

IN THE DISTRICT COURT IN AND FOR WATER DIVISION NO. 4  
STATE OF COLORADO

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER  
DIVISION NO. 4

Pursuant to C.R.S. 37-92-302, as amended, you are notified that the following is a resume of all applications filed in the Water Court during the month of August 2024.

The names, address of applicant, source of water, description of water right or conditional water right involved, and description of the ruling sought are as follows:

**The water right claimed by this application may affect in priority any water right 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.**

**CASE NO. 2024CW23.** Applicant: Gifford Trust, 12389 5975 Rd., Montrose, CO 81403. Application for Absolute Surface Water Rights: Gifford Spring - SE1/4SE1/4 of Section 28, T47N, R10W, NMPM., Easting: 240301.04, Northing: 4242588.57 Zone 13. Source: Happy Canyon Creek, Uncompahgre River. Appropriation Date: 12/31/1982. Amount Claimed: 0.033 cfs absolute for domestic, stockwater, and irrigation of 1/8<sup>th</sup> acre. **OURAY COUNTY.**

**CASE NO. 2024CW3035 TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.** ("Tri-State"), Attn: Thomas Kennedy, P.E., Senior Field Engineer (Water Resources), 1100 West 116th Avenue, Westminster, CO 80234; E-mail: thomas.kennedy@tristategt.org; Telephone: (303) 452-6111. Please direct all correspondence concerning this Application to: Aaron S. Ladd, Esq. and Robyn L. Smith, Esq., Vranesh and Raisch, LLP, 5303 Spine Road, Suite 202, Boulder, CO 80301; E-mail: asl@vrlaw.com; rls@vrlaw.com; Telephone: (303) 443-6151; and Roger T. Williams, Esq., Tri-State Generation and Transmission Association, Inc., 1100 West 116th Avenue, Westminster, CO 80234; E-mail: roger.williams@tristategt.org; Telephone: (303) 254-3218. **APPLICATION FOR FINDING OF REASONABLE DILIGENCE IN SAN MIGUEL COUNTY.** 2. Name of Structure: Trout Lake Reservoir. 3. Description of Conditional Water Right: a. Original Decree: Case No. 79CW247 in the District Court in and for Water Division No. 4, dated January 26, 1981. b. Subsequent Decrees Awarding Findings of Diligence: Case Nos. 84CW298 on July 3, 1985, 88CW173 on July 26, 1989, 95CW100 on March 19, 1996 (making 1,974 acre-feet absolute for hydroelectric power generation and piscatorial uses), 02CW030 on April 30, 2004 (making 396.7 acre-feet absolute for 100% consumptive thermal electric power generation), 10CW47 on October 6, 2011, and 17CW3058 on August 14, 2018. c. Legal Description of Decreed Point of Diversion: The initial point of survey is at a point whence the northwest corner of the SW1/4 of Section 8, Township 41 North, Range 9 West of the N.M.P.M., bears North 89°15' West, a distance of 976 feet. A map of Trout Lake Reservoir is attached hereto as **Exhibit A**. d. Source: Lake Fork of the San Miguel River. e. Appropriation Date: May 29, 1979. f. Amount: 3,422 acre-feet total:

| <b>Use</b>  | <b>Amount Absolute</b> | <b>Amount Conditional</b> |
|---|------------------------|---------------------------|
| Hydroelectric power generation and piscatorial purposes | 1,975 af               | 1,447 af                  |
| Thermal electric power generation                       | 396.7 af               | 3,025.3 af                |
| Industrial, domestic and agricultural                   | 0 af                   | 3,422 af                  |

