

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during September 2018, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 2018CW3049, Water Division 2 and CASE NO. 2018CW3150, Water Division 1 - SAVAGE FAMILY TRUST, c/o Robin "RJ" Savage, 1128 Hunter Street, Ramona, CA 92065. (Please address all pleadings and correspondence to: Chris D.

Cummins of Monson, Cummins & Shoheit, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921; (719) 471-1212)

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

EL PASO COUNTY

Applicant seeks to construct a non-exempt well to the not-nontributary Dawson aquifer to provide water service to a single family dwelling on the Applicant's 5-acre parcel. Applicant therefore seeks to quantify the Denver Basin groundwater underlying the Applicant's Property, and for approval of a plan for augmentation for the use thereof.

Legal Description of Wells. **Property Description.** All wells will be located on Applicant's Property, which contains approximately 5 acres, more or less ("Applicant's Property"). As more particularly described as follows, and depicted in the map attached to the Application as Exhibit A, Applicant's Property is located in: The SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, Township 11 South, Range 65 West of the 6th P.M., also known as Lot 5, Block 3 in the Table Rock Ranch Filing No.2, also known as 9125 Blue Sage Circle, Colorado Springs, El Paso County, Colorado. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

Proposed Wells. Applicant proposes that one well will be located on the Applicant's Property at a specific location not yet determined ("Savage Well No. 1"), to be constructed to the Dawson aquifer. **Not-Nontributary.** The ground water to be withdrawn from the Dawson aquifer of the Denver Basin underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. **Nontributary.** The groundwater that will be withdrawn from the Denver, Arapahoe and Laramie-Fox Hills aquifers of the Denver Basin underlying the Applicant's Property is nontributary. **Estimated Rates of Withdrawal.** Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective

aquifers will be determined by topography and actual aquifer conditions. **Estimated Average Annual Amounts of Ground Water Available.** Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code §8.4.7(C)(1), or the less stringent 100-year life requirement pursuant to C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

AQUIFER	SATURATED THICKNESS (ft)	DEPTH (ft)	Annual Average Withdrawal – 100 Years (Acre Feet)
Dawson (NNT)	448.9	1130	4.5
Denver (NT)	369.5	2000	3.1
Arapahoe (NT)	275.1	2600	2.3
Laramie Fox Hills (NT)	185.7	3200	1.4

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **Requested Uses.** The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct a well or use water from the not-nontributary Dawson aquifer pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with § 37-90-137(9)(c.5), C.R.S. **Well Fields.** Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. **Averaging of Withdrawals.** Applicant requests that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. **Owner of Land Upon Which Wells are to Be Located.** The land upon which the wells are and will be located is owned by the Applicant. **Structures to be**

Augmented. The structure to be augmented is Savage Well No. 1, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson aquifer underlying the Applicant's Property as requested and described herein. **Water Rights to be Used for Augmentation.** The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Dawson aquifer from Savage Well No. 1, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. **Statement of Plan for Augmentation.** Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by the well(s) proposed herein. Potential water use criteria and their consumptive use component for replacement of actual depletions are estimated as follows: **Household Use Only:** 0.30 acre feet annually within a single family dwelling, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use will therefore be 0.03 acre feet per well, with return flows of 0.27 acre feet. For purposes of conservatism, however, as discussed below, Applicant conservatively assumes septic return flows of only 0.18 acre feet per year. Any other type of waste water disposal shall require an amendment to this plan of augmentation. **Landscape Irrigation/native grasses:** An application rate of 0.05 acre feet annually per 1,000 square feet (2.18 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre feet. **Livestock (horse, goats, or equivalent livestock):** 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. The proposed well will pump a maximum of 3.0 acre feet of water from the Dawson aquifer per year. Such use shall be a combination of household use, irrigation of lawns and garden, irrigation of native grasses, and the watering of livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.3 acre feet of water per year per residence with the additional 2.7 acre feet per year per residence available for irrigation of approximately 10,000 square feet of lawn and garden, irrigation of up to 1 acre of natural grasses, and the watering of up to eight horses/goats or equivalent livestock. **Depletions.** Applicant has determined that maximum stream depletions over the 100 year pumping period for the Dawson aquifer amounts to approximately 5.75% percent of pumping. Maximum annual depletions for total residential pumping from Savage Well No. 1 are therefore approximately 0.173 acre feet in year 100. Should Applicant's pumping be less than the 3.0 acre feet described herein, resulting depletions and required replacements will be correspondingly reduced. **Augmentation of Depletions During Pumping.** Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of the residential well. Applicant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.30 acre feet per residence per year, 0.27 acre feet are replaced to the stream system per year, utilizing non-evaporative septic systems. Even conservatively assuming only 0.18 acre feet of return flows, during pumping, stream depletions will be adequately augmented.

Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Savage Well No. 1, Applicant will reserve up to 137 acre feet of water from the nontributary Laramie Fox Hills aquifer, and an additional 163 acre feet portion of the nontributary Arapahoe aquifer, representing the entirety of the Laramie-Fox Hills aquifer less 2% not to be consumed by statute, less the amount of actual stream depletions replaced during the plan pumping period, or such greater amounts as necessary to replace any injurious post pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills and Arapahoe aquifer groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a new well permit for Savage Well No. 1 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the South Platte River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter with the pending Division 1 application in Water Division 1 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient. Applicant requests a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). The term of this augmentation plan is for 100 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. Applicant has confirmed that there are no lienholders on the property, and therefore no notice is required per C.R.S.

§37-92-302(2)(b) and §37-90-137(4)(b.5)(l).

CASE NO. 2018CW3050, Water Division 2 and CASE NO. 2018CW3151, Water Division 1 - DAVID C. AND VALERIE K. CHERRY, 15435 S. East Cherry Creek Road, Larkspur, CO 80118.

