 5), dated May 12, 1976. These water rights have an appropriation date of August 23, 1930. The Board has the right to utilize a portion of such waters and the return flows therefrom by virtue of its ownership of shares of the Twin Lakes Reservoir and Canal Company. **(1) Decreed Points of Diversion: (a)** Lincoln Gulch Diversion Dam and Tunnel No. 1: The initial point of survey of the Lincoln Gulch Diversion Dam is located at a point whence the southwest corner of Sec. 6, T11S, R82W of the 6th P.M. bears N 18° 55' E 14,565.5 feet. The headgate or intake of Tunnel No. 1 is located at a point whence the southwest corner of Sec. 6, T11S, R82W

of the 6th P.M. bears N 17° 33' E 14,380.9 feet. **(b)** New York Collection Canal: The headgates of the New York Collection Canal are located as follows: **(c)** Headgate No. 1 is located on the east bank of West Fork Gulch, a tributary of Lincoln Creek, at a point whence the southwest corner of Sec. 6, T11S, R82W of the 6th P.M. bears N 58° 06' E 24,724.6. **(d)** Headgate No. 2 is located on New York Gulch at a point whence the southwest corner of Sec. 6, T11S, R82W of the 6th P.M. bears N 57° 24' E 23,997.4 feet. **(e)** Headgate No. 3 is located on Tabor Gulch at a point whence the southwest corner of Sec. 6, T11S, R82W of the 6th P.M. bears N 51° 32' E 16,923.1 feet. **(f) Roaring Fork Diversion Dam, Tunnel No. 2, and Lincoln Gulch Connection Canal:** The initial point of survey of the Roaring Fork Diversion Dam is located at a point whence the southwest corner of Sec. 6, T11S, R82W of the 6th P.M. bears S 80° 09' E 6,946.3 feet. The headgate or point of intake of Tunnel No. 2 is located on the south bank of the Roaring Fork River at a point whence the southwest corner of Sec. 6, T11S, R82W of the 6th P.M. bears S 80° 38' E 6,921.6 feet. The point of beginning of the Lincoln Gulch Connection Canal is located at the south end of Tunnel No. 2 at a point whence the southwest corner of Sec. 6, T11S, R82W of the 6th P.M. bears N 50° 42' E 12,539.2 feet. **(g) Lost Man Diversion Dam and Lost Man Diversion Canal:** The initial point of survey of the Lost Man Diversion Dam is located at a point whence the southwest corner of Sec. 6, T11S, R82W of the 6th P.M. bears S 58° 42' E 6,473.2 feet. The headgate of the Lost Man Diversion Canal is located on the east bank of Lost Man Creek at a point whence the southwest corner of Sec. 6, T11S, R82W of the 6th P.M. bears S 58° 18' E 6,871.2 feet. **(h) Twin Lakes Reservoir:** Twin Lakes Reservoir is located in Sections 15, 16, 17, 18, 19, 20, 21, 22, and 23, in T11S, R80W of the 6th P.M., in Lake County, Colorado in former Water District No. 11, Water Division No. 2, on the natural stream known as Lake Creek, a tributary of the Arkansas River. **(2) Decreed Use:** On May 12, 1976, the Water Court for Water Division No. 5 entered its decree (the "1976 Decree") in Case No. W-1901, wherein Twin Lakes obtained approval of a change in water rights, subject to the terms and conditions more fully set forth in the 1976 Decree. The water gathered and collected from the IPTDS is used for direct flow and storage purposes, irrigation, domestic, commercial, industrial, municipal, and all beneficial uses. **a. The Fryingpan-Arkansas Project** diverts water from the headwaters of Hunter Creek and the Fryingpan River and its tributaries in Pitkin County and from the Arkansas River and its tributaries. The west slope 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. The east slope water rights were adjudicated by the decrees in Civil Actions No. 51, Chaffee County District Court, dated on July 9, 1969, Civil Action No. B-42135, Pueblo County District Court, dated June 25, 1962, and Case No. 80CW6, District Court, Water Division No. 2, dated October 23, 1980. The principal components of the Fryingpan-Arkansas Project are as follows: **(1) Boustead Tunnel** (Originally called Fryingpan-Arkansas Divide Tunnel). **(a) Decreed Point of Diversion:** The intake portal of said tunnel is located at a point on the Fryingpan River, whence the Southwest corner of Sec. 7, T8S, R83W of the 6th P.M. bears North 48° 33' West a distance of 67,986 feet. **(b) Decrees:** Civil Action No. 4613, Garfield County District Court, 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. **(c) Source of Supply:** The source of supply is the Fryingpan River and its tributaries, the Hunter Creek Extension Canal, the South Side Collection System, and the North Side Collection System as described in the decree. The amount of water awarded to said tunnel is 900 cubic feet of water per second of time. **(2) Turquoise Reservoir. (a) Legal Description of Structure:** The intersection of Sugar Loaf Dam axis and Lake Fork Creek, a point whence the Northwest corner of Sec. 16, Township 9 South, Range 80 West of the 6th P.M., bears North 44° 46' 18" East a distance of 10,344.35 feet. Said reservoir inundates all or portions of Sec. 7, 8, 17, 18, 19 and 20, T9S, R80W of the 6th P.M., and Sec. 10, 11, 12, 13, 14 and 15, T9S, R81W of the 6th P.M., in Lake County, Colorado. **(b) Decrees:** Turquoise Reservoir was decreed in Civil Action No. 5141, Chaffee County District Court, on July 9, 1969, with an appropriation date of February 10, 1939 (Priority No. A-92C). The decree was modified in Case No. 80CW6 (Water Division 2) on October 23, 1980 (amended to correct clerical error on April 29, 1981), to conform to the reservoir as built. **(c) Storage Volume and Source:** The current decreed and existing capacity is 129,432 acre-feet, plus a right to refill. Of the decreed amounts, only the right to refill remains conditional. The sources of supply are water diverted from Hunter Creek, the Fryingpan River and its tributaries through the Boustead Tunnel and water diverted from Lake Fork Creek, a tributary of the Arkansas River. **(3)** Twin Lakes Reservoir. **(a) Legal Description of Structure:** The intersection of Twin Lakes Dam axis and Lake Creek, a point whence the Southeast corner of Sec. 23, T11S, R80W of the 6th P.M., bears South 54°13'08" East a distance of 3,803.10 feet. Said reservoir inundates all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 30, T11S, R80W of the 6th P.M., in Lake County, Colorado. **(b) Decrees:** Twin Lakes Reservoir component of the Fryingpan-Arkansas Project was decreed in Civil Action No. 5141, Chaffee County District Court, on July 9, 1969, with an appropriation date of February 10, 1939 (Priority No. A-93C). The decree was modified in Case No. 80CW6, District Court, Water Division 2 on October 23, 1980 (amended to correct clerical error on April 29, 1981), to conform to the reservoir as built. **(c) Storage Volume and Source:** The current decreed and existing capacity is 141,000 acre-feet, plus a right to refill. The source of supply for Project Water stored in Twin Lakes is water from Hunter Creek and the Fryingpan River and its tributaries delivered through the Boustead Tunnel and the Mount Elbert Conduit, Lake Creek, Lake Fork Creek, Half Moon Creek, and other tributaries of the Arkansas River. **(4) Pueblo Reservoir: (a) Legal description of structure:** Pueblo Reservoir is located at the intersection of Pueblo Dam axis and the Arkansas River whence the Northeast corner of Sec. 36, T20S, R66W of the 6th P.M., bears North 61° 21' 20" East a distance of 2,511.05 feet. Said reservoir inundates 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 of the 6th P.M., Sections 1, 2, 3, 4, 5, 9, 10, and 11, T21S, R66W of the 6th P.M., and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23 and 25, T20S, R67W of the 6th P.M., in Pueblo County, Colorado. **(b) Decrees: (i)** Pueblo Reservoir was decreed in Case No. B-42135, Pueblo County District Court, on June 25, 1962, with an appropriation date of February 10, 1939 (Priority No. A-22C). The decree was modified in Case No. 80CW6, District Court, Water Division 2, on October 23, 1980 (amended to correct clerical error on April 29, 1981), to conform to the reservoir as built. **(c)** Storage Volume and Source: The current decreed and existing capacity is 357,678

acre-feet. Southeastern Colorado Water Conservancy District's engineers have estimated that up to 7,738 acre-feet of this capacity may have been lost to siltation. The source of supply is water tributary to the Arkansas River. Pueblo Reservoir is also used to store west-slope Fryingpan-Arkansas Project water, and the Board has a contract for storage of its water in Pueblo Reservoir. By this Application, the Board does not seek any new rights of use of Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocation of Fryingpan-Arkansas Project water or return flows from Fryingpan-Arkansas Project water, but this does not alter any existing rights the Board may otherwise have. Return flows from the Fryingpan-Arkansas Project will be utilized only after they are purchased from the Southeastern Colorado Water Conservancy District. **h. West Pueblo Ditch:** Pueblo owns 492 shares out of the 500 shares in the West Pueblo Ditch Company. The West Pueblo Ditch diverts from the Arkansas River and by decree dated March 23, 1896, in Case No. 2535, the Pueblo County District Court was awarded water rights with Priority No. 32, Appropriation Date April 1, 1872, for 1.2 c.f.s.; Priority No. 34, Appropriation Date of April 1, 1874, for 1.0 c.f.s.; Priority No. 35, Appropriation Date of October 1, 1878, for 0.6 c.f.s.; Priority No. 45, Appropriation Date of 1883, for 0.4 c.f.s.; Priority No. 57, Appropriation Date of December 17, 1887, for 15.0 c.f.s. **(1) Originally Decreed Point of Diversion:** North bank of the Arkansas River at a point S 66°12' W, 35.45 chains from the NE corner of SE¼ of Sec. 31, T20S, R65W of the 6th P.M. in Pueblo County, Colorado (near the center of Sec. 31, T20S, R65W of the 6th P.M.). **(2) Decreed Use:** In Case No. 90CW55, 481.5 shares were changed to add to the originally decreed uses of irrigation and domestic purposes, all beneficial uses related to the Board's operations, including municipal, domestic, irrigation, commercial, industrial, mechanical, power generation and cooling, wastewater treatment, recreation, fish and wildlife, replacement, and storage in aid of the foregoing purposes. In conformity with the Decree in 90CW55, Pueblo may use the fully consumable West Pueblo Ditch water for replacement purposes under this plan. Pueblo will not use West Pueblo Ditch's Winter Water Storage Program water for replacement of Lake Minnequa depletions. **(3) Places of Storage: (a)** Pueblo Reservoir: The point of diversion of Pueblo Reservoir is at a point at the intersection of Pueblo Dam axis and the Arkansas River whence the Northeast corner of Sec. 36, T20S, R66W of the 6th P.M., bears North 61°21'20" East a distance of 2,511.05 feet. Said reservoir inundates 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 of the 6th P.M., sections 1, 2, 3, 4, 5, 9, 10, and 11, T21S, R66W of the 6th P.M., and sections 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, T20S, R67W of the 6th P.M. **(b)** Southside Reservoirs: are eight in number being numbered respectively No.1; No.2; No.3; No.4; No.5; N. No.1; N. No.2; and N. No.3. They are located in the S½ of the NE¼ and the SE¼ of the NW¼ of Sec. 34, T20S, R65W of the 6th P.M. **(4) Additional Points of Diversion: (a)** Northside Intake: Pueblo's Northside Intake headgate is situated on the North bank of the Arkansas River in Pueblo County, Colorado, in the Northwest quarter of the Northeast quarter of Sec. 33, T20S, R65W of the 6th P.M., at or near a point which lies South 74°14' 30" West, 2673.9 feet from the Northeast corner of said Sec. 33. **(b)** Southside Intake: Pueblo's Southside Intake headgate is located on the right bank of Arkansas River at a point whence the west quarter corner of Sec. 34, T20S, R65W of the 6th P.M. bears south 69°35' west 1,478 feet. **(c)** Pueblo Reservoir