g. Use: Thermal electric power generation, hydroelectric power generation, domestic, industrial, agricultural and piscatorial purposes. 4. Detailed outline of what has been done towards completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the previous diligence period: a. As decreed in Case No. 95CW100, Nucla Station, together with the water rights used and held to supply it and potential future generating units, are part of a single “project or integrated system” within the meaning of C.R.S. §37-92-301(4)(b). In addition to the conditional storage right for Trout Lake Reservoir, the following conditional water rights are part of the integrated water supply system for Nucla Station: Lake Hope Reservoir (decreed in Case No. 79CW248); and the Nucla Power Plant Ditch and Nucla Power Plant Spray Ponds (decreed in Civil Action No. 9042). Pursuant to C.R.S. 37-92-301(4)(b), “[w]hen a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.” b. During the diligence period, Tri-State expended approximately \$63,000 in legal fees and \$91,000 in engineering consulting fees related to the diligent development of its integrated water supply project. In addition, Tri-State dedicated significant staff time in the areas below that is more difficult to quantify. These efforts included, but are not limited to: i. In Case No. 21CW3039, Tri-State applied for a change of water rights for several water rights, including the Nucla Power Plant Ditch and Nucla Power Plant Spray Ponds. The water rights at issue in 21CW3039 were used for operation and cooling of Nucla Station and related incidental uses prior to the closure of Nucla Station. However, consistent with the goals of Tri-State’s Responsible Energy Plan announced July 17, 2019, Tri-State ceased operations at Nucla Station in September 2019. After closure of Nucla Station, Tri-State analyzed the water rights at issue in 21CW3039 and prepared and filed the application in that case to maintain these water rights to meet Tri-State’s water needs and the needs of Tri-State subsidiaries. Tri-State ultimately withdrew the application, in large part due to economic circumstances, but incurred legal fees in the amount of approximately \$22,600 related to this case and significant engineering fees. ii. In Case No. 21CW3034, Tri-State obtained a finding of reasonable diligence for the conditional portions of the Nucla Power Plant Ditch and Nucla Power Plant Spray Ponds, each a part of the integrated system. During the diligence period for these rights, Tri-State expended approximately \$19,600 in costs and legal fees related to this application. iii. Tri-State filed statements of opposition to applications of the Norwood Water Commission in Case Nos. 19CW3025 and 19CW3026 and Montrose County in Case Nos. 18CW3048, 18CW3049, 18CW3050, and 18CW3051 to protect the subject water right and other water rights in the integrated system from injury, expending approximately \$25,000 for legal and engineering fees related to its opposition in these cases. c. During the diligence period, Tri-State initiated negotiations to renew its storage contract with Public Service Company of Colorado to store the subject water right in Trout

Lake, including drafting a storage contract at a cost of more than \$3,500. d. The enactment of HB19-1261, signed into law on May 30, 2019, accelerated Tri-State's timeline to discontinue coal generation at Nucla Station from December 2022, to September 2019, in order to meet emission reduction targets set by HB19-1261. In addition, the General Assembly required that Tri-State develop replacement generation using renewable methods of generation. In light of these circumstances, Tri-State is evaluating a variety of renewable and low emission generation technologies and strategies to include in its new generation portfolio, including potentially siting such generation at or in the vicinity of the Nucla Station site, relying on the industrial and power generation water rights that are part of its integrated water supply project that includes Trout Lake, and the Trout Lake storage water right itself. e. Pursuant to C.R.S. § 37-92-301(4)(c), an application for diligence should not be denied solely based on current conditions "beyond the control of the applicant which adversely affect the feasibility of perfecting a conditional water right." The changed economic circumstances resulting from Colorado's recent clean energy legislation is a circumstance beyond Tri-State's control, and as such, Tri-State asks the Court to consider the state-mandated shift to clean energy generation when evaluating this diligence Application. f. Tri-State reserves the right to add additional support of its diligence activities as necessary. 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: a. Public Service Company d/b/a Xcel Energy, Water Resources, 1800 Larimer Street, Suite 1300, Denver, Colorado 80202; b. Tri-State. Based on the foregoing, Applicant requests the Court to enter a decree granting this Application, finding that Tri-State has exercised reasonable diligence towards completion of the Trout Lake Reservoir conditional appropriation and continuing the conditional decree and the conditional water rights in full force and effect for six years from the month in which a final decree is entered in this case. (8 pgs., 1 Exhibit) **SAN MIGUEL COUNTY.**

