

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING SEPTEMBER
2014

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 ordered published during September 2014, 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. 2014CW16 – SCOTT VIRDEN, 109 S. 4th Street, Westcliffe, CO 81252;
(719) 371-5390**

Amended Application for Water Rights (Surface)

CUSTER COUNTY

Name of Structure: Scott Spring. **Legal description of each point of diversion:** NW ¼ of the SE ¼ Section 1, Township 22 South, Range 72 West, 6th P.M., Custer County, 1926 feet from the South line and 1989 feet from the East line. **Street Address:** 6503 Hwy. 96, Westcliffe, CO 81252. **Subdivision:** Cottonwood Springs Ranch, Lot 5. **GPS Location in UTM format (Zone 13, NAD83):** Points were averaged. **Northing** 4224030; **Easting** 0466555. **Source:** Grape Creek, Arkansas River. **Date of initiation of appropriation:** 7/22/14. **How appropriation was initiated:** 18" Culvert spring box. **Date water applied to beneficial use:** 7/22/14. **Amount claimed:** .03 cfs Absolute. **Use:** Domestic, livestock, piscatorial, fire suppression/protection. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.

CASE NO. 2014CW3038 – JAMES P. McCAIN, et al. v. JESSE VIALPANDO, et al.

This case is a Complaint for Declaratory Judgment and is listed in the resume to account for the case number in numerical order.

CASE NO. 2014CW3039 – REJECTED FILING. The filing under this case number was rejected but is being listed in the resume to account for the case number in numerical order.

CASE NO. 2014CW3040; Previous Diligence Case Nos. 2000CW111 and 2008CW31 -- TRAIL'S END RANCH, LLC ("TRAIL'S END"), c/o Mr. Paul R. Seegers, Manager, 12720 Hillcrest Road, Suite 530, Dallas, Texas 75230 (Please send all pleadings and correspondence to: David F. Jankowski and Matthew L. Merrill, White & Jankowski, LLP, Attorneys for Applicant, 511 Sixteenth Street, Suite 500, Denver, CO 80202; (303) 595-9441)

Application for Finding of Reasonable Diligence

CUSTER COUNTY, COLORADO

Name of conditional water right: Pond No. 10 Exchange (the "Exchange"). **3. Description of Water Right** **a. Original Decree:** May 14, 2002, Case No. 00CW111, Water Court Division No. 2, State of Colorado. **b. Previous Diligence:** September 25, 2008, Case No. 2008CW31, Water Court Division No. 2, State of Colorado. **c. Source:** Unnamed tributary to Brush Creek, tributary to the Arkansas River, wastewater, seepage, and Trail's End Wells No. 12 and 13. **d. Legal Description of Pond No. 10:** Section 12, T.46N., R.12E., N.M.P.M., Custer County, Colorado, at a point approximately 1,900 feet from the west section line and 3,150 feet from the south section line. Pond No. 10 is shown on Exhibit 1 attached to the Application (identical to Exhibit 1 from original decree in Case No. 2000CW111). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court). **e. Appropriation Date:** November 1, 2000. **f. Amount:** 0.125 c.f.s., conditional. **g. Use:** Exchange, augmentation, substitution, replacement, piscatorial, wildlife habitat, stock watering, recreation and aesthetic purposes. All water diverted and stored in Pond No. 10 under the Exchange may be used, reused, successively used or disposed to extinction. **4. Detailed outline of steps taken during the diligence period toward completion of the appropriation and application to a beneficial use.** **a.** Pond No. 10 is an existing structure on Trail's End Ranch. Under the decree in Case No. 00CW111, water may be stored in Pond No. 10 under the Exchange in substitution for water which is made available to Brush Creek under the Applicant's interest in the Thomas Balman Ditch No. 4, also known as the Koch Spring Ditch. Water stored in the Pond under the Exchange may then be used for the purposes stated above. **b.** During the diligence period, Applicant has operated and maintained Pond No. 10. Applicant has not yet operated the Exchange into Pond because Applicant has throughout the diligence period been able to augment and replace depletions from the integrated water system adjudicated by the 00CW111 decree without use of the Exchange water right. Augmentation and replacement of depletions under the 00CW111 decree remains a principal purpose of the Exchange. **c.** Applicant intends and can and will use water from Pond 10 under the Exchange for all its decreed uses and as may be required to comply with the 00CW111 decree. During the diligence period, Applicant's consulting engineer inspected Pond 10, the sources of water for Pond 10 and the Balman No. 4 Ditch and determined that the Pond is capable of storing water and being operated under the Exchange for all decreed uses. **d.** In addition to the Exchange water right, a separate absolute water right and plan for augmentation for the Pond were adjudicated in Case No. 00CW111. Though Applicant has not yet stored water in Pond No. 10 under the Exchange, Applicant has stored and used water in the Pond under the priority adjudicated to the Pond and the plan for

augmentation, and has used such water for the uses adjudicated to the Exchange other than for augmentation and replacement. **Wherefore**, Applicant requests the judgment and decree of this Court that Applicant has diligently pursued completion of its conditional water right for the Exchange, that Applicant intends and can and will operate and use the Exchange and continuing the conditional water right for the Exchange for an additional diligence period, and for such other relief as the Court determines may be proper. **5. Names and addresses of owners or reputed owners of the land upon which any new diversion structure, or modification to any existing diversion structure is or will be located:** a. Trail's End, at the address above.