described above. **(d)** The Municipal Outlet and Delivery Manifold on the face of the Pueblo Reservoir Dam: At the lower end of the outlet tube from the Pueblo Dam (an on-stream dam impounding the waters of the Arkansas River) which is located at or near a point from whence the northeast corner of Sec. 36, T20S, R66W of the 6th P.M. bears North 49° East a distance of 2,891 feet. i. Lake Minnequa Storage: Fully consumable water from any of the sources listed above that is placed in storage at Lake Minnequa, or out-of-priority stored water in Lake Minnequa that, upon being fully replaced to the Arkansas River, assumes the fully consumable character of the replacement source. **j.** Any other source of fully consumable water that hereafter is lawfully available for the augmentation uses described herein. **2. Complete Statement of Plan for Augmentation. a. Description and history of Lake Minnequa**. Lake Minnequa (WDID 1503693) is a natural lake located in southern Pueblo, Colorado. In the late 1800's an inlet ditch and outlet pipe were added to the lake making it, for a short time, a part of the water delivery system for the CF&I Steel Mill (CF&I), now Rocky Mountain Steel. Lake Minnequa could physically receive water from either the St. Charles River via the St. Charles Ditch or later the St. Charles Flood Ditch, or from the Arkansas River via the Minnequa Canal. A pipe connected the lake to the steel mill. By the early 1900's Lake Minnequa became a back-up or emergency water supply with limited use. In the late 1930s the City of Pueblo ("City") installed an outlet pipe from the lake to drain storm runoff from the lake to the Arkansas River via the City's storm sewer system. The 1930s storm sewer outlet controlled the lake's surface to an elevation of 4798 feet ("Normal Pool"), with a corresponding water surface area of 117.2 acres, and an estimated volume of 663 acre-feet. In December 2008 the City purchased Lake Minnequa and has since made improvements at the lake, including removing the 1930s 21-inch storm sewer outlet pipe and replacing it with a 36-inch outlet pipe at elevation 4795.04 feet. The City also lowered the inlet of the former CF&I 24-inch delivery pipeline and connected it to the storm sewer system. These improvements increased the outlet flow capacity from about 14 c.f.s. to over 100 c.f.s. Now, if the lake level rises above elevation 4795.04 feet, the water will drain through the outlet and the City's storm sewer system into the Arkansas River just west of the South Santa Fe Avenue. The control structure for the new lower outlets can be used to temporarily raise the lake level by two feet to allow seasonal shoreline flooding to control tamarisk growth ("Tamarisk Control Pool"). Several water quality ponds have been constructed near the lake shore, and more may be built, to improve the quality of storm runoff to Lake Minnequa. The City also constructed an overflow spillway with a bottom elevation of 4802.44 feet. Finally, new wetlands have been or will be created to enhance the natural environment. For purposes of this augmentation plan, Lake Minnequa is a natural lake with a water surface area of 117.2 surface acres and volume of approximately 663 acre-feet at a high water line elevation of 4798 feet. Naturally occurring depletions from Lake Minnequa that do not require replacement under this augmentation plan include: (1) evaporation from the natural lake surface, including evaporation from a temporarily increased water surface area due to storm runoff; and (2) consumptive use of natural vegetation, including pre-existing wetlands surrounding Lake Minnequa. **b. Storm Runoff.** As in the past, storm runoff that is temporarily detained in Lake Minnequa will drain back to the Arkansas River through the unregulated outlets and the City's storm sewer system. The City's recent enlargement and lowering of the outlets means that

more of the detained storm runoff will be returned to the Arkansas River, and more quickly than what would have been delivered to the river in the past. When downstream senior water rights in the Arkansas River basin were appropriated, the Arkansas River and surface diversions therefrom did not receive, and therefore have not relied upon, the delivery of storm water inflow through Lake Minnequa. Instead, until the first storm sewer connection was made in the late 1930's, the Arkansas River did not regularly receive delivery of storm inflow from Lake Minnequa. During storm runoff events Lake Minnequa has the capacity to temporarily detain storm runoff to the emergency overflow elevation of 4802.44 feet, representing a "Flood Control Pool" with a capacity of 904.5 acre-feet, and a surface area of 159.1 acres. The emergency overflow spillway at elevation 4802.44 feet provides additional discharge capacity for floods exceeding a 1-in-100 year frequency. The storm runoff entering Lake Minnequa will drain much more quickly than it could have previously due to the greater discharge capacity of the improved outlets. Any such storm runoff temporarily detained by Lake Minnequa will not be replaced under this plan for augmentation. **c. New Depletions.** Certain City improvements at Lake Minnequa will result in new depletions that will be replaced pursuant to this plan for augmentation. In cooperation with the City, and using water from its portfolio of water rights, the Board intends to augment depletions at Lake Minnequa from (1) water surface evaporation from any new permanent water surfaces created outside of the 4798 elevation contour; (2) consumptive use associated with new wetlands areas (those that will be located outside the wetlands boundary mapped in 2005 prior to the City's storm system improvements); (3) evaporation and consumptive use from new water quality ponds; and (4) retention of Lake Minnequa natural inflows in the temporary Tamarisk Control Pool. **d. Evaporation.** Except for the new water quality ponds, the City does not anticipate any new water surfaces will be created. Although none are planned, the Board proposes to replace the gross evaporation from any new water surface area the City creates as part of its Lake Minnequa improvements outside of the elevation 4798 feet contour. Such replacements will be made only when the call on the Arkansas River downstream of Lake Minnequa is senior to September 9, 2011. Such evaporation replacements will be equal to the gross evaporation from the water surface area. Gross evaporation will be based on an annual shallow lake evaporation of 50.20 inches as determined for the lake's location using NOAA Technical Report NWS 33 Evaporation Atlas for the Contiguous 48 United States, (U.S. Department of Commerce, June, 1982). Monthly evaporation was determined using distribution factors for elevations below 6,500 feet from the Division of Water Resources' General Guidelines for Substitute Water Supply Plans for Sand and Gravel Pits Submitted to the State Engineer Pursuant to SB 89-120 & SB 93-260. No replacement for evaporation will be required when Lake Minnequa or man-made impoundments are ice covered. To the extent it can be established, the Board may adjust the evaporation augmentation requirement considering the partial extent of ice cover. Table 1 shows the monthly evaporation replacement rate to be used for this augmentation plan.

Table 1
Evaporation Replacement Requirements

Month	(1) **Distribution Factor (percent)**	(2) **Gross Evaporation (inches)**	(3) **Monthly Gross Evaporation (ac-ft/ac)**	(4) **Daily Gross Evaporation (ac-ft/ac/day)**
	SEO	(1) x 50.2	(2) / 12	(3) / # of days
November	4.0%	2.01	0.167	0.0056
December	3.0%	1.51	0.125	0.0041
January	3.0%	1.51	0.126	0.0041
February	3.5%	1.75	0.146	0.0052
March	5.5%	2.76	0.230	0.0074
April	9.0%	4.52	0.376	0.0126
May	12.0%	6.02	0.502	0.0162
June	14.5%	7.28	0.607	0.0202
July	15.0%	7.53	0.628	0.0203
August	13.5%	6.78	0.565	0.0182
September	10.0%	5.02	0.418	0.0139
October	7.0%	3.51	0.293	0.0094
Totals	100.0%	50.20	4.183	

For replacement purposes the depletions caused by such evaporation are considered to have an instantaneous effect on the Arkansas River. **e. Wetland Consumptive Use.** The City may establish new wetlands, or allow new wetlands to become established, beyond the historical extent of wetlands shown on Figure 5. The Board will replace the consumptive use of water caused by new wetlands outside of the line demarking the extent of historical wetlands. Table 2 shows the replacement rate required per acre of new wetlands.

Table 2
New Wetlands Consumptive Use and
Depletion Replacement Requirement

Month	(1) **New Wetlands Consumptive Use Rate (inches)**	(2) **New Wetlands Consumptive Use Rate (ac-ft/ac)**	(3) **New Wetlands Replacement Requirements (ac-ft/ac)**
		(1)/12	
January	0	0	0.30
February	0	0	0.28
March	0	0	0.30
April	0.99	0.08	0.29
May	6.27	0.52	0.31
June	11.45	0.95	0.30

July	11.12	0.93	0.31
August	8.72	0.73	0.31
September	4.52	0.38	0.30
October	0	0	0.30
November	0	0	0.29
December	0	0	0.30
Total	43.06	3.59	3.59

The Board will augment depletions resulting from new wetlands consumptive use at the Arkansas River. Wetlands consumptive use will result in lagged depletions. Because of the great distance to the Arkansas River and the relatively low transmissivity of the alluvial aquifer in the area, the Board plans to replace new wetlands depletions based on the monthly steady state depletion rates shown in Column 3 of Table 2. The City proposes to survey the new wetland areas biannually to determine the actual area of new wetlands existing at the time. At the time of each survey, the determination of wetlands area will be in accordance with criteria contained in the US Army Corps of Engineers Wetlands Delineation Manual (USACE 1987) as amended or updated and current at that time. The Board will establish revised augmentation replacement requirements appropriate for the newly measured wetland area which will be used until the next biannual area measurement. The City will continue surveying the wetlands until they have become established. Establishment will be deemed to have occurred when the change in surveyed area is less than 5 percent from the prior measurement, or at a point in time 10 years after this augmentation plan is decreed, whichever may occur first. **f. New Water Quality Ponds Evaporation and Consumptive Use.** Stormwater and drainage inflows may be routed through water quality ponds at several locations around the perimeter of Lake Minnequa (see Figure 5 attached to the Application), before discharging into the lake. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Four small water quality ponds have been constructed as part of the City's improvements to Lake Minnequa. The water quality ponds may have exposed water surface area at some times of the year. The Board proposes to treat the water quality ponds as hybrid wetlands/water surfaces for determining depletions under this augmentation plan. During May through August depletions from the maximum potential water surface area of the water quality ponds will be considered to be equal to the wetland evapotranspiration rate (which is greater than the evaporation rate in those months), and during September through April the depletions will be considered to be equal to the rate for water surface evaporation (whether there is a water surface present or not). The proposed hybrid monthly depletion rates and monthly replacement requirements are shown in Table 3. Since they are new man-made structures, depletions from the water quality ponds will be augmented whether or not all or portions of the ponds are within the elevation 4798 contour that represents the extent of the post-1930s natural lake.

Table 3
Water Quality Ponds Evaporation and Consumptive Use Rates
And Replacement Requirement

Month	(1) **Water Surface Evaporation Rate (ac-ft/ac)** Table 1	(2) **Wetlands Consumptive Use Rate (ac-ft/ac)** Table 2	(3) **Hybrid Depletion Rate (ac-ft/ac)** Greater of (1) or (2)	(4) **Water Quality Ponds Replacement Requirements (ac-ft/ac)**
January	0.126	0	0.126	0.300
February	0.146	0	0.146	0.280
March	0.230	0	0.230	0.300
April	0.376	0.08	0.376	0.400
May	0.502	0.52	0.520	0.526
June	0.607	0.95	0.950	0.632
July	0.628	0.93	0.930	0.652
August	0.565	0.73	0.730	0.589
September	0.418	0.38	0.418	0.442
October	0.293	0	0.293	0.300
November	0.167	0	0.167	0.290
December	0.125	0	0.125	0.300
Total	4.183	3.59	5.011	5.011

g. Storage in Tamarisk Control Pool. The City may temporarily raise the lake's outlet elevation by two feet (anticipated during, but not limited to, the period of November – April) to control Tamarisk growth at the lake. Water used for this purpose will be either water delivered to Lake Minnequa by the Board through St. Charles Reservoir No. 2, or stored natural inflow. For purposes of this plan for augmentation, the Board will assume that when natural inflow is captured and retained in the Tamarisk Control Pool, it results in out-of-priority storage that requires replacement. A continuous water level monitoring system has been installed at Lake Minnequa to record water surface elevation and to provide the basis for determining whether and to what extent out-of-priority storage of natural inflows may have occurred in the Tamarisk Control Pool. The volume of inflow thus captured and held in storage will be replaced with fully consumable water delivered by the Board to the Arkansas River. Upon delivery of fully consumable replacement water to the Arkansas River, the Board claims that the water thus retained in the Tamarisk Control Pool assumes the fully consumable character of the replacement water delivered to the Arkansas River. **h. Freshening Flows.** Water may be run through Lake Minnequa to provide freshening flows. The City and the Board have an agreement with the Lower Arkansas Water Conservancy District to provide such water, but it may be provided from other sources as well. Any increased evaporation from increased water surface area caused by the freshening flows will be attributed to the water used for that purpose and will be replaced, if required, pursuant to any agreement for such use. When the evaporation attributable to the freshening flow water is replaced, the Board claims that the volume of such water delivered to the Arkansas will