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

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

EL PASO COUNTY

David and Valerie Cherry (collectively "Applicant") seek to quantify the Denver Basin groundwater underlying their approximately 39.79-acre property in Douglas County, Colorado. **Legal Description of Wells.** **Property Description.**

The Applicant's approximately 39.79-acre property ("Applicant's Property") is located in Douglas County, Colorado, and more specifically described as follows and depicted on the Exhibit A map attached to the Application: The S $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, Township 10 South, Range 65 West, 6th P.M., Douglas County, Colorado. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Existing Wells.**

There are two existing exempt wells on the Property. Well with Permit Number 262718 ("Cherry Well No. 1") is located approximately 2,300 feet north of the south section line, and 2,600 feet east of the west section line of said Section 32 and constructed to the not-nontributary Dawson aquifer. Well with Permit Number 244945-A ("Cherry Well No. 2") is located approximately 1,975 feet north of the south section line, and 2,500 feet west of the east section line of said Section 32, and is also constructed to the not-nontributary Dawson aquifer. Applicant intends for both wells to be re-permitted for non-exempt uses upon entry of a decree approving the plan for augmentation requested herein.

Water Source. **Not-Nontributary.** The ground water to be withdrawn from the Dawson aquifer underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. **Nontributary.** The groundwater that will be withdrawn from the Denver, Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's Property is nontributary. **Estimated Rates of Withdrawal and Ground Water Available.**

Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of any well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. **Estimated Average Annual Amounts of Ground Water Available.**

Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 100-year aquifer life pursuant to C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

Groundwater Quantification							
Elevation: 7,300 ft		Acres:39.79		SW¼ NE ¼ Sec 32 T10S R66W 6th P.M.			
Denver Basin Aquifer	Elevation (ft amsl)		Net Sand (ft)	Depth (feet)		Total (AF)	100 Year (AF)
	Bottom	Top		Bottom	Top		
Dawson (NNT)	5290	7205	455	1010	95	3620	36.2
Denver (NT)	5407	6247	375	1893	1053	2537	25.4
Arapahoe (NT)	4827	5347	285	2473	1953	1928	19.3
Laramie Fox Hills (NT)	4169	4396	200	3131	2904	1194	11.9

Decreed amounts may vary based upon the State’s Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **Requested Uses.** The Applicant requests the right to use the ground water for beneficial uses upon the Applicant’s Property consisting of domestic, commercial, industrial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant’s Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct a well or use water from the not-nontributary Dawson aquifer pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifer in accordance with C.R.S. §37-90-137(9)(c.5) **Well Fields.** Applicant requests that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant’s Property through any combination of wells. Applicant requests that these wells be treated as a well field. **Averaging of Withdrawals.** Applicant requests that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant’s Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant’s Property. **Owner of Land Upon Which Wells are to Be Located.** The land upon which the wells are and will be located is owned by the Applicant. **Application for Approval of Plan for Augmentation. Structures to be Augmented.** The structures to be augmented are Cherry Wells Nos. 1 and 2 as are currently constructed to the not-nontributary Dawson aquifer underlying the Applicant’s Property, and as will be re-permitted pursuant to this plan for augmentation, as requested and described herein along with any replacement or additional wells associated therewith. **Water Rights to be Used for Augmentation.** The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Dawson aquifer from Cherry Well Nos. 1 and 2, together with water rights from the nontributary

Laramie-Fox Hills aquifer for any injurious post pumping depletions. **Statement of Plan for Augmentation.** Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by up to two wells proposed herein. Water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: **Use.** Cherry Well Nos. 1 and 2, in combination will pump a maximum total of 9.3 acre feet of water from the Dawson aquifer annually. Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use is household use at 0.3 acre feet per single-family home for up to three residences, plus outdoor use including the watering of up to 23 horses and 10 head of cattle or equivalent livestock with a water use of 0.36 acre feet per year (10 gallons/day/head or 0.011 annual acre feet per head); irrigation of 5,000 square feet lawn and garden per home or 0.75 acre feet per year (0.05 annual acre feet per 1000 sq ft); and irrigation of land for hay or other crops of up to 7.3 acre feet per year. **Depletions.** It is estimated that maximum stream depletions over the 100 year pumping period for the Dawson aquifer amounts to approximately 8.5% percent of pumping. Maximum annual depletions for total residential pumping from all wells are therefore 0.79 acre feet, in year 100. Should Applicant's pumping be less than the 9.3 acre feet described herein, resulting depletions will be correspondingly reduced. **Augmentation of Depletions During Pumping.** Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of augmented wells to the Dawson aquifer. Depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems, and depletions from irrigation will be adequately replaced by irrigation return flows. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.3 acre feet per residence per year, total of 0.9 acre feet, 0.81 acre feet is replaced to the stream system per year, assuming each house utilizes non-evaporative septic systems. Thus, during pumping, stream depletions will be adequately augmented. Further, as the bulk of pumping/diversions (up to 7.3 annual acre feet) are to result from pasture irrigation, and as the flood irrigation methods anticipated result in return flows of approximately 15%, the maximum 8.5% depletions in year 100 will likewise be adequately replaced through irrigation return flows, regardless of how much irrigation actually occurs (the depletive rate is nearly half of the return flow rate). Therefore, even if fewer than three residences are permanently occupied, augmentation of all non-irrigation depletions will occur even utilizing only return flows from a single septic system, while irrigation return flows will adequately augment all depletions resulting from such irrigation. **Augmentation for Post Pumping Depletions.** For the replacement of any injurious post-pumping depletions which may be associated with the use of the Cherry Well Nos. 1, and 2, Applicants will reserve up to 930 acre feet of water from the nontributary Laramie-Fox Hills aquifer, less the amount of actual stream depletions replaced during the plan pumping period. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicants reserve the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills

groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicants will be entitled to apply for and receive a new well permit for Cherry Wells Nos. 1 and 2, for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the South Platte River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter with pending Division 1 application in Water Division 1 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient. Applicant requests a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). The term of this augmentation plan is for 100 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. Applicant will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(l), and such notice will be sent within 14 days of the filing of this application.

CASE NO. 2018CW3051; Previous Case Nos. 90CW28, 98CW95, 05CW58, and 11CW85 - SECURITY WATER DISTRICT, c/o Roy E. Heald, 231 Security Blvd., Colorado Springs, CO 80911. (Please direct all correspondence and pleadings to

Steven T. Monson and/or David M. Shohet of Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921 (719) 471-1212)

Application for Finding of Reasonable Diligence

EL PASO COUNTY

Name of Structure: Exchange of Applicant's sewer return flows from its allocation of Frying Pan Arkansas Project water, delivered via the Fountain Valley Conduit or Southern Delivery System. **Description of conditional water right:** **Date of Original Decree:** July 6, 1992. **Case No.:** 90CW28. **Court:** District Court, Water Division 2.

