

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING AUGUST 2024. (This publication can be viewed in its entirety on the state court website at: www.coloradojudicial.gov)

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 August 2024, 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. 2024CW3019; Previous Case Nos, 17CW3060, 09CW73 – DONALA WATER AND SANITATION DISTRICT, 15850 Holbein Dr, Colorado Springs, CO

80921 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Matthew S. Poznanovic, John D. Buchanan, Hayes Poznanovic Korver LLC, 700 17th Street, Suite 1800, Denver, CO 80202, 303-825-1980)

Second Amended Application to Make Absolute and For Finding of Reasonable Diligence
LAKE AND CHAFFEE COUNTIES

Summary of Amendments: The application in this case was timely filed on May 30, 2024. Pursuant to the Water Referee's Minute Order Re: Amended Application dated June 6, 2024, the original application was amended to add the PLSS locations in Sections 3.2.1.1, 3.2.1.2, 3.2.2.1, and 3.2.2.2 below for purposes of resume notice. This second amendment to the application adds a claim to make the Turquoise Reservoir Exchange absolute as described in Section 4 below. **Description of Conditional Rights of Exchange ("Subject Water Rights"):** Original and Subsequent Decrees: The Subject Water Rights were originally adjudicated in Case No. 09CW73 entered by the District Court, Water Division 2 on November 15, 2011 ("09CW73 Decree"). Findings of diligence were made, and the Subject Water Rights continued for an additional six-year diligence period, in the decree entered in Case No. 17CW3060 on May 22, 2018. Points of Diversion: From the confluence of Rock Creek and Lake Fork Creek to Turquoise Reservoir, in Lake County (the "Turquoise Reservoir Exchange"). Turquoise Reservoir, WDID number 1103500, is located at UTM 381548E, 4345718N. The approximate location of the confluence of Rock Creek and Lake Fork Creek is in the NE1/4 of Section 6, Township 10 South, Range 80 West of the 6th P.M. As set forth in the 09CW73 Decree, Turquoise Reservoir is located in all or portions of Sections 7, 8, 17, 18, 19, and 20, Township 9 South, Range 80 West, and Sections 10, 11, 12, 13, 14 and 15, Township 9 South Range 81 West of the 6th P.M. The Turquoise Reservoir Dam axis and the centerline of Lake Fork Creek of the Arkansas River intersect at a point whence the NW corner of Section 16, Township 9 South, Range 80 West of the 6th P.M. bears N 44°46'18" E a distance of 10,344.35 feet, all as more particularly described in the decree in Civil Action 5141, District Court, Chaffee County, Colorado. From the confluence of the Arkansas River and Clear Creek to Clear Creek Reservoir, in Chaffee County (the "Clear Creek Exchange"). Clear Creek Reservoir, WDID number 1103504, is located at UTM 392180E, 4319897. The approximate location of the confluence of the Arkansas River

and Clear Creek is in the NE1/4 of Section 8, Township 12 South, Range 79 West of the 6th P.M. As set forth in the 09CW73 Decree, Clear Creek Reservoir is located in all or part of Sections 7 and 8, Township 12 South, Range 79 West of the 6th P.M. The Clear Creek Reservoir Dam axis and the centerline of Clear Creek intersect at a point whence the S. Corner of Section 8, Township 12 South, Range 79 West of the 6th P.M. bears S 27°W a distance of 2,255 feet. Priority date: May 26, 2009. Amount for all exchanges: 3.66 cfs, conditional, less transit loss from the points of measurement on the Willow Creek Ranch, the location of which is described in the 09CW73 Decree, to the point from which water is exchanged, for the Turquoise Reservoir Exchange and the Clear Creek Reservoir Exchange. The exchange rates for individual water rights shall be limited as shown below, less transit loss assessed from the Willow Creek Ranch to the point of exchange.

Maximum Exchange Rates (cfs)

| This is a table defining exchange rates for individual water rights being applied for. | | | | |
|---|-------------|-------------|-------------|---------------|
| Ditch | May | June | July | August |
| Abbott Placer Ditch | 0.82 | 0.96 | 0.75 | 0.71 |
| Abott Placer Ditch 1 st Enlargement | 0.43 | 0.50 | 0.43 | 0.38 |
| Willow Creek Ditch | 0.60 | 0.81 | 0.71 | 0.41 |
| Mitchell Ditch Nos. 1-4 | 0.52 | 0.65 | 0.56 | 0.50 |
| Sites Ditch No. 1 | 0.29 | 0.31 | 0.24 | 0.18 |
| Sites Ditch No. 2 | 0.49 | 0.43 | 0.27 | 0.15 |
| Total | 3.15 | 3.66 | 2.96 | 2.33 |

Uses: All municipal uses, including domestic, irrigation, commercial, industrial, mechanical, fire protection, maintenance and replacement of storage losses, and disposition of return flows. The sources of substitute supply, described below, may be fully consumed and may be used, reused, successively used or disposed of to extinction, after satisfaction of return flow obligations. Source of substitute supply: the water rights formerly used on the Willow Creek Ranch, originally decreed in CA 1127, Chaffee County District Court on June 19, 1890, changed to municipal use in the 09CW73 Decree (amounts, changed uses, and terms and conditions described in more detail in the 09CW73 Decree) (the “WCR Rights”), and summarized as follows:

| <u>Ditch</u> | <u>Priority</u> | <u>Source</u> |
|---|-----------------|----------------------|
| Abbott Placer Ditch (WDID 1100745) | 3/10/1881 | Willow Creek |
| Abbott Placer 1 st Enlargement | 11/30/1881 | Willow Creek |
| Willow Creek Ditch (WDID 1100746) | 4/15/1881 | Willow Creek |
| Mitchell Ditches Nos. 1-4 (WDID 1100749) | 5/31/1881 | Willow Creek |
| Sites Ditch No. 1 (WDID 1100747) | 4/30/1881 | Little Willow Creek |
| Sites Ditch No. 2 (WDID 1100809) | 4/30/1882 | Little Willow Creek. |

CLAIM TO MAKE ABSOLUTE: Donala operated the Turquoise Reservoir Exchange pursuant to and in compliance with the 09CW73 Decree at a maximum rate of 3.65 cfs. The exchange was first operated, and the maximum rate of exchange occurred, on June 10, 2024. The exchange was conducted in cooperation with the City of Aurora and Colorado Springs Utilities (“CSU”). Exchanged water was physically stored in Aurora’s storage space in Turquoise Reservoir, and then traded by a contract exchange for water in Pueblo Reservoir resulting in a storage credit to Donala of 7.26 acre-feet. The water in Pueblo Reservoir was subsequently delivered via CSU’s North Gate Interconnect system

for use in Donala's water delivery system by Donala's customers. Accordingly, Donala seeks to make the Turquoise Reservoir Exchange absolute to the full extent of 3.65 cfs resulting in 7.26 acre-feet of water delivered to Donala's customers. In the alternative and if the full 3.65 cfs exchange rate is not made absolute, Donala requests that a diligence finding be made to continue this water right pursuant to the activities described below.

CLAIM FOR FINDING OF REASONABLE DILIGENCE: This Application for Finding of Reasonable Diligence is filed pursuant to the Water Right Determination and Administration Act of 1969, C.R.S. § 37-92-302. **During the diligence period,** in continuing the development of the conditional water rights, Applicant has been engaged in the legal defense and protection of said water rights and has been diligent in the continued use and development of the water rights involved. These activities include, but are not limited to, the following efforts related to the Subject Water Rights and the WCR Rights: Donala has used the WCR Rights every year since the 09CW73 Decree was entered for diversion, storage, and delivery and has worked on all ongoing aspects of securing the long-term ability to deliver and continue to use the Subject Water Rights; Donala had discussions in 2024 with the City of Aurora, Colorado Springs Utilities, The Board of Waterworks of Pueblo ("Pueblo Water"), and water administration officials with the Division of Water Resources regarding operation of the Subject Water Rights in May and June 2024 and a subsequent contract exchange of the water stored in Turquoise and Clear Creek Reservoirs under the Subject Water Rights to Pueblo Reservoir. Donala worked with its legal and engineering consultants and water administration officials to obtain approval to divert and operate the Subject Water Rights in May and June 2024. Based on these discussions, Donala anticipates diverting and operating the Subject Water Rights in June 2024, and filing an amended application claiming that all or a portion of the Subject Water Rights have been made absolute; Donala entered into several agreements, including with the Arkansas Groundwater Users Association, Martin Marietta Materials, Inc., Warden M. Williams, and the Silver Ponds Property Owner's Association, regarding lease of water from Donala, including water made available through operation of the Subject Water Rights; Applicant entered into long-term contracts with Colorado Springs Utilities in 2023 and the U.S. Bureau of Reclamation in 2019 and obtained approval of a 1041 permit from the Pueblo Board of County Commissioners as set forth in Resolution No. P&D 19-029 adopted July 30, 2019, to allow construction of water diversion and conveyance facilities as part of Applicant's integrated water system, including water available under the Subject Water Rights; Applicant commissioned an Indirect Potable Reuse (IPR) study to investigate the potential to capture wastewater return flows, including return flows that would be made available through use of the Subject Water Rights, from Fountain Creek for reuse through the proposed Loop system at a cost of \$18,913; Applicant commissioned a study to analyze potential Aquifer Storage and Recovery (ASR) options to store water made available through the Subject Water Rights so that such water would be available during times of peak demand at a cost of \$190,482; Applicant spent \$92,399 on water rights accounting for its integrated water system, including revising the accounting system to better manage and utilize the Willow Creek and Little Willow Creek water rights and associated Subject Water Rights; Applicant commissioned a study to investigate the potential to treat effluent to drinking water standards to provide more options for reuse, including direct reuse and use after storage in surface reservoirs and in aquifer storage, at a cost of \$13,132; Applicant spent