remain undiminished by lake evaporation and can be made available for use on the Arkansas River, subject to transit losses after its return to the river. **i. Replacement Supplies**. Replacement water from the sources listed above may be provided by Pueblo through (1) use of fully consumable water in Lake Minnequa; (2) direct import of fully consumable water to the Arkansas River basin; (3) release of water previously stored in reservoirs (including fully consumable water stored in the Lake Minnequa); (4) discharge of fully consumable municipal return flows at wastewater treatment plants; (5) taking credit for fully consumable municipal subsurface return flows from the City of Pueblo; and (6) from discharge to the St. Charles River of fully consumable water supplied to the Comanche Power Station by Pueblo. Since any storm runoff from Lake Minnequa would have reached the Arkansas River at or near south Santa Fe Street, water for replacement of depletions will be delivered to the Arkansas River from locations downstream of South Santa Fe Street only when all water rights located within the reach of the Arkansas River between South Santa Fe Street and the point of replacement with priorities senior to September 9, 2011, are satisfied, including the City's RICD water right. **j. Delivery of Replacement Water.** The specific locations for delivery of replacement water include: **(1)** Pueblo Reservoir, Twin Lakes Reservoir, and Turquoise Reservoir, described above. **(2)** Clear Creek Reservoir: Clear Creek Reservoir is located on Clear Creek, a tributary of the Arkansas River, in Sections 7 and 8, T12S, R79W of the 6th P.M.; and Sec. 12, T12S, R80W of the 6th P.M., in Chaffee County. **(3)** City of Pueblo Municipal Wastewater Treatment Plant: Treated municipal return flows from this facility are discharged to the Arkansas River in the NE¼, NE¼ of Sec. 5, T21S, R64W of the 6th P.M. **(4)** Rocky Mountain Steel Wastewater Treatment Plant: Treated effluent from this facility is discharged to Salt Creek and enters the Arkansas River approximately one mile downstream of the City of Pueblo Wastewater Treatment Plant discharge. **(5)** Comanche Power Station: Unconsumed water delivered by Pueblo to the Comanche Power Station is discharged to the St. Charles River at a point in the Northwest quarter of Sec. 28, T21S, R64W of the 6th P.M. **(6)** Any other wastewater treatment facility utilized by Pueblo, including any terminal storage facilities hereafter constructed and located so as to receive the City's wastewater facility effluent, which discharges to the Arkansas River or its tributaries at or above the confluence of the Arkansas River and the St. Charles River. **(7)** Lake Minnequa Outlet/City of Pueblo Storm Sewer Discharge: Water previously stored in Lake Minnequa and delivered directly by release from storage will be claimed at the point where the City of Pueblo storm sewer discharges to the Arkansas River near the east line of the NE¼ of Sec. 1, T21S, R65W of the 6th P.M. **6. Appropriation Date Claimed for Application**: The Applicant's claim an appropriation date of September 9, 2011 as the date for determination of whether new depletions from the City's use of Lake Minnequa occur out-of-priority and require replacement under this plan for augmentation. **7. Name(s) and address(es) of owner(s)** or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: The City of Pueblo, 1 City Hall Place, Pueblo, CO 81003.

CASE NO. 11CW58 – JERRY L. PRICE. This application was not ordered published but is being listed in the resume to account for the case number.

CASE NO. 11CW59; Previous Case Nos. 97CW172 and 05CW23 – ARKANSAS RIVER RANCH HOMEOWNERS ASSOCIATION, INC., ("Applicant"), 1320 Pearl Street, Suite 102, Boulder, CO 80302 (Direct all pleadings to: Timothy R. Buchanan, #12185, Eric R. Potyondy, #38243, BUCHANAN AND SPERLING, P.C., 7703 Ralston Road, Arvada, Colorado 80002, 303-431-9141)

Application to Makes Water Rights Absolute, for Findings of Reasonable Diligence in the Development of Conditional Water Rights, and to Abandon and Partially Abandon Certain Conditional Water Rights

LAKE COUNTY

2. Name of Structures: (1) Arkansas River Ranch Upper Pond, described in Paragraph 3; (2) Arkansas River Ranch Lower Pond, described in Paragraph 4 , and (3) Substitution and Exchange of Water Rights, described in Paragraph 5. **Arkansas River Ranch Upper Pond Water Right 3. Description of Conditional Water Right: A. Original Decree:** Case No. 97CW172, District Court, Water Division 2, March 30, 1999 ("97CW172 Decree"). **B. Subsequent Decree:** Case No. 05CW23, District Court, Water Division 2, September 21, 2005 ("05CW23 Decree"). **C. Legal Description:** The Pond will be located on the channel of Spring Creek, a tributary of the Arkansas River, in the SW1/4 of Section 35, Township 10 South, Range 80 West of the 6th P.M. **D. Source of Water:** Water tributary to Spring Creek and the Arkansas River. **E. Appropriation Date:** December 30, 1997. **Amount:** 10 acre feet, with the right to fill and refill, conditional. **F. Use:** Recreation, fire protection, and fish and wildlife purposes. The water will be used for immediate application to beneficial use, for storage and subsequent application to beneficial use, and for replacement of depletions associated with the operation of the pond. The water will be fully consumed during the first use of the water. Water will also be diverted through the Reservoir for fish and wildlife enhancement and water quality improvement purposes. **G. Surface Area of High Water Line:** Approximately 4.0 acres. **H. Maximum Height of Dam:** Less than 10 feet. **I. Length of Dam:** Approximately 200 feet. **J. Total Capacity of Reservoir:** 10 acre feet with 0 acre feet of dead storage. **Arkansas River Ranch Lower Pond Water Right 4. Description of Conditional Water Right: A. Original Decree:** 97CW172 Decree. **B. Subsequent Decree:** 05CW23 Decree. **C. Legal Description:** The Pond will be located on the channel of Spring Creek, a tributary of the Arkansas River, in the SW1/4 of Section 35, Township 10 South, Range 80 West of the 6th P.M. **D. Source of Water:** Water tributary to Spring Creek and the Arkansas River. **E. Appropriation Date:** December 30, 1997. **Amount:** 10 acre feet, with the right to fill and refill, conditional. **F. Use:** Recreation, fire protection, and fish and wildlife purposes. The water will be used for immediate application to beneficial use, for storage and subsequent application to beneficial use, and for replacement of depletions associated with the operation of the pond. The water will be fully consumed during the first use of the water. Water will also be diverted through the Reservoir for fish and wildlife enhancement and water quality improvement purposes. **G. Surface Area of High Water Line:** Approximately 4.0 acres. **H. Maximum Height of Dam:** Less than 10 feet. **I. Length of Dam:** Approximately 200 feet. **J. Total Capacity of Reservoir:** 10 acre

feet with 0 acre feet of dead storage. **Substitution and Exchange of Water Rights 5. Description of Conditional Water Right: A. Original Decree:** 97CW172 Decree. **B. Subsequent Decree:** 05CW23 Decree. **C. Location:** The upper end of the exchange reach is the Arkansas River Ranch Upper and Lower Ponds located on the channel of Spring Creek, a tributary of the Arkansas River, in the SW1/4 of Section 35, Township 10 South, Range 80 West of the 6th P.M. The lower end of the exchange reach is the confluence of the outlet of Twin Lakes Reservoir on Lake Creek with the Arkansas River in the SW1/4 of Section 24, Township 11 South, Range 80 West of the 6th P.M. **D. Source:** The following water rights will be substituted and exchanged for the water depleted from the Arkansas River pursuant to the plan for augmentation described in the Decree entered in Case No. 97CW172 on March 30, 1999: (a) the fully consumable portion of the Twin Lakes Water Rights; (b) the fully consumable portion of the After Acquired Water Rights (as defined in the 97CW172 Decree); (c) at such times when the Arkansas River Ranch Upper Pond and Lower Pond water rights are out of priority and there are no Twin Lakes Water Rights or After Acquired Water Rights available for release to the Arkansas River for replacement of depletions, the Arkansas River Ranch Upper Pond and Lower Pond water rights shall be released from the Arkansas River Ranch Upper Pond and Lower Pond into Spring Creek, a tributary of the Arkansas River, as necessary to replace the depletions associated with the operation of the ponds; (d) at such times when the Arkansas River Ranch Upper Pond and Lower Pond water rights are out of priority and there are Twin Lakes Water Rights or After Acquired Water Rights available and released to the Arkansas River, the Twin Lakes Water Rights or After Acquired Water Rights in the Arkansas River may be substituted and exchanged in priority for water diverted out of Spring Creek, a tributary of the Arkansas River Ranch Upper Pond and Lower Pond. **E. Appropriation Date:** December 30, 1997. **F. Amount:** A conditional water exchange right for 1.0 c.f.s. **G. Use:** Recreation, fire protection, and fish and wildlife purposes. The water will be used for immediate application to beneficial use, for storage and subsequent application to beneficial use, and for replacement of depletions associated with the operation of the pond. The water will be fully consumed during the first use of the water. Water will also be diverted through the Reservoir for fish and wildlife enhancement and water quality improvement purposes **Abandonment of Conditional Water Rights Decreed to Arkansas River Ranch Upper Pond.** 6. Applicant has determined it will not construct the Arkansas River Ranch Upper Pond and will (1) abandon the Arkansas River Ranch Upper Pond Water Right described in Paragraph 3 and (2) partially abandon the Substitution and Exchange of Water Rights described in Paragraph 5 to the extent it of the substitution and exchange to the Arkansas River Ranch Upper Pond and releases from the Arkansas River Ranch Upper Pond. Applicant does not intend to abandon any other part of the Substitution and Exchange of Water Rights. **Claim to Make Absolute, in Part, the Arkansas River Ranch Lower Pond Water Right, or in the Alterative, for Findings of Reasonable Diligence in the Development of the Water Right**. **7. Claim to Make Absolute, in Part, the Arkansas River Ranch Lower Pond Water Right. A. Date Water Applied to Beneficial Use:** March 2007 and subsequently. Call records from the State of Colorado's Hydrobase website are attached to the Application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Amount:** 3.0 acre feet, absolute.

Use: Recreation, fire protection, and fish and wildlife purposes. **B. Description of Place Where Water Applied to Beneficial Use:** In the SW1/4 of Section 35, Township 10 South, Range 80 West of the 6th P.M. **C. Partial Abandonment:** Applicant has constructed the Arkansas River Ranch Lower Pond with a surface area of approximately 0.78 acres, the volume of which is approximately 3.0 acre feet. Applicant will abandon the Arkansas River Ranch Lower Pond Water Right described in Paragraph 4 to the extent of the difference between the actual volume of the Arkansas River Ranch Lower Pond Water Right and 10 acre feet originally decreed. Applicant does not intend to abandon any other part of the Arkansas River Ranch Lower Pond Water Right. **8. Claim for Findings of Reasonable Diligence in the Development of the Arkansas River Ranch Lower Pond Water Right. Outline of what has been done towards completions or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** Since the entry of the 05CW23 Decree, Applicant has undertaken numerous actions to develop the water rights that are the subject of this application, which are part of an integrated system under C.R.S. §37-92-301(4)(b). The following description is not intended to be all inclusive, but is merely illustrative of Applicant's continued diligence. i. Applicant diverted water directly and by exchange, and placed such water to beneficial use. ii. Construction work related to the Arkansas River Ranch Lower Pond including, but not limited to, the following: extending the dam to its current length and size; draining the pond for cleaning and contouring the bottom of the pond; and bank work to prevent erosion including, but not limited to, the revegetation of the banks. iii. Expenditures for engineering fees for work related to the Arkansas River Ranch Lower Pond, including, but not limited to, surveys of the Arkansas River Ranch Lower Pond and adjacent lands. iv. Expenditures for legal fees in conjunction with the water rights that are the subject of this application. v. Payment of annual stock assessments, storage fees and other payments made to the Twin Lakes Reservoir and Canal Company. vi . Expenditures in excess of $9,429.73 on the continued development of the water rights that are the subject of this application. **Claim to Make Absolute, In Part, the Substitution and Exchange of Water Rights, or in the Alterative, for Findings of Reasonable Diligence in the Development of the Water Rights 9. Claim to Make Absolute the Substitution and Exchange of Water Rights. A. Date Water Applied to Beneficial Use:** March 2006 and subsequently. *See* Ex. A to the Application. **Amount:** 1.0 cfs, absolute. **Use:** Recreation, fire protection, and fish and wildlife purposes. **B. Description of Place Where Water Applied to Beneficial Use:** In the SW1/4 of Section 35, Township 10 South, Range 80 West of the 6th P.M. **C. Comments.** Applicant seeks to make absolute the Substitution and Exchange of Water Rights to the extent not abandoned as described in Paragraph 6. **10. Claim for Findings of Reasonable Diligence in the Development of the Substitution and Exchange of Water Rights. A. Outline of what has been done towards completions or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** A description of what has been done towards completions or for completion of the appropriation and application of water to a beneficial use as conditionally decreed is set forth in Paragraph 8.a herein and is hereby incorporated by reference. **11. Name and address of owner of land on which any new diversion structure or storage structure, or**

modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: The owners of the land upon which the Arkansas River Ranch Lower Pond Water Right is located are Applicant and the following: High Country ARR, LLC, 1320 Pearl St. #102, Boulder, Colorado 80302; Kootenay Club Property Management, P.O. Box 926, Leadville, Colorado 80461; Devol GSTT Exemption Trust, Donna Y. Copeland – Trustee, 460 College Avenue, Boulder, Colorado 80302; Five Bros. Properties, LLC, 217 Peak View Drive, Twin Lakes, Colorado 81251; Larry D. and Emily A. Robbs, 3265 El Greco Court, Hacienda Heights, California 91745. **WHEREFORE,** Applicant requests that this Court enter a decree as follows: (1) abandoning the Arkansas River Ranch Upper Pond Water Right described in Paragraph 3; (2) partially abandoning the Substitution and Exchange of Water Rights described in Paragraph 5 to the extent it uses the Arkansas River Ranch Upper Pond; (3) making absolute, in part, and abandoning, in part, the Arkansas River Ranch Lower Pond Water Right; (4) making absolute, in part, the Substitution and Exchange of Water Rights to the extent not abandoned as described in Paragraph 6; (5) to the extent such water rights for which a claim of absolute determination asserted, finding that Applicant has proceeded with reasonable diligence toward the completion of the appropriation of all water rights described herein which are not abandoned and continuing such water right in full force and effect for another diligence period; and (6) such other relief as the Court may deem appropriate.