Legal Description of Exchange To and From Points: The exchange is from the Applicant's wastewater treatment outfall at its treatment facility discharging into Fountain Creek located in the NW1/4 of Section 24, Township 15 South, Range 66 West of the 6th P.M. The exchange is operated to the headgate of the Fountain Mutual Ditch located in the SW 1/4 of Section 20, Township 14 South, Range 66 West of the 6th P.M. Sources: The source of the exchange water is the Applicant's sewer return flows from Frying Pan Arkansas Project water, which the Applicant is entitled to purchase and to deliver via the Fountain Valley Conduit or Southern Delivery System ("Project Water Sewered Return Flows"). Applicant's Project Water Sewered Return Flows can be used, in part, to augment the Applicant's wells under decreed plans of augmentation including, without limitation, those plans decreed in Case Nos. 90CW28, 01CW149, 07CW51, 09CW92 and 12CW99. The Project Water Sewered Return Flows not utilized by the Applicant under any decreed plan for augmentation can be available under this exchange. Subject to any existing rights Applicant may have, any decree entered in this case will not give Applicant any rights of use of Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocation of Fryingpan-Arkansas Project Water or return flows from Fryingpan-Arkansas Project Water. Return flows from the Fryingpan-Arkansas Project will be utilized in Applicant's exchanges only after they are purchased from Southeastern Colorado Water Conservancy District ("Southeastern"). Applicant's purchase and use of Fryingpan-Arkansas Project Water and of return flows therefrom shall be consistent with the Allocation Principles of Southeastern (as they may from time to time be amended), and the policies, procedures, contracts, charges and terms as may be lawfully determined from time to time by Southeastern in its discretion. Appropriation Date: June 29, 1990. Amount claimed: The amount of the exchange is for a diversion of up to 6.0 c.f.s. at the headgate of the Fountain Mutual Ditch. Uses: The water under the plan of exchange is to be used, reused and successively used to extinction by recharge for the following beneficial uses: municipal, domestic, fire protection, sewage disposal, irrigation, manufacturing, industrial, commercial, augmentation, recharge, and exchange. Applicant is entitled to recharge and augment the Widefield Aquifer by exchanging the Project Water wastewater return flows to a recharge facility in order to provide "effective recharge" to the Widefield Aquifer as required under the terms of the Widefield Aquifer Stipulation in Case No. W 116, and under the terms and conditions as decreed in Case No. 01CW149. **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:** In Case No. 90CW28, the Applicant was awarded a 6 c.f.s., conditional water right for the exchange of its Project Water Sewered Return Flows from the point of its wastewater treatment plant discharging into Fountain Creek up to the headgate of the Fountain Mutual Ditch. The Applicant is entitled to a right of first refusal to the use of these return flows. The exchange of Project Water Sewered Return Flows is for the use, reuse and successive use to extinction for such water by direct use or recharge to the Widefield Aquifer for municipal, domestic, fire protection, irrigation, manufacturing, industrial, commercial, augmentation, recharge, and exchange uses. Recharge will occur by infiltration of the Project Water Sewered Return Flows to the Widefield Aquifer, as delivered by the Fountain Mutual Ditch and other means, constituting effective recharge under the terms

of the Widefield Aquifer Stipulation. During this diligence period, Applicant temporarily discontinued the use of all of its wells in 2016 due to the discovery of Perfluorinated Compounds (PFCs) in the Widefield Aquifer. The Applicant has been working with the United State Air Force, who has committed to design and construct a water treatment system to remove PFCs from the Applicant's well water. The system is expected to cost in excess of \$15 million and will allow Security to fully utilize its groundwater resources and operate the subject exchange. It is anticipated that the treatment system will be operational in 2020. This new water treatment facility is located in close proximity to the Fountain Mutual Ditch. While the new facility is not currently being designed to treat surface water diverted from Fountain Mutual Ditch, Applicant has explored options for this new plant to treat surface water diverted by the Fountain Mutual Ditch, including diversions of exchanged Project Water Sewered Return Flows within the ditch, for direct treatment and use in Applicant's municipal system. During this diligence period, Applicant also participated as a member of the Widefield Aquifer Recharge Association ("WARA"). WARA is an unincorporated nonprofit association, under C.R.S. Section 7-30-101, *et. seq.*, consisting of Widefield Water and Sanitation District, the City of Fountain and the Applicant. Each member equally provides one third (1/3rd) of required operating capital of WARA. WARA was formed to plan, evaluate, design and study the financial feasibility of a public water treatment and supply project for the recharge of the Widefield Aquifer. The Association has the power to enter into contracts relating to the acquisition of real property, obtain necessary licenses and permits, and develop a financial structure and feasibility for recharge of the Widefield Aquifer. During this diligence period, Applicant has paid \$20,000.00 to WARA, which includes WARA's costs for engineering, legal, accounting, association manager, and payments to FMIC for use of FMIC's facilities. Applicant has also performed significant work within its service boundaries and on its municipal water system to develop the decreed exchange as part of its integrated municipal supply system. Applicant has expended approximately \$27,000,000.00 on the operation, repair, maintenance and capital improvements to its integrated water supply system. Applicant also completed several inclusions of parcels into its service area. All inclusions have been approved by orders entered by the District Court of El Paso County and Applicant has commenced work towards providing water service to these inclusions. In addition, Applicant has expended approximately \$18,492,000.00 during this diligence period in acquiring water rights for use in its water supply system and other capital expenditures. These water rights are to be used as a physical and legal water supply to these annexations as well as the Applicant's current and future demands. Applicant has also prosecuted numerous Water Court applications for changes of water rights and plan for augmentation during this diligence period to provide additional physical and legal water supply for the Applicant's current and future demands. As the decreed exchange is part of the Applicant's integrated water supply system, work performed on behalf of one component of this integrated system constitutes diligence on behalf of all structures, which are a part of this integrated system. Applicant has also incurred legal, engineering, and administrative fees related to its water supply system consisting of, without limitation, water supply and distribution analysis, water rights planning, Water Court filings for the protection of its water rights, well permitting, and water rights administration matters. These amounts are further detailed in Applicant's annual

budgets and audits during this diligence period. **Claim to Make Absolute:** No part of the conditional water right is claimed to be made absolute at this time. **Name and address of the owners of land on which structure is located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Fountain Mutual Irrigation Company, c/o Gary Steen, P.E., 487 Anaconda Drive, Colorado Springs, CO 80919, owns the headgate and main canal of the Fountain Mutual Ditch.