CASE NO. 2014CW3041 – J.D. PARTNERS and DONNA MARTIN, d/b/a STAR RANCH, 22540 W. Hwy 160, La Veta, CO 81055 (Attorney for Applicants: Erich Schwiesow, Lester, Sigmond, Rooney & Schwiesow, PO Box 1270, Alamosa CO 81101 (719)589-6626; attorneys@lsrslaw.com)

Application for Change of Water Right

HUERFANO COUNTY

Decreed water right for which change is sought: Holita Reservoir, decreed Oct 16, 1901, District Court, Huerfano County **Legal description of structure as described in most recent decree that adjudicated the location:** The Decree for the Holita Reservoir does not contain a legal description for the point of diversion of the feeder ditch, nor for the location of the reservoir. The Reservoir is located in the S½SW¼ of Section 26, and the N½NW¼ of Section 35, Township 27 South, Range 66 West, 6th P.M. **Decreed source of water:** The decree does not explicitly identify the source of water. The source of water is the Cucharas River. **Appropriation Date:** March 20, 1901. **Total amount decreed to structure:** 16 cfs ditch carrying capacity, and reservoir storage capacity of 23,524,020 cubic feet of water (540.04 acre feet). **Amount of water that applicant intends to change:** Applicant owns 1,720 shares of 25,000 shares in the Holita Ditch and Reservoir Company (6.88%). Applicant intends to change the entire amount of applicant's interest from irrigation to irrigation and stockwater. **Description of proposed change:** Applicant's interest in the Holita Reservoir has historically been used for irrigation on Applicant's property in the NW ¼ of Section 26, Township 27 South, Range 66 West, 6th P.M., up until 1982. From 1982 until 1991 Applicant's interest was used by Navajo Western in an augmentation plan, and that portion not needed was used by the other owner, Corsentino Dairy, for irrigation, in portions of Sections 25 and 36, Township 27 South, Range 66 West, 6th P.M., and Sections 30 and 31, Township 27 South, Range 65 West, 6th P.M. Subsequent to 1991, until 2012, Applicant's interest was used by Corsentino Dairy, on similar acreage under three center pivot sprinklers installed in 1993, 1994, and 1996. Consumptive use of the entire Holita water right has been estimated at 214 acre feet per year in a water short system. Consumptive use attributable to Applicant's 6.88% interest would be 14.7 acre feet. Applicant intends to change the type of use of its interest in the Holita Reservoir from irrigation to irrigation and stockwater use. Applicant has installed a pipeline from the East outlet of Holita reservoir which will charge an existing series of eight small (8-12 foot diameter) stock tanks located on Applicant's ranch with water from its interest in the Holita Reservoir. Applicant's ranch is located in portions of Sections 13-15, 22-24, 26-28, 33, and 34, all in Township 27 South, Range 66 West, 6th P.M. To

the extent applicant's 14.7 acre feet is not consumed in the stockwater usage, Applicant will apply any remainder to irrigation near the stock tanks. Applicant will limit the total amount diverted into the pipeline to 14.7 acre feet for stockwater and irrigation purposes. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored:** City of Walsenburg, 525 S. Albert Ave., Walsenburg, CO 81089.

CASE NO. 2014CW3042 (Water Div. 2) and CASE NO. 2014CW3113 (Water Div. 1) - IZZET GÜNBIL, 14360 Arfsten Road, Larkspur, CO 80118 (Henry D. Worley, Worley Law Office LLC, Attorney for Applicant, 611 North Weber, Suite 104, Colorado Springs, CO 80903; (719) 634-8330)

Application for Underground Water Rights and for Approval of Plan for Augmentation
DOUGLAS COUNTY

Applicant owns 40.0 acres of land described as the NW1/4 SW1/4 Section 26, T. 10 S., R. 66 W., 6th P.M. in Douglas County (the "Property"). A map showing the Property's approximate boundaries is attached to the Application as Figure 1. A copy of the Applicant's deed to the Property 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). **2. Names of wells and permit, registration, or denial numbers:** permit no. 187044. This structure is currently permitted as an exempt well in the Dawson aquifer. A copy of that well permit is attached to the Application as Exhibit B. **3. Legal description of wells:** Permit no. 187044 is located in the NW1/4 SW1/4 Section 26, T. 10 S., R. 66 W., 6th P.M., 1645 feet from the south section line and 660 feet from the west section line. Applicant hereby waives the 600 foot spacing rule in regard to all Dawson aquifer wells constructed on the Property. **4. Source:** Not nontributary Dawson aquifer. **5.A. Date of appropriation:** Not applicable. **5.B. How appropriation was initiated:** Not applicable. **5.C. Date water applied to beneficial use:** Not applicable. **6. Amounts claimed:** Not nontributary Dawson aquifer: 3,024 acre feet, absolute. Nontributary Denver aquifer: 3,243.6 acre feet, absolute. Nontributary Arapahoe aquifer: 1,938 acre feet, absolute. Nontributary Laramie-Fox Hills aquifer: 1,272 acre feet, absolute. These amounts may be adjusted upward or downward to correspond to the State Engineer's Determinations of Facts. **7. Proposed use:** all beneficial uses, including augmentation, except municipal. **8. Names and addresses of owners of land on which well is located:** Same as Applicant. **9. Remarks:** **A.** There is one lien against the Property. Applicant is giving notice of the application to the lienor pursuant to C.R.S. 37-92-302(2)(b). A copy of the letter is attached to the Application as Exhibit C. After entry of the decree adjudicating the water rights and approving the plan for augmentation described below, Applicant will apply for a new well permit for his existing well, the terms of which are consistent with the plan for augmentation and with applicable statutes and regulations. **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.** **10. Name of structures to be augmented:** Existing Dawson aquifer well 187044. No other water rights are or will be diverted from this well. **11. Previous decrees for water rights to be used for augmentation:** not applicable. **12. Historic use:** Not applicable. **13. Statement of**