CASE NO. 11CW60 – CITY OF TRINIDAD, 135 North Las Animas Street, Trinidad, CO 81082 (Jeffrey J. Kahn, Madoline Wallace-Gross, Lyons, Gaddis, Kahn & Hall, P.C., P.O. Box 978, Longmont, CO 80502-0978).

Application To Amend Plan For Augmentation

IN LAS ANIMAS COUNTY

2. Background: Applicant obtained approval of a plan for augmentation in Case No. 02CW67, District Court, Water Division No. 2, entered on March 25, 2003. The plan for augmentation authorized Applicant to divert ground water tributary to the Purgatoire River from the Central Park Well, City Shop Well and School District Well. A map showing the locations of the structures is attached to the Application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) By this application, Applicant seeks to amend the plan for augmentation: a. To authorize Applicant to divert additional ground water from the Central Park Well for delivery to Central Park Lake to raise the water level of the lake above the natural level; b. To authorize the Applicant to divert additional ground water from the City Shop Well for municipal use; c. To authorize the Applicant to divert additional ground water from the School District Well for the irrigation of parks and athletic fields; d. To correct the legal descriptions of the Central Park Well and the School District Well; e. To replace all depletions associated with water pumped from the wells by making augmentation releases from Trinidad Reservoir; and f. To add new augmentation sources. **3. Structures to be augmented: a. Central Park Well, Permit No. 15736-R. 1. Previous Decrees for Well:** W-2854, District Court, Water Division No. 2, entered on March 1, 1979; Case No. 02CW67, District Court, Water Division No. 2, entered on March 25, 2003. **2. Legal Descriptions of Well: i. Actual Legal**

Description: SE ¼ SW ¼ of § 13, Township 33 South, Range 64 West of the 6th PM, 1120 feet from South and 1870 feet from West Section Lines, in Las Animas County, Colorado. **ii. From Case No. W-2854:** SE ¼ SW ¼ of § 13, Township 33 South, Range 64 West of the 6th PM, 1300 feet from South and 1950 feet from West Section Lines, in Las Animas County, Colorado. **iii. From Case No. 02CW67:** NE ¼ SW ¼ of § 13, Township 33 South, Range 64 West of the 6th PM, 1400 feet from South and 1930 feet from West Section Lines, in Las Animas County, Colorado. Applicant seeks to correct the legal description of the well in the augmentation plan to the actual location of the well described above. **3. Source:** Ground water tributary to the Purgatoire River. **4. Depth:** 60 feet. **5. Appropriation Date:** June 5, 1957. **6. Decreed Use:** Municipal and municipal irrigation purposes. **7. Other Water Rights Diverted from This Well:** Not applicable. **8. Limitations Imposed in Case No. 02CW67: i. Maximum Diversion Rate:** 200 g.p.m. **ii. Maximum Volumetric Diversion:** 30 a.f. maximum annually. **iii. Uses:** Irrigation of parks and athletic fields. **B. City Shop Well, Permit No. 10035-F. 1. Previous Decrees for Well:** W-2854, District Court, Water Division No. 2, entered on March 1, 1979; Case No. 02CW67, District Court, Water Division No. 2, entered on March 25, 2003. **2. Legal Description of Well:** SE ¼ NE ¼ of § 13, Township 33 South, Range 64 West of the 6th PM, 2150 feet from North and 220 feet from East Section Lines, in Las Animas County, Colorado. **3. Source:** Ground water tributary to the Purgatoire River. **4. Depth:** 44 feet. **5. Appropriation Date:** May 21, 1965. **6. Decreed Use:** Municipal and municipal irrigation purposes. **7. Other Water Rights Diverted from This Well:** Not applicable. **8. Limitations Imposed in Case No. 02CW67: i. Maximum Diversion Rate:** 187 g.p.m. **ii. Maximum Volumetric Diversion:** 20 a.f. maximum annually. **iii. Uses:** Municipal. **c. School District Well, Permit No. 17256. 1. Previous Decree for Well:** Case No. 02CW67, District Court, Water Division No. 2, entered on March 25, 2003. **2. Legal Description of Well: i. Actual Legal Description:** NE ¼ SW ¼ of § 13, Township 33 South, Range 64 West of the 6th PM, 1970 feet from South and 2130 feet from West Section Lines, in Las Animas County, Colorado. **ii. From Case No. 02CW67:** NE ¼ SW ¼ of § 13, Township 33 South, Range 64 West of the 6th PM, 2010 feet from South and 1940 feet from West Section Lines, in Las Animas County, Colorado. Applicant seeks to correct the legal description of the well in the augmentation plan to the actual location of the well described above. **3. Source:** Ground water tributary to the Purgatoire River. **4. Depth:** 40 feet. **5. Appropriation Date:** Not Applicable. **6. Decreed Use:** Not applicable. **7. Other Water Rights Diverted from This Well:** Not applicable. **8. Limitations Imposed in Case No. 02CW67: i. Maximum Diversion Rate:** 45 g.p.m. **ii. Maximum Volumetric Diversion:** 10 a.f. maximum annually. **iii. Uses:** Irrigation of parks and athletic fields. **4. Water rights to be used for augmentation:** Any fully-consumable water lawfully stored in Applicant's 3000 acre-foot of storage capacity in Trinidad Reservoir. Trinidad Reservoir is an on-channel reservoir located on the Purgatoire River. Trinidad Reservoir's dam is located in the SE¼ NW¼ of § 27, Township 33 South, Range 64 West of the 6th PM, 2400 feet from north and 1800 feet from east Section Lines. Fully-consumable water lawfully stored in Trinidad Reservoir may include the following water rights. **a. Direct Flow Water Rights Changed to Storage in Case No. 88CW61, District Court, Water Division No. 2, entered June 22, 2001.** In Case No. 88CW061, the Water Court changed the following irrigation priorities

adjudicated for diversion by the John Flood Ditch and Model Land and Irrigation Company, owned by the City of Trinidad, to storage in Trinidad Reservoir: **1. John Flood Direct Flow Water Rights: i. Appropriations:**

District 19 Priority No.	Appropriation Date	Original Decree Date	Amount (cfs)	Trinidad Ownership (cfs)
5	03/20/1862	08/10/1903	4.00	2.00
9	01/01/1863	08/10/1903	1.28	0.877
15	04/10/1864	08/10/1903	5.10	2.343
20	10/07/1865	08/10/1903	24.00	3.391
27	05/31/1866	08/10/1903	2.25	1.541
145	10/20/1902	01/12/1925	100.00	68.50

ii. Decreed Uses: Municipal, industrial, maintenance of the Trinidad Reservoir permanent fishery pool, recreation and irrigation. Municipal includes all municipal uses, such as, but not by way of limitation, domestic, commercial, manufacturing, industrial, agricultural, watering of parks and lawns and gardens, fire protection, generation of electric power and power generally, recreation, fish and wildlife propagation, sewage treatment, street sprinkling, maintenance of adequate storage reserves, replacement, augmentation and exchange. **iii. Historic Use:** The historic use of these water rights was determined in Case No. 88CW61. These water rights may be used to extinction and are fully-consumable subject to the terms and conditions of the decree in Case No. 88CW61. **2. Model Land and Irrigation Company Water Rights: i. Appropriations:**

District 19 Priority No.	Appropriation Date	Original Decree Date	Amount	Trinidad Ownership
168	01/22/1908	01/12/1925	200.00 c.f.s.	That amount of water allocable to 373.7 acres under the Model Ditch which has been removed from irrigation.
–	01/22/1908	01/12/1925	20,000 a.f.	

ii. Decreed Uses: Municipal, industrial, maintenance of the Trinidad Reservoir permanent fishery pool, recreation, fish propagation and irrigation. **iii. Historic Use:** The historic use of these water rights was determined in Case No. 88CW61. These water rights may be used to extinction and are fully-consumable subject to the terms and conditions of the decree in Case No. 88CW61. **b. Direct Flow Water Rights to Be Changed to Storage in Case No. 06CW78, District Court, Water Division No. 2, pending.** In Case No. 06CW78, Applicant seeks to change the following irrigation priorities adjudicated for diversion by the John Flood Ditch, owned by the City of Trinidad, to storage in Trinidad Reservoir: **1. Appropriations*:***

District 19 Priority Number	Appropriation Date	Original Decree Date	Decreed Amount (cfs)	Trinidad Ownership (cfs)
13	01/01/1864	08/10/1903	5.00	**0.538**
20	10/07/1865	08/10/1903	24.00	**0.86**

2. Uses Requested in Case No. 06CW78: Same as ¶ 4.a.i.2. **3. Historical Use:** These water rights were historically used to flood irrigate 88 acres located in the South ½ of § 6 and the North ½ of the North ½ of Township 32 South, Range 62 West of the 6th P.M., as more fully described in Case No. 06CW78. **a. Direct Flow Water Rights to Be Changed to Storage in Case No. 08CW101, District Court, Water Division No. 2, pending.** In Case No. 08CW101, Applicant seeks to change the following irrigation

priorities adjudicated for diversion by the John Flood Ditch, owned by the City of Trinidad, to storage in Trinidad Reservoir: **1. Appropriations:**

District 19 Priority Number	Appropriation Date	Original Decree Date	Decreed Amount (cfs)	Trinidad Ownership (cfs)
9	01/01/1863	08/10/1903	1.28	**0.048**
15	04/10/1864	08/10/1903	5.10	**0.128**
20	10/07/1865	08/10/1903	7.35	**0.586**
27	05/31/1866	08/10/1903	2.25	**0.084**
145	10/20/1902	01/12/1925	100.00	**3.750**

