

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING SEPTEMBER
2016

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 2016, 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. 2016CW11 – MARK A. CORNELIUS, 3519 County Road 504,
Walsenburg, CO 81089; (719) 989-1415**

Amended Application for Absolute Underground Water Right

HUERFANO COUNTY

Name of Well: Cottonwood Spring Well; **Permit Number:** No permit number found. **Legal description of Well (UTM FORMAT-Zone 13; NAD83 Datum):** Easting 512447.77 Northing 4165209.53. **Legal Description (PLSS):** Huerfano County, SW ¼ Section 2, Township 28 South, Range 67 West, 6th P.M. **Source of PLSS information:** Record #330065-355614. **Street Address:** 504 County Road; **Subdivision:** Rio Cucharas Phase 2; **Lot:** Tract C. **Source of water:** springs. **Depth of well:** 1450 feet. **Date of appropriation:** 1975; **How appropriation was initiated:** Livestock and commercial uses. **Date water applied to beneficial use:** 1975. **Amount claimed:** 50 gpm Absolute. **Does the well withdraw nontributary groundwater?** No. **Does the well operate pursuant to a decreed plan for augmentation?** No. **Use or proposed use:** Livestock and commercial use for water haulers. **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:** Golden Cycle Gold Corp., 1515 S. Tejon Street, Suite 201, Colorado Springs, CO 80906.

**CASE NO. 2016CW12; Previous Case Nos. 03CW26, 03CW82, 10CW27 – OLSON
FAMILY TRUST, Charles B. and Shirley L. Olson, Trustees, 29624 Thimbleberry
Lane, Evergreen, CO 80439; (303) 674-3537**

Application for Finding of Reasonable Diligence

CHAFFEE COUNTY

Name of Structure: Olson Ditch. **Date of Original Decree:** May 7, 2004; **Case No.:** 03CW26, Water Division 2. **Subsequent decrees awarding findings of diligence:** September 19, 2007, Case No. 03CW82, Water Division 2; August 19, 2010, Case No. 10CW27, Water Division 2. **Legal description:** NE ¼ of the NW ¼ Section 35, Township 13 South, Range 79 West, 6th P.M., Chaffee County, Colorado, 1050 feet from the North line and 1550 feet from the West line. **Source of water:** Powell Creek. **Appropriation Date:** July 5, 2002; **Amount:** 0.8 cfs. **Use:** Livestock and irrigation of 60 acres within the S ½ SE ¼ S26, T 13S, R 79W, 6th P.M., as designated by Case

96CW193. A request for conditional claim reduction is part of this application as follows: Amount of water: 0.4 cfs; Use: Stock watering and irrigation of 20 acres, west of County Road 361 and within the S ½ of the SE ¼ of Section 26, Township 13 South, Range 79 West, 6th P.M., Chaffee County, Colorado. The 20 acres to be irrigated is the same 20 acres designated as the irrigated land in Case 96CW193. **Detailed outline of what has been done toward completion of the appropriation:** Installed a cmp culvert in the ditch and over a drainage that has caused ditch washouts. Expenditures included: equipment rental, \$277; materials, \$605; and fuel, \$127. On August 19, 2016, notified the Division 2 Engineer that the U.S. Forest Service was not in compliance with its agreement with the Colorado Division of Water Resources to release water from Lower Harvard Lake, standing above the natural lake level. On August 28, 2016, requested that the Division 2 Engineer seek the termination on non decreed diversions from Powell Creek by Adventure Unlimited. **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:** Adventure Unlimited Ranches, P. O. Box 2036, Buena Vista, CO 81211.

CASE NUMBER 2016CW3059 – GREENHOUSE FX, LLC, a Colorado limited liability company, 1483 Woolsey Heights, Colorado Springs, CO 80915 (Please

direct all correspondence or inquiries regarding this matter to the attorneys for the Applicant: David M. Shohet, #36675, Ryan W. Farr, #39394, Monson, Cummins & Shohet, 319 North Weber Street, Colorado Springs, Colorado 80903, (719) 471-1212)
Application for Plan for Augmentation

PUEBLO COUNTY

Background and Summary of Plan for Augmentation. Applicant leases approximately 40 acres located in the N ½ of the N ½ of the NE ¼, Section 10, Township 21 South, Range 68 West of the 6th P.M., Pueblo County, Colorado (“Property”). The Property is shown on the map 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.) The Applicant seeks a plan to augment up to two wells on its property for both indoor and outdoor cultivation and irrigation of crop including cannabis (hemp and marijuana), and the associated commercial, domestic, drinking and sanitary needs for the grow facility. **Application for Approval of Plan for Augmentation. Structures to be Augmented.** The structures to be augmented consist of up to two wells, which may be completed to the Dakota Aquifer, to be constructed on the Property. One well, Well Permit Nos. 210212, is currently located on the Property. Applicant may use this well structure for use as one of the two wells under this plan for augmentation. **Water Rights to be Used for Augmentation.** Water rights to be used for augmentation consist of fully consumable water leased from the Board of Water Works of Pueblo, Colorado (“Pueblo Water”). Applicant may seek to transfer this plan for augmentation to a well user group in the future. Applicant may also seek a term and condition in any final decree requesting the Water Court to retain perpetual jurisdiction over the plan for augmentation for the sole purpose to add new or additional sources of augmentation. Lease with Pueblo Board of Water Works.

Applicant has entered into a lease for fully consumable water with Pueblo Water. Applicant's lease with Pueblo Water is attached to the Application as Exhibit B ("Lease"). The water rights or sources of water that may be used for augmentation in this augmentation plan include the following: Fully consumable water owned or controlled by the Pueblo Water. All water to be used in this augmentation plan provided by Pueblo Water must be decreed or otherwise legally available for augmentation purposes. The source of such water is unspecified in the lease, but may include Pueblo Water's water stored in Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, from direct flow transmountain water or from any other reservoir or place from which Pueblo Water may deliver water, the sources of which are at the option of Pueblo Water, as long as they are legally available for augmentation purposes. Water deliveries may include, without limitation, water stored in Twin Lakes Reservoir (located in all or portions of Sec. 14,15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in T.11S., R.81W., 6th P.M., in Lake County), Turquoise Reservoir (located on Lake Fork Creek in Sec. 7, 8, 17, 18, 19, and 20, T.9S., R.80W., 6th P.M. and Sec. 10, 11, 12, 13, 14, and 15, T.9S., R.81W., 6th P.M., in Lake County), Clear Creek Reservoir (located in Sec. 7 and 8, T.12S., R.79W, and Sec. 12, T.12S., R.80W., 6th P.M. in Chaffee County, and reusable return flows. The sources of such water may include, but are not limited to, the water rights decreed in Case Nos. 84CW177, District Court, Water Div. No. 2; 84CW177(B), District Court, Water Div. No. 2; 90CW340, District Court, Water Div. No. 5; W-1901, District Court, Water Div. No. 5; 95CW321, District Court, Water Div. No. 5; 90CW55, District Court, Water Div. No. 2; and 04CW130, District Court, Water Div. No. 2.