plan for augmentation: **A. Water Demand.** Applicant seeks to pump 1.5332 acre feet annually from his Dawson aquifer well for some or all of the following purposes: for indoor uses for drinking and sanitary purposes in the principal house, for livestock watering, for landscape and garden irrigation, for commercial use including but not limited to a dog breeding and training facility, including an office for the same, for a hot tub or swimming pools, fire suppression and for augmentation of depletions pursuant to the augmentation plan applied for herein. **B. Water Consumption and Return Flows.** Annual indoor water usage for the principal house is assumed by the State Engineer to be at least 0.2 acre foot. It is generally accepted that no more than ten percent of water used indoors in residences using non-evaporative septic systems and leach fields for wastewater disposal is consumed, with 90 percent (0.18 acre foot per home, annually) returning to the stream system. Although there will be some return flows from other uses, Applicant will rely only on return flows from septic systems and leach fields for replacement of depletions during a proposed 300 year pumping period. **C. Allowable Annual Pumping and Replacement of Stream Depletions During Pumping.** Based on computer modeling, stream depletions will occur to tributaries of the South Platte and Arkansas Rivers. Applicant proposes to aggregate and replace all stream depletions to Elk Creek, a tributary of Cherry Creek and the South Platte River. Computer modeling for an adjacent property indicates that during pumping total stream depletions will gradually increase to a maximum of approximately 11.74 percent of annual pumping in the 300th year. Based on that, Applicant intends to pump 1.533 acre foot annually for 300 years. This amount may be adjusted in the decree, to conform with the Division Engineer's Consultation Report regarding depletions as a percentage of pumping over the proposed 300 year pumping period. Applicant also reserves the right to shorten the pumping period. **D. Replacement of Stream Depletions After Cessation of Pumping.** Applicant agrees to replace depletions for the shortest of the following periods: the period provided by the Colorado Legislature, should it eventually specify one and if the Applicants obtain water court approval for such modification, the period determined by the State Engineer, should the State Engineer lawfully establish such a period; the period established through rulings of the Colorado Supreme Court in relevant cases; or until Applicant or her successors petition the water court and after notice to parties in the case prove that they have complied with all statutory requirements. Applicant will reserve approximately 442 acre feet from the Denver aquifer underlying the Property for the replacement of post-pumping depletions, unless and until such time as any of the above conditions occurs which terminates the obligation to replace post-pumping depletions, or unless Applicant obtains judicial approval of another source of replacement water for post-pumping depletions. Applicant shall make post-pumping replacements annually as required to replace modeled stream depletions. Applicant proposes to aggregate all depletions and to replace them to the South Platte drainage. **E. Miscellaneous. (1)** As stated above, after entry of this decree, Applicant shall apply for a new well permit for existing permit 187044 on terms consistent with the decree in this case and with applicable regulations and statutes. **(2)** Applicant will include in the decree provisions which (a) limit annual pumping from the proposed Dawson aquifer well to 1.5332 acre feet annually; (b) require the use of a non-evaporative septic system for wastewater treatment; (c) reserve adequate nontributary water for replacement of post-pumping depletions, which

reservation may be voided upon the occurrence of any of the events specified above eliminating the need for such reservation; (d) inform future owners that utilization of water for indoor residential purposes is required in order to generate the necessary return flows for augmentation; and (e) indicate that the owners will be required to construct a well or wells into the Denver aquifer underlying the Property for replacement of post-pumping depletions if the source of augmentation water is unchanged. Provisions otherwise limiting the uses to which water may be used on the Property are unnecessary because the annual pumping limitations, and the requirement that non-evaporative septic systems be used, ensures that septic system return flows alone will equal depletions throughout the 300 year pumping period. **(3)** This application is being filed in both Water Divisions 1 and 2 because stream depletions will occur in both the South Platte and Arkansas drainages. After the time for filing statements of opposition has expired, Applicant will seek to consolidate the two applications in Water Division 1. **(4)** It is not uncommon in applications such as this for values for amounts of water available for appropriation, amounts which may be pumped annually pursuant to the plan for augmentation, depletion factors, and amounts required to replace post-pumping depletions to vary somewhat from the values determined by the Division of Water Resources. Applicant hereby gives notice that he reserves the right to amend the figures set forth herein as necessary to conform to the State's figures regarding such issues.