2. Uses Requested in Case No. 08CW101: Same as ¶ 4.a.i.2. **3. Historical Use:** These water rights were historically used to flood irrigate 128.4 acres located in the East ½ of § 25 and the South ½ of § 36, Township 31 South, Range 63 West of the 6th P.M., and in the West ½ of Section 30, Township 31 South, Range 62 West of the 6th P.M. as more fully described in Case No. 08CW101. **d. Transbasin Water Stored in Trinidad Reservoir.** Applicant may utilize any fully-consumable transbasin water exchanged to Trinidad Reservoir with approval of the Division Engineer pursuant to a contract or lease with a third party. **5. Statement of Amended Plan for Augmentation.** Applicant seeks to amend its existing plan for augmentation in Case No. 02CW67 to correct the legal descriptions of the Central Park Well and the School District well as described above. Applicant also seeks to augment depletions caused by additional diversions from Central Park Well, City Shop Well and School District Well. **a. Lagged Depletions.** The operation of the Central Park Well, City Shop Well and the School Well creates lagged depletions to the Purgatoire River. Depletions to the river will be calculated by measuring the total amount of water pumped from the wells each month. The wells cause lagged depletions on the schedule decreed in Case No. 02CW67. **b. Central Park Well. 1. Irrigation Depletions.** Applicant will continue to divert water from the Central Park Well for irrigation of parks and athletic fields. Pursuant to the decree in Case No. 02CW67, water diverted for irrigation is 85 percent consumed. **2. Filling and Refilling Central Park Lake.** Applicant seeks to divert additional water from the Central Park Well to raise the level of the Central Park Lake above the natural level year-round. Applicant will meter the water delivered to Central Park Lake from the Central Park Well. Applicant will assume that water diverted for filling Central Park Lake is 100 percent consumed. **i. Legal Description:** The center of Central Park Lake is located in the SE¼ SW¼ of § 13, Township 33 South, Range 64 West of the 6th PM, 830 feet from the South and 1630 feet from the West Section Lines, in Las Animas County, Colorado. The surface acreage of Central Park Lake is 1.51 acres. Central Park Lake is an off-channel lake. **ii. Uses Once Stored:** Water delivered to Central Park Lake will be used for aesthetic, recreation, piscatorial and wildlife watering purposes. **iii. Remarks:** Upon information and belief, Central Park Lake is a natural lake. **3. Amendments to Decreed Limitations: i. Maximum Volumetric Diversion:** 50 a.f. maximum annually (an increase of 20 a.f. annually) **ii. Uses:** Irrigation of parks and athletic fields, described in ¶ 5.b.1; filling Central Park Lake, described in ¶5.b.2, year-round to increase the water level above the natural lake level for aesthetic, recreation, piscatorial and wildlife watering purposes. **c. City Shop Well. 1. Municipal Depletions.** Applicant will continue to divert water from the City Shop Well for municipal uses. Pursuant to the decree in Case No. 02CW67, water diverted for this

municipal use is 100 percent consumed. **2. Amendment to Maximum Volumetric Diversion:** 30 a.f. maximum annually (an increase of 10 a.f. annually) **c. School District Well. 1. Irrigation Depletions.** Applicant will continue to divert water from the School District Well for irrigation of parks and athletic fields. Pursuant to the decree in Case No. 02CW67, water diverted for irrigation is 85 percent consumed. **2. Amendment to Maximum Volumetric Diversion:** 20 a.f. maximum annually (an increase of 10 a.f. annually) **7. Names and addresses of owners of the land upon which the structures are located: a. Central Park Lake:** Applicant. **b. Central Park Well:** Applicant. **c. City Shop Well:** Applicant. **d. School District Well:** Trinidad School District No. 1, 215 S. Maple Street, Trinidad, CO 81082. **e. Trinidad Reservoir:** United States Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18E, Loveland, Colorado 80537-9711.

CASE NO. 11CW61 – STEVEN and SHAN RING, 28632 Weston Ct., Evergreen, CO 80439 (**Name of Attorneys:** David M. Shohet, Felt Monson & Culichia, LLC, 319 N. Weber St., Colorado Springs, CO 80903, (719) 471-1212, dms@fmcwater.com.)
Application for Change of Water Right
FREMONT COUNTY
2. Decreed Name of Structure for Which Change is Sought. Campbell Ditch and its enlargement, also known as the Campbell Ditch Extension or the Deever's Extension of the Campbell Ditch (the "Campbell Ditch"). **3. Summary of Relief Sought.** Steven and Shan Ring (the "Rings") seek a change in the point of diversion for their portion of the Campbell Ditch to the point of diversion of the Jackson Ditch. The Rings also seek a change in place of use of their portion of the Campbell Ditch for the irrigation of the their property located in the Southwest Quarter of Section 14 and the Southeast Quarter of Section 15, all in Township 48 North, Range 10 East of the N.M.P.M. (the "Rings' Property"). The Rings' Property is more particularly described in the Exhibit A attached to the Application and is generally shown on the Exhibit D Map attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) A portion of the Rings' Property is already a decreed place of use for the Campbell Ditch. The Rings only seek to change their portion of the Campbell Ditch. **4. Information from Previous Decree: A. Adjudication Dates and Numbers:** November 14, 1905, the District Court of Fremont County, State of Colorado, in the Matter of the Adjudication of Water Rights in Water District No. 12, in an unnumbered decree. A decree entered in Case No. 2700 by the District Court of Fremont County, State of Colorado, dated January 4, 1909, modified the appropriation date of the Campbell Ditch. Copies of the both decrees are attached to the Application as Exhibits B and C, respectively. **B. Decreed Points of Diversion:** S.21º15'W. 3300 feet from the South 1/4 corner of Section 15 South, Township 48 North, Range 10 East, N.M.P.M. The Exhibit D map shows the approximate location of the decreed point of diversion for the Campbell Ditch. **C. Decreed Source:** Cherry Creek, a tributary to the Arkansas River. **D. Decreed Appropriation Dates and Amounts.** March 1, 1883, for 2.34 c.f.s., and March 1, 1890 for 2.34 c.f.s. Only 1.0 c.f.s. of 1883 right and 1.17 of the 1890 are the subject of this Application. **F. Decreed Uses:** Irrigation of 100 acres. **5. Proposed Change.** The Rings are the owners of 1.0 c.f.s. of the Campbell Ditch and 1.17 c.f.s. of the Campbell Ditch Enlargement

(collectively, the "Rings' Campbell Ditch Water Right"). A copy of the Rings' deed evidencing their ownership in the Rings' Campbell Ditch Water Right is attached to the Application as Exhibit E. 0.34 c.f.s. of the first priority of the Campbell Ditch was changed in Case No. 93CW135. In a decree entered in Case No. 03CW30, dated May 11, 2007, an additional 1 c.f.s. of the 1883 right and 1.17 c.f.s. of the1890 right were changed to the headgate of the Jackson Ditch for irrigation. A copy of the decree entered in Case No. 03CW30 is attached to the Application as Exhibit F. The Rings' Campbell Ditch Water Right is the entire remaining unchanged portion of the Campbell Ditch and is the same amount of water changed in Case No. 03CW30. In Case No. 03CW30, the Water Court found that the Campbell Ditch irrigated 320 acres in the Southeast 1/4 and Southeast1/4 of the Southwest 1/4 of Section 15 and the East 1/2 of the Northwest 1/4 and the Northwest 1/4 of the Northeast 1/4 of Section 22, all in Township 48 North, Range 10 East of the N.M.P.M. The Court also found that the historical consumptive use of the Applicant's portion of the Campbell Ditch was 73.1 acre feet. The Water Court awarded the applicant in Case No. 03CW30 a change of the Campbell Ditch for 73.1 annual acre feet for the diversion at the Jackson Ditch for irrigation uses. These findings are binding as a matter of *res judicata*. Williams v. Midway Ranches Property Owners Association, Inc., 938 P.2d 515 (Colo. 1997). The Rings seek to change the point of diversion of the Rings' Campbell Ditch Water Right to the point of diversion of the Jackson Ditch, located at a point 1853 feet west of and 550 feet north of the section corner common to Sections 14, 15, 22, and 23 in Township 48 North, Range 10 East of the N.M.P.M. The Rings further seek to change the place of use of the Rings' Campbell Ditch Water Right to irrigate the Rings' Property. The Rings seek to irrigate the Rings' Property using all methods of application, including flood, storage and subsequent use in a sprinkler or for greenhouse irrigation. The Rings claim the historic consumptive use of the Rings' Campbell Ditch Water Right is 73.1 annual acre feet. This calculation is based on the findings of the decree entered in Case No. 03CW30. The Rings will limit their diversion of the Campbell Ditch at the Jackson Ditch at times and in the amounts when the Campbell Ditch is in-priority at the original point of diversion. **6. Name and address or owners of land on which structures are located.** The headgate for the Jackson Ditch may be located on land owned by Margaret Wood Walters, 3700 Tamarack Trail, Austin, TX 78727-2925, and/or James and Lona Sumrall, 2919 Fremont County RD 47, Howard, Colorado 81233-9502.

CASE NO. 11CW62; Previous Case Nos. 86CW118(A); 99CW62 – CITY OF COLORADO SPRINGS AND COLORADO SPRINGS UTILITIES, c/o Brett W. Gracely, P.E., P. O. Box 1103, Mail Code 930, Colorado Springs, CO 80947-0930

(Please direct all pleadings and correspondence to: David W. Robbins, Dennis M. Montgomery, Jennifer H. Hunt, and Nathan P. Flynn, Hill & Robbins, P.C., Attorneys for Applicant, 1441 18th Street, Suite 100, Denver, Colorado 80202; (303) 296-8100, and Co-counsel for the City of Colorado Springs, Richard L. Griffith, City Attorney's Office – Utilities Division, Colorado Springs Utilities 121 S. Tejon Street, Fourth Floor, P.O. Box 1103, MC 940, Colorado Springs, CO 80947-0940, (719) 668-8008.)

Application for Finding of Reasonable Diligence and to Make Conditional Water Rights Absolute, and for Change of Water Right to Correct Legal Descriptions

LAKE, CHAFFEE, FREMONT, PUEBLO, TELLER, AND EL PASO COUNTIES

2. Conditional Water Right and Structures Involved: Colorado Springs Utilities Reusable Sewered Return Flows Exchange, involving the structures described in Paragraph 3.C below. **3. Describe conditional water right (as to each structure) including the following information from the Referee's Ruling and Judgment and Decree: A. Date of Original Decree:** March 15, 1993, Case No. 86CW118(A). **Court:** Water Division No. 2. **B. Subsequent decrees awarding findings of diligence:** 99CW062, entered September 5, 2005. **C. Decreed legal description and PLSS Description (structures involved in exchange): 1. Structures used to deliver Reusable Sewered Return Flows: a.** Las Vegas Street Wastewater Treatment Facility Outfall, located on Fountain Creek in the SW¼ SW¼[1] of Section 20, Township 14 South, Range 66 West of the 6th Principal Meridian in El Paso County. PLSS: In the SE¼ of the SW¼ of Section 20, T. 14 S., R. 66 W. of the 6th P. M. at a point 583 feet from the South Section line and 2176 feet from the West Section line. **b.** Air Force Academy Wastewater Treatment Facility Outfall, located on Monument Creek in the SW¼ SW¼ of Section 19, Township 12 South, Range 66 West of the 6th Principal Meridian in El Paso County. PLSS: In the SW¼ of the SW¼ of Section 19, T. 12S., R. 66W. of the 6th P. M. at a point 10 feet from the South Section line and 775 feet from the West Section line. **c.** Any other supplemental or replacement wastewater treatment facility outfall located within the drainages of Fountain Creek or the Arkansas River above its confluence with Fountain Creek and hereafter utilized by Applicant, including any terminal storage facilities hereafter constructed and located to receive Applicant's wastewater facility discharges. **2. Structures Used to Divert, Store, and/or Subsequently Release Exchanged Reusable Sewered Return Flows: a. Ruxton Creek System.** (1) Sheep Creek Intake: A point on the South bank of Sheep Creek whence the Southwest corner of Section 11, Township 14 South, Range 68 West of the 6th Principal Meridian bears South 21° West a distance of 600 feet. PLSS: In the SW¼ of the SW¼ of Section 11, T. 14S., R. 68W. of the 6th P. M. at a point 205 feet from the West Section line and 573 feet from the South Section line. (2) South Ruxton Creek Intake No. 1: A point on the West bank of South Ruxton Creek whence the Northwest corner of Section 14, Township 14 South, Range 68 West of the 6th Principal Meridian bears North 49° West a distance of 2,555 feet. PLSS: In the SE¼ of the NW¼ of Section 14, T 14S., R. 68W. of the 6th P. M. at a point 1938 feet from the West Section line and 1557 feet from the North Section line. (3) South Ruxton Creek Intake No. 2: A point on the West bank of South Ruxton Creek whence the Northwest corner of Section 14, Township 14 South, Range 68 West of the 6th Principal Meridian bears North 51° 40' West a distance of 2,385 feet. PLSS: In the SE¼ of the NW¼ of Section 14, T.14S., R. 68W. of the 6th P. M. at a point 1880 feet from the West Section line and 1363 feet from the North Section line. (4) Cabin Creek Intake: A point on the North bank of Cabin Creek whence the Southwest corner of Section 11, Township 14 South, Range 68 West of the 6th Principal Meridian bears South 7° 55' West a distance of 3,020 feet. PLSS: In the SW¼ of the NW¼ of Section 11, T. 14S., R. 68W. of the 6th P. M. at a point 421 feet from the West Section line and 1919 feet from the North Section line. (5) Ruxton Creek Intake at Lake Moraine: A point on the East bank of Ruxton Creek at Lake Moraine Reservoir whence the Southwest corner of Section 22,

[1] Decreed Legal Description: the outfall is actually in the SE¼ of the SW¼; Applicant seeks to correct the error, as set forth below.