approximately \$250,000 on funding for the Loop Water System for the purpose of capturing wastewater return flows from Fountain Creek, including return flows that would be made available through use of the Subject Water Rights, and reusing them through the proposed Loop system. Applicant actively engaged in the formation of and has representation on the Board of Directors of the Loop Water Authority formed to develop and operate the proposed Loop Water System; 6.10 Applicant performed annual maintenance on the Willow Creek Ranch to preserve and protect the watershed and water rights associated with the Subject Water Rights, including fire mitigation, repairing fences, and enhancing the streams and environment around the gaging stations to ensure the clear flow and measurement of Willow Creek; Applicant has continued to review the Division 2 water court resume to monitor for applications that could cause injury to the Subject Water Rights; Donala annually renewed and operated its water lease agreement with Pueblo Water regarding Donala's obligation to replace non-irrigation season return flows in the Upper Arkansas River Basin, including replacement obligations under the 09CW73 Decree; and The work and expenditures listed above are illustrative and not exhaustive. Additional work and additional or revised expenditures may be claimed in support of this application. **Names and addresses of owners of land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored:** Turquoise Reservoir: United States Forest Service, San Isabel National Forest, 2840 Kachina Drive, Pueblo, CO 81008; the U.S. Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18E, Loveland, CO 80537-9711; and the U.S. Bureau of Land Management, 3170 East Main Street, Canon City, Co, 81212. Clear Creek Reservoir: Pueblo Reservoir: Board of Water Works of Pueblo, c/o Seth Clayton, P.O. Box 400, Pueblo, CO 81002-0400. Pueblo Reservoir: United States of America, Department of Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County 18-E, Loveland, CO 80537. **WHEREFORE**, Applicant requests that this Court enter a decree finding that (1) Applicant has made the Turquoise Reservoir Exchange absolute for all uses at the maximum exchange rate of 3.65 cfs or at a lesser rate as the Court may determine, and (2) that Applicant has exercised reasonable diligence in the development of any remaining conditional portion of the Subject Water Rights, including the Turquoise Reservoir Exchange, and continuing the Subject Water Rights for an additional diligence period, and for such other and further relief as this Court deems just and proper in the premises.

CASE NO. 2024CW5; Previous Case Nos. 2004CW97, 2008CW53, 2011CW62, 2018CW1 – NORMAN WERBNER, PO Box 649, Long Key, FL 33001, normanwerb@aol.com, (305) 393-0076

Application For Finding Of Reasonable Diligence, to Make Absolute in Whole in In Part
LAKE COUNTY

2. Name of Structure: Echo Pond Enlargement Type: Reservoir. **3. Describe conditional water right:** **A. Date of Original Decree:** 08/26/2005 **Case No:** 2004CW97 **Court:** District Court, Water Division 2. **B. List all subsequent decrees:** Date of Decrees: 01/22/2010, Case No. 2008CW53; 01/17/2012, Case No. 2011CW52; 01/23/2018, Case No. 2018CW1, all in District Court, Water Division #2. **C. Legal description:** The point of diversion for the intake of the pipe line leading to the pond is located on the easterly side

of Exho Creek S 35° 00' W a distance of 460 feet from Corner No. 4 of Mineral Survey No. 4078 in Section 20, Township 11 South, Range 81 West, 6th P.M., Lake County Colorado. The outlet of the pond is located S. 29° 00' W a distance of 365 feet from Corner No. 4 of Mineral Survey No. 4078 in Section 20, Township 11 South, Range 81 West, 6th P.M., Lake County, Colorado. **D. Source of water:** Echo Creek, a tributary of Lake Creek, a Tributary of Arkansas River. **E. Appropriation Date:** November 18, 2004. **Amount:** 0.45 Acre Feet. **F. Use:** Recreation, aesthetic, and fish propagation purposes. **G. Depth:** N/A.

4. 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: The applicant has completed the necessary work to complete the enlargement, He has filled and stored water in Echo Pond to capacity (0.67 AF) using Twin Lake Shares to replace out of priority diversions. **5. Claim to make absolute in whole or in part. A. Date water applied to beneficial use:** August 15, 2007 **Amount:** 0.45 Acre-Feet **Use:** See 3F above **B. The application shall include supporting evidence that applicant diverted water in-priority and applied such water to the beneficial uses claimed in the amounts claimed:** Echo Pond was granted an absolute right to store .22 acre-feet by case 93CW72. A request to expand the capacity by .45 acre-feet to .67 acre-feet was approved by case 04CW97. In 2007, that expansion was done with an out of priority filling. That fill of the pond was never accounted for or in priority. Echo Pond remained full until May, 2024 from the 10 gallon per minute Echo Creek diversion and evaporation losses were augmented using the ½ share of Twin Lakes. (The Applicant owns one share of Twin Lakes, and the other half-share was not used for anything.) Echo Pond was partially drained in May 2024 to repair the bottom outlet and overflow piping. The amount drained was in excess of the .45 acre-feet mentioned above that was taken in 2007 out of priority. All the water that remained in the pond after the partial draining was within the original 22 acre-feet that had previously been decreed as absolute by case 04CW97. The pond remained partially drained with no water entering until the repair was completed. After the repair was completed, the pond was refilled with water from Echo Creek. The refilling was completed on August 18, 2024. The refilling was done using water released by Twin Lakes designated specifically for that purpose. The water that was rebased to the Applicant was based on the allocation of water applicable to his half-share that was not pledged to any other usage. (Refer to **Exhibit A** attached to the application (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) which has my request to Stacey Sober of Twin Lakes Canal and Company to release the water applicable to my unpledged half-share, and **Exhibit B** which is an e-mail from Stacy Sober to Theresa Dawson and Tim Miller of Twin Lakes Canal and Reservoir Company authorizing them to release .55 acre-feet and the response from Terry Dawson to Stacey Sober that she released (the .55 acre-feet) at the rate of 0.136 cfs for two days.) The flow rate into the pond was measured by Joe Crabb of DWR to help ensure that the permitted rate and the total allocated .55 acre-feet were not exceeded. Echo Pond was successfully refilled without exceeding those limits. The Division of Water Resources was made aware of and approved the plan to refill Echo Pond using the above procedure. Refer to **Exhibit C** which shows the approval of the fill by Will Scott of the Division of Water Resources. **C. Description of place of use where water is applied to beneficial use:** Echo Pond Enlargement – attached USGS Topo 6. **If actual location of the structure is different from the location in paragraph 3.C.**

above, provide actual description: SW ¼ SE ¼, Section 20, Township 11S, Range 81W, 6th PM. UTM: Easting 373000, Northing 4325816 Zone 13. Street Address: 12681 E. State Highway 82, Twin Lakes, CO 81251, Subdivision: Unit 3 of Twin Lakes Canon Estates, Lot 7, Source of UTM: Handheld Garmin GPS. Accuracy of location displayed on GPS device: 27 meters. **7. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.

CASE NO. 2024CW3029; Previous Case Nos. 18CW3012, 09CW150 – HUMBOLDT PEAK PARTNERS, LLC c/o Buck Blessing, 260 Josephine St., Suite 600, Denver, CO 80206 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: David S. Hayes, John D. Buchanan, Hayes Poznanovic Korver, LLC, 700 17th Street, Suite 1800, Denver, CO 80202, Phone: (303) 825-1980)

Application For Finding of Reasonable Diligence

CUSTER COUNTY

2. Name of conditional water right: Humboldt Peak Pond (the “Pond”). **3. Description of the conditional water right:** A. Date of original decree: The original decree for the Pond was issued on February 8, 2012 in Case No. 09CW150, District Court, Water Division No. 2. B. Subsequent diligence decree: A subsequent decree was entered on August 6, 2018 in Case No. 18CW3012, District Court, Water Division No. 2. C. Legal description: The Pond is located in the SW1/4 SW1/4 NE1/4 and the NW1/4 NW1/4 SE1/4 of Section 13, T. 23 S., R. 73 W., of the 6th P.M. in Custer County, Colorado, and is depicted on **Exhibit A**, attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court or via CCE.) A point on the centerline of the dam at the location of the outlet is approximately 2,785 feet from the North line and 1,980 feet from the East line of said Section 13. WDID 1303322. UTM: 456465 E, 4211682 N. D. Source: Macey Creek, tributary to Grape Creek, which is tributary to the Arkansas River; and precipitation and runoff in the watershed tributary to the Pond, which is tributary to Stanton Creek, tributary to Grape Creek, tributary to the Arkansas River. E. Appropriation Date: August 28, 2009. F. Rate of Diversion: 1.09 c.f.s, conditional. G. Amount: 10.5 acre-feet, conditional. H. Use: Aesthetic, piscatorial, recreation, wildlife habitat, and fire suppression. **4. Evidence of Reasonable Diligence:** The Pond is part of an integrated system for supplying the water demands of the Humboldt Peak Ranch. The application contains a summary of specific projects and work undertaken during the diligence period (from August 2018 to present) and is available for inspection at the office of the Division 2 Water Clerk or via CCE. The list is not intended to be all inclusive and may be supplemented by additional evidence at any hearing in this matter. **5. Can and will.** The conditional water right for the Pond can and will be diverted, stored, or otherwise captured, possessed, and controlled, and will be beneficially used, with diligence in a reasonable time. C.R.S. § 37-92-305(9)(b). **6. 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:** Applicant. WHEREFORE,

Applicant respectfully requests that this Court enter Findings of Fact, Conclusions of Law, and a Judgment and Decree: (1) finding that Humboldt Peak Partners, LLC has been reasonably diligent in the development of the conditional water right originally decreed to the Humboldt Peak Pond in Case No. 09CW150, as described in the preceding paragraphs; (2) continuing said conditional water right in full force and effect; and (3) granting such other relief as may be appropriate.