Statement of Plan for Augmentation. Diversions and Depletions. Uses. Indoor and outdoor cultivation and irrigation of a crop, including cannabis (hemp and marijuana), and the associated commercial, domestic, drinking and sanitary needs for the grow facility. **Diversions.** Applicant's grow facility will operate year-round, with all uses generally increasing during the summer months. The anticipated maximum well diversions under this plan is 15 annual acre feet. **Depletions.** Water diverted use for all uses will be considered to be one-hundred percent consumptive. **Return Flows.** As all uses are being considered one hundred percent consumptive Applicant is not claiming any return flows from diversions from the wells. However, Applicant reserves the right to claim such return flows in the future through amendment of the decree. **Location and Timing of Depletions.** Well pumping by all wells on Applicant's Property will be entitled to occur on a year-round basis, resulting in year-round lagged depletions to the Arkansas River. Depletions from pumping any Dakota wells located on the Property may occur to the Arkansas River at the base of the Pueblo Reservoir Dam in Section 36, Township 20 South, Range 66 West of the 6th P.M., or at another point to be determined. **Replacement Water.** Replacement water to augment the Applicant's well depletions currently totals 10 are-feet from the Lease, less any transit losses, or any such augmentation water applicant may acquire in the future. Applicant estimates that replacement water less transit losses will be approximately 9.03 annual acre feet. Applicant reserves the right to acquire additional water supplies so that total annual depletions under this plan may equal up to 15 annual acre feet. Current replacement water provided by Pueblo Board of Water Works is fully consumable and is available to the Applicant at the point of depletion on the Arkansas River caused by the pumping of any well under this plan. **Name and Address of Owners of Land Upon Which**

Structures are Located. All structures, wells, and operations covered by this Application occur on property owned by the Applicant. **Remarks.** Upon entry of a decree in this case, the Applicant shall be entitled to apply for and receive well permits and all subsequent replacement or additional wells for use in accordance with any decree entered in this case. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater and replacement of lagged depletions under the proposed augmentation plan. Applicant intends to waive the 600 foot well spacing requirement for the wells to be located on the Applicant's Property. The wells shall be installed and metered as required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on a monthly basis or as otherwise requested by the Division Engineer. The Applicant shall also provide Accountings to the Division Engineer and Water Commissioner to demonstrate compliance under this plan of augmentation. WHEREFORE, the Applicant requests this Application for Plan for Augmentation be granted as requested herein and for such other and further relief as the Court deems appropriate

CASE NO. 2016CW3060; Previous Case Nos. 2013CW3014 and 2002CW116 – THE MYRON STRATTON HOME, a Colorado nonprofit corporation, 555 Gold Pass Heights, Colorado Springs, CO 80906

(Please direct all correspondence or inquiries regarding this matter to the attorneys for the Applicant: Carolyn F. Burr, Jens Jensen, WELBORN SULLIVAN MECK & TOOLEY, P.C., 1125 –17th Street, Suite 2200, Denver, Colorado 80202, Telephone: (303) 830-2500)

Application For A Determination That A Conditional Water Right Has Been Made Absolute

EL PASO COUNTY, COLORADO

Name and Legal Description of Structures and Facilities Associated with the Conditional Water Right: Las Vegas Street Wastewater Treatment Facility Outfalls:

Located in El Paso County in the southwest quarter of the southwest quarter of Section 20, Township 14 South, Range 66 West of the Sixth Principal Meridian. Spring Run Reservoir No. 2: Located in the northwest quarter of the northwest quarter of Section 31, Township 14 South, Range 66 West of the Sixth Principal Meridian, El Paso County, Colorado.

Description of Conditional Water Rights: **Original Decree:** The Spring Run Reservoir No. 2 Exchange was originally decreed as an appropriative right of exchange for 50.0 a.f. at a rate of exchange of 1.0 c.f.s. on August 18, 2011, by the Division 2 Water Court in Case No. 10CW94. 17.5 a.f. at a rate of exchange of 0.3 c.f.s. was decreed as absolute. The remainder was decreed as conditional. **Subsequent**

Decrees: A decree making absolute an additional 32.5 a.f. at an exchange rate of 0.3 c.f.s., for a total of 50.0 a.f. at an exchange rate of 0.3 c.f.s., was entered on March 20, 2014 by the Division 2 Water Court in Case No. 13CW3014. Thus, the entirety of the decreed 50.0 a.f. has been made absolute, and the only part of the right that remains conditional is 0.7 c.f.s. out of a total of 1.0 c.f.s of the exchange rate. **Description of**

the Exchange Reach: The Exchange Reach extends from a) the Colorado Springs Las Vegas Street Wastewater Treatment Facility Outfalls located in El Paso County in the southwest quarter of the southwest quarter of Section 20, said outfall discharges to the Effluent Release Canal where effluent is conveyed approximately 2,000 feet to the confluence with Fountain Creek located in the southwest quarter of the northeast

quarter of Section 29; b) downstream on Fountain Creek approximately 800 feet to the confluence with Spring Run Creek located in the southwest quarter of the northeast quarter of Section 29; and c) exchange upstream on Spring Run Creek approximately 12,000 feet from the confluence of Fountain Creek and Spring Run Creek to Spring Run Reservoir No. 2, located in the northwest quarter of the northwest quarter of Section 31, all located in Township 14 South, Range 66 West of the Sixth Principal Meridian, El Paso County, Colorado. A map showing the exchange reach and the area irrigated with water from this exchange is attached as Figure No. 1 to the Technical Memorandum 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.) **Source of Water:** Reusable effluent discharged from the Colorado Springs Las Vegas Street Wastewater Treatment Facility wastewater outfall into the Fountain Creek System in exchange for otherwise out-of-priority storage of inflows from Spring Run Creek into Spring Run Reservoir No. 2. **Appropriation Date:** January 29, 2009. **Amount:** 50.0 a.f. at 1.0 cfs. **Use of Exchanged Water.** Storage and eventual irrigation of land historically irrigated by water stored in the exercise of the water rights decreed to Spring Run Reservoir No. 2. **Diligence:** This application does not seek a finding of diligence. Such application is due in August 2017, unless the right is made absolute prior to that time. **Claims to Make Absolute: Date Water Applied to Beneficial Use:** July 17-18, 2014. **Amount:** 1.0 c.f.s. **Use:** Storage, by refilling Spring Run Reservoir No. 2 for eventual irrigation use. **Evidence of Beneficial Use:** Technical Memorandum (attached to the Application as Exhibit 1) containing explanation of out-of-priority diversions requiring use of this Spring Run Reservoir No. 2 Exchange, staff gauge measurements proving diversions made pursuant to this Spring Run Reservoir No. 2 Exchange, and records of releases made by Colorado Springs Utilities pursuant to this Spring Run Reservoir No. 2 Exchange. **Description of Place of Beneficial Use:** The water was diverted to refill Spring Run Reservoir No. 2, described in paragraph 2.2, to replace evaporation and for eventual irrigation use on the lands described in the Technical Memorandum and depicted on Figure 1 attached thereto. **The UTM coordinates for the center of Spring Run Reservoir No. 2 are as follows:** Northing: 4293880 mN; Easting: 514750mE; Zone 13; Street address: 555 Gold Pass Heights, Colorado Springs, CO 80906. **The UTM coordinates for the center of irrigation use are as follows:** Northing: 4293790 mN; Easting: 515860 mE; Zone 13; Street address: 555 Gold Pass Heights, Colorado Springs, CO 80906; **Source of UTM:** Google Earth, Aquamap; **Accuracy of location:** 30 feet; **Legal Description Using the Public Land Survey System (PLSS):** El Paso County, northeast quarter of Section 31, Township 14 South, Range 66 West of the Sixth Principal Meridian. **Names(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** No new or modified storage or diversion structures are proposed; Applicant owns the land where the Spring Run Reservoir No. 2 is located. WHEREFORE, Applicant, The Myron Stratton Home, respectfully requests a finding and decree declaring that it has made absolute the entire water right granted by this Court in 10CW94, parts of which were made absolute in the original decree and parts of which were subsequently made absolute by this Court in 13CW3014.