Township 14 South, Range 68 West of the 6th Principal Meridian bears South 27° 10' West a distance of 1,070 feet. PLSS: In the SW¼ of the SW¼ of Section 22, T. 14S., R. 68W. of the 6th P. M. at a point 954 feet from the South Section line and 495 feet from the West Section line. (6) Dark Canyon Intake: A point on South Ruxton Creek whence the Northwest corner of Section 14, Township 14 South, Range 68 West of the 6th Principal Meridian bears North 23° 50' West a distance of 4,330 feet. PLSS: In the SE¼ of the SW¼ of Section 14, T. 14S., R. 68W. of the 6th P. M. at a point 1776 feet from the West Section line and 1214 feet from the South Section line. (7) Lion Creek Intake: A point at the junction of Ruxton and Lion Creeks whence the Northeast corner of Section 15, Township 14 South, Range 68 West of the 6th Principal Meridian bears North 9° 50' East a distance of 1,600 feet. PLSS: In the SE¼ of the NE¼ of Section 15, T. 14S., R. 68W. of the 6th P. M. at a point 264 feet from the East Section line and 1595 feet from the North Section line. (8) Lake Moraine Reservoir: Located in the Southeast quarter of Section 21 and the Southwest quarter of Section 22, the Northwest quarter of Section 27, and the Northeast quarter of Section 28, Township 14 South, Range 68 West of the 6th Principal Meridian. (9) Big Tooth Reservoir: Located in the Southwest quarter of Section 14 and the Northwest quarter of Section 23, Township 14 South, Range 68 West of the 6th Principal Meridian. **b. North Slope System (Fountain Creek).** (1) French Creek Intake: A point on French Creek whence the Southeast corner of Section 26, Township 13 South, Range 68 West of the 6th Principal Meridian bears South 80° 43' East a distance of 1,953 feet. PLSS: In the SE¼ of the SE¼ of Section 26, T. 13S., R. 68W. of the 6th P. M. at a point 140 feet from the South Section line and 1948 feet from the East Section line. (2) Cascade Creek Intake: A point on Cascade Creek whence the Northwest corner of Section 27, Township 13 South, Range 68 West of the 6th Principal Meridian bears North 70° 11' West a distance of 1,322 feet. PLSS: In the NE¼ of the NW¼ of Section 27, T. 13S., R. 68W. of the 6th P. M. at a point 412 feet from the North Section line and 1279 feet from the West Section line. (3) Crystal Creek Intake: A point on Crystal Creek whence the Northwest corner of Section 17, Township 13 South, Range 68 West of the 6th Principal Meridian bears North 23° 12' West a distance of 2,735 feet. PLSS: In the SW¼ of the NW¼ of Section 17, T. 13S., R. 68W. of the 6th P. M. at a point 2549 feet from the North Section line and 1148 feet from the West Section line. (4) South Catamount Creek Intake: A point on South Catamount Creek whence the Southeast corner of Section 12, Township 13 South, Range 69 West of the 6th Principal Meridian bears South 37° East a distance of 645 feet. PLSS: In the SE¼ of the SE¼ of Section 12, T. 13S., R. 68W. of the 6th P. M. at a point 387 feet from the East Section line and 480 feet from the South Section line. (5) North Catamount Creek Intake: A point on North Catamount Creek whence the South quarter corner of Section 12, Township 13 South, Range 69 West of the 6th Principal Meridian bears South 47° 45' West a distance of 1,535 feet. PLSS: In the SW¼ of the SE¼ of Section 12, T. 13S., R. 68W. of the 6th P. M. at a point 1524 feet from the East Section line and 1135 feet from the South Section line. (6) Crystal Reservoir: Located in the Southwest quarter of Section 17, the Southeast quarter of Section 18 and the Northwest quarter of Section 19, Township 13 South, Range 68 West of the 6th Principal Meridian. (7) South Catamount Reservoir: Located in the Northwest quarter of Section 18, Township 13 South, Range 68 West of the 6th Principal Meridian and the Southeast quarter of Section 12 and the Northern half of Section 13, Township 13

South, Range 69 West of the 6th Principal Meridian. (8) North Catamount Reservoir: Located in Sections 11, 12, 13, and 14, Township 13 South, Range 69 West of the 6th Principal Meridian. **c. Northfield Collection System (West Monument Creek).** (1) Intake No. 1: A point on West Monument Creek whence the South quarter corner of Section 28, Township 12 South, Range 67 West of the 6th Principal Meridian bears South 80° 23' East a distance of 2,060 feet. PLSS: In the SW¼ of the SW¼ of Section 28, T. 12., R. 67W. of the 6th P. M. at a point 234 feet from the West Section line and 418 feet from the South Section line. (2) Intake No. 2: A point on West Monument Creek whence the South quarter corner of Section 28, Township 12 South, Range 67 West of the 6th Principal Meridian bears South 49° 50' East a distance of 1,255 feet. PLSS: In the SE¼ of the SW¼ of Section 28, T. 12S., R. 68W. of the 6th P. M. at a point 1351 feet from the West Section line and 844 feet from the South Section line. (3) Intake No. 3: A point on the North Fork of West Monument Creek whence the South quarter corner of Section 28, Township 12 South, Range 67 West of the 6th Principal Meridian bears South 9° 10' West a distance of 4,288 feet. PLSS: In the NW¼ of the NE¼ of Section 28, T. 12S., R. 68W. of the 6th P. M. at a point 1036 feet from the North Section line and 1914 feet from the East Section line. (4) Northfield Reservoir: Located in the Southeast quarter of Section 25, Township 12 South, Range 68 West of the 6th Principal Meridian. (5) Stanley Canyon Reservoir: Located in Section 19, Township 12 South, Range 67 West of the 6th Principal Meridian. (6) Nichols Reservoir: Located in the Southwest quarter of Section 25 and the Southeast quarter of Section 26 and the Northwest quarter of Section 36, Township 12 South, Range 68 West of the 6th Principal Meridian. (7) Rampart Reservoir: Located in Sections 22, 23, 26 and 27, Township 12 South, Range 68 West of the 6th Principal Meridian. **d. Pikeview System (Monument Creek).** (1) Pikeview Intake (also known as Monument Creek Pipeline): A point on Monument Creek just upstream from the point where the Garden of the Gods Road crosses Monument Creek, in north Colorado Springs, whence the North quarter corner of Section 19, Township 13 South, Range 66 West of the 6th Principal Meridian bears North 8° 15' East a distance of 3,189.8 feet. This intake delivers water to Pikeview Reservoir and Pikeview Reservoir No. 2. PLSS: In the NE¼ of the SW¼ of Section 19, T. 13S., R. 66W. of the 6th P. M. at a point 2208 feet from the West Section line and 2124 feet from the South Section line. (2) Pikeview Reservoir: An off-channel reservoir located adjacent to and on the west side of Monument Creek, at a point just downstream from the point where the Garden of the Gods Road crosses Monument Creek, in north Colorado Springs, in the Northeast quarter of the Northwest quarter and in the Northwest quarter of the Northeast quarter of Section 30, Township 13 South, Range 66 West of the 6th Principal Meridian. (3) Pikeview Reservoir No. 2: An off-channel reservoir located adjacent to and on the east side of Monument Creek, at a point just downstream from the point where the Garden of the Gods Road crosses Monument Creek, in north Colorado Springs, in the Northeast quarter of the Southwest quarter of Section 30, Township 13 South, Range 66 West of the 6th Principal Meridian. **e. 33rd Street Diversion Intake (Fountain Creek).** (1) The 33rd Street Intake is located on Fountain Creek at 33rd Street in west Colorado Springs, whence the South quarter corner of Section 3, Township 14 South, Range 67 West of

the 6th Principal Meridian bears South 12° West[2] a distance of 535 feet. PLSS: In the SW¼ of the SE¼ of Section 3, T. 14 S., R. 67 W. of the 6th P. M. at a point 523 feet from the South Section line and 2535 feet from the East Section line. (2) An alternate point of diversion for the 33rd Street Intake is located at a point on the North bank of Fountain Creek in the Southwest quarter of Section 3, Township 14 South, Range 67 West of the 6th Principal Meridian, approximately 153 feet upstream of the original point of diversion. The alternate point of diversion was adjudicated on February 21, 1991, in Case No. 90CW29, Water Division No. 2**.** PLSS: In the SE¼ of the SW¼ of Section 3, T. 14 S., R. 67 W. of the 6th P. M. at a point 570 feet from the South Section line and 2612 feet from the West Section line. **f. Bear Creek System (Bear Creek).** Bear Creek Intake is located on Bear Creek just south of the intersection of Gold Camp Road and Bear Creek Canyon Road, in El Paso County, at a point whence the Southwest corner of Section 15, Township 14 South, Range 67 West of the 6th Principal Meridian bears North 43° 14' East a distance of 2,280 feet. PLSS: In the SW¼ of the NE¼ of Section 21, T. 14S., R. 67W. of the 6th P. M. at a point 1484 feet from the East Section line and 1656 feet from the North Section line. **g. South Suburban System (Cheyenne Creek).** (1) South Cheyenne Creek Intake: Located on South Cheyenne Creek at a point just west of the intersection of Mesa Avenue and South Cheyenne Canyon Road, in southwest Colorado Springs, whence the quarter corner common to Sections 34 and 35, Township 14 South, Range 67 West of the 6th Principal Meridian bears North 35° 16' East a distance of 1,329.7 feet. This intake delivers water to South Suburban Reservoir and Gold Camp Reservoir. PLSS: In the NE¼ of the SE¼ of Section 34, T. 14S., R. 67W. of the 6th P. M. at a point 795 feet from the East Section line and 1537 feet from the South Section line. (2) North Cheyenne Creek Intake: Located on North Cheyenne Creek at a point approximately one mile west of the intersection of North and South Cheyenne Canyon Roads, in southwest Colorado Springs, whence the Northeast corner of Section 34, Township 14 South, Range 67 West of the 6th Principal Meridian bears North 7°[3] 29' East a distance of 4,419.2 feet. This intake delivers water to South Suburban Reservoir and Gold Camp Reservoir. PLSS: In the SW¼ of the NW¼ of Section 34, T. 14S., R. 67W. of the 6th P. M. at a point 910 feet from the West Section line and 1460 feet from the North Section line. (3) South Suburban Reservoir: An off-channel reservoir located just north of the intersection of North and South Cheyenne Canyon Roads, in southwest Colorado Springs, in Sections 26 and 35, Township 14 South, Range 67 West of the 6th Principal Meridian. (4) Gold Camp Reservoir: An off-channel reservoir located just north of the intersection of North and South Cheyenne Canyon Roads, in southwest Colorado Springs, in Sections 27 and 34, Township 14 South, Range 67 West of the 6th Principal Meridian. **h. Pueblo Reservoir.** The point of diversion of Pueblo Reservoir is at a point at the intersection of Pueblo Dam axis and the Arkansas River whence the Northeast corner of Section 36, Township 20 South, Range 66 West of the 6th Principal Meridian, bears North 61° 21' 20" East a distance of 2,511.05 feet. Said reservoir

[2] Decreed Legal Description: the bearing is actually 12° East: Applicant seeks to correct the typographical error, as set forth below.