CASE NO. 2024CW3030; Previous Case Nos. 18CW3024, 11CW66, 99CW81, 92CW88, 83CW138 – FOREST LAKES METROPOLITAN DISTRICT, C/O ANN NICHOLS, District Manager, 2 North Cascade, Suite 1280, Colorado Springs, CO 80903 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David M. Shohet and Sedona E. Chavez of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921, (719) 471-1212)

Application to Make Conditional Water Storage Right Absolute or for a Finding of Reasonable Diligence in the Alternative

EL PASO COUNTY

Name of Structure: Pinon Lake No. 1. (WDID 1003907) **Legal Description:** The west abutment of the dam is located in the SE1/4 of the SE1/4, Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1,000 feet west of the east section line and 350 feet north of the south section line of said Section 27. The dam alignment runs easterly from the above-described abutment for approximately 700 feet. The high water line includes portions of the SE1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado. The approximate location of Pinon Lake No. 1 can be seen in **Exhibit A** attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Date and Case Number of Original Decree:** The date of the original decree is December 1, 1986, entered in Case No. 83CW138, District Court, Water Division 2. Date of Decree: June 15, 1993, Case No. 92CW88, District Court, Water Division 2. Date of Decree: October 10, 2005, Case No. 99CW81, District Court, Water Division 2. Date of Decree: March 20, 2012, Case No. 11CW66, District Court, Water Division 2. Date of Decree: August 23, 2018, Case No. 18CW3024, District Court, Water Division 2. **Source:** Beaver Creek and its tributaries, tributary to Monument Creek. **Appropriation Date:** June 6, 1983. **Amount claimed:** 120 acre-feet, conditional. **Uses:** Domestic, irrigation, industrial, commercial, municipal, augmentation, and exchange, including the right to fill, refill, and reuse. **Dam Height:** 40 feet. **Dam Length:** 700 feet. **Claim to Make Absolute:** The Applicant seeks to make absolute the entirety of the conditional water storage right decreed in Case No. 83CW138, District Court, Water Division 2, for Pinon Lake No. 1. Applicant has stored 120 acre-feet in Pinon Lake No. 1 through diversions pursuant to Applicant's plan for augmentation decreed in Case No. 84CW19, District Court, Water Division 2, on November 17, 1987, and the water stored has been applied to beneficial use. The Applicant provides the additional following information regarding its absolute claim: **Date Water Applied to Beneficial Use:** June 6, 1983, which is the date water was first exchanged into Pinon Lake No. 1.. **Amount:** 120 acre-feet. **Uses:** Domestic, irrigation, industrial, commercial, municipal, augmentation, and exchange, including the right to fill, refill, and reuse.

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 the alternative to a finding making the conditional water storage right absolute for Pinon Lake No. 1, Applicant seeks a finding of reasonable diligence. Pinon Lake No. 1 is a component of the Applicant's integrated water supply system, which consists of storage water rights, plans for augmentation, appropriative rights of exchange, surface water rights, groundwater rights, as well as both a physical and administrative infrastructure to operate the system. Pursuant to C.R.S. § 37-92-301(4)(b), work on one component of the integrated system shall be considered in finding that reasonable diligence has been shown for all components of the integrated system. During the subject diligence period, Applicant has outlaid the following expenditures or completed the following work related to Pinon Lake No. 1 and Applicant's integrated water supply system: From 2018-2024, Applicant saw major development within the residential area of Applicant's service area. The water distribution infrastructure for Filings 2A, 2B, and 4 was completed and conveyed to Applicant in 2022, for \$533,497.00. The water distribution infrastructure for Filings 5, 6, and 7, including a water storage tank and booster pump station, was completed and conveyed to Applicant in 2023, for \$3,039,932.00. In 2017, the Applicant provided water service to 111 homes, which, as of year-end 2023, had increased to 372 homes. The Applicant expects to provide water service to 480 homes within the next couple of years. Extensive development has occurred on the commercial tract south of Baptist Road – Falcon Commerce Center ("FCC"). The water distribution infrastructure for Phase 1 of FCC was completed and conveyed to Applicant in 2022, for \$391,361.00. The water distribution infrastructure for Phase 2 of FCC was completed and conveyed to Applicant at year-end 2023, for \$749,441.00. As of June 2024, Applicant has been providing water service to the FCC, which includes the Pilot Travel Center, a UPS distribution center, Quik-Trip, and an Eagle Rock liquor distribution center. In 2019, Applicant's contractors completed construction of a 1.5 m.g.d. surface water treatment plant (the "plant"), which was put into service that same year. The final cost of the plant totaled \$9,783,028.00. In 2021 and 2022, the Applicant equipped and put into service A1 Well (WDID 1005857), which is within the Applicant's service area, at a cost of \$325,287.00. In 2022, the pump on the Dillon Well (WDID 1005897) within the Applicant's service area failed. Applicant installed a new pump and motor and repaired the screen, at a total cost of \$267,270.00. Applicant began work on a Denver aquifer well (Well Permit No. 85707-F) that is adjacent to the Dillon Well in 2021, which continued through the early months of 2024. The total accumulated cost for drilling and equipping the Denver aquifer well is near \$1,200,000.00. Production from the well began in June 2024. Applicant engaged in two regional studies regarding how reusable return flows from the Applicant's integrated water supply system and other regional water providers can be recaptured and conveyed through Colorado Springs Utility's system back to northern El Paso County for use by the Applicant and the other local water providers. In late 2023, the Applicant executed a Joint Funding and Participation Agreement with Triview Metropolitan District ("Triview") to obtain capacity in its Northern Delivery System ("NDS") to deliver Applicant's return flows from the Colorado Springs Utility system, through Triview's NDS and distribution system, to the Applicant's distribution system. Applicant is making 5 quarterly payments of \$199,506.46 to acquire a 3.75% capacity right in the NDS. Applicant has performed annual maintenance activities on both Pinon

and Bristlecone dams. Applicant has continued to provide augmentation water to twelve (12) entities and individuals with ponds and lakes on Hay Creek and Upper Beaver Creek on the Rampart Range. **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 ill be placed to beneficial use:** Applicant owns the land where Pinon Lake No. 1 is located, and the beneficial use of the water from Pinon Lake No. 1 is within the Applicant's service area.

CASE NO. 2024CW3031; Previous Case Nos. 18CW3022, 11CW67, 99CW82, 92CW89, 83CW139 – FOREST LAKES METROPOLITAN DISTRICT, C/O ANN NICHOLS, District Manager, 2 North Cascade, Suite 1280, Colorado Springs, CO 80903 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David M. Shohet and Sedona E. Chavez of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921, (719) 471-1212)

Application to Make Conditional Water Storage Right Absolute or for a Finding of Reasonable Diligence in the Alternative

EL PASO COUNTY

Name of Structure: Bristlecone Lake No. 2 (WDID 1003906). **Legal Description:** The south abutment of the dam is located in the SE1/4 of the SW1/4, Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 2,500 feet east of the west section line and 20 feet north of the south section line of said Section 27. The dam alignment runs in a northerly direction from the above-described abutment for a distance of approximately 1,600 feet. The high water line includes portions of the SW1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado. The location of Bristlecone Lake No. 2 can be seen in **Exhibit A** attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Date and Case Number of Original Decree:** The date of the original decree is December 1, 1986, entered in Case No. 83CW139, District Court, Water Division 2. **Dates and Case Numbers of Subsequent Diligence Decrees:** Date of Decree: June 15, 1993, Case No. 92CW89, District Court, Water Division 2; Date of Decree: October 10, 2005, Case No. 99CW82, District Court, Water Division 2; Date of Decree: March 20, 2012; Case No. 11CW67, District Court, Water Division 2, Date of Decree: August 23, 2018, Case No. 18CW3022, District Court, Water Division 2; **Source:** Beaver Creek and its tributaries, tributary to Monument Creek. **Appropriation Date:** June 6, 1983. **Amount claimed:** 1,140 acre-feet, conditional. **Uses:** Domestic, irrigation, industrial, commercial, municipal, augmentation, and exchange, including the right to fill, refill, and reuse. **Dam Height:** 80 feet. **Dam Length:** 1,600 feet. **Claim to Make Absolute:** The Applicant seeks to make absolute the entirety of the conditional water storage right decreed in Case No. 83CW139, District Court, Water Division 2, for the Bristlecone Lake No. 2. Applicant has stored 1,140 acre feet in Bristlecone Lake No. 2 through diversions pursuant to Applicant's plan for augmentation decreed in Case No. 84CW19, District Court, Water Division 2, on November 17, 1987, and the water stored has been applied to beneficial use. The Applicant provides the additional following information regarding its absolute claim: Date Water Applied to Beneficial Use: June 6, 1983, which is the date water was first

exchanged into Bristlecone Lake No. 2; Amount: 1,140 acre-feet; Uses: Domestic, irrigation, industrial, commercial, municipal, augmentation, and exchange, including the right to fill, refill, and reuse. **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 the alternative to a finding making the conditional water storage right absolute for Bristlecone Lake No. 2, Applicant seeks a finding of reasonable diligence. Bristlecone Lake No. 2 is a component of the Applicant's integrated water supply system, which consists of storage water rights, plans for augmentation, appropriative rights of exchange, surface water rights, groundwater rights, as well as both a physical and administrative infrastructure to operate the system. Pursuant to C.R.S. § 37-92-301(4)(b), work on one component of the integrated system shall be considered in finding that reasonable diligence has been shown for all components of the integrated system. During the subject diligence period, Applicant has outlaid the following expenditures or completed the following work related to Bristlecone Lake No. 2 and Applicant's integrated water supply system: From 2018-2024, Applicant saw major development within the residential area of Applicant's service area. The water distribution infrastructure for Filings 2A, 2B, and 4 was completed and conveyed to Applicant in 2022, for \$533,497.00. The water distribution infrastructure for Filings 5, 6, and 7, including a water storage tank and booster pump station, was completed and conveyed to Applicant in 2023, for \$3,039,932.00; In 2017, the Applicant provided water service to 111 homes, which, as of year-end 2023, had increased to 372 homes. The Applicant expects to provide water service to 480 homes within the next couple of years; Extensive development has occurred on the commercial tract south of Baptist Road – Falcon Commerce Center ("FCC"). The water distribution infrastructure for Phase 1 of FCC was completed and conveyed to Applicant in 2022, for \$391,361.00. The water distribution infrastructure for Phase 2 of FCC was completed and conveyed to Applicant at year-end 2023, for \$749,441.00. As of June 2024, Applicant has been providing water service to the FCC, which includes the Pilot Travel Center, a UPS distribution center, Quik-Trip, and an Eagle Rock liquor distribution center; In 2019, Applicant's contractors completed construction of a 1.5 m.g.d. surface water treatment plant (the "plant"), which was put into service that same year. The final cost of the plant totaled \$9,783,028.00; In 2021 and 2022, the Applicant equipped and put into service A1 Well (WDID 1005857), which is within the Applicant's service area, at a cost of \$325,287.00; In 2022, the pump on the Dillon Well (WDID 1005897) within the Applicant's service area failed. Applicant installed a new pump and motor and repaired the screen, at a total cost of \$267,270.00; Applicant began work on a Denver aquifer well (Well Permit No. 85707-F) that is adjacent to the Dillon Well in 2021, which continued through the early months of 2024. The total accumulated cost for drilling and equipping the Denver aquifer well is near \$1,200,000.00. Production from the well began in June 2024; Applicant engaged in two regional studies regarding how reusable return flows from the Applicant's integrated water supply system and other regional water providers can be recaptured and conveyed through Colorado Springs Utility's system back to northern El Paso County for use by the Applicant and the other local water providers. In late 2023, the Applicant executed a Joint Funding and Participation Agreement with Triview Metropolitan District ("Triview") to obtain capacity in its Northern Delivery System ("NDS") to deliver Applicant's return flows from the Colorado Springs Utility system, through Triview's NDS and distribution system, to the Applicant's

distribution system. Applicant is making 5 quarterly payments of \$199,506.46 to acquire a 3.75% capacity right in the NDS.; Applicant has performed annual maintenance activities on both Pinon and Bristlecone dams; Applicant has continued to provide augmentation water to twelve (12) entities and individuals with ponds and lakes on Hay Creek and Upper Beaver Creek on the Rampart Range. **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:** Applicant owns the land where Bristlecone Lake No. 2 is located, and the beneficial use of the water from Bristlecone Lake No. 2 is within the Applicant's service area.