CASE NO. 2016CW3061; Previous Case Nos. 99CW172; 10CW15 – BECKWITH RANCH WEST, LLC., c/o Aubrey Phillips, P.O. Box 349, Charlottesville, VA 22911

(Please direct all correspondence concerning this Application to: Gabe Racz, Esq. and Andrea A. Kehrl, Esq., Vranesh and Raisch, LLP, Attorneys for Applicant, 1720 14th Street, Suite 200, Boulder, CO 80302, Telephone: (303) 443-6151, Email: gr@vrlaw.com, aak@vrlaw.com)

Application for Finding of Reasonable Diligence

CUSTER COUNTY

Names of Structures: Beckwith Rangeland Habitat Pond A, Beckwith Rangeland Habitat Pond B, Beckwith Rangeland Habitat Pond C, Beckwith Rangeland Habitat Pond D, Beckwith Rangeland Habitat Pond E. The aforementioned ponds are referred to collectively as the “Beckwith Rangeland Habitat Ponds,” and the conditional water rights decreed to the Beckwith Rangeland Habitat Ponds are referred to below as the “Subject Water Rights.” **Description of Conditional Water Rights: Date of Original Decree:** The Subject Water Rights were originally decreed in Case No. 99CW172, District Court, Water Division No. 2, entered March 3, 2004 (the “Original Decree”). Applicant’s plan for augmentation for the Beckwith Rangeland Ponds was also adjudicated in Case No. 99CW172 (“Augmentation Plan”). **Subsequent Decrees Awarding Findings of Diligence:** Case No. 10CW15, District Court, Water Division No. 2, entered September 23, 2010. **Legal Descriptions:** The Beckwith Rangeland Habitat Ponds are located on lands owned by the Applicant in Section 34, Township 21 S, Range 73 W and a portion of the NE ¼ of Section 3, Township 22 S, Range 73 W of the 6th P.M. in Custer County, Colorado. The specific locations of the Beckwith Rangeland Habitat Ponds follow: Beckwith Rangeland Habitat Pond A: The outlet is in the SE ¼ NW ¼ of Section 34, Township 21 S, Range 73 W of the 6th P.M. in Custer County, Colorado, at a point 1,986 feet from the north line and 2,501 feet from the west line of said Section 34. Beckwith Rangeland Habitat Pond B: The outlet is in the SW ¼ NE ¼ of Section 34, Township 21 S, Range 73 W of the 6th P.M. in Custer County, Colorado, at a point 1,964 feet from the north line and 2,573 feet from the east line of Section 34. Beckwith Rangeland Habitat Pond C: The outlet is in the NE ¼ NE ¼ of Section 3, Township 22 S, Range 73 W of the 6th P.M. in Custer County, Colorado, at a point 195 feet from the north line and 1,093 feet from the east line of Section 3. Beckwith Rangeland Habitat Pond D: The outlet is in the NW ¼ NE ¼ of Section 3, Township 22 S, Range 73 W of the 6th P.M. in Custer County, Colorado, at a point 546 feet from the north line and 2,097 feet from the east line of said Section 3. Beckwith Rangeland Habitat Pond E: The outlet is in the SE ¼ NW ¼ of Section 34, Township 21 S, Range 73 W of the 6th P.M. in Custer County, Colorado, at a point 1,742 feet from the north line and 1,884 feet from the west line of said Section 34. The locations of the Beckwith Rangeland Habitat Ponds are depicted on the map attached to the application as Exhibit A, which is the map that was attached to the application submitted in Case No. 10CW15. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Sources of Water:** Intercepted ground water tributary to Swift Creek and Grape Creek, tributaries of the Arkansas River and ground water deliveries from the Clevenger Flowing Well No. 1, which was adjudicated a water right in Case No. W-123, District Court, Water Division No. 2, entered May 25,

1971. **Appropriation Date:** June 2, 1999. **Amounts:** Beckwith Rangeland Habitat Pond A: 3.68 acre-feet, Beckwith Rangeland Habitat Pond B: 5.85 acre-feet, Beckwith Rangeland Habitat Pond C: 3.50 acre-feet, Beckwith Rangeland Habitat Pond D: 3.36 acre-feet, Beckwith Rangeland Habitat Pond E: 5.72 acre-feet. Total: 22.11 acre-feet. **Uses:** Stock watering and wildlife wetland habitat maintenance. **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, during the previous diligence period:** The Applicant constructed the Beckwith Rangeland Habitat Ponds pursuant to a Wildlife Extension Agreement with the U.S. Fish and Wildlife Service (“FWS”) dated June 18, 1999, to improve and increase wildlife and waterfowl habitat on existing wetland areas. The Wildlife Extension Agreement provided the design criteria for the Beckwith Rangeland Habitat Ponds and associated water control structures. The agreement also included a FWS grant of up to \$55,000 for construction. Construction of the Beckwith Rangeland Habitat Ponds was completed before the entry of the Original Decree in 2004. During the diligence period, ducks, geese, and other wildlife continued to use the Beckwith Rangeland Habitat Ponds. In addition, during the diligence period, water from the ponds has been used for stock watering. The property on which the Beckwith Rangeland Habitat Ponds are located is a working cattle ranch, managed by on-site lessee, Randy Rusk. Mr. Rusk has reported diversions from the Clevenger Flowing Well No. 1, which is a decreed source of water for the Beckwith Rangeland Habitat Ponds, on a monthly basis to the Division Engineer. Mr. Rusk has also reported replacements made pursuant to the Augmentation Plan on an annual basis to the Water Commissioner. During the diligence period, Applicant has expended approximately \$3,400 in engineering expenses and approximately \$15,000 in legal expenses for activities associated with the Beckwith Rangeland Habitat Ponds and the operation of the Augmentation Plan, which allows Applicant to operate and utilize the Beckwith Rangeland Habitat Ponds, as they have not been in priority since their original adjudication in Case No. 99CW172. Certain engineering and legal activities and expenses are described in more detail below. On March 2, 2007, Applicant filed a Petition to Correct Substantive Errors in Judgment and Decree with the Court in an effort to correct the decreed amounts of the Beckwith Rangeland Habitat Ponds and thus the replacement obligations pursuant to the Augmentation Plan. Following entry of the prior diligence decree in Case No. 10CW15, and during the diligence period, Applicant expended legal and engineering fees in its continued efforts to pursue this correction. The Court ultimately dismissed Applicant’s Petition on November 13, 2012. In May of 2013, in accordance with Rules 3.1 and 3.2 of the Amended Rules Governing the Measurement of Tributary Groundwater Diversions Located in the Arkansas River Basin, Applicant hired consulting engineers to re-verify the previously verified totalizing flow meter on the Clevenger Flowing Well No. 1 and to submit notice of the re-verification to the Division of Water Resources (“DWR”). Applicant’s engineers determined that the meter was installed pursuant to manufacturer specifications and no variance was required. Applicant expended approximately \$700 in engineering fees for this analysis and submission to the DWR. During the irrigation season of 2015, Applicant hired engineering consultants to evaluate the current conditions and operation of the Beckwith Rangeland Habitat Ponds and the Augmentation Plan, expending in excess of \$2,700 for this evaluation. In 2015,

Applicant expended approximately \$1,000 for a new totalizing flow meter on the Clevenger Flowing Well No. 1. Applicant operates the Beckwith Rangeland Habitat Ponds pursuant to the Augmentation Plan and accounts for its operation of the Augmentation Plan. **If claim to make absolute in whole or in part:** N/A. **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:** Applicant. **Remarks or any other pertinent information:** Applicant acquired the Subject Water Rights from BJP Real Estate Partnership, Ltd.