CASE NO. 2018CW3052, Water Division 2 and CASE NO. 2018CW3157, Water Division 1 - CURTIS FAMILY LIVING TRUST, c/o Barry and Tanja Curtis, Co-Trustees, 1920 E. Baptist Road, Monument, CO 80132 (Please send all correspondence and pleadings to Chris D. Cummins of Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921 (719) 471-1212).

Application for Approval of Plan for Augmentation

EL PASO COUNTY

Applicant seeks approval of a plan for augmentation for replacement of out-of-priority depletions resulting from the use of up to two (2) wells to the not-nontributary Dawson aquifer underlying Applicant's Property, for provision of water service to an equivalent number of single family dwellings thereon, based on an anticipated subdivision of Applicant's approximately 36.65-acre parcel into two lots. The Denver Basin groundwater underlying Applicant's Property, as more particularly described on Exhibit A and as depicted on the Exhibit B map attached to the Application, was previously adjudicated by the Division 2 Water Court in Case No. 01CW140. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Applicant is the owner of a pro-rata allocation of the Dawson, Denver and Laramie Fox Hills aquifers, as adjudicated therein, as demonstrated on the deed attached to the Application as Exhibit C. Applicant's Denver Basin groundwater entitlements are as follows:

<u>Aquifer</u>	<u>Total Acre Feet</u>	<u>Annual Acre Feet (100-year)</u>
Dawson (NNT)	2,360	7.87 ¹
Denver (NNT)	3,380	33.80
Laramie-Fox Hills (NT)	1,078	10.78

Structures to be Augmented. The structures to be augmented are Curtis Wells Nos. 1 and 2, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson aquifer underlying the Applicant's Property. **Water Rights to be Used for Augmentation.** The water rights to be used for augmentation during pumping are the septic return flows resulting from the in-house use of water pumped from the not-nontributary Dawson aquifer from Curtis Well Nos. 1 and 2, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. **Statement of Plan for Augmentation.** Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by two wells proposed herein for two residential lots.

¹ The annual quantity listed for the Dawson aquifer is a 300-year aquifer life, consistent with El Paso County Land Development Code, not the less restrictive 100-year aquifer life provided by Colorado Statute.

Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: **Household Use Only:** 0.25 acre feet annually within single family dwellings on two lots, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for in-house uses within each residence would therefore be 0.025 acre feet per well, with return flows of 0.225 acre feet per lot, and total return flows of 0.45 annual acre feet. Any other type of waste water disposal shall require an amendment to this plan of augmentation. **Landscape Irrigation:** 0.05 acre feet annually per 1,000 square feet (2.18 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre feet. **Horses (or equivalent livestock):** 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. **Hot Tub/Water Feature Use:** 0.006 acre feet (2100 gallons) annually, based upon six fillings per year, with a 50% consumptive use rate. The annual consumptive use for each hot tub is therefore 0.003 acre feet (1050 gallons). Each well will pump a maximum of 1.0 acre feet of water per year per residence for a maximum total of 2.0 acre feet being withdrawn from the Dawson aquifer per year. Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.25 acre feet of water per year per residence with the additional 0.73 acre feet per year per residence available for irrigation of approximately 14,000 square feet of lawn and garden and the watering of up to four horses or equivalent livestock on each residential lot. **Depletions.** Applicant's consultant has determined that maximum stream depletions over the 300 year pumping period for the Dawson aquifer amounts to approximately 22% percent of pumping. Maximum annual depletions for total residential pumping from all wells are therefore 0.44 acre feet in year 300. Should Applicant's pumping be less than the 1.0 acre feet per lot described herein, resulting depletions and required replacements will be correspondingly reduced. **Augmentation of Depletions During Pumping.** Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of the two residential wells. Applicant's consultant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.25 acre feet per residence per year, total of 0.5 acre feet, 0.45 acre feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be adequately augmented. **Augmentation for Post Pumping Depletions.** For the replacement of any injurious post-pumping depletions which may be associated with the use of the Curtis Well Nos. 1 and 2, Applicant will reserve up to 530 acre feet of water from the nontributary Laramie Fox Hills aquifer, less the amount of actual stream depletions replaced during the plan pumping period, calculated by Applicant's consultant to be 70 acre feet. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to

prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a new well permit for the Curtis Well Nos. 1 and 2 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137.

Remarks. This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the Arkansas River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter with pending Division 2 application in Water Division 2 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient. Applicant requests a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. Well Permit No. 302149 will be re-permitted upon decree in this matter as one of the augmented structures described herein. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. Applicant will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), and such notice will be sent within 14 days of the filing of this application.

CASE NO. 2018CW3053; Previous Case Nos. W-31, W-958, W-958(76), 80CW27, 81CW2, 83CW99, 84CW43, 88CW27, 94CW61, and 01CW113 - CITY OF COLORADO SPRINGS, COLORADO SPRINGS UTILITIES, c/o Abigail Ortega, PE, Water Supply Resources Manager, 1521 Hancock Expressway, MC 1825, Colorado Springs, CO 80903 (Please address all pleadings and correspondence to Applicant's attorney: Michael Gustafson, Senior Attorney, City Attorney's Office-Utilities Division, 30 South Nevada Avenue, MC 1825, Colorado Springs, CO 80903; (719) 385-5909; email: mgustafson@springsgov.com) **2. Names of Structures and Description**