CASE NO. 2024CW3032; DAVID HUBER AND CYNTHIA KIRK REVOCABLE LIVING TRUST, P.O. Box 232, Westcliffe, CO 81252 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Karl D. Ohlsen and Matthew L. Navarrette at Carlson, Hammond & Paddock, LLC, 1900 N. Grant Street, Suite 1200, Denver, Colorado 80203-4539; Phone: (303) 861-9000; e-mail: kohlsen@chp-law.com, mnavarrette@chp-law.com)

Amended Application For Approval Of Plan For Augmentation Including Exchanges
CUSTER and FREMONT COUNTIES

2. Name(s) of structure(s) to be augmented: Huber Pond No. 1 ("Little Pond" or "Upper Pond") and Huber Pond No. 2 ("Large Pond" or "Lower Pond"). Collectively the Huber Pond No. 1 and Huber Pond No. 2 are referred to as the Huber Ponds. By this Application, the Hubers seek approval of a plan for augmentation, with appropriate rights of exchange, to replace out of priority depletions associated with the Huber Ponds. The Huber Ponds were decreed in Case No. 00CW69 in the District Court for Water Division No. 2. The Huber Ponds are located on Duckett Creek, a tributary of Lake Creek, which is a tributary of Texas Creek, which is a tributary of the Arkansas River. Additional information concerning the Huber Ponds is set forth below. A. **Location and description.** The Huber Ponds are located at SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 8, T.46N., R.12E., N.M.P.M. in Custer County, Colorado. See Exhibit A attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) UTM coordinates for Little Pond are NAD 83 Zone 13N, E442045 N4234003. UTM coordinates for Large Pond are NAD 83 Zone 13N, E442200 N4234094. Large Pond is located approximately 525 ft downstream from Little Pond. The appropriation date for Little Pond is December 31, 1960, and the appropriation date for Large Pond is December 31, 1957. Storage capacity for Little Pond is .50 acre-feet, absolute, and storage capacity for Large Pond is 2.45 acre-feet, absolute. Decreed uses for the Huber Ponds include stock water, irrigation, and storage uses. There are no other water rights derived from this structure. **3. Water right(s) to be used for augmentation:** The Hubers will utilize water rights decreed to the Jake Wells Ditch for their augmentation plan. The Hubers are under contract to lease 1.49 acre-feet of augmentation water from Stephen and Nancy Oswald (the "Oswalds"), the owners of the Jake Wells Ditch water rights, changed for augmentation use in Case No. 98CW132. A. **Date of original and all relevant subsequent decrees.** The water rights for the Jake Wells Ditch were decreed on February 3, 1894, in the District Court for Water District 12. The Jake Wells Ditch received two water rights from the 1894 decree: 1) the senior water right for 1 c.f.s. with an appropriation date of May 1, 1873, and 2) the junior water right for 2.12 c.f.s. with an appropriation date of April

1, 1877. A change of water rights was decreed to the Jake Wells Ditch in Case No. 98CW132 on May 23, 2001, in the District Court for Water Division 2, changing the water rights to include storage and augmentation rights. The Case No. 98CW132 water rights also include a right to fill and refill Spruce Creek Reservoir to the total extent of the annual historical irrigation season depletion credits. Under the 98CW132 decree, the Oswalds are entitled to an average historical irrigation season depletion credit of 48.9 acre-feet per year, with 5.4 acre-feet of this amount being obligated to replacing out of priority evaporative losses from Spruce Creek Reservoir and 4 acre-feet being annually obligated to provide for other third-party augmentation plans. B. Type of water right. Irrigation, storage, and augmentation. C. Legal description of each point or diversion storage structure. Spruce Creek Reservoir is in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 2, T.46N., R.12E., N.M.P.M. See Exhibit B. The source of water for Spruce Creek Reservoir comes from Spruce Creek, which is a tributary of Texas Creek, which is a tributary of the Arkansas River. Spruce Creek Reservoir maintains an appropriation date of April 1, 1877, for 1.06 c.f.s. of absolute water. The decreed use for Spruce Creek Reservoir is storage for all beneficial uses including augmentation. Jake Wells Ditch is located in Sec. 2, T.46N., R.12E., N.M.P.M. See Exhibit C. The source of water for the Jake Wells Ditch is Spruce Creek, a tributary of Texas Creek, a tributary of the Arkansas River. Decreed uses for Jake Wells Ditch include irrigation, storage, and augmentation. From Jake Wells Ditch, augmentation water travels through an existing pipeline (the "Augmentation Pipeline") that traverses through the Oswalds' property and exits into an unnamed tributary of Duckett Creek. D. Water lease agreement with the Oswalds. The out-of-priority depletions resulting from evaporative losses from the Huber Ponds will be augmented with water owned by the Oswalds pursuant to a water lease agreement (the "Agreement"). 1. *Lease Terms*. Applicant's Agreement with the Oswalds will be a long-term lease for a period of 25 years, commencing on December 31, 2024, and terminating on December 31, 2045. If Applicant is not in default at the expiration of the Agreement or any extension of the Agreement, the Agreement will automatically be extended for two additional periods of twenty-five (25) years on the same terms, covenants, and conditions as the Agreement unless Applicant gives the Oswalds written notice of its intent not to extend the Agreement at least twelve months (12) prior to the expiration of the initial term or any extended term. Applicant will lease up to 1.49 acre-feet of water (the "Agreement Water") from the Oswalds per year. The Oswalds will measure and deliver Agreement Water into Spruce Creek or Lake Creek at the outlet of the Spruce Creek Reservoir pursuant to the terms and limitations in Case No. 98CW132. Applicant shall be responsible for constructing and installing telemetry equipment below the point of the Oswalds' delivery point. Applicant may utilize the Augmentation Pipeline that delivers water into an unnamed tributary of Duckett Creek. If Applicant chooses to receive Agreement Water through the Augmentation Pipeline and the pipeline fails, the Oswalds will deliver Agreement Water through Spruce Creek until the Augmentation Pipeline is repaired at Applicant's sole expense. **4. Complete statement of plan for augmentation**. The Hubers will utilize augmentation water stored in Spruce Creek Reservoir to mitigate evaporative losses to their Huber Ponds. The Huber Ponds evaporation calculations are as follows:

| Huber Ponds Evaporation | | | | | | | | | | |
|-------------------------|--------------|-------------|---------------|-----------|-------------|-------------------|-----------|------------------------|-------------|-------------|
| Month | Evaporation | Gross | Precipitation | | Net | Pond Surface Area | | Net Evaporative Losses | | |
| | Distribution | Evaporation | Gross | Effective | Evaporation | Pond No 1 | Pond No 2 | Pond No 1 | Pond No 2 | Total |
| | (%) | (inches) | (inches) | (inches) | (feet) | (acres) | (acres) | (acre-feet) | (acre-feet) | (acre-feet) |
| | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) | (J) |
| Jan | 1 | 0.38 | 0.80 | 0.56 | 0.00 | 0.11 | 0.59 | 0.00 | 0.00 | 0.00 |
| Feb | 3 | 1.14 | 1.04 | 0.73 | 0.03 | 0.11 | 0.59 | 0.00 | 0.02 | 0.02 |
| Mar | 6 | 2.28 | 1.10 | 0.77 | 0.13 | 0.11 | 0.59 | 0.01 | 0.07 | 0.09 |
| Apr | 9 | 3.42 | 2.27 | 1.59 | 0.15 | 0.11 | 0.59 | 0.02 | 0.09 | 0.11 |
| May | 12.5 | 4.75 | 2.30 | 1.61 | 0.26 | 0.11 | 0.59 | 0.03 | 0.15 | 0.18 |
| Jun | 15.5 | 5.89 | 1.06 | 0.74 | 0.43 | 0.11 | 0.59 | 0.05 | 0.25 | 0.30 |
| Jul | 16 | 6.08 | 2.72 | 1.90 | 0.35 | 0.11 | 0.59 | 0.04 | 0.21 | 0.24 |
| Aug | 13 | 4.94 | 2.31 | 1.62 | 0.28 | 0.11 | 0.59 | 0.03 | 0.16 | 0.19 |
| Sep | 11 | 4.18 | 1.61 | 1.13 | 0.25 | 0.11 | 0.59 | 0.03 | 0.15 | 0.18 |
| Oct | 7.5 | 2.85 | 1.33 | 0.93 | 0.16 | 0.11 | 0.59 | 0.02 | 0.09 | 0.11 |
| Nov | 4 | 1.52 | 0.61 | 0.42 | 0.09 | 0.11 | 0.59 | 0.01 | 0.05 | 0.06 |
| Dec | 1.5 | 0.57 | 0.86 | 0.60 | 0.00 | 0.11 | 0.59 | 0.00 | 0.00 | 0.00 |
| Totals | 100 | 38 | 18.00 | 12.60 | 2.13 | - | - | 0.23 | 1.26 | 1.49 |

Notes:

(A) SEO monthly evaporative distribution for elevations above 6,500 feet. Huber Ponds elevation 8,400 feet.

(B) Gross evaporation from SEO CDSS: 38 inches/year.

(C) Gross annual precipitation of 18 inches from SEO CDSS, monthly distribution from Cotopaxi 4.8 SSE.

(D) Effective precipitation = 70% of gross precipitation.

(E) Net evaporation = (Col B - Col D)/12, if less than zero than zero. Both ponds are on-channel on Duckett Creek.