CASE NO. 2016CW3062 – RIVERSIDE DITCH AND ALLEN EXTENSION COMPANY (“Riverside”), 31715 U.S. Highway 24 North, Buena Vista, CO 81211 (Please direct all correspondence or inquiries regarding this matter to the attorneys for the Applicant: Steven T. Monson, #11329, Ryan W. Farr, #39394, Monson, Cummins & Shoheit, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, Colorado 80903, (719) 471-1212)

Application for Surface Water Right

CHAFFEE COUNTY, COLORADO

Summary of Application. Riverside is a Colorado mutual ditch company and is seeking a junior decreed water right for historical diversions that have been made from Three Elk Creek by means of diversions into the Riverside Ditch and Allen Extension (“Riverside Ditch”). **Application for Surface Water Right. Name of Structure.** The Riverside Three Elk Creek Diversion. **Legal Description of Location:** The Riverside Three Elk Creek Diversion is located in the NW1/4 of the SW1/4 of Section 25, Township 13 South, Range 79 West of the 6th P.M., Chaffee County, Colorado. UTM Coordinates, NAD83: Zone 13 S, Easting: 397585, Northing: 4305143. **Source.** The water source is Three Elk Creek, a/k/a Three Mile creek. tributary to the Arkansas River (“Three Elk Creek”). **Date of Appropriation.** July 6, 1888. **How Appropriation was Initiated.** The appropriation of the water right was initiated upon completing construction of the Allen Extension of the Riverside Ditch across Three Elk Creek causing the diversion of water from Three Elk Creek into the Riverside Ditch. **Date Water Applied to Beneficial Use.** July 6, 1888. **Amount of Water Claimed.** 1.5 c.f.s., absolute. **Uses.** Irrigation. **Places of Use.** The places of use are all the property historically irrigated by and under the Riverside Ditch situated down ditch of the point of diversion for the Riverside Three Elk Creek Diversion. **Names and addresses of owner or reputed owner of land upon which structures is located.** The Riverside Three Elk Creek Diversion is located on property owned by Randy and Laurie Hancock, 32400 County Road 361, Buena Vista, Colorado 81211. WHEREFORE, the Applicant requests approval of this Application for a Water Right and for such other relief as the Court deems appropriate in these circumstances.

CASE NO. 2016CW3063 – ANDREW RODOSEVICH and LINHONA, LLC, 8100 E. Union Avenue, #1809, Denver, CO 80237

(Please direct all correspondence or inquiries regarding this matter to the attorney for the Applicants: James J. Petrock, Petrock & Fendel P.C., 700 Seventeenth Street, Suite 1800, Denver, CO 80202; (303) 534-0702)

Application for Underground Water Rights from Nontributary and Not Nontributary Sources, Approval of Plan for Augmentation, and Change of Water Rights in the Nontributary Arapahoe and Not Nontributary Laramie-Fox Hills Aquifers

EL PASO COUNTY

Subject Property: 40 acres being the SW1/4NW1/4 of Section 26, T14S, R61W of the 6th P.M., El Paso County, as shown on Attachment A to the Application ("Subject Property"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Applicant Rodosevich is the owner of the Subject Property. **Source of Water Rights:** The Laramie-Fox Hills aquifer is not nontributary as described in Sections 37-90-103(10.7), C.R.S., and the Arapahoe aquifer is nontributary as described in Section 37-90-103(10.5), C.R.S. **Estimated Amounts:** Arapahoe: 2.7 acre-feet, Laramie-Fox Hills: 10.8 acre-feet. **Proposed Use:** Domestic, commercial, irrigation, stock watering, fire protection, and augmentation purposes, including storage, both on and off the Subject Property. **Decree information for which change is sought:** Case No. 15CW3038 was decreed by Applicant Linhona, LLC, on January 28, 2016, District Court, Water Division 2, for 5.4 acre-feet per year of nontributary Arapahoe aquifer and 21.6 acre-feet per year of not nontributary Laramie-Fox Hills aquifer groundwater. The property which is the subject of that decree is 80 acres located in the SE1/4NW1/4 and the SW1/4NE1/4 of Section 26, T14S, R61W of the 6th P.M., El Paso County, as also shown on Attachment A to the Application. The 80 acres is contiguous to the 40 acres which is the subject of this application. **Proposed change:** Applicants request that the groundwater decreed in Case No. 15CW3058 be withdrawn in combination with the same type of groundwater being decreed in this case through wells to be located on the entire 120 acres, including the withdrawal of not nontributary Laramie-Fox Hills aquifer groundwater pursuant to the plan for augmentation requested herein. **Groundwater to be augmented:** Up to 30 acre-feet per year of the Laramie-Fox Hills aquifer groundwater as requested herein and decreed in Case No. 15CW3038. **Water rights for augmentation:** Return flows from the use of not nontributary and nontributary groundwater and direct discharge of nontributary ground water. **Statement of plan for augmentation:** The Laramie-Fox Hills aquifer groundwater will be used for inhouse use in two single family residences, irrigation, including greenhouses, and stockwatering. Applicants reserve the right to revise the annual amount to be withdrawn and these uses without having to amend the application or republish the same. Sewage treatment for inhouse use will be provided by non-evaporative septic systems and return flow from inhouse and irrigation use will be approximately 90% and 10% of that use, respectively. During pumping Applicants will replace an amount equal to 4% of the annual amount withdrawn pursuant to Section 37-90-137(9)(c.5), C.R.S. Applicants estimate that depletions occur to the Arkansas River stream systems. Return flows accrue to the Arkansas River stream systems, and those return flows are sufficient to replace actual depletions while the subject groundwater is

being pumped. Applicants will reserve a sufficient amount of nontributary Arapahoe aquifer groundwater underlying the Subject Property to meet post pumping augmentation requirements for a period of 1000 years after pumping ceases. Further, Applicants pray that this Court grant the application and for such other relief as seems proper in the premises.

CASE NO. 2016CW3064 – ELIZABETH W. DEAN (“Applicant”), 6 South Tejon Street, Suite 660, Colorado Springs, CO 80903 (Please direct all correspondence or inquiries regarding this matter to Applicant’s attorneys: Steven T. Monson, #11329, Ryan W, Farr, #39394, Monson, Cummins & Shohet, LLC, 319 North Weber Street, Colorado Springs, Colorado 80903, (719) 471-1212)

Application for Groundwater Rights

EL PASO COUNTY

Summary of Application. Applicant wishes to adjudicate the groundwater supply related to three exempt domestic wells as described below. **Dean Well No. 1. Property Description:** The Applicant is the owner of a parcel of property described as Lot 3 of the Eagle Canyon Subdivision together with an additional tract of land located in the SW1/4 of Section 15, Township 16 South, Range 67 West of the 6th P.M., El Paso County, Colorado, comprising approximately 94.53 acres and shown on Exhibit A attached to the Application (“Applicant’s Property No. 1”). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Name of Structure:** Dean Well No. 1. **Legal Description of Well:** Dean Well No. 1 is located on Applicant’s Property No. 1 approximately 1,225 feet from the South section line and 750 feet from the West section line. UTM coordinates: NAD83, Zone 13 S, Easting: 510213, Northing: 4278305. Dean Well No. 1 is permitted as an exempt well pursuant to Permit No. 186506. Such permit is attached to the Application as Exhibit B. **Source:** The source of the well is groundwater tributary to Little Turkey Creek, tributary to Turkey Creek, tributary to the Arkansas River. **Appropriation: Date of Initiation of Appropriation:** January 9, 1995. **How Appropriation was Initiated:** By the submission and approval of a permit application by the Colorado Division of Water Resources. **Date Water Applied to Beneficial Use:** July 31, 1995. **Amount Claimed:** 6 g.p.m., absolute; 9 g.p.m., conditional. **Uses:** Dean Well No. 1 is permitted for ordinary household uses inside three single family dwellings, the irrigation of not more than 1 acre of home gardens and lawns, the watering of domestic animals, and fire protection. Applicant seeks an absolute right for the use within one single family dwelling, irrigation, the watering of domestic animals, and fire protection. Applicant seeks a conditional right for such uses in two additional single family dwellings. **Land Ownership:** The land where the well is located and upon which the water is used is Applicant’s Property No. 1. **Remarks:** Dean Well No. 1, which is the subject of this Application, is an exempt well issued pursuant to § 37-92-602(3)(b)(II)(A), C.R.S. for the uses authorized in § 37-92-602(1)(b), C.R.S. and a decree for Dean Well No. 1 is sought pursuant to § 37-92-602(4), C.R.S. It is Applicant’s intent to maintain the exempt status of Dean Well No. 1. The priority date sought for the well is the above appropriation date regardless of the Water Court filing date. **Dean Well No. 2. Property Description:** The Applicant is the owner of a parcel of property located in the SW1/4 of Section 15, Township 16 South, Range 67 West of the 6th P.M., El Paso