CASE NO 2014CW3043: Previous Case No. 2002CW185 – CROWLEY COUNTY WATER ASSOCIATION, INC., PO Box 487, Ordway, CO 81063 (Please direct all correspondence to Robert F.T. Krassa, Krassa & Miller, LLC, Attorney for Applicant, 2737 Mapleton Ave, Suite 103, Boulder CO 80304; 303-442-2156)

Application for Finding of Reasonable Diligence

CROWLEY COUNTY, COLORADO

2. Name of Structure: CCWA Well No. 1. **3. Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree:** **a. Date of Original Decree:** September 8, 2008; Case 02CW185, Water Division No. 2. Said decree was recorded September 12, 2008 at reception number 165618, records of Crowley County, and is incorporated herein by this reference. **b. List all subsequent decrees awarding findings of diligence:** None, this is the first diligence proceeding. **c. Location of structure:** In the SE/4NE/4 Section 14, T.22S., R.59 W. of the 6th P.M. in Crowley County, Colorado, at a point 1650 feet south of the north line and 200 feet west of the east line of said Section 14. Location is shown on map attached as Exhibit A (same as Exhibit A of said decree in 02CW185). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court). **d. Source:** Groundwater tributary to the Arkansas River. **e. Date of Appropriation:** July 3, 2001; Amount: 1000 gpm (2.22 cfs) conditional, not to exceed 1607 acre feet per year. **f. Use:** irrigation, agricultural, commercial, industrial, domestic, mechanical, manufacturing, industrial, power generation, fire protection, sewage treatment, street sprinkling, irrigation of parks, lawns and grounds, recreation, piscatorial, and maintenance and preservation of wildlife and aesthetic values. Any irrigation use will be by customers of Applicant's water system in Crowley County. **g. Depth:** 100 feet. **4. Provide a detailed outline of what has been done toward completion or for**

completion of appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: a. During the diligence period, the subject well was drilled, equipped, connected to CCWA's water system and placed into service. The project included enlarging a portion of CCWA's pipeline system. CCWA spent over \$1.2 million on this project during the diligence period. The well has been pumped into CCWA's water system at its full decreed rate of 2.2 cfs for the above described decreed uses in CCWA's service area, shown on map attached to the Application as Exhibit B (same as Exhibit B of said decree in 02CW185). b. The said decree in Case 02CW185 provides at paragraph 1009 that, "Applicant's water rights and each of the water rights and structures which now and in the future will provide augmentation, substitution replacement and exchange supplies under this decree collectively comprise an integrated system of water rights and structures under Sec. 37-92-301(4)(b), C.R.S. Work performed and effort or costs expended by Applicant on any water rights or structures which are part of its integrated water system shall, for the purposes of demonstrating reasonable diligence in future proceedings involving all water rights described herein, be considered to be diligence on all features of Applicant's entire integrated water supply system." c. Applicant CCWA has in all respects diligently worked toward placing these conditional water rights to beneficial use. **5. Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure necessary for the subject water right is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** CCWA

CASE NO. 2014CW3044 – EASTCLIFFE HOME OWNERS ASSOCIATION, INC., A Colorado non-profit corporation, Attn: Alex B. Campbell, 155 Deerhaven Drive, Westcliffe, CO 81252 (Please send all pleadings and correspondence to: David C. Hallford and Chad J. Lee, Balcomb & Green, PC, Attorneys for Applicant, PO Drawer 790, Glenwood Springs, CO 81602; 970-945-6546)

Application for Absolute Water Storage Right

CUSTER COUNTY

Overflow from the Eastcliffe Spring No. 1, a natural spring in the Wilmer Gulch-Grape Creek drainage area. **Reservoir:** Eastcliffe Home Owners Association Pond. **Location of Dam Centerline:** NW1/4, SW1/4, S. 9, T. 23 S., R. 71 W., 6th P.M., 1,770 ft. from the S. Sec. line and 60 ft. from the W. Sec. line of said Sec. 9, as depicted on Exhibit A to application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court). **Location Information in UTM format:** Northing 4,212,640 m Easting 470,190 m, Zone 13. **Subdivision Information:** The Pond is located on Tract A of the Eastcliffe III Subdivision. **Structure Used to Fill Reservoir:** The Pond is filled with overflow from the Eastcliffe Spring No. 1, which is decreed for 15 g.p.m. **Pt. of Diversion:** The pt. of diversion for the Eastcliffe Spring No. 1 is in the NW1/4, SW1/4, Sec. 9, T. 23 S., R. 71 W., 6th P.M. on a bearing of S. 22 deg., East at a dist. of 950 ft. from the W. 1/4 corner of said Sec. 9. **Approp.:** 6/1/1971. **How Approp. Initiated:** Construction of the Pond and storage of water in Pond. **Date Water Applied to Beneficial Use:** 6/1/1972. **Amount Claimed:** 2.065 AF, absolute. **Rate of Diversion:** 15 g.p.m. **Uses:** Rec., aesthetic, fire prot., and pisc. uses, to fill,

refill and flow-through for such uses. **Surface Area of High Water Line:** 0.53 acres. **Vertical Height of Dam:** 8 ft. **Length of Dam:** 42 ft. **Total Capacity:** 2.065 AF; **Active capacity:** 0 AF; **Dead storage:** 2.065 AF. **Landowner:** The land upon which the Pond is constructed and upon which water is stored is the Applicant.

CASE NO. 2014CW3045; Previous Case Nos. 1996CW53, 2004CW12 – GRANDOTE GOLF AND COUNTRY CLUB, LLC, (“Grandote”), c/o Dr. Charles R. Briggs, 5540 Highway 12, La Veta, CO 81055 (All correspondence and communications should be addressed to: Brian M. Nazareus, Esq., Sheela S. Stack, Esq., Allison P. Altaras, Esq., RYLEY CARLOCK & APPLEWHITE, 1700 Lincoln Street, Suite 3500, Denver, Colorado 80203; (303) 863-7500)

Application For Finding Of Reasonable Diligence And To Make Absolute
HUERFANO COUNTY.