(F) Pond No 1 surface area by hand held GPS tracking of perimeter: 4,612 square feet (0.11 acres).

(G) Pond No 2 surface area by hand held GPS tracking of perimeter: 25,905 square feet (0.59 acres).

(H) Pond No 1 net evaporation = Col E * Col F.

(I) Pond No 2 net evaporation = Col E * Col G.

(J) Total net evaporation = Col H + Col I.

sjk: 10/9/2023

The terms of the decree in Case No. 98CW132 permit up to 48.9 acre-feet of annual augmentation water, with 5.4 acre-feet of this amount being obligated to replacing out of priority evaporative losses from the adjacent Spruce Creek Reservoir, and approximately 4 acre-feet annually being obligated to other third-party augmentation plans. This leaves a sufficient amount of water under the 98CW132 decree to augment the Hubers' proposed 1.49 acre-feet of net evaporative depletions from the Huber Ponds. To accomplish the Hubers' augmentation goals, water from Spruce Creek Reservoir will utilize the Augmentation Pipeline that traverses through the Oswalds' property and reaches its terminus at the unnamed tributary of Duckett Creek. The Hubers also request primary and secondary rights of exchange. The downstream terminus for the primary right of exchange will be the confluence location of the unnamed Duckett Creek tributary, into which augmentation waters are provided via the Augmentation Pipeline, and Duckett Creek in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 34, T.47N., R.12E., N.M.P.M. The upstream terminus for the primary right of exchange will be the location of Little Pond, located in SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 8, T.46N., R.12E., N.M.P.M., with Large Pond being an intervening "exchange to" point. The annual exchange volume for this right would be 1.49 acre-feet and the instantaneous exchange rate would be 0.15 c.f.s. The Hubers' secondary right of exchange would extend from the confluence of Texas Creek and Lake Creek. This secondary right of exchange will protect the reach from Lake Creek up to its confluence with Duckett Creek and up to the Huber Ponds. The downstream terminus of this second exchange right will be the confluence of Texas Creek and Lake Creek in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 23, T.47N., R.12E., N.M.P.M., while the upstream terminus of this right will be the location of the Huber Ponds (as described in the primary right of exchange). The secondary right of exchange may be utilized when augmentation waters are released directly to Spruce Creek and administered to Texas Creek. The exchange parameters for

the secondary right of exchange would match the primary right of exchange. The date of appropriation for the primary and secondary right of exchange is the date of execution of the water lease Agreement: July 24, 2024. **5. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool.** N/A. The Hubers will utilize existing storage structures and will not modify or construct any new infrastructure to convey their augmentation water. **WHEREFORE**, the Hubers request the Court to enter its decree and ruling approving a plan for augmentation in this matter, or such other relief as the Court deems appropriate.

CASE NO. 2024CW3033; RYAN G. TOLLIS & ANDREA M. SEAGREN, 12665 Black Lane, Colorado Springs, Colorado 80908 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Chris D. Cummins and Sedona E. Chavez of MONSON, CUMMINS, SHOHET & FARR, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921 (719) 471-1212)

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

EL PASO COUNTY

Applicants own a 9.77-acre parcel of land and are seeking to quantify the Denver Basin groundwater underlying the property. Applicants also seek approval of a plan for augmentation for the use of a not-nontributary Dawson aquifer well for provision of water to Applicants’ property. Property Description. Applicants’ property lies in the SE¼ SW¼ of Section 12, Township 12 South, Range 66 West of the 6th P.M., El Paso County, Colorado (“Applicants’ Property”) as approximately shown on **Exhibit A** map attached to the application, (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) and as more specifically described as follows: The west half of the southeast quarter of the southwest quarter, except the west 330 feet thereof in Section 12 in Township 12 South, Range 66 West of the 6th P.M. El Paso County, Colorado. a.k.a.: 12665 Black Lane. The Applicants make the following amendment, pursuant to the Water Referee’s Minute Order Re: Amended Application, dated September 11, 2024: The El Paso County Assessor has assigned parcel ID no. 6212000039 to the Applicants’ Property, and lists the property address as 5140 Shoup Road, Colorado Springs, Colorado 80908. Existing Wells. There is one existing well registered with Division of Water Resources Permit No. 332674 (“Tollis Well No. 1”). The Well is drilled to depth of approximately 290 feet to the Dawson aquifer. Upon approval of the plan for augmentation requested herein, Tollis Well No. 1 will be re-permitted. The approximate location of Tollis Well No. 1 can be seen on attached **Exhibit A**. Proposed Wells. Applicants will construct such additional or replacement wells on Applicants’ Property as necessary to produce their decreed entitlements. Not-Nontributary. The groundwater to be withdrawn from the Dawson and Denver aquifers underlying Applicants’ Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer require the replacement of actual stream depletions. Nontributary. The groundwater to be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers underlying Applicants’ Property will be nontributary. Estimated Rates of Withdrawal. Pumping from the wells on Applicants’

Property will not exceed 100 gpm. The actual pumping rate for the wells will vary according to aquifer conditions and Well production capabilities. The Applicants request the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amounts. Estimated Average Annual Amounts of Groundwater Available. Applicants request a vested right for the withdrawal of all legally available groundwater in the Denver Basin aquifers underlying the Applicants' Property. Said amounts may be withdrawn over the 100-year life of the aquifers as required under 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 the Applicants' Property:

| AQUIFER | NET SAND (Feet) | Total Appropriation (Acre-Feet) | Annual Avg. Withdrawal 100 Years (Acre-Feet) |
|------------------------|-----------------|---------------------------------|--|
| Dawson (NNT) | 209.2 | 409.0 | 4.09 |
| Denver (NNT) | 479.1 | 796.0 | 7.96 |
| Arapahoe (NT) | 245.6 | 408.0 | 4.08 |
| Laramie-Fox Hills (NT) | 188.2 | 276.0 | 2.76 |

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 groundwater for beneficial uses upon the Applicants' Property consisting of domestic (including a primary residence and an accessory dwelling unit ("ADU")), specifically including home-office commercial-type uses; irrigation, including but not limited to lawn, garden, and greenhouse irrigation; watering of stock and domestic animals; use of water in hot tubs or small water features; 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 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. Applicants request that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying the 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 groundwater in excess of the average annual amount decreed to the aquifers beneath the Applicants' Property, so long as the sum 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 Applicants' Property. Owner of Land Upon Which Wells are to Be Located. The land and underlying groundwater upon which the wells will be located is owned by the Applicants, along with Gregory M. Tollis, whose address is 9939 Bridgeport Dr., Colorado Springs, CO 80920. Structures to be Augmented. The structure to be augmented is the Tollis Well No.1 on Applicants' Property, which is completed to the Dawson aquifer, along with any replacement or additional wells associated therewith, in the SE¼ SW¼ Section 12, Township 12 South, Range 66 West of the 6th P.M., El Paso County, Colorado. 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 the Tollis Well No. 1 on Applicants' Property, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post-pumping depletions. Statement of Plan for Augmentation. Applicants seek to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by the Tollis Well No. 1 on Applicants' Property described herein. Water use criteria and their consumptive use component for replacement of actual depletions for the Applicants' Property are estimated as follows: Uses. Pumping from the Dawson aquifer will be a maximum of 1.98 acre-feet of water per year. Such uses shall be for domestic (including a primary residence and an accessory dwelling unit ("ADU")), specifically including home-office commercial-type uses; irrigation, including but not limited to lawn, garden, and greenhouse irrigation; watering of stock and domestic animals; use of water in hot tubs or small water features; and also for storage and augmentation purposes associated with such uses. Amounts. The Tollis Well No. 1 will pump a maximum of 1.98 acre-feet from the Dawson aquifer annually, for the uses described above. An example breakdown of this combination of use is in-house use of 0.20 acre-feet of water per year for the primary residence on Applicants' Property, with the additional 1.78 acre-feet per year available for any other remaining uses. Depletions. It is estimated that maximum stream depletions over the 100-year pumping period for the Dawson aquifer amounts to approximately 9.052% of pumping. Maximum annual depletions for total pumping from the Tollis Well No. 1 is therefore 0.18 acre-feet in year 100 (i.e. 9.052% of pumping). Should Applicants' pumping be less than the 1.98 acre-feet total per year described herein, resulting depletions and required replacements will be correspondingly reduced, so long as depletions resulting from pumping are adequately replaced. 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 a well completed to the Dawson aquifer. Depletions during pumping will be effectively replaced by residential return flows from a non-evaporative septic system. The annual consumptive use for non-evaporative septic systems is 10%. At a household rate of 0.20 acre-feet per residence per year, 0.18 acre-feet is replaced to the stream per year from the primary residence, assuming the use of a non-evaporative septic system. Thus, during pumping, stream depletions will be adequately augmented. Augmentation for Post-Pumping Depletions. For the replacement of any injurious post-pumping depletions that may be associated with the use of the Well, Applicant will reserve up to 198 acre-feet of the water from the underlying

Laramie-Fox Hills aquifer, accounting for actual stream depletions replaced during the pumping period, as necessary to replace any injurious post-pumping depletions. 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 the Tollis Well No. 1 on Applicants' Property, and any replacement or additional wells, for the uses in accordance with this Application and otherwise in compliance with C.R.S. § 37-90-137.

CASE NO. 2024CW3034; SHAWNETTE M. SANDOVAL, BRIAN P. SANDOVAL 2670 N Interstate 25, Pueblo, CO 81008 AND JASON D. WARD 2460 N Interstate 25, Pueblo, CO 81008 (Please address all pleadings and inquiries regarding this matter to Co-Applicant's attorneys: Jennifer M. DiLalla, Virginia S. Sargent, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Boulevard, Suite 240, Boulder, CO 80302, 303-443-8782)

Application for Change of Water Rights and Plan for Augmentation Including Water Exchange Project

FOUNTAIN CREEK AND ITS TRIBUTARIES, IN PUEBLO COUNTY

2. Overview of application: 2.1 Cactus Ditch Water Rights: The Sandovals own a 5/6 interest in the water rights decreed to the Cactus Ditch ("Sandoval Rights"). Jason Ward owns the remaining 1/6 interest in the water rights decreed to the Cactus Ditch ("Ward Rights"). Together, the Sandovals and Jason Ward are referred to as the "Co-Applicants" in this Application, and the Sandoval Rights and the Ward Rights are referred to as the "Cactus Ditch Water Rights. The Cactus Ditch Water Rights are put to beneficial use for irrigation of approximately 59 acres on the Sandovals' property known as "Riverside Ranch." 2.2 Purpose: The purpose of this Application is twofold: 2.2.1 Co-Applicants seek to change the point of diversion for the Cactus Ditch Water Rights to a new well on Riverside Ranch, to ensure that they can divert water for irrigation regardless of flooding, washout, or changed conditions on Fountain Creek; and 2.2.2 Co-Applicants seek a decreed augmentation plan, including a water exchange project, to replace out-of-priority depletions attributable to (a) diversion of the Cactus Ditch Water Rights at the changed point of diversion; and (b) evaporation loss from an unlined pond on Riverside Ranch.