County, Colorado, comprising approximately 5.00 acres and shown on Exhibit C attached to the Application ("Applicant's Property No. 2"). **Name of Structure:** Dean Well No. 2. **Legal Description of Well:** Dean Well No. 2 is located on Applicant's Property No. 2 approximately 1,200 feet from the South section line and 1,300 feet from the West section line. UTM coordinates: NAD83, Zone 13 S, Easting: 510379, Northing: 4278272. Dean Well No. 2 is permitted as an exempt domestic well pursuant to Permit No. 43918-A. Such permit is attached to the Application as Exhibit D. **Source:** The source of the well is groundwater tributary to Little Turkey Creek, tributary to Turkey Creek, tributary to the Arkansas River. **Appropriation:** *Date of Initiation of Appropriation:* December 4, 1970. *How Appropriation was Initiated:* By the submission of a permit application to the Colorado Division of Water Resources. *Date Water Applied to Beneficial Use:* December 11, 1970. **Amount Claimed:** 9 g.p.m., absolute; 6 g.p.m. conditional. **Uses:** Dean Well No. 2 is permitted for ordinary household uses inside one single family dwelling, the irrigation of not more than 1 acre of home gardens and lawns, the watering of domestic animals, and fire protection. Applicant seeks an absolute right for all uses. **Land Ownership:** The land where the well is located and upon which the water is used is Applicant's Property No. 2. **Remarks:** Dean Well No. 2, which is the subject of this Application, is an exempt well issued pursuant to § 37-92-602(3)(b)(II)(A), C.R.S. for the uses authorized in § 37-92-602(1)(b), C.R.S. and a decree for Dean Well No. 2 is sought pursuant to § 37-92-602(4), C.R.S. It is Applicant's intent to maintain the exempt status of Dean Well No. 2. The priority date sought for the well is the above appropriation date regardless of the Water Court filing date. **Shared Well.** **Name of Structure:** Shared Well. **Legal Description of Well:** Shared Well is located on property owned by Donald C. Larrabee, Jr. described as a part of Lot 1 of the Eagle Canyon Subdivision located in the NE1/4 of the SW1/4 of Section 15, Township 16 South, Range 67 West of the 6th P.M., El Paso County, Colorado, comprising approximately 6.11 acres and shown on Exhibit E attached to the Application. Shared Well is approximately 2,200 feet from the South section line and 1,900 feet from the West section line. UTM coordinates: NAD83, Zone 13 S, Easting: 510549, Northing: 4278549. Shared Well is permitted as an exempt domestic well pursuant to Permit No. 179279. Such permit is attached to the Application as Exhibit F. **Ownership of Shared Well.** Shared Well is jointly owned by the Applicant, Donald C. Larrabee, Jr., and Gary McCowen and Anita McCowen. Applicant has a one-third interest in Shared Well. The well is shared for each of their respective uses. **Source:** The source of the well is groundwater tributary to Little Turkey Creek, tributary to Turkey Creek, tributary to the Arkansas River. **Appropriation:** *Date of Initiation of Appropriation:* April 4, 1994. *How Appropriation was Initiated:* By the submission of a permit application to the Colorado Division of Water Resources. *Date Water Applied to Beneficial Use:* For Applicant's interest in the well, the water has not been placed to beneficial use. **Amount Claimed:** 15 g.p.m., conditional. **Uses:** Shared Well is permitted for use in three single family dwellings, for the irrigation of not more than one acre of home gardens and lawns, for the watering of domestic animals, and fire protection. Applicant is seeking a conditional right for her one-third interest in Shared Well resulting in a conditional right for use in one single family dwelling, irrigation of one-third of an acre of home gardens and lawns, the watering of domestic animals, and fire protection. **Land Ownership:** The land upon which the Applicant's interest will be

used is Applicant's Property No. 1. Donald C. Larrabee, Jr., 1417 Potter Drive, Suite 105, Colorado Springs, Colorado 80909 is the owner of the land where the Shared Well is located and also owner of one-third interest in Shared Well. Gary McCowen and Anita McCowen, 3070 Little Turkey Creek Road, Colorado Springs, Colorado 80926 are the owners of the remaining one-third interest in Shared Well. **Remarks:** Shared Well, which is the subject of this Application, is an exempt domestic well issued pursuant to § 37-92-602(3)(b)(II)(A), C.R.S. for the uses authorized in § 37-92-602(1)(b), C.R.S. and a decree for Applicant's interest in Shared Well is sought pursuant to § 37-92-602(4), C.R.S. It is Applicant's intent to adjudicate only Applicant's interest in Shared Well and to maintain the exempt status of Shared Well for Applicant's uses.

CASE NO. 2016CW3065 – STEPHEN HYDE and LORREEN GEORGE, 69 Marland Pl., Colorado Springs, CO 80906-4303 (Please direct all correspondence and inquiries regarding this matter to Applicants' attorneys: Monson, Cummins & Shohet, LLC, David M. Shohet, #36675, Ryan W. Farr, #39394, 319 N. Weber St., Colorado Springs, CO 80903, (719) 471-1212)

Application for Approval of Plan for Augmentation

CHAFFEE COUNTY, COLORADO

Plan for Augmentation. Applicants seek a plan for augmentation to cover any out-of-priority evaporative depletions associated with one pond to be constructed on the Applicants' property located in Chaffee County. **Name of Structure to be Augmented:** Hyde Pond. **Legal Description:** In the SE1/4 of the NE1/4 of Section 15, Township 12 South, Range 80 West, 6th P.M., with the center of the downstream embankment at approximately 2145 feet south of the north section line and 2140 west of east section line of said Section 15. UTM coordinates of 385855 mE, 4318704 mN (NAD 1983, Zone 13 North). A map attached to the Application as Exhibit A shows the approximate boundaries of the Applicants' property and the approximate location of pond. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Source:** Exposure of groundwater tributary to Clear Creek, tributary to the Arkansas River. **Pond Total Capacity:** 2.0 acre-feet, all dead storage (below existing ground surface), not lined. **Uses:** Piscatorial, recreation, fire protection and, aesthetics. **Maximum Height of Dam/Berm(above existing ground surface):** 2 feet. **Length of Dam/Berm:** 600 feet (encircling pond). **Maximum surface area of pond:** 0.5 acres. **Water Rights to be used for augmentation: Giebfried Ditch. Date of Original Decree:** July 22, 1889. **Decree No.:** Case No. 1591, In the Matter of the Adjudication of Priorities of Water Rights in Water District No. 11 upon petition of Peter Giebfried, District Court in and for Chaffee County, Colorado. **Legal Description of Points of Diversion: Original Decreed Point of Diversion:** On the south bank of Clear Creek at the point whence the south quarter corner of Section 11 in Township 12 South, Range 80 West bears north 54°34' East, 2991.94 feet. **Alternate Point of Diversion A-2 (Decreed in Water Division 2, Case No. 89CW11, entered April 4, 1994):** On the northerly bank of Clear Creek within the NW 1/4 of the NW 1/4 of Section 14, T12S, R80W of the 6th P.M., from whence the Northwest Corner of said Section 14 bears North, 43 degrees 21'55" West 892.5 feet. **Alternate Point of Diversion A-3 (Decreed in Water Division 2, Case No. 89CW11, entered April 5, 1994):** On the northerly bank of Clear Creek within the SE 1/4 of the SE 1/4 of Section 11, T11S,