**CASE NO. 2024CW3036 TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.** ("Tri-State"), Attn: Thomas Kennedy, P.E., Senior Field Engineer (Water Resources), 1100 West 116th Avenue, Westminster, CO 80234; E-mail: thomas.kennedy@tristategt.org; Telephone: (303) 452-6111. Please direct all correspondence concerning this Application to: Aaron S. Ladd, Esq. and Robyn L. Smith, Esq., Vranesh and Raisch, LLP, 5303 Spine Road, Suite 202, Boulder, CO 80301; E-mail: asl@vrlaw.com; rls@vrlaw.com; Telephone: (303) 443-6151; and Roger T. Williams, Esq., Tri-State Generation and Transmission Association, Inc., 1100 West 116th Avenue, Westminster, CO 80234; E-mail: roger.williams@tristategt.org; Telephone: (303) 254-3218. **APPLICATION FOR FINDING OF REASONABLE DILIGENCE IN SAN MIGUEL COUNTY.** 2. Name of Structure: Lake Hope Reservoir. 3. Description of Conditional Water Right: a. Original Decree: Case No. 79CW248 in the District Court in and for Water Division No. 4, dated January 26, 1981. b. Subsequent Decrees Awarding Findings of Diligence: Case Nos. 84CW297 on July 3, 1985, 88CW174 on July 26, 1989, 95CW101 on March 19, 1996 (making 1,535 acre-feet absolute for piscatorial uses), 02CW031 on April 30, 2004, 10CW56 on October 6, 2011, and 17CW3059 on August 14, 2018. c. Legal Description of Decreed Point of Diversion: The initial point of survey is at a point whence the northwest corner of Section 27, Township

41 North, Range 9 West of the N.M.P.M., bears North 44°20' West, a distance of 3,175 feet. A map of Lake Hope Reservoir is attached hereto as **Exhibit A. d. Source:** Lake Fork of the San Miguel River. e. Appropriation Date: May 29, 1979. f. Amount: 2,315 acre-feet total:

| <b>Use</b>   | <b>Amount Absolute</b> | <b>Amount Conditional</b> |
|--|------------------------|---------------------------|
| Piscatorial  | 1,535 af               | 780 af                    |
| Thermal electric power generation, hydroelectric power generation, domestic, industrial and agricultural |                        | 2,315 af                  |

g. Use: Thermal electric power generation, hydroelectric power generation, domestic, industrial, agricultural and piscatorial purposes. 4. Detailed outline of what has been done towards completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the previous diligence period: a. As decreed in Case No. 95CW101, Nucla Station, together with the water rights used and held to supply it and potential future generating units, are part of a single “project or integrated system” within the meaning of C.R.S. §37-92-301(4)(b). In addition to the conditional storage right for Lake Hope Reservoir, the following conditional water rights are part of the integrated water supply system for Nucla Station: Trout Lake Reservoir (decreed in Case No. 79CW247); and the Nucla Power Plant Ditch and Nucla Power Plant Spray Ponds (decreed in Civil Action No. 9042). Pursuant to C.R.S. 37-92-301(4)(b), “[w]hen a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.” b. During the diligence period, Tri-State expended approximately \$63,000 in legal fees and \$91,000 in engineering consulting fees related to the diligent development of its integrated water supply project. In addition, Tri-State dedicated significant staff time in the areas below that is more difficult to quantify. These efforts included, but are not limited to: i. In Case No. 21CW3039, Tri-State applied for a change of water rights for several water rights, including the Nucla Power Plant Ditch and Nucla Power Plant Spray Ponds. The water rights at issue in 21CW3039 were used for operation and cooling of Nucla Station and related incidental uses prior to the closure of Nucla Station. However, consistent with the goals of Tri-State’s Responsible Energy Plan announced July 17, 2019, Tri-State ceased operations at Nucla Station in September 2019. After closure of Nucla Station, Tri-State analyzed the water rights at issue in 21CW3039 and prepared and filed the application in that case to maintain these water rights to meet Tri-State’s water needs and the needs of Tri-State subsidiaries. Tri-State ultimately withdrew the application, in large part due to economic circumstances, but incurred legal fees in the amount of approximately \$22,600 related to this case and significant engineering fees. ii. In Case No. 21CW3034, Tri-State obtained a finding of reasonable diligence for the conditional portions of the Nucla Power Plant Ditch and Nucla Power Plant Spray Ponds, each a part of the integrated system. During the diligence period for these rights, Tri-State expended approximately \$19,600 in costs and legal fees related to this application. iii. Tri-State filed statements of opposition to applications of the Norwood Water Commission in Case Nos. 19CW3025 and 19CW3026 and Montrose