CHANGE OF WATER RIGHTS 3. **Water rights to be changed:** The Cactus Ditch Water Rights, as described in paragraphs 3.1 through 3.6 below. 3.1 Name of structure: Cactus Ditch (WDID 1000746). 3.2 Original decree: March 23, 1896, Civil Action No. 2535 in the District Court for Pueblo County ("CA 2535 Decree"). 3.3 Legal description: As shown on **Exhibit A** attached to the application, (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The legal description given in the CA 2535 Decree places the point of diversion approximately 6 miles east of the west bank of Fountain Creek, where the actual point of diversion and river headgate are located. The Co-Applicants' pending amended application in Case No. 24CW3021 seeks correction of this established but erroneously

described point of diversion under C.R.S. § 37-92-305(3.6) (“24CW3021 Amended Application”). A file-stamped copy of the 24CW3021 Amended Application is attached as **Exhibit B**. 3.3.1 Decreed point of diversion: The decreed point of diversion is on the west bank of Fountain Creek (Fontaine Qui Bouille) in the NW1/4 Section 25, T19S, R64W, Pueblo County, Colorado. (UTM: 542729.6 Easting; 4247148.8 Northing.) All UTM coordinates in this Application are NAD 83, Zone 13. 3.3.2 Corrected point of diversion: As described in the 24CW3021 Amended Application and as shown on the map attached as **Exhibit A**, the corrected and actual point of diversion is located in the SE1/4 SW1/4 Section 25, T19 S, R65W, 6th P.M., Pueblo County. (UTM: 533430 Easting; 4246094 Northing.) 3.4 Source: Fountain Creek, tributary to the Arkansas River. 3.5 Amounts and appropriation dates: 3.5.1 1 cubic foot per second (“cfs”), absolute, with an appropriation date of January 9, 1869 (“1869 Priority”). 3.5.2 0.5 cfs, absolute, with an appropriation date of December 31, 1879 (“1879 Priority”). 3.6 Use: Irrigation. **4. Detailed description of proposed change**: Co-Applicants seek to change the point of diversion for the Cactus Ditch Water Rights to a planned well to be located approximately 1,660 feet downstream of the Cactus Ditch river headgate and 82 feet from the current streambank of Fountain Creek (“Riverside Well”). There are no other water rights diverting from Fountain Creek between the river headgate and the location of the Riverside Well. No change in the decreed type or place of use of the Cactus Ditch Water Rights is requested. 4.1 Proposed point of diversion: The proposed point of diversion for the Cactus Ditch Water Rights is the Riverside Well in the SW1/4 NW1/4 Section 36, T19S, R65W of the 6th P.M., as shown on **Exhibit A**. (UTM: 533535 Easting; 4245429 Northing). The Riverside Well is further described in paragraph 7.1 below. 4.2 Lagged depletions from pumping: Co-Applicants’ consulting engineers calculated the daily unit response function (“URF”) for Riverside Well to determine lagged depletions to Fountain Creek, as summarized in **Table 1** below. **Table 1**. Riverside Well URF.

| URF Day | URF Total |
|---------|-----------|
| 1 | 86.3% |
| 2 | 13.7% |
| Total | 100.0% |

4.3 Replacement of out-of-priority lagged depletions: As shown in Table 1, 13.7% of depletions will impact Fountain Creek the day following pumping from the Riverside Well (“Day 2 Depletions”). Co-Applicants will replace out-of-priority Day 2 Depletions under the augmentation plan described in paragraphs 7-9 below (“Augmentation Plan”). **5. Historical use**: The Cactus Ditch Water Rights have historically been used for irrigation of approximately 59 acres under the ditch and primarily on Riverside Ranch (“Historically Irrigated Land”). In accordance with C.R.S. § 37-92-302(2)(a), **Exhibit C** shows the approximate location of the Historically Irrigated Land, and **Exhibit D** summarizes records of actual diversion of the Cactus Ditch Water Rights described in paragraph 3 above, to the extent such records exist. 5.1 Transferable yield: A summary of diversions, historical consumptive use (“HCU”), and historical return flows attributable to the Cactus Ditch Water Rights is shown in the water balance summary attached as **Exhibit E**. 5.1.1 Diversions of the Cactus Ditch Water Rights averaged 251.3 acre-feet per year (“afy”). 5.1.2 To calculate historical return flows, the Co-Applicants’ consulting engineers used parameters prepared for ArkDSS along Fountain Creek; assumed that 50% of the water

applied to the Historically Irrigated Land was consumed through flood irrigation of the alfalfa crop; and estimated that the distribution of return flows was split evenly as tailwater (25%) and deep percolation (25%) return flows. The URF for deep percolation return flows is given in **Table 2** below. **Table 2.** Deep percolation return flow URF.

| URF Month | URF Total |
|-----------|-----------|
| 1 | 78.3% |
| 2 | 21.7% |
| Total | 100.0% |

5.1.3 The average HCU attributable to the Cactus Ditch Water Rights was 91.5 afy, with a maximum of 178.0 afy. 5.2 Future diversions: Farm efficiency resulting from irrigation following pumping at the changed point of diversion will remain 50%. 5.2.1 Dividing the average HCU of 91.5 afy by a farm efficiency of 50% results in an average future pumping volume of 183 afy at the changed point of diversion. 5.2.2 Dividing the maximum HCU of 178.0 acre-feet by the farm efficiency of 50% results in a maximum future pumping volume of 356 afy at the changed point of diversion. 5.2.3 Co-Applicants will pump at the changed point of diversion only when and to the extent that water is physically and legally available at the original point of diversion, as described in the decree to be entered in pending Case No. 24CW3021. **CONDITIONAL GROUNDWATER RIGHTS 6. Riverside Pond:** 6.1 Permit number: Pending (application date: July 1, 2024). In compliance with emailed direction received from the Division of Water Resources on July 25, 2024, the Sandovals will re-submit the permit application following entry of a decree in this case. 6.2 Type of structure: Pond well. 6.3 Legal description of structure: SW1/4 NE1/4 of Section 26, T19S, R64W, Pueblo County, Colorado, approximately 477 feet from Fountain Creek, as shown on **Exhibit F**. (UTM: 533603 Easting; 4245229 Northing.) 6.4 Source: Groundwater tributary to Fountain Creek, tributary to the Arkansas River. 6.5 Depth of pond well: 15 feet. 6.6 Amount: 0.009 cfs (maximum daily depletion rate); 3.8 afy. 6.7 Use: Evaporation of exposed ground water from unlined pond used for stockwatering and piscatorial uses. 6.8 Augmentation plan: Pending; described in paragraphs 7-9 below. **PLAN FOR AUGMENTATION 7. Augmented structures:** 7.1 Riverside Well: 7.1.1 Type of structure: Well. 7.2 Permit number: Pending (application date: July 1, 2024). In compliance with emailed direction received from the Division of Water Resources on July 25, 2024, the Sandovals will re-submit the permit application following entry of a decree in this case. 7.2.1 Legal description of point of diversion: As described in paragraph 4.1 above. 7.2.2 Source: Ground water tributary to Fountain Creek, tributary to the Arkansas River. 7.2.3 Depth of well: 25 feet (anticipated; not yet constructed). 7.2.4 Amount: 0.21 cfs (maximum daily rate of Day 2 Depletions). 7.2.5 Decreed use: Irrigation. 7.3 Riverside Pond: As described in paragraph 6 above. **8. Water rights to be used for augmentation:** 8.1 Fryingpan-Arkansas Project (“Project Water”): 8.1.1 Eligibility: Riverside Well and Riverside Pond are located within the boundaries of the Southeastern Colorado Water Conservancy District (“SECWCD”), and all water described in this Application will be used within those boundaries. Co-Applicants are eligible for annual allotments of Project Water and Project Water Return Flows, which Co-Applicants may purchase and use after the water is allocated to them by SECWCD, as shown in the SECWCD letter attached as **Exhibit G**. 8.1.2 Allocation: Southeastern allocates Project Water, and Project Water Return Flows, annually based on its decrees,

principles, policies, procedures, contracts, charges and rules and regulations, as they may be amended from time to time. 8.1.3 Project Water – West Slope decrees: The Fryingpan-Arkansas Project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County. The principal water rights were adjudicated by the decrees in Civil Action No. 4613 (District Court, Garfield County) dated June 20, 1958, and August 3, 1959; and were modified by the Decree in Case No. W-829-76 (District Court, Water Division No. 5) dated November 27, 1979; and were supplemented by the Decree in Case No. 83CW352 (District Court, Water Division No. 5) dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travels under the Continental Divide through the Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir and Pueblo Reservoir, and applied to beneficial use within Southeastern’s District boundaries. Because the water is imported from another river basin, it is fully consumable in Water Division 2. 8.1.4 Project Water – East Slope decrees: The Fryingpan-Arkansas Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont, and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141 (District Court, Chaffee County) dated July 9, 1969; and Civil Action No. B-42135 (District Court, Pueblo County) dated June 25, 1962; and were modified and supplemented by the Decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir, and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed for exchange, reuse and successive use to extinction, for beneficial use within Southeastern’s District boundaries. Under these decrees, Turquoise Reservoir and Twin Lakes Reservoir may store native water or imported water, directly or by exchange with each other or with Pueblo Reservoir. 8.2 Addition of supplies under C.R.S. § 37-92-305(8): Consistent with C.R.S. § 37-92-305(8), the decree to be entered in this case will provide procedures to allow additional or alternative sources of augmentation water, including water leased on a yearly or less frequent basis, to be used in the augmentation plan after the decree is entered, if the use of the additional or alternative sources is part of a substitute water supply plan (“SWSP”) approved under C.R.S. § 37-92-308 or if such sources are decreed for such use. 9. Complete statement of plan for augmentation: 9.1 Replacement of out-of-priority depletions: Out-of-priority Day 2 Depletions from pumping of the Riverside Well and evaporation losses from Riverside Pond will impact Fountain Creek, which is tributary to the Arkansas River. Project Water will be released from Pueblo Reservoir to the confluence of Fountain Creek and the Arkansas River, then exchanged up to the point of depletion at Riverside Ranch as described in paragraph 12 below; or augmentation supplies added under C.R.S. § 37-92-205(8) will be delivered to the stream in compliance with the applicable decree or SWSP approval. 9.2 Augmented depletions: Total augmentation deliveries to replace out-of-priority depletions will be 7.8 afy, which is the sum of the replacement volumes described below in paragraphs 9.2.1 and 9.2.2 below. 9.2.1 Riverside Well: Out-of-priority Day 2 Depletions will occur only when there is a call the day following in-priority pumping of the Cactus Ditch Water Rights. Based on structure call analyses of the Cactus Ditch Water Rights, Co-Applicants’ consulting engineers estimate that maximum out-of-priority Day 2 Depletions will total 0.99 afy. Co-Applicants