of Conditional Water Rights: A. Upper Sugar Loaf Reservoir, Priority No. A-28(C); Sugar Loaf Reservoir Enlargement and Amendment, Priority No. A-55(C). 1. Original Decree: July 9, 1969, Case No. 5141, District Court of Chaffee County Colorado. 2. Subsequent decrees awarding diligence: Diligence decrees were entered in Case Nos. 81CW2, 84CW43, 88CW27, 94CW61, and 01CW113, District Court, Water Division 2. 3. Legal Description: The Decree in Case No. 5141 specifies that the place of storage of both water rights to be the channel of the Lake Fork of the Arkansas River. By Decree entered in Case No. W-3994 on the District Court in and for Water Division 2 on August 22, 1975, a change was awarded with respect to the Sugar Loaf Reservoir Enlargement and Amendment to the effect that “the net amount of water to which applicant is entitled will be stored directly in Pueblo Reservoir, in Sugar Loaf Reservoir or Twin Lakes Reservoir, the latter two by exchange, or diverted through the Minnequa Canal, or any combination thereof.” 4. Appropriation Date/ Source/Amount: i. Upper Sugar Loaf Reservoir: July 2, 1892, Arkansas River - 3,120 acre feet, conditional. ii. Sugar Loaf Reservoir Enlargement and Amendment, a. May 1, 1902, Lake Fork of the Arkansas River – 10,238 acre feet, April 27, 1931, Lake Tennessee Fork and the East Fork of the Arkansas River – 10,238 acre feet, the rate of fill being 200 c.f.s. by way of the Tennessee Fork Feeder Canal and 200 c.f.s. by way of the East Fork Feeder Canal, which unite in what is designated as the Tennessee Fork Canal with a combined total of 400 c.f.s. b. In Case No. 81CW2 (W-31) the District Court in and for Water Division 2, decreed that 3,900 acre feet be made absolute and that 150 c.f.s. out of the East Fork Feeder Canal and 150 c.f.s. out of the Tennessee Fork Feeder Canal with a combine total of 300 c.f.s. through the Tennessee Fork Canal be made absolute, leaving a balance of 6,338 acre feet conditional with 50 c.f.s. out of the East Fork Feeder Canal, and 50 c.f.s. out of the Tennessee Fork Feeder Canal with a combined total of 100 c.f.s. out of the Tennessee Fork Canal conditional. No additional portions of the conditional water rights have been made absolute since the Decree was entered in Case No. 81CW2 (W-31). 5. Decreed Use: Irrigation, fish propagation, domestic, municipal and other beneficial uses. **3. Provide a detailed outline of what has been done toward completion or for completion of the appropriations and application of water to beneficial use as conditionally decreed, including expenditures:** A. Integrated System: The Applicant owns and operates the Colorado Springs’ municipal water supply system, an integrated system for water diversion, transmission, storage, treatment, and distribution of water, as well as collection and treatment of the resulting wastewater for release, exchange, or reuse, all for the benefit of inhabitants of the City and its water service area. The conditional water rights herein are a part of this integrated water system comprising all water rights decreed and used for development and operation of the City of Colorado Springs’ municipal water supply system. Reasonable diligence in the development of one component of the system comprises reasonable diligence in the development of all components. B. During the last diligence period of December 2001 – August 2018, the City has continued to pursue development of its integrated system through, including but not limited to, the following activities: 1. Applicant filed and adjudicated numerous water rights applications in Water Division 2 (Arkansas River Basin), and Water Division 5 (Colorado River Basin) including, but not limited to, pursuit of adjudication of decrees in: Case No. 95CW272 (Water Division No. 5) for the so-called “Homestake II” Project and for Eagle River MOU

joint use projects; Case Nos. 02CW65 and 16CW3054 (Water Division No. 2) involving claims for diligence for Roby Ditch and Reservoir; Case Nos. 02CW71 and 13CW20 (Water Division No. 2) for Applicant's Local System Exchange originally decreed in Case No. 84CW202; Case Nos. 02CW72 and 13CW9 (Water Division No. 2) involving claims for diligence for Applicant's Arkansas River Exchange originally decreed in Case No. 84CW203; Case Nos. 02CW135 and 16CW3053 (Water Division No. 2) involving claims for diligence for Chancellor Well No. 1 and Chancellor Well No. 2; Case Nos. 03CW314 and 18CW3041 regarding a Colorado River-Blue River Exchange (Water Division No. 5); Case No. 03CW320 (Water Division No. 5) for so-called "substitution operations" pursuant to the Blue River Decree (Consolidated Cases Nos. 2782, 5016 and 5017); Case No. 04CW132 (Water Division No. 2) regarding exchange of Denver Basin groundwater return flows; Case No. 05CW96 (Water Division No. 2) regarding the exchange of Temporary Use Waters (a.k.a. ATM or leased water) in the Upper Arkansas River Basin; Case No. 06CW120 (Water Division No. 2) for exchange regarding Restoration of Yield; Case Nos. 06CW132 and 15CW3019 (Water Division No. 5) involving claims for diligence for Lower Blue Reservoir; Spruce Lake Reservoir, and Mayflower Reservoir; Case Nos. 06CW23 and 16CW3072 (Water Division No. 2) involving claims for diligence related to Applicant's appropriative rights of exchange originally decreed in Consolidated Case Nos. 84CW202, 84CW203, 86CW118(B) and 89CW36; Case No. 07CW120 (Water Division No. 2) for Quail Lake conditional storage right; Case No. 07CW121 (Water Division No. 2) regarding exchange of Fountain Creek Recovery Project waters; Case No. 07CW122 (Water Division No. 2) involving rights of exchange to the Local System from Pueblo Reservoir and Williams Creek Reservoir; Case No. 13CW3077 (Water Division No. 5) regarding the proposed administration of Green Mountain Reservoir pursuant to the Blue River Decree; Case No. 12CW31 (Water Division No. 2) for a conditional storage right for Upper Williams Creek Reservoir and associated appropriative rights of exchange for Upper Williams Creek Reservoir and Williams Creek Reservoir; Case No. 15CW3001 (Water Division No. 2) involving a change of water rights in the Chilcott Ditch Company ("Chilcott"); Case No. 15CW3002 (Water Division No. 2) involving a change of water rights in the Fountain Mutual Irrigation Company ("FMIC"); Case No. 16CW3050 (Water Division No. 2) involving a change of water right for Chancellor Well No. 1; and Case No. 16CW3056 (Water Division No. 2) involving an augmentation plan, replacement plan, and appropriative right of exchange involving Applicant's FMIC and Chilcott water rights. 2. Applicant also participated as an objector in numerous water rights applications in Water Division 2 (Arkansas River Basin), and Water Division 5 (Colorado River Basin) in order to protect its water rights, including the Upper Sugar Loaf Reservoir and Sugar Loaf Reservoir Enlargement and Amendment. 3. Applicant performed work on other parts of its integrated water system that either directly or indirectly enhance management of its integrated system. 4. Rehabilitation of the dam face of the Upper Blue Reservoir (Continental-Hoosier Diversion System), rehabilitation of the dam face and outlet works of Montgomery Reservoir (Continental-Hoosier Diversion System), and rehabilitation of the dam face and outlet works of Homestake Reservoir (Homestake Diversion System); 5. Applicant continued to implement, and made absolute incremental amounts of its decreed Arkansas, Local, and Colorado Canal Exchange Programs, so as to divert and beneficially reuse fully consumable transmountain and changed agricultural water. 6.