County in Case Nos. 18CW3048, 18CW3049, 18CW3050, and 18CW3051 to protect the subject water right and other water rights in the integrated system from injury, expending approximately \$25,000 for legal and engineering fees related to its opposition in these cases. c. During the diligence period, Tri-State initiated negotiations to renew its storage contract with Public Service Company of Colorado to store the subject water right in Lake Hope, including drafting a storage contract at a cost of more than, \$3,500. d. The enactment of HB19-1261, signed into law on May 30, 2019, accelerated Tri-State's timeline to discontinue coal generation at Nucla Station from December 2022, to September 2019, in order to meet emission reduction targets set by HB19-1261. In addition, the General Assembly required that Tri-State develop replacement generation using renewable methods of generation. In light of these circumstances, Tri-State is evaluating a variety of renewable and low emission generation technologies and strategies to include in its new generation portfolio, including potentially siting such generation at or in the vicinity of the Nucla Station site, relying on the industrial and power generation water rights that are part of its integrated water supply project that includes Lake Hope, and the Lake Hope storage water right itself. e. Pursuant to C.R.S. § 37-92-301(4)(c), an application for diligence should not be denied solely based on current conditions "beyond the control of the applicant which adversely affect the feasibility of perfecting a conditional water right." The changed economic circumstances resulting from Colorado's recent clean energy legislation is a circumstance beyond Tri-State's control, and as such, Tri-State asks the Court to consider the state-mandated shift to clean energy generation when evaluating this diligence Application. f. Tri-State reserves the right to add additional support of its diligence activities as necessary. 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: a. United States Forest Service, Rocky Mountain Regional Office, 1617 Cole Boulevard, Building 17, Lakewood, Colorado 80401; b. Public Service Company d/b/a Xcel Energy, Water Resources, 1800 Larimer Street, Suite 1300, Denver, Colorado 80202; c. Tri-State. Based on the foregoing, Applicant requests the Court to enter a decree granting this Application, finding that Tri-State has exercised reasonable diligence towards completion of the Lake Hope Reservoir conditional appropriation and continuing the conditional decree and the conditional water rights in full force and effect for six years from the month in which a final decree is entered in this case. (8 pgs., 1 Exhibit) **SAN MIGUEL COUNTY.**

YOU ARE FURTHER NOTIFIED THAT you have until the last day of October 2024 to file with the Water Clerk a Verified Statement of Opposition setting forth facts as to why a certain application should not be granted or why it should be granted only in part or on certain conditions. A copy of such a Statement of Opposition must also be served upon the applicant or the applicant's attorney and an affidavit of certificate of such service shall be filed with the Water Clerk, as prescribed by C.R.C.P. Rule 5. (Filing fee: \$192.00; Forms may be obtained from the Water Clerk's Office or on our website at [Division 4 | Colorado Judicial Branch](#)). (This publication can be viewed in its entirety on the state court website at: [Division 4 | Colorado Judicial Branch](#).) FRED CASTLE, Water Clerk, Water Division 4, 1200 N. Grand Ave., Bin A, Montrose, CO 81401