R80W of the 6th P.M., from whence the Southeast Corner of said Section 11 bears South 44 degrees 02'10" East 1387.4 feet. Alternate Point of Diversion A-4 (Decreed in Water Division 2, Case No. 89CW11, entered April 5, 1994): On the southeasterly bank of Clear Creek within the SE 1/4 of the SE 1/4 of Section 11, T12S, R80W of the 6th P.M., from whence the Southeast Corner of said Section 11 bears South 15 degrees 08'25" East 1060.3 feet. **Source**: Clear Creek, a tributary of the Arkansas River. **Amount and Appropriation Date**: 3.0 c.f.s. with an appropriation date of April 20, 1878. 0.05 c.f.s. of the 3.0 is owned by the Applicant and will be dedicated to this plan for augmentation. Applicants, in Case No. 1990CW32, changed 0.4 c.f.s. of the Giebfried Ditch water right to augmentation purposes. Paragraph 14 of the decree entered in Case No. 1990CW32 recognized that 0.05 c.f.s. of the 0.4 c.f.s. Giebfried Ditch water right changed (equating to 1.35 annual acre-feet (af) of replacement water) was excess to the replacement requirements of Case No. 1990CW32 and could be used in a subsequent application for an augmentation plan. Only the 0.05 c.f.s. of the changed 0.4 c.f.s. of the Giebfried Ditch water right is sought to be used in this plan for augmentation. **Water Owned and/or Leased by Arkansas Groundwater Users Association**. Applicant has entered into an Agreement with the Arkansas Groundwater Users Association ("AGUA"), executed on May 22, 2016 (the "AGUA Agreement"). The AGUA Lease makes available to the Applicants 1 annual acre feet of fully consumable water. AGUA may utilize fully consumable sources of water available to AGUA for augmentation purposes by direct flow or exchange including, without limitation, the following decreed sources, amounts, and legal descriptions: **The Ewing Placer Ditch**: Pueblo Water owns the Ewing Placer Ditch in its entirety. **Decree**: Civil Action No. 507, District Court, Eagle County, decree dated November 13, 1911. Changes of use including augmentation were decreed in Case No. 90CW052 (Div. 2) and 90CW340 (Div. 5). **Appropriation date**: June 1, 1906. **Source**: Piney Creek, tributary to the Eagle River. The Ewing Placer Ditch diverts water from, and carries the water across the Continental Divide into Tennessee Creek for delivery to the Arkansas River. **Amount**: 18.5 cfs. **The Warren E. Wurtz Ditch**: Pueblo Water owns the Warren E. Wurtz Ditch in its entirety. **Decree**: District Court, Eagle County, Civil Action No. 963, dated October 3, 1936. Changes of use including augmentation were decreed in Case No. 90CW052 (Div. 2) and 90CW340 (Div. 5). **Appropriation Date**: June 8, 1929. **Source**: Bennett Creek, Mitchell Creek, and side 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. **Amount**: 85 cfs. **The Wurtz Extension Ditch**: Pueblo Water owns the Wurtz Extension Ditch in its entirety. **Decree**: District Court, Water Division No. 5, Case No. 80CW505, dated October 21, 1982. **Appropriation Date**: October 26, 1953. **Source**: 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. **Amount**: 100 cfs. **The Busk Ivanhoe System**: Pueblo Water's undivided one-half interest in the Busk-Ivanhoe System water rights. **Decree**: District Court, Garfield County, Civil Action Nos. 3082 and 4033. Changes of use including augmentation were decreed in Case No. 90CW052 (Div. 2) and 90CW340 (Div. 5). **Appropriation Date**: Dates differ for various components of the system as more fully set forth in the referenced decree. **Source**:

Hidden Lake Creek, Pan Creek, Lyle Creek, and Ivanhoe Creek, all tributaries of the Fryingpan and Roaring Fork Rivers. Water is carried through the Continental Divide for delivery into Busk Creek on the headwaters of the Arkansas River. Amount: 85 cfs by absolute decree dated January 9, 1928. Other absolute decrees in the amounts of 25 cfs and 70 cfs were entered in Civil Action Nos. 3082 and 4033. **The Homestake Project**: By an assignment of interest from the City of Aurora, Pueblo Water has the annual right to receive 2,500 acre-feet of Homestake Project Water delivered at Turquoise Lake. Decree: The Homestake Project's water rights were adjudicated by the decree in Civil Action No. 1193 (District Court, Eagle County) date June 8, 1962. Appropriation Date: September 22, 1952. Source: The Homestake Project diverts water from the headwaters and tributaries of the Eagle River, and carries such water through the Continental Divide for delivery to Lake Fork Creek, a tributary of the Arkansas River. **The Independence Pass Transmountain Diversion System**: Pueblo Water has the right to utilize a portion of such water rights and the return flows therefrom by virtue of its ownership of shares of the Twin Lakes Reservoir and Canal Company. Pueblo Water owns 11,476.15726 shares out of 49,588.965 shares outstanding (a 23.143 percent interest) in the Twin Lakes Canal and Reservoir Company. Decree: District Court, Garfield County, Civil Action No. 3082, dated August 25, 1936. The original decree for the System was modified by a decree in Case No. W-1901 (District Court, Water Division No. 5) dated May 12, 1976, which decree contains additional limits more fully set forth therein. Appropriation Date: August 23, 1930. Source: Headwaters of the Roaring Fork River and its tributaries. The Independence Pass Transmountain Diversion System carries water collected from certain tributaries through a tunnel underneath the Continental Divide for delivery to Lake Creek, a tributary of the Arkansas River. Amount: 625 cfs. Twin Lakes shares used as an augmentation source in this plan will be limited to the trans-basin component of Pueblo Water's Twin Lakes shares. **Fully Consumable Return Flows**: Sewered and non-sewered fully consumable return flows from indoor use and lawn, garden, parks, and landscape irrigation use associated with Pueblo Water's municipal use of the Ewing Placer Ditch, the Warren E. Wurtz Ditch, the Wurtz Extension Ditch, the Busk-Ivanhoe System, the Homestake Project, and the Independence Pass Transmountain Diversion System decreed in Case Nos. 84CW177(A), 84CW177(B), 86CW111(A) and 86CW111(B). **West Pueblo Ditch**: Pueblo Water owns 492 of 500 shares in the West Pueblo Ditch and Reservoir Company. Decree: In Case No. 90CW55, 481.5 shares owned by Pueblo Water 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. The described sources in Paragraphs II(2)(i)-(viii) above may be delivered from Twin Lakes Reservoir (located in all or portions of Sections. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 30, in T.11S., R.81W., 6th P.M., in Lake County), Turquoise Reservoir (located on Lake Fork Creek in Sections. 7, 8, 17, 18, 19, and 20, T.9S., R.80W., 6th P.M. and Sections. 10, 11, 12, 13, 14, and 15, T.9S., R.81W., 6th P.M., in Lake County), Clear Creek Reservoir (located in Sections. 7 and 8, T.12S., R.79W., and Section. 12, T.12S., R.80W., 6th P.M., in Chaffee County), and Pueblo Reservoir (located in Sec, 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32,