conservatively propose to deliver 1.0 acre-foot of augmentation supplies to the stream monthly from July through October, for total replacements of 4.0 afy. **9.2.2 Riverside Pond:** Co-Applicants' consulting engineers calculate annual gross evaporation as approximately 50 inches or 4.17 feet, requiring 3.8 afy of augmentation deliveries if all evaporation is assumed to be out of priority. The monthly schedule of evaporation losses and augmentation deliveries is given in **Exhibit H. 10. Conditional water exchange project:** 10.1 Exchange-from point: Confluence of Fountain Creek and the Arkansas River in the NE1/4 of Section 6, T21S, R64W, Pueblo County, Colorado, as shown on **Exhibit I.** (UTM: 535956.5 Easting, 4233959.4 Northing.) 10.2 Exchange-to point: The point at which depletions attributable to the augmented structures will impact Fountain Creek in the NW 1/4 NE1/4 of Section 36, T19S, R65W, Pueblo County, Colorado, as shown on **Exhibit I.** (UTM: 533566.5 Easting, 4245493.2 Northing) 10.3 Exchange reach: From the exchange-from point at the confluence of Fountain Creek and the Arkansas River described in paragraph 10.1 above; thence up Fountain Creek 8.4 miles to the point of depletion described in paragraph 10.2 above. The exchange reach is shown on **Exhibit I.** 10.4 Source of substitute supply: Project Water, as described in paragraph 8.1 above. 10.5 Maximum exchange rate: 0.26 cfs. 10.6 Maximum exchange volume: 7.8 afy. 10.7 Use: Augmentation of out-of-priority depletions under the augmentation plan described in paragraphs 7-9 above. **11. Names and addresses of owners or reputed owners of 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:** 11.1 The Sandovals own the land on which the Riverside Well will be located. 11.2 The Sandovals own part of the land on which Riverside Pond is located. 11.3 Anthony and Robin L. Dogan own the remainder of the land on which Riverside Pond is located. Their mailing address is 2631 Overton Road, Pueblo, Colorado, 81008-9679. WHEREFORE, the Co-Applicants respectfully request that the Court enter a decree approving this Application for Change of Water Rights, Conditional Water Right, and Plan for Augmentation Including Water Exchange Project and granting all such other and further relief, whether legal or equitable, as the Court may determine necessary or desirable.

CASE NO. 2024CW3035; Previous Case Nos. 17CW3029, 08CW83 – FIVE RIVERS CATTLE FEEDING LLC d/b/a COLORADO BEEF 2258 U.S. Highway 50, Lamar, Colorado 81052 (Please direct all pleading and inquiries regarding this matter to Applicant's attorneys: William H. Caile and Hannah K. Carrese of Holland & Hart LLP, 555 17th Street, Suite 3200 Denver, CO 80202-3921, 303-295-8000)

Application for Finding of Reasonable Diligence

PROWERS COUNTY

2. Name of Structures: **A.** Hunter Well No. 1, a/k/a Colorado Beef Well No. 1, Well Permit No. 42941-F ("Well No. 1"). **B.** Hunter Well No. 2, a/k/a Colorado Beef Well No. 2, Well Permit No. 42942-F ("Well No. 2"). Well No. 1 and Well No. 2 are collectively referred to herein as the "Colorado Beef Wells." **3. Overview:** The Colorado Beef Wells were originally decreed absolute water rights for irrigation use in Case No. W-2028, Water Division 2. In Case No. 08CW83, Water Division 2, Colorado Beef obtained a decree which, inter alia, changed the use of 492 shares ("Shares") of capital stock in the Fort

Lyon Canal Company ("Fort Lyon"), so that the Shares could be used for stock watering, commercial, and other uses related to the Colorado Beef feedlot. The decree in Case No. 08CW83 also corrected the legal descriptions of the Colorado Beef Wells, and adjudicated junior, conditional water rights for certain new uses and increased amounts for the Colorado Beef Wells. **4. Information from Previous Decree:** **A.** Date of original decree: May 5, 2011, in Case No. 08CW83, Water Division 2. The Court entered Amended Findings of Fact, Conclusions of Law, Judgement and Decree in Case No. 08CW83 on April 11, 2012. **B. Subsequent decrees awarding diligence:** 17CW3029, dated August 9, 2018. **C. Legal descriptions (as corrected in Case No. 08CW83):** i. **Well No. 1:** SE 1/4 of SW 1/4 of Section 30, Township 22 South, Range 47 West of 6th P.M. at a distance of approximately 4,675 feet from the North Section Line and 1,900 feet from the West Section Line, in Prowers County, Colorado. See Map on file with the Court as Exhibit A. ii. **Well No. 2:** SE 1/4 of SW 1/4 of Section 30, Township 22 South, Range 47 West of 6th P.M. at a distance of approximately 4,965 feet from the North Section Line and 2,005 feet from the West Section Line, in Prowers County, Colorado. See **Exhibit A**, (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). **D.** Source: Groundwater tributary to the Arkansas River. **E. Appropriation date:** October 31, 2008. **F. Amounts:** i. Well No. 1: 2.28 cfs, or 1,023 gpm, not to exceed 850 acre feet in any one calendar year, CONDITIONAL. ii. Well No. 2: 2.28 cfs, or 1,023 gpm, not to exceed 850 acre feet in any one calendar year, CONDITIONAL. iii. These amounts are cumulative of, and not in addition to, the amount decreed to the wells for irrigation use in Case No. W-2028. **G. Uses:** Commercial, stock watering, irrigation, and other purposes associated with the Colorado Beef feedlot; and augmentation, substitution, and replacement uses in connection with the maintenance of historical return flows associated with the change of Fort Lyon Shares approved in Case No. 08CW83, and subject to the terms of paragraph 12(G)(ii) of the Amended Decree in that case. Irrigation use shall occur in portions of Sections 28, 29, and 30, Township 22 South, Range 47 West of the 6th P.M. in Prowers County. Augmentation use of this water right shall only occur in connection with maintenance of historical return flows associated with the change of Fort Lyon Shares approved in Case No. 08CW83. **H. Remarks:** (1) The Colorado Beef Wells are "LAWMA Structures" that are covered under the Augmentation Plan decreed to the Lower Arkansas Water Management Association ("LAWMA") in Case No. 02CW181, Water Division 2, and under LAWMA's annual Rule 14 Plan. (2) The existing irrigation use ("Irrigation Use") of the Colorado Beef Wells is a pre-1985 use and is covered by the Rule 14 Plan. No change was made in Case No. 08CW83 to the existing Irrigation Use. (3) Feedlot uses of the Colorado Beef Wells ("Feedlot Uses") are uses that were permitted after December 31, 1985, and are augmented pursuant to the LAWMA Augmentation Plan. Colorado Beef obtained well permits Nos. 42941-F and 42942-F for expanded uses associated with the Feedlot Uses. No change was made in Case No. 08CW83 to well permits Nos. 42941-F and 42942-F or the existing Feedlot Uses. (4) Use of the Colorado Beef Wells for augmentation, substitution, and replacement uses in connection with the maintenance of historical return flows associated with the change of Fort Lyon Shares approved in Case No. 08CW83 ("Replacement Uses") are uses that were permitted or decreed after December 31, 1985, and must therefore be covered under the LAWMA Augmentation Plan or another suitable augmentation plan. (5) Any expanded uses of the Colorado Beef Wells for irrigation,

pursuant to the subject conditional water rights decree in Case No. 08CW83, will be uses that were permitted or decreed after December 31, 1985, and must therefore be covered under the LAWMA Augmentation Plan or another suitable augmentation plan. (6) LAWMA currently augments existing Irrigation Uses and Feedlot Uses of the Colorado Beef Wells pursuant to the LAWMA Rule 14 Plan and the LAWMA Augmentation Plan, as described above. In the future, LAWMA may also augment Replacement Uses, but currently the Replacement Uses are not covered by any plan for augmentation. (7) Feedlot Uses and Replacement Uses of the Colorado Beef Wells are deemed to be 100 percent consumptive. All out-of-priority depletions associated with the Feedlot Uses and Replacement Uses will be fully accounted for and augmented under the terms of the LAWMA Augmentation Plan or other suitable augmentation plan or substitute water supply plan as may be approved by the Water Court or the Colorado State Engineer in subsequent proceedings and upon proper notice. **5. A detailed outline of what has been done toward completion of the appropriations and application of water to beneficial use as decreed is included in the application.** **6.** The Colorado Beef Wells are located on land owned by Applicant.