2. Description of the Conditional Water Right. **2.1. Name of Conditional Water Right.** The Coler-Grandote Exchange. **2.2. Exchange Reach.** The lower terminus of the exchange is the Cucharas Delivery Flume, described in paragraph 2.4.1.4., below. The upper terminus of the exchange is the Grandote Pipeline Headgate, described in paragraph 2.4.2., below. Water stored in the Coler Ditch and Reservoir System under Grandote’s pro rata interest will be released to the Cucharas River via the Cucharas Delivery Flume. Subject to the provisions of the 96CW053 Decree, water is diverted by exchange at the Grandote Pipeline Headgate. **2.3. Original and Subsequent Diligence Decrees.** The original decree was entered by the Water Court, Water Division 2 on February 23, 1998, in Case No. 96CW053 making absolute 2.13 cfs. A subsequent diligence decree was entered by the Water Court, Water Division 2 on September 19, 2008 in Case No. 04CW12, continuing as conditional 1.87 cfs. **2.4.** The facilities involved in the Coler-Grandote Exchange are as follows: **2.4.1. Coler Ditch and Reservoir System.** The source of substitute supply for the Coler-Grandote Exchange is water attributable to Grandote’s ten percent (10%) interest in the Coler Ditch and Reservoir System and that System’s appurtenant water rights, which are described as follows: **2.4.1.1. Lake Miriam Ditch.** The headgate of the Lake Miriam Ditch, which diverts from the Cucharas River, is located in the Northwest quarter of the Southeast quarter 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. 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. **2.4.1.2. Lake Miriam Reservoir (a.k.a. Horseshoe Reservoir).** Lake Miriam Reservoir is located in the West half of Section 13 and the Northwest quarter of Section 24, Township 28 South, Range 67 West of the 6th P.M., Huerfano County, Colorado. 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. **2.4.1.3. Lake Oehm Reservoir (a.k.a. Martin Lake).** Lake Oehm Reservoir is located in the East half of Section 13, Township 28 South, Range 67 West of the 6th P.M. and the West half of Section 18, Township 28

South, Range 66 West of the 6th P.M., Huerfano County, Colorado. 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. **2.4.1.4. 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 (the “Cucharas Delivery Flume”), which is located in the Northeast quarter of the Southwest quarter 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. **2.4.2. The Grandote Pipeline Headgate.** The Coler System water described above is exchanged to the Grandote Pipeline Headgate, which is located in the Southwest quarter of Southwest quarter of Section 28, Township 29 South, Range 68 West of the 6th P.M., Huerfano County, Colorado at a point approximately 100 feet from the West line and 400 feet from the South line of said Section 28. Water diverted from the Cucharas River at the headgate is delivered to a regulating storage pond on the Grandote Peaks Golf Club (the “Golf Course”), which serves as the forebay for the irrigation pump and distribution system. **2.5. Source:** The Cucharas River. **2.6. Appropriation Date:** August 18, 1995. **2.7. Amount:** 4.0 cfs, of which 2.13 cfs was made absolute by the decree entered in Case No. 96CW053; the remaining 1.87 cfs was continued as conditional. **2.8. Uses:** Water exchanged under the Coler-Grandote Exchange is beneficially used at the Golf Course for irrigation of the Golf Course, including replacement of evaporative losses attributable to the Golf Course regulatory pond. The Golf Course consists of approximately 127 irrigated acres which are located in the South half of the Northwest quarter and the West half of the Southwest quarter of Section 28, and the East half of the Southeast quarter and the Southeast quarter of the Northeast quarter of Section 29, all in Township 29 South, Range 68 West of the 6th P.M., Huerfano County, Colorado. **3. Detailed Outline of Work Done For the Completion of the Conditional Appropriation and the Application of Water to a Beneficial Use:** The activities described below support Grandote’s claims for a findings of reasonable diligence and to make the remaining conditional portion of the water rights absolute. 3.1. Applicant has diligently monitored stream conditions for the opportunity to maximize its exchange. 3.2. Grandote continued to prosecute and secured a decree in Case No. 04CW13, thereby continuing use of the Grandote Pipeline Headgate water right for uses on the Golf Course. 3.3. Grandote has actively protected the subject conditional water right from potential injury by performing monthly reviews of the Water Division 2 water court resume to determine whether the filing of Statements of Opposition was necessary to protect its water rights in Water Division 2, including this conditional water right. Grandote’s counsel has continued to participate in pending legal actions to protect this conditional water right during this diligence period. In particular, Grandote’s counsel negotiated terms and conditions to protect Grandote’s water rights from injury and entered into a stipulation with Cucharas Sanitation and Water

District in Case No. 97CW166 concerning the use of the Cucharas-Coler Exchange. 3.4. Grandote has operated and paid taxes for the Golf Course. In addition, Grandote has paid its assessments to the City of Walsenburg for its interest in the Coler System, and has regularly consulted with the City about the amount of water in storage for the benefit of Grandote. 3.5. During this diligence period, Grandote and the Town of La Veta have been in negotiations regarding the inclusion of the Golf Course and surrounding property into the town. **Claim to Make Absolute:** Grandote diverted 1.87 cfs, via exchange, and beneficially used the water to irrigate the Golf Course. **5. Name(s) of owner(s) of the land on which structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Grandote Golf and Country Club, LLC and the City of Walsenburg. WHEREFORE, Applicant Grandote Golf and Country Club, LLC respectfully requests that this Court enter a decree finding that Applicant has exercised reasonable diligence in the development of the conditional water right decreed to the Coler-Grandote Exchange, that the remaining 1.87 cfs out of 4.0 cfs of the Coler-Grandote Exchange water right has been made ABSOLUTE, and for such other and further relief as this Court deems just and proper.