Applicant pursued environmental permitting, design, and construction of Phase I of its Southern Delivery System, which was completed and in operation in 2016. This system will provide overall operational flexibility to allow more effective management of Applicant's water supplies. 7. Applicant continued implementing projects and processes identified in its 1996 Water Resource Plan for the Colorado Springs' municipal water supply system. Applicant completed its Integrated Water Resources Plan ("IWRP"), which identified a portfolio of water supply projects, policies, and processes that will be necessary to provide a reliable and sustainable supply of water for its customers for the next 50 years. The IWRP identified numerous water supply, storage, reuse, conveyance, and conservation projects that will be necessary to supply and deliver enough water to meet estimated customer demands at buildout of Colorado Springs. The IWRP was completed in 2017. Numerous engineering and planning studies and investigations have been performed as a result of and for the purposes of advancing and implementing these major planning efforts. 8. Applicant participated in statewide water planning processes, including the Statewide Water Supply Initiative Phase II and 2010 update, the Basin Roundtable and Interbasin Compact Committee processes authorized under House Bill 05-1177, the development of the Colorado Water Plan, and participated on other committees, work groups, legislative processes, and forums through which it protected and promoted the development of its integrated system to meet the future water supply needs of Colorado Springs. 9. Applicant reserves the right to identify additional relevant efforts that may be later discovered or to make upward adjustments to amounts expended. In particular, Applicant has extensive water rights portfolios, extensive and complex water supply, collection, treatment and reuse systems, and extensive numbers of agreements, contracts, and leases related to their facilities and the use, reuse, and storage of their water rights. Applicant is involved in many legal actions related to the collection, treatment, reuse, and protection of its water rights. Further, the management, protection, and operation of the water rights and the facilities system involve numerous Colorado Springs Utilities' departments and staff members throughout the state. Applicant made diligent efforts to identify efforts and expenditures pertinent to this application. However, it is reasonably possible that relevant efforts or expenditures may have been overlooked or need further upward adjustment. C. Applicant has expended in excess of \$1,340,636,663 in capital expenditures in connection with development of its integrated water supply system of which these water rights form a part during this diligence period. 4. **Claim to Make Absolute:** N/A. 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 is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** The land upon which the subject water rights and structures are located is owned by the following party: The structures described in section 4 above are owned by the United States of America, Bureau of Reclamation whose address is: ATTN: Signe Snortland, Area Manager, Eastern Colorado Area Office, 11056, County Rd 18E, Loveland, CO 80537-9711.

CASE NO. 2018CW3054, Water Division 2 and CASE NO. 2018CW3162, Water Division 1 - CHRISTY L. MULLINS AND THOMAS R. POENITSCH, JR., P.O. Box 8202, Colorado Springs, CO 80933.

(Please send all correspondence and pleadings to Ryan W. Farr of Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921).

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

EL PASO COUNTY

Applicants seek to construct up to three (3) non-exempt wells to the not-nontributary Dawson aquifer to provide water service to an equivalent number of single family dwellings thereon, based on an anticipated subdivision of Applicants' 18.66-acre parcel into three lots. Applicants therefore seek to quantify the Denver Basin groundwater underlying the Applicants' Property, and for approval of a plan for augmentation for the use thereof. **Legal Description of Wells.** **Property Description.** All wells will be located on Applicant's Property, which contains approximately 18.66 acres, more or less ("Applicants' Property") with the plan to subdivide into three lots, consisting of two 5-acre lots and one 8.66-acre lot. As more particularly described as follows, and depicted in the Exhibit A map attached to the Application, Applicants' Property is located in: The SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, Township 12 South, Range 65 West of the 6th P.M., El Paso County, Colorado. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Existing Well.** There is currently a well constructed to the Dawson aquifer located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, Township 12 South, Range 65 West of the 6th P.M., El Paso County, Colorado, permitted under DWR Permit No. 163813-A ("Mullins Well No. 1"), adjudicated in Case No. W-2847 (Well No. 1 therein). Upon entry of a decree in this matter, Mullins Well No. 1 will be re-permitted consistent with the terms and conditions of the plan for augmentation requested herein and will be located on the larger (8.66-acre) lot once the Applicants' Property is subdivided. **Proposed Additional Wells.** Applicants propose that up to two additional wells (one well per lot) will be located on the Applicants' Property at specific locations not yet determined ("Mullins Wells Nos. 2 and 3"), also to be constructed to the Dawson aquifer. **Water Source.** **Not-Nontributary.** The ground water to be withdrawn from the Dawson and Denver aquifers of the Denver Basin underlying the Applicants' Property is not-nontributary. Pursuant to § 37-90-137(9)(c.5), C.R.S., the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. **Nontributary.** The groundwater that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers of the Denver Basin underlying the Applicants' Property is nontributary. **Estimated Rates of Withdrawal.** Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicants request the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. **Estimated Average Annual Amounts of Ground Water Available.** Applicants request a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicants' Property. Said amounts may be

withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code §8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to C.R.S. §37-90-137(4). Applicants estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants' Property:

Table 1: Groundwater Quantification								
Elevation 7460		Acres 18.66		SE ¼ SE ¼ Sec 8 T12S R65W				
Denver Basin Aquifer	Elevation (ft amsl)		Net Sand (ft)	Depth (feet)		Total (AF)	100 Years (AF)	300 Years (AF)
	Bottom	Top		Bottom	Top			
Dawson (NNT)	6645	6813	350	815	135	1306	13.1	4.4
Denver (NNT)	5718	6638	370	1742	823	1174	11.7	-
Arapahoe (NT)	5162	5652	255	2298	1808	809	8.1	-
Laramie Fox Hills (NT)	4596	4925	200	2864	2535	560	5.6	-

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicants further request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **Requested Uses.** The Applicants request the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicants also request that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicants' Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicants may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicants shall only be entitled to construct a well or use water from the not-nontributary Dawson aquifer pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with § 37-90-137(9)(c.5), C.R.S. **Well Fields.** Applicants request that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicants' Property through any combination of wells. Applicants request that these wells be treated as a well field. **Averaging of Withdrawals.** Applicants request that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicants' Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicants are entitled to withdraw from the aquifers underlying the Applicants' Property. **Owner of Land Upon Which Wells are to Be Located.** The land upon which the wells are and will be located is owned by the Applicants. **Structures to be Augmented.** The structures to be augmented are Mullins Wells Nos. 1 through 3, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson aquifer of the Denver Basin underlying the Applicants' Property as requested and described herein. **Water Rights to be Used for**

Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Dawson aquifer from Mullins Wells Nos. 1 through 3, together with water rights from the nontributary Arapahoe and Laramie-Fox Hills aquifers for any injurious post pumping depletions.