CASE NO. 2024CW3036; Previous Case Nos. 03CW119, 18CW3018 – ARKANSAS GROUNDWATER AND RESERVOIR COMPANY, ATTN: Kent Ricken, General Manager, 205 S. Main Street, Fowler, CO 81309 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: James S. Witwer, Andrea M. Bronson, Natalie Boldt, Davis Graham & Stubbs, LLP, 1550 17th Street, Suite 500, Denver, Colorado 80202, james.witwer@davisgraham.com, 303-892-9400)

Application for Findings of Reasonable Diligence and to Make a Conditional Water Right Absolute in Part
PUEBLO COUNTY

2. Introduction: In Case No. 2003CW119, Water Division No. 2, the Arkansas Groundwater Users Association (“AGUA”) decreed an appropriative right of exchange at a rate of 50.7 cfs, by which AGUA would exchange the Excelsior Ditch Water Rights as described in the decree entered in Case No. 2004CW62, Water Division No. 2, within a reach or a portion thereof, of the Arkansas River extending from the confluence of Chico Creek and the Arkansas River to Pueblo Reservoir (“Excelsior Ditch Water Rights Exchange”). A subsequent application was filed in 2018, Case No. 2018CW3018, Water Division No. 2 making a portion of the conditional exchange right absolute in the amount of 34.8 cfs, and continuing the remaining 15.9 cfs conditional portion thereof in full force and effect. AGUA has since merged with the Colorado Water Protective Development Association, now known as the Arkansas Groundwater and Reservoir Association (“AGRA”), and AGRA seeks herein: 1) to make an additional 0.2 cfs of the conditional exchange right absolute; and 2) findings of reasonable diligence and to continue the remaining conditional 15.7 cfs exchange right (or such larger portion thereof as is not made absolute herein). **3. Name of Structure:** Appropriative Right of Exchange decreed in Case No. 2003CW119, District Court, Water Division No. 2, February 23, 2012 (hereinafter “Excelsior Ditch Water Rights Exchange”). **4. Description of Excelsior Ditch Water Rights Exchange Conditional Water Right:** A. Original Decree: Case No. 2003CW119, District Court, Water Division No. 2, February 23, 2012. B. Subsequent Decrees Awarding Findings of Diligence: Case No. 2018CW3018, District Court, Water

Division No. 2, August 14, 2018. C. Legal Description of exchange reaches: The Exchange will operate between the structures identified below. A map of these structures is attached as **Exhibit A** to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) a. Exchange from points: The Excelsior Ditch Water Rights are delivered to the Arkansas River at the following “exchange-from” points of diversion. The amount, timing and location of the Excelsior Ditch Water Rights delivered from these points is determined pursuant to the decree in Case No. 04CW62: i. Excelsior Ditch Augmentation Station Outlet Canal (WDID 1400625). The Excelsior Ditch Augmentation Station Outlet Canal discharges into the Arkansas River in the SW 1/4, Section 34, Township 20 South, Range 63 West of the 6th Principal Meridian, Pueblo County, Colorado. The Excelsior Ditch Augmentation Station Outlet Canal is used to convey the Excelsior Ditch Water Rights diverted into the Excelsior Ditch back to the Arkansas River. Flows through this canal are measured, recorded, and reported to the State of Colorado Division of Water Resources. UTM Coordinates: 548516.9 E, 4235937.3 N.ii. Chico Creek Confluence with the Arkansas River (WDID 1420004). The confluence of Chico Creek (an ephemeral stream) and the Arkansas River is located in the NW 1/4, Section 8, Township 21 South, Range 62 West of the 6th Principal Meridian, Pueblo County, Colorado. Water will be delivered from a future augmentation station under the Excelsior Ditch to the Arkansas River at or above the confluence with Chico Creek. UTM Coordinates: 555409 E, 4233073 N. b. Exchange to point: The Excelsior Ditch Water Rights are exchanged upstream to the following “exchange-to” point of diversion: i. Pueblo Reservoir (WDID 1403526). The Pueblo Reservoir is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 of Township 20 South, Range 66 West of the 6th P.M. and Sections 1, 2, 3, 4, 5, 9, 10 and 11 of Township 21 South, Range 66 West of the 6th P.M. and Sections 8, 9, 13, 14, 15, 16, 22, 23 and 25 of Township 20 South, Range 67 West of the P.M., all in Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section 36 bears North 61° 21' 20" East, a distance of 2,511.05 feet, all more particularly described in the decree in Case No. B42135, District Court, Pueblo County, Colorado. UTM Coordinates: 524076 E, 4235362 N. D. Source of Water to be Exchanged: Arkansas River. The source of replacement water for the exchange decreed herein is the Excelsior Ditch Water Rights changed pursuant to the amended decree entered in Case No. 2004CW62, Water Division No. 2, on June 18, 2007. The use of this water shall be subject to the terms and conditions contained in the Case No. 04CW62 Decree. AGRA currently owns 1,792 shares of 3,333 total shares outstanding in the Excelsior Irrigating Company, or a 53.765 percent interest. AGRA currently leases the remaining 1,541 shares and those were included in the Excelsior Ditch Water Rights Exchange with the owner’s consent. a. Description of Excelsior Ditch Water Rights. i. Amounts and dates of appropriation of the Excelsior Ditch Water Rights: 20 cfs with an appropriation date of May 1, 1887 (Priority No. 55) and 40 cfs with an appropriation date of January 6, 1890 (Priority No. 60). ii. Previous cases involving the Excelsior Ditch Water Rights: 1. Original adjudication for the Excelsior Ditch Water Rights: Case No. 2535, Pueblo County District Court, decree entered March 23, 1896. Pursuant to that decree, the Bessemer Irrigation Company was awarded Priority No. 55 and the Rocky Ford High Line Canal Company was awarded

Priority No. 60. 2. Transfer case: The Excelsior Ditch Water Rights were transferred to the Excelsior Irrigation Ditch in Case No. 9532, Pueblo County District Court, decree entered September 15, 1905. 3. Change of use case: Case No. 04CW62 changed the Excelsior Ditch Water Rights from irrigation use to irrigation use and augmentation use. iii. Source: Arkansas River. iv. Location of Excelsior Ditch headgate: On the north bank of the Arkansas River in the SE 1/4, SE 1/4, Section 36, Township 20 South, Range 64 West of the 6th PM in Pueblo County, Colorado. E. Date of Appropriation: December 30, 2003. F. Amount: 15.9 cubic feet per second (“cfs”), conditional. Case No. 03CW119 decreed an exchange of 50.7 cfs, of which 34.8 cfs was made absolute in Case No. 2018CW3018. G. Use: Irrigation and augmentation of depletions associated with wells owned by AGRA members pursuant to a separate decree or approved substitute water supply plan and any other uses decreed for the Excelsior Ditch Water Rights pursuant to the 04CW62 Decree. Case No. 03CW119 did not adjudicate any further change of the Excelsior Ditch Water Rights, and nothing in this Application seeks to modify the terms and conditions in the decrees and stipulations in Case Nos. 04CW62 and 03CW119. H. Location of Place of Use: See description of exchange reaches in Section 4.C. above. **5. Detailed outline of work performed, and expenditures made toward completion of the appropriation and application of water to a beneficial use as conditionally decreed**: A. During the diligence period, AGUA, now AGRA, 1) maintained and used a storage account in Pueblo Reservoir to store the exchanged Excelsior Ditch Water Rights, including payments to the US Bureau of Reclamation exceeding \$508,420.00; 2) paid assessments to the Excelsior Ditch Irrigating Company in the amount of \$334,648.48, which paid for, among other things, maintenance and repairs of the Excelsior Ditch including the Baxter Road Gate replacement, 36th Lane Gate Replacement, 36th Lane Gate Controls and automation, the Nyberg Road Culvert replacement, and equipment purchases; 3) paid engineering and consultant fees in the amount of \$36,791.50 associated with reporting, projecting, and accounting of water exchanged under the Excelsior Ditch Water Rights Exchange and other Excelsior ditch matters; and 4) leased and/or provided water under the portions of the Excelsior Ditch Water Rights not owned by AGRA, and used the portion of such rights owned by AGRA, for decreed purposes authorized pursuant to the Case No. 04CW62 Decree, either before or after exercise of the Excelsior Ditch Water Rights Exchange originally decreed in Case No. 03CW119. B. During the diligence period, Applicant incurred costs for legal and engineering consulting work related to development, protection, and exercise of the Excelsior Ditch Water Rights, and Applicant’s Excelsior Ditch Water Rights Exchange decreed in Case No. 03CW119, and its interest in the Excelsior Ditch. These included costs associated with filing statements of opposition and applications developing and defending the Excelsior Ditch Water Rights Exchange. The total legal expenses for such work during the diligence period exceeded \$208,673, and the total engineering/consulting costs for such work during that period exceeded \$17,675.00. **6. Claim to make Excelsior Ditch Water Rights Exchange Absolute in Part**: A. Date water applied to beneficial use: On May 24, 2023; May 27, 2023; June 2, 2023; and June 9, 2023, AGRA operated the Excelsior Ditch Water Rights Exchange at a rate of 35.0 cfs as evidenced by the attached Division of Water Resources, Water Division No. 2, Dashboard Exchange Approvals. Applicant seeks to make an additional 0.2 cfs absolute. See Exhibit B. A. Amount: 0.2 cfs (34.8 cfs was made absolute in Case No. 2018CW3018. Applicant seeks to make an additional 0.2

cfs absolute). B. Use: Applicant operated the Excelsior Ditch Water Rights Exchange by storing the Excelsior Ditch Water Rights in Pueblo Reservoir. C. Evidence Applicant Diverted Water in Priority and Put Water to Beneficial Use: Evidence that Applicant operated the Excelsior Ditch Water Rights Exchange in priority is attached as Exhibit B. Applicant put water to beneficial use by exchanging the water rights, storing the water rights in Pueblo Reservoir, and subsequently delivering the water rights from storage to the Arkansas River for augmentation and replacement of depletions from wells owned by AGRA's members as necessary. D. Description of Place of Use Water was Placed to Beneficial Use: Water exchanged under the Excelsior Ditch Water Rights Exchange was stored in Pueblo Reservoir, and subsequently delivered to the Arkansas River for augmentation and replacement of depletions from wells owned by AGRA's members. **7. Name and address 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 or existing storage pool is or will be constructed or upon which water is or will be stored**: United States Department of the Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Rd 18E, Loveland, CO 80537-9711; KIRKLAND PROPERTY HOLDINGS LLC, PO BOX 580, Rye, CO 81069-0580; Martin Marietta Materials, Inc., c/o Baden Tax Management, PO BOX 8040, Fort Wayne, IN, 46898-8040; Colorado Interstate Gas Co., PO BOX 4372, Houston, TX 77210-4372.

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 October 2024, (forms available at Clerk's office or at www.coloradojudicial.gov, after serving parties and attaching a certificate of mailing, filing fee \$192.00). 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 13th day of September 2024.

Michele Santistevan

Michele M. Santistevan, 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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