33, 34, 35 and 36, T.20S., R.66W., and Sec. 1, 2, 3, 4, 5, 9, 10 and 11, in T.21S., R.66W., and Sec. 5, 8, 9, 13, 14, 15, 16, 22, 23, 24 and 25, in T.20S., R.67W., 6th P.M. in Pueblo County). The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section 36 bears North 61° 21' 20" East, a distance of 2,511.05 feet, all more particularly described in the decree in Case No. B-42135, District Court, Pueblo County, Colorado, as corrected in Case No. 02CW37. **Excelsior Ditch:** Decree: Case No. 2535, Pueblo County District Court, decree entered March 23, 1896. Changes of use including augmentation were decreed in Case No. 04CW62, Water Division No. 2, on June 18, 2007. Amount and Appropriation Dates: 20 cfs with an appropriation date of May 1, 1887 (Priority No. 55) and 40 cfs with an appropriation date of January 6, 1890 (Priority No. 60). Source: Arkansas River. **Any fully consumable water stored in AGUA's Pueblo Reservoir If & When account. Statement of Plan for Augmentation.** Applicants seek approval of a plan for augmentation to replace groundwater exposed by a pond to be built by the Applicants. The total high surface area of the Hyde Pond is 0.5 acres. Applicants' water resource has calculated that the net evaporative depletions of Hyde Pond will be 1.1 annual acre feet. As the evaporative depletions occur off channel, Applicants' water resource engineer has calculated that monthly depletions are lagged back to Clear Creek using a lag pattern of 75% the month of evaporation, 17% the second month, 5% the third month, 2% the fourth month and 1% the fifth month after depletion. Applicants, pursuant to the terms of the decree entered in Case No. 90CW32, will leave the Giebfried Ditch water right in the stream during the irrigation season. Applicants will utilize their leased AGUA water to replace any of the Ponds lagged depletions during the non-irrigation season. **Name And Address Of Owners Of Land On Which Structures Will Be Located.** Applicants own the land where the Hyde Pond will be located. **Additional Terms and Conditions.** Applicants shall install and maintain such water measuring devices as deemed essential by the State Engineer or Division Engineer and the same shall be installed and operated in accordance with the instruction of that office. WHEREFORE, Applicants request that their Application for Approval of Plan for Augmentation be granted as requested herein, and for such other and further relief as the Court deems appropriate in these circumstances.

CASE NO. 2016CW3066, Water Division 2 and CASE NO 2016CW3128, Water Division 1 – CLIVE and KAREN GRANT REVOCABLE TRUST, 1315 Walsen Road, Colorado Springs, CO 80921

(Please direct all correspondence and inquiries regarding this matter to Applicants' attorneys: James J. Petrock, Petrock & Fendel, 700 17th Street, #1800, Denver, CO 80202; (303) 534-0702)

Application For Underground Water Rights From Nontributary And Not Nontributary Sources And For Approval Of Plan For Augmentation, In The Nontributary Laramie-Fox Hills And The Not Nontributary Dawson, Denver, And Arapahoe Aquifers

EL PASO COUNTY

Subject Property: 40 acres being the SW1/4NE1/4 of Section 5, T12S, R66W of the 6th P.M., El Paso County, as shown on Attachment A to the Application ("Subject Property"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Source of Water Rights:** The

Dawson, Denver, and Arapahoe aquifers are not nontributary as described in Sections 37-90-103(10.7), C.R.S., and the Laramie-Fox Hills aquifer is nontributary as described in Section 37-90-103(10.5), C.R.S. **Estimated Amounts:** Dawson: 8 acre-feet, Denver: 28 acre-feet, Arapahoe: 16 acre-feet, Laramie-Fox Hills: 11 acre-feet. **Proposed Use:** Domestic, commercial, industrial, irrigation, livestock watering, fire protection, and augmentation purposes, including storage, both on and off the Subject Property. **Groundwater to be augmented:** 2 acre-feet per year of Dawson aquifer groundwater for 300 years as requested herein. **Water rights for augmentation:** Return flows from the use of not nontributary and nontributary groundwater and direct discharge of nontributary ground water. **Statement of plan for augmentation:** The Dawson aquifer groundwater will be used through two wells, including existing well Permit No. 69076, to serve 2 residences at rates of flow not to exceed 15 gpm. Each well will withdraw 1 acre-foot annually for 300 years for inhouse use (0.35 acre-feet), irrigation of 10,500 square-feet of lawn, garden, and trees (0.6 acre-feet), and stockwatering of up to 4 large domestic animals (0.05 acre-feet). Applicants reserve the right to amend these amounts and values without amending the application or republishing the same. Sewage treatment for inhouse use will be provided by non-evaporative septic systems and return flow from inhouse and irrigation use will be approximately 90% and 15% of that use, respectively. During pumping Applicant will replace actual depletions to the affected stream system pursuant to Section 37-90-137(9)(c.5), C.R.S. Because depletions may occur to stream systems in Water Divisions 1 and 2, this application is being filed in both divisions. Based on the location of the Subject Property, return flows from use of the water on the Subject Property return to the Arkansas River stream system and such return flows are sufficient to replace the total annual actual depletion. Applicant requests that the total actual depletion be returned to the Arkansas River stream systems and for a finding that those replacements are sufficient to prevent injury to all affected stream systems. Applicant will reserve an equal amount of the nontributary Laramie-Fox Hills aquifer groundwater requested herein to meet post pumping augmentation requirements. Further, Applicants pray that this Court grant the application and for such other relief as seems proper in the premises.

CASE NO. 2016CW3067 – RICKY L. MARKUS AND KAY L. MARKUS, 19677 Road W, Ordway, CO 81063-940 (Please direct all correspondence to Robert F. T. Krassa, Krassa & Miller, LLC, Attorney for Applicants, 2737 Mapleton Avenue, Suite 103, Boulder CO 80304-3836, 303-442-2156)

Application for Correction for an Established but Erroneously Described Point of Diversion Pursuant to C.R.S. § 37-92-305(3.6)

CROWLEY COUNTY, COLORADO

Decreed water right for which correction is sought: Name of structure: “Well No. 8, 9, 10, 11, 12 and 13 (BATTERY)”. **Original decree entered** January 9, 1973 in Case No. W-879 in this Court. Copy of decree 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.) There have been no relevant subsequent decrees.

Legal description of structure as described in decree in W-879: “NW1/4 NE1/4 Sec. 18, T. 19S., R 56W. Of the 6th P.M., in Crowley County, Colorado”. This location is shown on the print of a portion of the official USGS quad sheet map “Box Springs, Colorado” attached to the Application as Exhibit B. **Decreed source of water:** not stated in the W-879 decree. However, the source of water is shallow groundwater, which has been determined by the office of the State Engineer to be not tributary to the

Arkansas River. **Appropriation** Date: April 1, 1915 **Total amount decreed to structure:** 0.69 c.f.s. or 310 g.p.m., all absolute. **Decreed use or uses:** Irrigation of cropland, supplemental irrigation of cropland irrigated under the Box Springs Canal and Reservoir Co. System and domestic use. **Detailed description of proposed correction** to an established but erroneously described point of diversion: **Complete statement of correction** to an established but erroneously described point of diversion, including whether it is erroneously described: As shown by the Affidavit of B.O. Carter (attached to the Application as Exhibit C) which was attached to the Application filed in this Court in said Case W-879, the six subject wells were dug and cased in 1934 as replacements for wells that were in use in 1914. The wells have been at the same location since 1914. As shown on the AquaMap attached to the Application as Exhibit D, the six wells are strung out in a line parallel to and about 20 feet south of the north line of said Section 18. However, instead of being in the NW 1/4 of the NE 1/4 of Section 18 as stated in the W-879 decree, they are in fact partly in the NE 1/4 of the NW 1/4 and partly in the NW 1/4 of the NW 1/4 of that section, as stated in the Application in Case W-879, copy attached to the Application as Exhibit E. The cause of the error is not known but may simply be a transcription error. The discrepancy was brought to the attention of the Applicants by the Division Engineer's office in the Summer of this year.