Statement of Plan for Augmentation. Applicants wish to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by three wells proposed herein for three residential lots. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: **Uses.** *Household Use Only:* 0.26 acre feet annually within single family dwellings on up to three lots, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for each lot would therefore be 0.026 acre feet per well, with return flows of 0.234 acre feet per lot. Any other type of wastewater disposal shall require an amendment to this plan of augmentation. *Landscape Irrigation:* 0.05 acre feet annually per 1,000 square feet (2.18 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre feet. *Other Uses:* Other uses would be considered 100 percent consumptive. Each well will pump a maximum of 1.0 acre feet of water per year per residence for a maximum total of 3.0 acre feet being withdrawn from the Dawson aquifer per year. Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock, and other uses. **Depletions.** Applicants' consultant has determined that maximum stream depletions over the 300 year pumping period for the Dawson aquifer amounts to approximately twenty-three (23) percent of pumping. Maximum annual depletions for total residential pumping from all wells is therefore 0.69 acre feet in year 300. Should Applicants' pumping be less than the 1.0 acre feet per lot described herein, resulting depletions and required replacements will be correspondingly reduced. **Augmentation of Depletions During Pumping.** Pursuant to C.R.S. §37-90-137(9)(c.5), Applicants are required to replace actual stream depletions attributable to pumping of the three residential wells. Applicants' consultant have determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is ten (10) percent per year per residence. At a household use rate of 0.26 acre-feet per residence per year, total of 0.78 acre-feet, 0.69 acre-feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be adequately augmented. **Augmentation for Post Pumping Depletions.** For the replacement of any injurious post-pumping depletions which may be associated with the use of the Mullins Well Nos. 1 through 3, Applicants will reserve up to 797 total acre-feet of water from the nontributary Arapahoe and Laramie Fox Hills aquifers representing the entirety of the Laramie-Fox Hills aquifer less two (2) percent not to be consumed by statute (549 acre-feet) plus 248 acre-feet of water from the Arapahoe aquifer, which is less the amount of actual stream depletions replaced during the plan pumping period, calculated at 102.8 acre-feet. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicants

reserve the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Arapahoe and Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicants will be entitled to apply for and receive a new well permit for the Mullins Well Nos. 1 through 3 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the Arkansas River system where the majority of such depletions will occur, and it is Applicants' intent to consolidate the instant matter with pending Division 2 application in Water Division 2 upon completion of publication. Applicants request that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient. Applicants request a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. The Applicants request a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicants shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' Property. Applicants will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), and such notice will be sent within 14 days of the filing of this application.

CASE NO. 2018CW3055 - THE UNITED STATES OF AMERICA, c/o USDA Forest Service, Regional Hydrologist, 1617 Cole Boulevard, Building 17, Lakewood, CO 80401

(Please address all correspondence and pleadings to Applicant's attorney: James J. DuBois U.S. Department of Justice, Environment and Natural Resources Division, 999 - 18th Street, Suite 370, Denver, CO 80202 (303) 844-1375)

Application for Plan for Augmentation and for Appropriative Right of Exchange

PUEBLO AND CUSTER COUNTIES

PLAN FOR AUGMENTATION AND EXCHANGE. 2. Overview. Lake Isabel is a man-made reservoir located on the St. Charles River near the community of San Isabel