CASE NO. 2014CW3046; Previous Case No. 2005CW67 – CHEYENNE MOUNTAIN DEVELOPMENT COMPANY, LLC (“Cheyenne”, P. O. Box 60069, Colorado Springs, CO 80960-0069 (Please send all pleadings and correspondence to: FELT, MONSON & CULICHIA, LLC, Steven T. Monson and Ryan W. Farr, Attorneys for Applicant, 319 N. Weber St., Colorado Springs, CO 80903, (719) 471-1212.)

Application for Finding of Reasonable Diligence

EL PASO COUNTY COLORADO.

II. Name of Structures: Hammer Well No. 1 and Hammer Well No. 2. Applicant is the successor in interest to KnM Group, LLC (“KnM”) which was granted a conditional water right in case 05CW67 for residential water supply to include domestic, livestock, irrigation of lawns, gardens and landscaping, fire protection, and commercial on lands owned by the Applicant and by RAEL Investments, LLC (“RAEL”). **A. Date of Original Decree:** The original decree was entered on September 18, 2008, in Case No. 05CW67, District Court, Water Division 2. **B. Conditional Water Rights:** Applicant is seeking a finding of reasonable diligence for the following water rights: **1. Hammer Well No. 1: a) Location:** Hammer Well No. 1 is located in the NW ¼ of the SW ¼ of Section 5, Township, 17 South, Range 62 West, 6th P.M., El Paso County, Colorado, being 1,410 feet from the South line of said Section and 235 feet from the West line of said Section. **2. Hammer Well No. 2: a) Location:** Hammer Well No. 2 will be located in the NW ¼ of the NE ¼ of Section 7, Township 17 South, Range 62 West of the 6th P.M., El Paso County, Colorado, being 95 feet from the North line of said Section and 1,930 feet from the East line of said Section. **3. Source:** The source of water for Hammer Well No. 1 and Hammer Well No. 2 is the alluvium of Black Squirrel Creek, tributary to Chico Creek, tributary to the Arkansas River. **4. Appropriation:** The appropriation date is May 24, 2005. The appropriation was initiated through KnM’s location and drilling of a test hole on the property, all with the intent to acquire and appropriate water for the beneficial uses of the residential development set forth herein. **5. Amounts Claimed:** The maximum pumping rate of Hammer Well No. 1 is 1,000 gpm for a total annual

amount of 140 acre feet. The maximum pumping rate of Hammer Well No. 2 is 1,000 gpm for a total amount of 140 acre feet. The maximum combined pumping rate of Hammer Well No. 1 and Hammer Well No. 2 is 1,000 gpm and the combined annual appropriations from both Hammer Well No. 1 and Hammer Well No. 2 is 140 acre feet.

6. Prior Water Right: Hammer Well No. 1 has a prior water right adjudicated under Case No. W-4704 as changed by Case No. 05CW67, District Court, Water Division 2, for 111.5 acre feet of annual historic diversions. This absolute 111.5 acre feet of annual diversions is in addition to the conditional 140 acre feet set forth above.

7. Uses: Water from the Hammer Well No. 1 and Hammer Well No. 2 is to provide a water supply to a residential subdivision of which uses include domestic, livestock, irrigation or landscaping, fire protection, recreation, and commercial (i.e. home occupations).

8. Ownership: Cheyenne Mountain Development Company, LLC. is the owner of the water right and the properties where Hammer Well No. 1 is located and where Hammer Well No. 2 will be located. Attached as Exhibit A to the Application is the public trustee confirmation deed. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court). Cheyenne Mountain Development Company, LLC and RAEL Investments, LLC are the current owners of the property where all water rights are to be used as shown on Exhibit B attached to the Application ("Property"). Both companies are managed by Robert C. Irwin with an address of P.O. Box 60069, Colorado Springs, CO. 80960-0069.

III. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to beneficial use as conditionally decreed, including expenditures. The KnM Group, LLC ("KnM") purchased the Property from Cheyenne in 2005 in order to subdivide and develop the property. Cheyenne maintained deeds of trust on all of the property sold to KnM. Robert Irwin, manager of Cheyenne, continued to work with KnM regarding the Property both as an agent for KnM and as an interested party during the KnM ownership time period. During the time period from 2008 to 2012, KnM suffered financial troubles, which ultimately resulted in failure of the company and foreclosure of the Property. The decree in 05CW67 was signed by Judge Maes on September 18, 2008. It was around this time in 2008 that the real estate market dried up resulting in difficult times for those in the position of KnM who were pursuing future residential developments. KnM suffered significant financial setbacks because of the noteworthy market downturn. However, prior to KnM's ultimate foreclosure, KnM attempted to prevent foreclosure by releasing to Cheyenne "deeds in lieu" on particular parcels of the property. Cheyenne accepted these deeds in lieu in order to help maintain the potential for KnM to develop the subdivision as originally planned and to help maintain the Property as a whole. The parcels conveyed to Cheyenne from KnM through the deeds in lieu were subsequently conveyed by Cheyenne to RAEL. RAEL obtained these parcels with the intention to pursue the original subdivision plans. In 2012 KnM was foreclosed on by Cheyenne for the remaining parcels still owned by KnM within the Property. A public trustee confirmation deed was issued to Cheyenne on May 7, 2012 and recorded May, 8, 2012 for the remaining parcels owned by KnM. Cheyenne regained the Property from KnM through the foreclosure with the intent to develop the Property as originally planned. During the time that KnM owned the Property, KnM entered into grazing leases with T. A. Williams for grazing to occur on the Property. These grazing leases were entered into by KnM in order to obtain a