[3] Decreed Legal Description: the bearing is actually 70°: Applicant seeks to correct the typographical error, as set forth below.

inundates all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 20 South, Range 66 West of the 6th Principal Meridian, Sections 1, 2, 3, 4, 5, 9, 10, and 11, Township 21 South Range 66 West of the 6th Principal Meridian, and Section 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, Township 20 South, Range 67 West of the 6th Principal Meridian. **i. Twin Lakes Reservoir.** Twin Lakes Reservoir is formed by a dam across Lake Creek in Lake County in Section 23, Township 11 South, Range 80 West of the 6th Principal Meridian, as described in the decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980. **j. Turquoise Reservoir.** Turquoise Reservoir is formed by a dam across Lake Fork Creek in Lake County in Section 19, Township 9 South, Range 80 West of the 6th Principal Meridian as described in the decree in Case No. 80CW6 (District Court, Water Division No. 2), as dated October 23, 1980. **k. Clear Creek Reservoir.** Clear Creek Reservoir is located on Clear Creek in Sections 7 and 8, Township 12 South, Range 79 West, and Section 12, Township 12 South, Range 80 West of the 6th Principal Meridian, Chaffee County. **l. Fountain Valley Conduit.** The Fountain Valley Conduit is a series of pipelines, pumping stations and other water-conveyance facilities in Pueblo and El Paso Counties that together convey water from the outlet works of Pueblo Reservoir to the Fountain Valley Authority's water users, including the City of Colorado Springs. The Fountain Valley Conduit is a part of the Fryingpan-Arkansas Project which is described in more detail in Paragraphs 3 and 5, and Exhibit 2, of Contract Number 9-07-70-W0315, dated July 10, 1979, between the United States and the Southeastern Colorado Water Conservancy District. Colorado Springs is authorized to utilize a portion of the capacity of the Fountain Valley Conduit to transport water, pursuant to a Subcontract dated July 10, 1979, between the Southeastern Colorado Water Conservancy District, the Fountain Valley Authority, the City of Colorado Springs, and various other parties. **m. Otero Pump Station (a.k.a. Otero Diversion Structure).** The Otero Pump Station diverts water from the Arkansas River in Chaffee County, approximately at the point that bears North 30° West a distance of 6,180 feet to the Northeast corner of Section 6, Township 12 South, Range 79 West of the 6th Principal Meridian. PLSS: In the SW¼ of the SE¼ of Section 5, T. 12 S., R. 79 W. of the 6th P. M. at a point 35 feet from the South Section line and 2256 feet from the East Section line. **n. Pikes Peak Collection System - South Slope**. The Pikes Peak Collection System-South Slope is a system of five reservoirs and connected diversion structures, pipelines and tunnels in Teller and El Paso Counties consisting of the following: (1) Big Horn Reservoir (Reservoir Number 7). Located on a branch of the East Fork of West Beaver Creek in the Southeast quarter of Section 13 and the Northeast quarter of Section 24, Township 14 South, Range 69 West of the 6th Principal Meridian. A point located at the intersection of the creek and the dam axis bears South 19° West 2,896 feet to a point, thence South 66° West 1,598 feet to the Northwest corner of Section 26, Township 14 South, Range 69 West of the 6th Principal Meridian. (2) Wilson Reservoir (Reservoir Number 8). Located on the East Fork of West Beaver Creek in the Southeast quarter and the Southeast quarter of the Northeast quarter of Section 23, the West half of the Southwest quarter and the Southwest quarter of the Northwest quarter of Section 24, Township 14 South, Range 69 West of the 6th Principal Meridian. Station 65 near the dam bears South 53° East a distance of 19,280 feet to the Southeast corner of Section 32, Township 14 South, Range 68 West of the

6th Principal Meridian. (3) Boehmer Reservoir (Reservoir Number 2). Located on the Main Fork of Middle Beaver (Boehmer) Creek in the South half of Section 19 and the North half of Section 30, Township 14 South, Range 68 West of the 6th Principal Meridian. (4) Mason Reservoir (Reservoir Number 4). Located on Middle Beaver Creek in Sections 32 and 33 of Township 14 South, Range 68 West of the 6th Principal Meridian, and Sections 4 and 5 of Township 15 South, Range 68 West of the 6th Principal Meridian in Teller County. Station 0 of the dam bears North 6° 49' West a distance of 950.62 feet to the Southeast Corner of Section 32, Township 14 South, Range 68 West of the 6th Principal Meridian. (5) McReynolds Reservoir (Reservoir Number 5). Located on a tributary of Middle Beaver Creek in Section 4, Township 15 South, Range 68 West of the 6th Principal Meridian in Teller County. Station 0 of the dam bears North 34° 35' West a distance of 2,166.2 feet to the Southeast corner of Section 32, Township 14 South, Range 69 West of the 6th Principal Meridian. **o. Rosemont Collection System.** The Rosemont Collection System consists of Rosemont Reservoir and connected diversion structures, pipelines and tunnels in Teller and El Paso Counties. The reservoir is located on East Beaver Creek in the Southeast quarter and the Southeast quarter of the Northeast quarter of Section 23, Township 15 South, Range 68 West of the 6th Principal Meridian, and the system diverts waters from East Beaver Creek and its tributaries, as described in the decree in Case No. 6193, District Court of Fremont County. **p. Brush Hollow Reservoir.** Brush Hollow Reservoir is located on Brush Hollow Creek in Sections 24, 25, Township 18 South, Range 69 West of the 6th Principal Meridian and Sections 19, 30, Township 18 South, Range 68 West of the 6th Principal Meridian. The dam is located in the Northeast quarter of Section 25, Township 18 South, Range 69 West of the 6th Principal Meridian, and the Northwest quarter of Section 30, Township 18 South, Range 68 West of the 6th Principal Meridian. The structures described in Paragraphs 3.C.2.a through 3.C.2.g above are located in the Fountain Creek Basin, while the structures described in Paragraphs 3.C.2.h through 3.C.2.p above are located in the Arkansas River Basin, but outside the Fountain Creek Basin. **D. Source of water:** The sources of water for the appropriative rights of exchange herein are: Reusable Sewered Return Flows; and the reuse and successive use of such return flows, derived from the Applicant's use of its ownership interest in the Colorado Canal Companies, as follows: 1. The Colorado Canal. The Colorado Canal water rights are the right to divert 756.28 cubic feet of water per second of time from the Arkansas River for direct flow irrigation use with a priority date of June 9, 1890. By decree dated October 21, 1985, in Case No. 84CW62, District Court, Water Division No. 2, the use of the Colorado Canal water rights was changed to include use and total consumption for municipal, commercial, industrial, and all other beneficial uses at any location. Applicant has the right to take its pro rata share of the water diverted and stored by the Colorado Canal Company, pursuant to the decree in Case No. 84CW62, by exchange or by pipeline for use and total consumption in Applicant's municipal water system or elsewhere. 2. Lake Meredith Reservoir. Lake Meredith Reservoir's decreed water rights authorize the storage of 26,028.4 acre-feet with diversions from the Arkansas River through the Colorado Canal at a rate of 756.28 c.f.s. under priority of March 9, 1898, and authorize the release of waters stored in Lake Meredith Reservoir and the exchange of such released waters for waters diverted at the Colorado Canal headgate for irrigation purposes with an exchange priority of March 9,

1898. The active storage capacity of Lake Meredith Reservoir is 41,413 acre-feet. Each stockholder in the Lake Meredith Reservoir Company is entitled to a pro rata portion of the waters realized from the operation of Lake Meredith Reservoir and the use of a pro rata portion of Lake Meredith Reservoir storage space. By decree dated October 21, 1985, Case No. 84CW63, District Court, Water Division No. 2, the use of Lake Meredith water rights was changed to include use and total consumption for municipal, commercial, industrial, and all other beneficial uses at any location. Applicant has the right to take its pro rata share of the water diverted and stored by the Lake Meredith Reservoir Company, pursuant to the decree in Case No. 84CW63, by exchange or by pipeline for use and total consumption in Applicant's municipal water system or elsewhere. 3. Lake Henry Reservoir. Lake Henry Reservoir has decreed water storage rights of 11,916 acre-feet and a decreed rate of diversion of 756.28 c.f.s. through the Colorado Canal. By decree dated October 21, 1985, in Case No. 84CW64, District Court, Water Division No. 2, the use of Lake Henry water rights was changed to include use and total consumption for municipal, commercial, industrial, and all other beneficial uses at any location. Applicant has the right to take its pro rata share of the water diverted and stored by the Lake Henry Reservoir Company, pursuant to the decree in Case No. 84CW64, by exchange or by pipeline for use and total consumption in Applicant's municipal water system or elsewhere. The description of or reference to structures and water rights herein is not intended to amend or limit the decrees for those structures and water rights in any way, and omissions in such descriptions and references shall in no way prejudice the owners of those structures and water rights. **E. Priority Date:** March 20, 1985. **Amounts:** see Paragraph 3.H. below. **F. Decreed Use:** All beneficial uses for which the waters to be exchanged and reused are decreed, including those uses set forth in the Decree in Case No. 86CW118(A) (hereinafter the "Decree"). **G. Description of Appropriative Rights of Exchange:** Pursuant to the conditions of the Decree, Applicant may exchange its Reusable Sewered Return Flows that accrue to Fountain Creek to points upstream within the Fountain Creek Basin. In addition, Applicant may exchange its Reusable Sewered Return Flows, after transport to the Arkansas River, to points upstream in the Arkansas River Basin for diversion, storage, or subsequent exchange. Applicant may also choose to use its Reusable Sewered Return Flows directly in its municipal water system for all municipal purposes, including irrigation and industrial uses; in plans for augmentation; by sale to other water users; or in such other ways as may be allowed by law. 1. Local Exchange: Subject to the conditions of the Decree, Applicant may divert or store an amount of water equivalent to the amount of Reusable Sewered Return Flows then reaching Fountain Creek in excess of its augmentation requirements at one or more of the structures described in Paragraphs 3.C.2.a through 3C.2.g above. 2. Arkansas River Exchange: Subject to the conditions of the Decree, Applicant may divert or store an amount of water equivalent to the Reusable Sewered Return Flows then reaching the Arkansas River at one of the following structures, described in more detail in Paragraphs 3.C.2.h through 3.C.2.p above. 3. Inter-Facility Exchanges: Applicant may also release previously stored Reusable Sewered Return Flows from one of the reservoirs described in Paragraph 3.C.2 and an equivalent amount may be stored or diverted by exchange in one or more of the structures described in Paragraph 3.C.2. 4. Reaches of Exchange: The facilities described in Paragraph 3.C. above define the stream reaches within which

Applicant may conduct exchanges. Pursuant to the Decree, Applicant may operate these exchanges from other yet-to-be-constructed facilities as described in Paragraph 8(c) of the Decree, within these defined stream reaches. 5. River Flow Exchanges and Contract Exchanges Compared: Pursuant to the Decree, Applicant's exchanges of water may be accomplished in several ways. An actual upstream flow may be diverted while Reusable Return Flows are discharged or Reusable Return Flows already reduced to storage in another reservoir are released (a "River Flow Exchange"); or, a volume of water already in storage in an upstream reservoir that would otherwise be conveyed downstream, may be traded, with the consent of the owners of that stored water, for Applicant's Reusable Return Flows then returning to the stream or already reduced to storage in another reservoir (a "Contract Exchange"). **H.** The exchanges are a part of Applicant's integrated water supply system, including these exchanges and conditional water rights as well as other absolutely decreed water rights, and various other collection, storage, transmission, and related facilities necessary to divert and deliver water to the City of Colorado Springs for beneficial use. Diligence as to one portion of the integrated system constitutes diligence as to all portions thereof. **I. Amounts:** The amounts Applicant has made absolute, including the quantities made absolute since entry of the decree in Case No. 86CW118A, (e.g. by the decree in Case No. 99CW062) and the remaining conditional appropriative rights of exchange are as set forth on the Table below:

ABSOLUTE AND CONDITIONAL EXCHANGE OF REUSABLE SEWERED RETURN FLOWS

Point of Delivery of Return Flow	For Exchange to:	Remaining Conditional Amount	Absolute Amount
Sewered Return Flows to Fountain Creek	Ruxton Creek System: A. Intake Structures B. Storage Reservoirs	 25.19 cfs 1,564.20 a/f	 9.51 cfs 25.80 a/f
	North Slope System: A. Intake Structures B. Storage Reservoirs	 50.29 cfs 17,275.00 a/f	 6.51 cfs 155.00 a/f
	Northfield System: A. Intake Structures B. Storage Reservoirs	 8.90 cfs 41,729.96 a/f	 0.00 cfs 40.04 a/f
	Pikeview System: A. Intake Structures B. Storage Reservoirs	 11.00 cfs 190.85 a/f	 0.00 cfs 13.65 a/f
	33rd Street System	13.90 cfs	0.00 cfs
	Bear Creek System	3.10 cfs	0.00 cfs
	South Suburban System: A. Intake Structures B. Storage Reservoirs	 21.13 cfs 481.81 a/f	 4.37 cfs 118.19 a/f