within the San Isabel National Forest, as shown on the map 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.) The St. Charles River is a tributary of the Arkansas River in Water Division 2, Water District 15. Lake Isabel was built by the Civilian Conservation Corps in the 1930s for recreation, piscatorial and fire protection purposes. Applicant seeks to keep Lake Isabel full as much as possible to maintain these current uses. Applicant seeks to adjudicate a plan for augmentation to replace the evaporative depletions from Lake Isabel that are out of priority to senior water rights downstream on the St. Charles and Arkansas Rivers and to exchange replacement supplies to Lake Isabel. Applicant does not seek to change the use of the water rights decreed to Lake Isabel in Case Nos. 79CW176 and 82CW66. **3. Description of Water Right and Structure to be Augmented:** Lake Isabel. No other water rights are diverted from this structure. **4. Water Right Decreed to Lake Isabel:** The Lake Isabel water right was decreed in Case Nos. 79CW176 and 82CW66, District Court, Colorado Water Division No. 2. The water right is decreed in the amount of 1,036.9 acre-feet, absolute, with an appropriation date of September 28, 1935, from the St. Charles River for recreation, fisheries, flood control, and fire suppression uses. **5. Legal Description of Structure:** The dam for Lake Isabel is located at a point whence the southwest corner of Section 6, Township 24 South, Range 68 West, bears south 2 degrees 19 minutes east a distance of 1,066.47 feet, SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 1, Township 24 South, Range 69 West, 6th P.M. 100 feet from east section line, 700 feet from south section line. The surface area at high water line is approximately 35.7 acres. **6. Water Rights to be Used for Augmentation:** **6.1 PBWW Lease:** Applicant has negotiated a thirty-year lease with Pueblo Board of Water Works ("PBWW"). A copy of the lease is attached to the Application as Exhibit 2. PBWW agrees to deliver transmountain water or other water that is considered totally consumable or suitable for augmentation and replacement purposes under Colorado law, including but not limited to reusable return flows from transmountain water or other fully-consumable water suitable for augmentation and replacement purposes under Colorado Law when the Applicant's water rights would otherwise be out of priority. The water may be released from any of PBWW's sources, including but not limited to water stored at Pueblo Reservoir (located on the Arkansas River in all or portions of Sec. 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36, T.20S., R 66W, 6th P.M., Sec. 1, 2, 3, 4, 5, 9, 10 and 11, T.21S., R.66W., of the 6th P.M., and Sec. 5, 8, 9, 13, 14, 15, 16, 22, 23 and 25, T.20S, R.67W. of the 6th P.M. in Pueblo 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), 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), 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) and reusable return flows; from direct flow transmountain water rights or from any other reservoir or place from which PBWW may deliver water, the sources of which are at the option of PBWW, as long as they are legally available for augmentation purposes, but such sources do not include Fryingpan-Arkansas Project Water. 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; 04CW130, District Court, Water Div. No. 2; and the subject water rights in the currently pending Case No. 17CW3050, District Court, Water Div. No. 2. **6.2 Fully Consumable Water Stored in Lake Isabel.** Fully consumable water from any of the sources listed above that is stored in Lake Isabel by exchange will be fully consumable. **6.3 Other.** Any other source of fully consumable water that hereafter is lawfully available for the augmentation uses described herein, which may be added to the plan for augmentation pursuant to C.R.S. § 37-92-305(8)(c). Applicant will propose terms and conditions in the decree for the plan for augmentation requested herein for adding additional sources of augmentation to the augmentation plan in the future pursuant to the Court's retained jurisdiction authorized by C.R.S. § 37-92-305(8)(c). **7. Statement of Plan for Augmentation: 7.1 General Description of the Plan for Augmentation and Exchange:** Lake Isabel is operated to maintain a full reservoir to the extent possible. Evaporative losses or refilling of capacity created by replacement of evaporative losses are the only potentially out-of-priority depletions associated with the reservoir. The maximum out-of-priority storage resulting from the net evaporative depletions that must be replaced at Lake Isabel is estimated to be approximately 50.40 acre-feet per year. The Applicant has leased a total of 58 acre-feet per year from PBWW to replace the out-of-priority evaporative losses, including transit losses that may be assessed on the release of the replacement supplies. PBWW supplies will be used to replace depletions to any senior water right downstream of Lake Isabel capable of receiving PBWW lease water. Where necessary, the Applicant will release water from Lake Isabel to downstream senior calling water rights from Lake Isabel equal to the amount of evaporative losses. Evaporative depletions will be replaced to downstream senior calling water rights by PBWW lease deliveries and releases from Lake Isabel. Releases from Lake Isabel may be refilled from water stored in priority or by exchange of PBWW lease water. **7.2 Evaporation depletions:** Preliminary determinations indicate that the gross evaporation is 35 inches per year (2.92 feet) based NOAA Technical Report NWS33, Evaporation Atlas for the Contiguous 48 United States (U.S. Department of Commerce, June, 1982) for Lake Isabel's location. Monthly evaporation will be determined using distribution factors for elevations above 6,500 feet from the Division of Water Resources' General Guidelines for Substitute Water Supply Plans for Sand and Gravel Pits Submitted to the State Engineer Pursuant to SB 89-120 & SB93-260. **7.2.1** Because Lake Isabel is located on-channel, a reduction of 1.26 acres of the reservoir surface area used to calculate evaporative loss is appropriate to account for the pre-existing surface area of the historical river channel that has been inundated. The effective surface area at high water line for purposes of calculating evaporation is therefore approximately 34.44 acres. **7.2.2** Because Lake Isabel is located on-channel, a reduction in the gross evaporation for effective precipitation is appropriate. The gross evaporation rate can be reduced by 70 percent of the effective precipitation for Lake Isabel. The annual average precipitation for the Rye 1 SW station is estimated to be approximately 26.5 inches per year. Therefore, the gross evaporation rate can be reduced by 18.6 inches per year, resulting in a net evaporation rate of 16.4 inches per year (1.37 feet). **7.2.3** Applicant estimates that the annual volume of evaporation from the maximum surface area at Lake Isabel that may require augmentation is approximately 50.4 acre-feet per year.

7.2.4 The evaporative out-of-priority depletions may be reduced by the actual extent of ice coverage during the winter months. Ice coverage will be tracked through the winter months and when ice is present, the evaporation amount will be reduced by the percentage of reservoir ice coverage. **7.3 Measuring devices:** Lake Isabel will be equipped with measurement devices required by the Division Engineer. The Applicant will account for storage in Lake Isabel and operation of the plan for augmentation on a daily basis. **7.4 Delivery of Replacement Water:** Replacement water described in paragraph 6.1 will be released to supply replacement to senior water rights capable of receiving PBWW water. Such releases shall be reduced to account for transit losses assessed by the Division Engineer. For those senior calling water rights not capable of receiving PBWW water, the replacement supplies may be released from Lake Isabel. **8. Appropriative Right of Exchange. 8.1** Name of Structure: Lake Isabel Saint Charles River Exchange. **8.1.1** Downstream Terminus: Confluence of the Saint Charles River and the Arkansas River, located in Section 32, T 20 S, R 63 W, 6th P.M. **8.1.2** Upstream Terminus: Lake Isabel, as described in paragraph 5. **8.2** Date of Appropriation: September 28, 2018. **8.3** Amount: 25 c.f.s., conditional. This is the maximum flow rate allowed for PBWW lease deliveries. **8.4** This exchange will be operated to refill Lake Isabel using PBWW lease deliveries during times when water is physically available for storage at Lake Isabel and the Lake Isabel water right is out of priority. **8.5** Exchange Terms and Conditions: **8.5.1** The exchange shall be operated on a daily basis. **8.5.2** The exchange may be operated only at times when a live stream exists between the exchange-from point(s) and the exchange-to point(s) involved. **8.5.3** The amount of water diverted at the exchange-to point(s) shall not be greater than the amount of water introduced at the exchange-from point(s). **8.5.4** The exchange may be operated only when all water rights, including other appropriative rights of exchange, located between the exchange-from point(s) and the exchange-to point(s) that are senior (based on appropriation date) are satisfied to the extent of their calls or are out of priority. Water rights and exchanges shall not be deemed to be out of priority if they would be able to divert but for the Applicant's diversion under the subject exchange. **8.5.5** The Applicant shall notify and obtain approval from State water administration officials prior to commencing operation of the exchange. **9. 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 or delivered to: Lake Isabel is located on land owned and managed by the Applicant.

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 2018, (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 3rd day of October, 2018.

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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