The legal description of the corrected point of diversion in UTM format

Well Name	Well Permit #	Well ID #	GPS		Q40	Q160	PLSS		
			Easting	Northing			Sec	Township	Rng
Carter Well No 8	21055FR	1706260	611830.86	4251813.87	NW	NW	18	19S	56W
Carter Well No 9	21056FR	1706261	611845.59	4251813.74	NW	NW	18	19S	56W
Carter Well No 10	21057FR	1706262	611861.12	4251814.25	NW	NW	18	19S	56W
Carter Well No 11	21058FR	1706263	611877.14	4251814.71	NW	NW	18	19S	56W
Carter Well No 12	21059FR	1706264	611891.23	4251814.91	NE	NW	18	19S	56W
Carter Well No 13	21060FR	1706265	611905.87	4251815.27	NE	NW	18	19S	56W

Datum: WGS84. Units are set to true North. **Source:** Google Earth Pro referenced with DWR AquaMap. **Legal Description Using the Public Land Survey System (PLSS):** Wells 8, 9, 10 and 11, also known as Permit Numbers 21055-FR, 21056-FR, 21057-FR and 21058-FR are in the NW 1/4 of the NW 1/4 of Section 18, Township 19 South, Range 56 West of the Sixth Principal Meridian in Crowley County. Wells 12 and 13, also known as Permit Numbers 21059-FR and 21060-FR, are in the NE 1/4 of the NW 1/4, same section, range and township. Distance in feet from the west and north section lines of said Section 18 are:

Well	from West Line	from North Line
8	1201	20
9	1250	20
10	1301	20
11	1353	20
12	1399	20
13	1447	20

By way of summary, all of these wells are in the North half of the NW/4 of said Section 18. This corrected location, which is also the location at which the structures have been

since original construction in 1914, is shown on the print of Aquamap titled "Carter Wells 8 to 13" attached to the Application as Exhibit D. **Owners of the land upon which the said wells are located:** Applicants.

CASE NO. 2016CW3068 – JERALD and LEVI HEIDRICH, 7440 Templeton Gap Road, Colorado Springs, CO 80922 and RICHARD and DELORES SCHUBERT, 7415 Templeton Gap Road, Colorado Springs, CO 80922 (Please direct all correspondence and inquiries regarding this matter to Applicants' attorneys: James J. Petrock, Petrock & Fendel, 700 17th Street, #1800, Denver, CO 80202; (303) 534-0702) Application For Underground Water Rights From Nontributary Sources, Approval Of Plan For Augmentation, And Change Of Water Rights, In The Nontributary Laramie-Fox Hills Aquifer

EL PASO COUNTY

Request for groundwater right: Applicants Jerald and Levi Heidrich have obtained the written consent of the landowner for the use of nontributary Laramie-Fox Hills aquifer groundwater underlying approximately 5 acres, known as the Reel Subdivision Waiver as described in Book 2890 at Page 382 of the El Paso County records, which is generally located in the NE1/4 of Section 7, T13S, R65W of the 6th P.M., as described and shown on Attachment A to the Application ("Reel Subdivision"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Reel Subdivision is adjacent to the Heidrich land described below. A copy of the consent as recorded in the El Paso County records is attached to the Application as Attachment B. There is approximately 1.4 acre-feet per year of nontributary Laramie-Fox Hills aquifer groundwater available underlying the Reel Subdivision, and that groundwater will be decreed in this case. **Proposed Use:** Domestic, commercial, industrial, irrigation, livestock watering, fire protection, and augmentation purposes, both on and off the Subject Property. **Jurisdiction:** The Water Court has jurisdiction over the subject matter of this application pursuant to Sections 37-92-302(2), and 37-90-137(6), C.R.S. **Decree information for which change is sought:** Case No. 92CW3, decreed on October 26, 1992, Water Division 2, and 99CW49, decreed on October 28, 1999, Water Division 2 (Schubert), and Case No. 09CW57, decreed on December 8, 2009, Water Division 2 (Heidrich). The land which is the subject of Case No. 92CW3 and 99CW49 is approximately 21.65 acres being Lot 4, Glover Subdivision as shown on Attachment A (Schubert land), and the land which is the subject of Case No. 09CW57 is approximately 5.5 acres described and shown on Attachment A (Heidrich land). (Case No. 09CW57 includes the Arapahoe aquifer groundwater underlying the Reel Subdivision). The parcels are generally located in the NE1/4 of Section 7, T13S, R65W of the 6th P.M., El Paso County. **Applicants request the following changes:** A. The decree in Case No. 99CW49 approved a plan for augmentation to allow pumping and use of 6.1 acre-feet per year of not nontributary Denver aquifer groundwater. By this change Case No. 99CW49 will be revised to allow the withdrawal of 3 acre-feet per year of the Denver aquifer groundwater. Approximately 3.1 acre-feet per year of nontributary Laramie-Fox Hills groundwater which was reserved for use in that plan will be available for other uses. B. Applicant Heidrich is the owner of 4.4 acre-feet per year of not nontributary Arapahoe aquifer groundwater (includes the Arapahoe groundwater under the Reel Subdivision), and Applicant Schubert is the owner of 9 acre-feet per year of not nontributary Arapahoe

aquifer groundwater as decreed in Case No. 09CW57 and 02CW3, respectively. Applicants request that the combined annual amount of 13.4 acre-feet per year of decreed Arapahoe groundwater be withdrawn through wells to be located on the Heidrich land, Schubert land, and Reel Subdivision, subject to Rule 11.B of the Statewide Nontributary Ground Water Rules (2 CCR 402-7), including the Arapahoe aquifer groundwater which is the subject of the augmentation plan requested below. Applicants will continue to own their respective amounts of Arapahoe aquifer groundwater and such ownership does not merge by this application. **Description of plan for augmentation: Groundwater to be augmented:** 13.4 of not nontributary Arapahoe aquifer groundwater as described above. **Water rights to be used for augmentation:** Return flows from the use of not nontributary Arapahoe aquifer groundwater and direct discharge or return flows from use of nontributary Laramie-Fox Hills aquifer ground water as requested above and decreed in Case No. 92CW3 and 09CW57. **Statement of plan for augmentation:** Applicants will use the Arapahoe aquifer groundwater for domestic, commercial, light industrial, irrigation, stockwatering, storage, and augmentation purposes on the Heidrich land, Schubert land, and Reel Subdivision. Sewage treatment for domestic and commercial use will be provided by a non-evaporative septic system. Consumptive use associated with commercial use will be approximately 10% of water used and consumptive use associated with irrigation use will be approximately 90% of water used. During pumping Applicants will replace 4% of the actual amount withdrawn to the affected stream system pursuant to Section 37-90-137(9)(c), C.R.S. Depletions may occur to the Arkansas River stream system and return flows from use of the subject water rights will also return to the Arkansas River stream system. Those return flows are sufficient to replace at least 4% of the annual amount withdrawn while the subject groundwater is being pumped. Applicants will reserve a sufficient amount of nontributary Laramie-Fox Hills aquifer groundwater to meet post pumping augmentation requirements for a period of 1000 years after pumping ceases. Case No. 09CW57 approved a plan for augmentation to allow use of 4.4 acre-feet per year of not nontributary Arapahoe aquifer groundwater and that augmentation plan will continue to operate as decreed, or in combination with the augmentation plan requested herein. Further, Applicant prays that this Court grant the application and for such other relief as seems proper in the premises.

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 2016, (forms available at Clerk's office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments,

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

Witness my hand and the seal of this Court this 6th day of October, 2016.



Mardell R. DiDomenico

Mardell R. DiDomenico, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
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(Court seal)
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