Point of Delivery of Return Flow	For Exchange to:	Remaining Conditional Amount	Absolute Amount
Fountain Creek (Direct Municipal Effluent)	Pueblo Reservoir	135.75 cfs	28.25 cfs
	Twin Lakes Reservoir	164.00 cfs	0.00
	Fountain Valley Conduit	164.00 cfs	0.00
	Otero Pump Station	164.00 cfs	0.00
	South Slope System	164.00 cfs	0.00
	Brush Hollow Reservoir	164.00 cfs	0.00
	Turquoise Reservoir	164.00 cfs	0.00
	Clear Creek Reservoir	164.00 cfs	0.00
	Rosemont System	164.00 cfs	0.00
Fountain Creek (Storage in Terminal Storage Reservoir, *i.e.*, effluent storage)	Pueblo Reservoir	1,000.00 cfs	0.00
	Twin Lakes Reservoir	1,000.00 cfs	0.00
	Fountain Valley Conduit	1,000.00 cfs	0.00
	Otero Pump Station	1,000.00 cfs	0.00
	Brush Hollow Reservoir	1,000.00 cfs	0.00
	South Slope System	1,000.00 cfs	0.00
	Turquoise Reservoir	1,000.00 cfs	0.00
	Clear Creek Reservoir	1,000.00 cfs	0.00
	Rosemont System	1,000.00 cfs	0.00
Pueblo Reservoir	Twin Lakes Reservoir	Flow**	50.00 cfs
	Otero Pump Station		0.00
	Brush Hollow reservoir		0.00
	South Slope System		0.00
	Turquoise Reservoir		0.00
	Clear Creek Reservoir		0.00
	Rosemont System		0.00
Rosemont System	Twin Lakes Reservoir	Flow**	0.00
	Turquoise Reservoir		0.00
	Otero Pump Station		0.00
	South Slope System		0.00
	Clear Creek Reservoir		0.00
	Brush Hollow Reservoir		0.00
Brush Hollow Reservoir	South Slope System	Flow**	0.00
	Rosemont System		0.00
	Twin Lakes Reservoir		0.00
	Turquoise Reservoir		0.00
	Otero Pump Station		0.00
	Clear Creek Reservoir		0.00
South Slope System	Twin Lakes Reservoir	Flow**	0.00
	Turquoise Reservoir		0.00
	Otero Pump Station		0.00
	Clear Creek Reservoir		0.00
	Rosemont System		0.00
	Brush Hollow Reservoir		0.00

Point of Delivery of Return Flow	For Exchange to:	Remaining Conditional Amount	Absolute Amount
Turquoise Reservoir	Twin Lakes Reservoir Clear Creek Reservoir South Slope System Rosemont System Brush Hollow Reservoir	Flow**	0.00 0.00 0.00 0.00 0.00
Twin Lakes Reservoir	Turquoise Reservoir Clear Creek Reservoir South Slope System Rosemont System Brush Hollow Reservoir	Flow**	0.00 0.00 0.00 0.00 0.00
Clear Creek Reservoir	Turquoise Reservoir Twin Lakes Reservoir Otero Pump Station South Slope System Rosemont System Brush Hollow Reservoir	Flow**	0.00 0.00 0.00 0.00 0.00 0.00

** The maximum rate of flow that would have been released from the receiving storage reservoir had no exchange been made (including inadvertent storage) and had no storage right junior to the exchange been exercised to store water in the receiving reservoir, except that Contract Exchanges shall have no rate of flow limitation and direct flow exchanges shall be limited to the physical capacity of the existing or future diversion system.

J. **Depth (if well):** N/A. **4. Integrated System:** The Applicant owns and operates an integrated system for water diversion, transmission, storage, treatment and distribution, as well as collection and treatment of the resultant wastewater for release, exchange, or reuse. The conditional water rights herein are a part of this integrated water system comprising all water rights decreed and used for development and operation of the City of Colorado Springs municipal water supply system. Reasonable diligence in the development of one component of the system comprises reasonable diligence in the development of all components. **5. Provide a 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. A.** Applicant owns and operates the municipal water supply system serving the City of Colorado Springs. The conditional water rights herein are a part of that municipal water supply system, which also comprises and includes other absolute and conditional water rights, and collection, storage, and diversion and delivery systems, including the structures (and/or interests therein) described in paragraphs 3.C. and D. above; the Continental-Hoosier Diversion System; interests in the Homestake Diversion Project; and interests in the Independence Pass Transmountain Diversion System of the Twin Lakes Reservoir and Canal Company. **B.** During the diligence period, the Applicant has undertaken numerous projects and activities for the improvement and enlargement of its water supply and distribution systems in order to facilitate the completion of the appropriation of the conditionally decreed water rights that are the subject of this

application, including, but not limited to: rehabilitation of the dam face of the Upper Blue Reservoir (Continental-Hoosier Diversion System); rehabilitation of the dam face and outlet works of Montgomery Reservoir(Continental-Hoosier Diversion System); pursuit of adjudication of a decree in Case No. 03CW320 (Water Division No. 5) for so-called "substitution operations" pursuant to the Blue River Decree (Consol. Cases No. 2782, 5016 and 5017); participation in negotiations regarding proposer administration of Green Mountain Reservoir pursuant to the Blue River Decree; pursuit of adjudication of a Colorado River-Blue River Exchange in Case No. 03CW314 (Water Division No. 5); design, environmental permitting, and initial construction of dam face and outlet works rehabilitation/maintenance of Homestake Reservoir (Homestake Project); adjudication of Case No. 95CW272 (Water Division No.5) for the so-called "Homestake II" Project and for Eagle River MOU joint use projects; environmental permitting, design, and initial construction activities on the Southern Delivery System major delivery system project; extensive participation in the Arkansas River Exchange Program; continued development of the Colorado Canal Reuse Program; participation as an objector in numerous water court applications, in Water Divisions 2 and 5, for the protection of the water rights and operations of the Colorado Springs Municipal Water Supply System. In addition, the Applicant has operated the decreed exchanges that are the subject of this application to divert and beneficially use additional amounts of water so as to make absolute additional incremental amounts of the decreed exchanges. **C.** Applicant's total capital expenditures in connection with the activities described above on its integrated system during the period from September 5, 2005 through July 31, 2011 have exceeded $549,299,055. In addition to that amount, over $3,747,299 was expended on the operation of the Arkansas River Exchange Program, and $4,577,269 was expended on the operation of the Colorado Canal Reuse Program. **6. If Claim to make absolute:** The Applicant has operated the decreed exchanges that are the subject of this application to divert and beneficially use additional amounts of water beyond the amounts previously made absolute so as to make absolute additional incremental amounts of the decreed exchanges, as follows: **A. Date water applied to beneficial use:** Between September 5, 2005 and September 22, 2011 as documented on Exhibit 1 attached to the Application (CS-U Data Sheets-Sewered Return Flow Exchanges). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Amounts:** As set forth in the Table below (2005-2011 Exchange of Reusable Sewered Return Flows):

2005-2011 EXCHANGE OF REUSABLE SEWERED RETURN FLOWS

Point of Delivery of Return Flow	For Exchange to:	Remaining Conditional Amount	Total Amount Previously Made Absolute	Additional Amount Claimed Absolute	New Total Amount Claimed Absolute
Sewered Return Flows to Fountain Creek	North Slope System: A. Intake Structures B. Storage Reservoirs	50.29 cfs 17,275 a.f	6.51 cfs 155.00 a/f	13.01 cfs 0. a.f.	19.52 cfs 155.00 a/f
Fountain Creek (Direct Municipal Effluent)	Pueblo Reservoir	135.75cfs	28.25 cfs	12.87 cfs	41.12 cfs
Pueblo Reservoir	Twin Lakes Reservoir Clear Creek Reservoir	Flow**	50.00 cfs 0.0 cfs	375.00 cfs 50.00 cfs	425 cfs 50.00cfs
Twin Lakes Reservoir	Turquoise Reservoir	Flow**	0.00	80.00 cfs	80.00cfs
Clear Creek Reservoir	Twin Lakes Reservoir	Flow**	0.00	50.00 cfs	50.00cfs

Uses: Municipal purposes within the Colorado Springs municipal water supply service area, including replacement/augmentation of evaporation on Colorado Springs Utilities Reservoirs. **B. Description of place of use where water is applied to beneficial use:** The service area of the Colorado Springs municipal water supply utility, and Colorado Springs Utilities Reservoirs. **7. Names and addresses of owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** **A.** City of Colorado Springs, Colorado Springs Utilities, c/o Brett W. Gracely, P.E., P.O. Box 1103, Mail Code 930, Colorado Springs, CO 80947-0930. (Las Vegas Street Wastewater Treatment Facility Outfall; Ruxton Creek System; North Slope System; Intake No. 1, Intake No. 2, Northfield Reservoir, Stanley Canyon Reservoir, Nichols Reservoir, and Rampart Reservoir, of the Northfield Collection System; Pikeview Reservoir of the Pikeview System; 33rd Street Diversion Intake and Alternate Point of Diversion; Bear Creek System Intake; North Cheyenne Creek Intake, South Suburban Reservoir, and Gold Camp Reservoir of the South Suburban System; Pikes Peak Collection System; and Rosemont Collection System). **B.** Air Force Academy, Attn: Real Estate Office, 8120 Edgerton Drive, Suite 40, USAF Academy, CO 80840, (Air Force Academy Wastewater Treatment Facility Outfall; Intake No. 3 of the Northfield Collection System). **C.** Pike National Forest, 2840 Kachina Drive, Pueblo, CO 81008, (Crystal Reservoir, South Catamount Reservoir, and North Catamount Reservoir of the North Slope System (with Applicant); Nichols Reservoir, Rampart Reservoir of the Northfield Collection System (with Applicant)) **D.** Crestline MHC LLC, C/o Continental Communities, 2015 Spring Road, Suite 600, Oak Brook, IL 60523. (Pikeview Intake

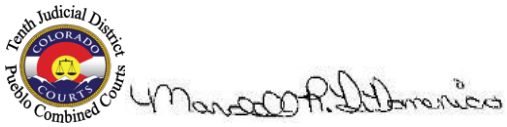
(also known as Monument Creek Pipeline)) **E.** R.W. Case, Long Hope Joint Venture LLP, 2432 Parkview Lane, Colorado Springs, CO 80906. (Pikeview Reservoir No. 2) **F.** Seven Falls Co., C/o Ad Valorem Tax Department, 1601 Elm Street, Suite 4700, Dallas, TX 75201. (South Cheyenne Creek Intake) **G.** United States of America, Department of Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County 18-E, Loveland, CO 80537. (Pueblo Reservoir; Twin Lakes Reservoir; Turquoise Reservoir; Fountain Valley Conduit) **H.** Board of Water Works of Pueblo, C/o Alan Hamel, P.O. Box 400, Pueblo, CO 81002-0400. (Clear Creek Reservoir) **I.** Homestake Partners (Cities of Colorado Springs and Aurora, acting through the Homestake Steering Committee), C/o Tom Vidmar, Superintendent, Otero Pump Station, 37200 North Highway 24, P.O. Box 1821, Buena Vista, CO 81211. (Otero Pump Station) **J.** Beaver Park Water, Inc., Box 286, Penrose, CO 81240-0286. (Brush Hollow Reservoir) **8. Remarks or other pertinent information: A.** PLSS Descriptions. PLSS descriptions are included herein in compliance with Water Court forms. In the event of a discrepancy between the decreed location and the PLSS descriptions herein, the decreed location is controlling. Any person reading this application should rely on the terms of the decree in Case No. 86CW118(A) adjudicating the conditional water rights herein. **B. Errors in Legal Descriptions.** The decreed legal description for the Las Vegas Street Wastewater Treatment Facility Outfall, as set forth in paragraph 3.C.1.a. above contains an error in stating that the outfall is in the **SW¼** SW¼ of Section 20, when it is actually in the **SE¼** of the SW¼. Further, the decreed legal description for the 33rd Street Intake, as set forth in Paragraph 3.C.2.e above, contains a typographical error in stating the bearing is 12° **West**, when the correct bearing is 12° **East.** Finally, the decreed legal description for the North Cheyenne Creek Intake, as set forth in Paragraph 3.C.2.g(2) above contains a typographical error in stating the bearing as **7°**, rather than **70°.** Applicant is filing a Motion to Combine a Change of Water Right to effect such correction with the instant Diligence Application herewith. WHEREFORE, Applicant requests (1) that a finding of reasonable diligence be entered, and the conditional water rights that are the subject of this application be continued in force; (2) that the conditional water rights be made partially absolute in the additional amount set forth in Paragraph 6 above; and (3) that the errors in the legal descriptions of the Las Vegas Street Wastewater Treatment Facility Outfall, the 33rd Street Intake and the North Cheyenne Creek Intake be corrected.

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 November 2011, (forms available at Clerk's office or at

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

Witness my hand and the seal of this Court this 7th day of October, 2011.



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Mardell R. DiDomenico, Clerk
District Court, Water Div. 2
Pueblo County Judicial Building
320 W. 10th Street
Pueblo, CO 81003; (719) 583-7048

(Court seal)
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