revenue stream and to keep KnM financially afloat. After foreclosure occurred and Cheyenne took over ownership of the Property, Cheyenne and RAEL have continued the grazing leases with T. A. Williams also in order to continue a revenue stream so as to assist and to make possible the planned future subdivision development of the Property. Robert Irwin as agent for KnM and also as an interested party assisted KnM with the Property between 2009 and 2010. During this time Mr. Irwin had a determination made that a master drainage study did not need to be conducted for the Property. Mr. Irwin obtained a market value determination of the Property. Mr. Irwin investigated the potential for wind and solar electrical generation on the Property to supply the Property, as well as investigated the economics of “non-grid” housing. Mr. Irwin worked with Buffalo Builders about potential structure construction and what types of homes would be best for the area. Finally, in 2009 Mr. Irwin assisted in the removal of thousands of tires from the Property to meet El Paso County ordinance requirements, even though it was later determined that this tire removal was not necessary. The Decree in 05CW67 requires that the land taken out of historical irrigation is to be revegetated. This revegetation requires the land to consist of native grasses or other self-sustaining dry-land cover with noxious weeds adequately controlled. Recently Cheyenne has been in contact with Verlin Hopkins who is an agronomist in order to assess the condition of the revegetation on the Property and determine if the revegetation is in compliance with the decree, and if not, what actions need to be taken. Electric utilities were installed and made available to the Property during the time that Cheyenne originally owned the Property. Since that time the available utilities have been maintained with the intent and purpose to supply electricity for future homes.

CASE NO. 2014CW3047; Previous Case Nos. 1990CW54 and 2004CW9 – PUBLIC SERVICE COMPANY OF COLORADO, A COLORADO CORPORATION, 1800 Larimer Street, Suite 1300, Denver, CO 80202 (Please direct all correspondence or inquiries regarding this matter to the attorneys for the Applicant: Carolyn F. Burr, James M. Noble, WELBORN SULLIVAN MECK & TOOLEY, P.C., 1125 –17th Street, Suite 2200, Denver, Colorado 80202, Telephone: (303) 830-2500)

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2. Name of Structure and Conditional Water Right: St. Charles River/Arkansas River Exchange. **3. Description of Conditional Water Right:** Water diverted under the St. Charles River/Arkansas River Exchange has been and is to be beneficially used at the Comanche Steam Electric Generating Station (the “Comanche Station”). The St. Charles River/Arkansas River Exchange is an exchange on the Arkansas River from the confluence with the St. Charles River to the Comanche Station Pumping Plant and/or the Pueblo Reservoir. **3.1. Prior Decrees.** This water right was originally decreed as conditional on January 14, 1998, by the Division 2 Water Court in Case No. 90CW54 and was found to have met the requirements of reasonable diligence and a portion was made absolute in Case No. 04CW9 on September 19, 2008. **3.2. Structures Involved in Exchange:** **3.2.1. The Comanche Station Discharge.** The Comanche Station Discharge is located on the St. Charles River in the Southwest quarter of the Northwest quarter of Section 28, Township 21 South, Range 64 West of the 6th P.M. in Pueblo County, Colorado. **3.2.2. The Comanche Station Pumping Plant.** The Comanche

Station Pumping Plant is located near the Pueblo Dam on the south bank of the Arkansas River in the Southwest quarter of Section 31, Township 20 South, Range 65 West of the 6th P.M. in Pueblo County, Colorado. The pumping plant consists of three (3) 4,000 g.p.m. lift pumps for a total of 12,000 g.p.m. **3.2.3. The Comanche Station Pipeline.** The Comanche Station Pipeline runs approximately twelve (12) miles and conveys water from the Comanche Station Pumping Plant to the Comanche Station Raw Water Reservoir. The pipeline has a normal operating capacity of 26.7 c.f.s. **3.2.4. The Comanche Station Raw Water Reservoir.** The Comanche Station Raw Water Reservoir is located adjacent to the Comanche Station in the West half of Section 20, Township 21 South, Range 64 West of the 6th P.M. in Pueblo County, Colorado. The capacity of the reservoir is 853 acre feet. Water stored in the reservoir is ultimately delivered to the Comanche Station for beneficial use. **3.2.5. Pueblo Reservoir.** The point of diversion for Pueblo Reservoir is at a point at the intersection of the Pueblo Dam axis and the Arkansas River whence the Northeast corner of Section 36, Township 20 South, Range 66 West of the 6th P.M. bears North 61 degrees 21'20" East a distance of 2,511.05 feet. The reservoir inundates all or portions of Sections 7, 18-22, and 25-36, Township 20 South, Range 66 West of the 6th P.M.; Sections 1-5 and 9-11, Township 21 South Range 66 West of the 6th P.M.; and Sections 5, 8, 9, 13-16, 22, 23, and 25, Township 20 South, Range 67 West of the 6th P.M., all in Pueblo County, Colorado. **3.3. Exchange Reach:** The exchange reach for the St. Charles River/Arkansas River Exchange is on the Arkansas River from the mouth of the St. Charles River upstream to Pueblo Reservoir. **3.4. Sources:** The sources of substitute supply for the St. Charles River/Arkansas River Exchange shall be water discharged at the Comanche Station Discharge which may be reused and successively used. Said sources include: **3.4.1.** Transmountain water from the Independence Pass Transmountain Diversion System, which diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County. The water rights were adjudicated by a decree entered 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. PSCo has the right to utilize a portion of such waters by virtue of its ownership of shares in the Twin Lakes Reservoir and Canal Company; **3.4.2.** Water attributable to PSCo's Comanche Station Pipeline water right decreed by this Court in Case No. 90CW49 on October 12, 1994; **3.4.3.** Water attributable to PSCo's Comanche Station Raw Water Reservoir storage right decreed by this Court in Case No. 90CW50 on October 12, 1994; **3.4.4.** Transmountain water leased by PSCo from the Pueblo West Metropolitan District, attributable to 5,732.41 shares owned by the District out of the 49,588.965 shares issued and outstanding in the Twin Lakes Reservoir and Canal Company, including, but not limited to, the lease or purchase by PSCo of measured return flows from such water rights which are the subject of the decree entered by this Court in Case No. 85CW134(A); **3.4.5.** Water delivered to the Comanche Station under the St. Charles River/Arkansas River Exchange but not fully consumed at the Comanche Station; **3.4.6.** Reusable water from the water rights of the Pueblo Board of Water Works ("Pueblo") that is delivered to PSCo pursuant to its January 18, 1972, Water Service Contract with Pueblo, as amended or replaced, may be used by PSCo as a source of substitute supply for the St.

Charles River/Arkansas River Exchange only upon Pueblo's express written consent.

3.5. Appropriation Date and Amount: **3.5.1. Date of Appropriation:** October 30, 1990. **3.5.2. Rate of Exchange:** 14.20 c.f.s. For the exchange reach from the mouth of the St. Charles River upstream to the Comanche Station Pumping Plant, 4.11 cfs is ABSOLUTE and 10.09 cfs is CONDITIONAL. The full 14.20 cfs is CONDITIONAL for the exchange into Pueblo Reservoir. The exchange has an annual volumetric limit of 3,000.00 acre feet. **3.6. Decreed Uses:** Water that is exchanged upstream pursuant to the St. Charles River/Arkansas River Exchange may be diverted at the Comanche Station Pumping Plant. Alternatively, exchanged water may be stored in Pueblo Reservoir for subsequent delivery to the Comanche Station Pumping Plant. Exchanged water may not be stored in Pueblo Reservoir unless PSCo has the valid legal ability to store water in the reservoir. Water diverted at the Comanche Station Pumping Plant may be directly delivered to the Comanche Station via the Comanche Station Pipeline, or stored in the Comanche Station Raw Water Reservoir for subsequent use at the Comanche Station. Water used at the Comanche Station shall be used for all industrial purposes associated with the generation of electrical energy, including, without limitation: power generation, cooling, evaporation replacement, domestic, potable domestic, piscatorial, dust suppression, irrigation of lawns, trees, and gardens adjacent to the Comanche Station, and fire prevention purposes. The water may be used and reused to extinction at the Comanche Station, and water that has not been fully consumed may be successively used as a source of substitute supply for the St. Charles River/Arkansas River Exchange. **4. Evidence of Reasonable Diligence Towards Completing Appropriation.** 4.1. The St. Charles River/Arkansas River Exchange water right is vital to the operation of the Comanche Station. During the diligence period, PSCo conducted several activities in furtherance of the continued use of this water right, and to improve and maintain this system, as follows: 4.1.1. PSCo operated the St. Charles River/Arkansas River Exchange on numerous occasions throughout the diligence period. 4.1.2. Throughout the diligence period, PSCo performed necessary maintenance and repair work on its facilities that are used to operate the St. Charles River/Arkansas River Exchange, including the Comanche Raw Water Reservoir, the Comanche Station Pumping Plant, the Comanche Station Pipeline, the Comanche water treatment system, and the Comanche Station Discharge. PSCo spent approximately \$330,000 on these activities during the diligence period. 4.1.3. PSCo constructed and completed the Comanche Unit 3 at a cost in excess of \$1 billion. Unit 3 began operation in July 2010. Water diverted pursuant to the St. Charles River/Arkansas River Exchange serves this new unit, in addition to the two prior-existing units at the Comanche Station. 4.1.4. During the diligence period, PSCo participated as an objector in numerous Division 2 water court cases in order to protect its existing water rights on the Arkansas River and its tributaries. Some of these cases have concluded, and others are ongoing. Some of the cases in which PSCo has participated as an objector during the diligence period include Case Nos. 97CW31, 98CW173, 01CW145, 01CW151, 07CW74, 07CW128, 07CW129, 08CW12, 10CW4, 10CW85, 12CW94, and 13CW19. **5. Names and Addresses of Owners of the Land Upon Which any New Diversion or Storage Structure, or Modification to any Existing Diversion or Storage Structure is or will be Constructed or upon Which Water is or will be Stored, Including any Modification to the existing Storage Pool.** Not

applicable. This application does not seek approval of a new or modified diversion or storage structure. WHEREFORE, PSCo requests that the Court enter a decree finding that PSCo has satisfied the statutory standard of steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances, that reasonable diligence was performed during the diligence period in development of the subject water right, and that the conditional portion of the subject water right should continue.

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 2014, (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 6th day of October, 2014.



Mardell R. DiDomenico

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

(Court seal)
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