

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING SEPTEMBER 2024. (This publication can be viewed in its entirety on the state court website at: [www.coloradojudicial.gov](http://www.coloradojudicial.gov))  
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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during September 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:

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**CASE NO. 2023CW3040 – MICHAEL JOSEPH BARRY TRUST AND BONNIE KAY BARRY TRUST, P.O. Box 965, Ankeny, IA 50021** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Ryan W. Farr and Paul J. Raymond of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921 (719) 471-1212)

Amended Application for Conditional Surface Water Right and Approval of Plan for Augmentation

**CHAFFEE COUNTY**

**II.** The Applicants seek a conditional surface water right for diversion from a spring arising on their property for irrigation purposes on their approximately 36-acre parcel as legally described on **Exhibit A** attached to the application (“Applicants’ Property”) (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) This amended application is a restatement of the request for the conditional surface water right while now including an application for a plan for augmentation for utilization of the requested conditional surface water right. **III. Name of Structure:** Bonnie Spring. *Legal Description of Point of Diversion:* In the NW1/4 of the NW1/4 of Section 22, Township 50 North, Range 8 East of the N.M.P.M., UTM Zone 13 NAD83, Easting: 406256, Northing: 4270318, as depicted on the attached **Exhibit B** map. *Source:* Spring and seepage area tributary to the Arkansas River. *Appropriation: Date of Initiation of Appropriation:* August 30, 2023, the date of filing of the initial application. *Amount Claimed:* 3 annual acre-feet, conditional. *Rate:* 50 gallons per minute, conditional. *Uses:* Irrigation. *Amount of acreage to be irrigated:* Up to 20 acres. *Legal description of lands to be irrigated:* located in the NW1/4 of the NW1/4 and the SW1/4 of the NW1/4 of Section 22, Township 50 North, Range 8 East of the N.M.P.M., within Applicants’ Property, specifically shown on the attached **Exhibit B. IV. Structures to be Augmented.** The structures to be augmented are the Bonnie Spring herein described with withdrawal accomplished by means of a pump and a pump withdrawing directly from the Arkansas River. The location of the Bonnie Spring is as set forth above and location of the diversion point directly from the Arkansas River is in the SW1/4 of the NW1/4 of Section 22, Township 50 North, Range 8 East of the N.M.P.M., UTM Zone 13 NAD83, Easting: 406090, Northing: 4270133 (“Arkansas Diversion”). The location of the Bonnie Spring and the Arkansas Diversion are shown on the attached **Exhibit B** map. Water Rights to be Used for Augmentation. 10 acre-feet of fully consumable water leased from

the Board of Water Works of Pueblo, Colorado (“Pueblo Water”). Lease with Pueblo Board of Water Works. Applicants are entering into a lease for fully consumable water with Pueblo Water. The water rights or sources of water that may be used for augmentation in this augmentation plan include the following: Fully consumable water owned or controlled by Pueblo Water. All water to be used in this augmentation plan provided by Pueblo Water must be decreed or otherwise legally available for augmentation purposes. The source of such water is unspecified in the lease, but may include Pueblo Water’s water stored in Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, from direct flow transmountain water or from any other reservoir or place from which Pueblo Water may deliver water, the sources of which are at the option of Pueblo Water, as long as they are legally available for augmentation purposes. Water deliveries may include, without limitation, water stored in Twin Lakes Reservoir (located in all or portions of Sec. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in T.11S., R.80W., 6th P.M., in Lake County), Turquoise Reservoir (located on Lake Fork Creek in Sec. 7, 8, 17, 18, 19, and 20, T.9S., R.80W., 6th P.M. and Sec. 10, 11, 12, 13, 14, and 15, T.9S., R.81W., 6th P.M., in Lake County), Clear Creek Reservoir (located in Sec. 7 and 8, T.12S., R.79W, and Sec. 12, T.12S., R.80W., 6th P.M. in Chaffee County), and reusable return flows. The sources of such water may include, but are not limited to, the water rights decreed in Case Nos. 84CW177, District Court, Water Div. No. 2; 84CW177(B), District Court, Water Div. No. 2; 90CW340, District Court, Water Div. No. 5; W-1901, District Court, Water Div. No. 5; 95CW321, District Court, Water Div. No. 5; 90CW55, District Court, Water Div. No. 2; and 04CW130, District Court, Water Div. No. 2. Applicants will also seek a term and condition requesting the Water Court to retain perpetual jurisdiction over the plan for augmentation for the sole purpose to add new or additional sources of augmentation to this requested plan for augmentation. Accordingly, Applicant may utilize other fully consumable water rights for augmentation purposes under this plan. Statement of Plan for Augmentation. Diversions and Depletions. Uses. Irrigation. Diversions. Applicants intend to irrigate their property throughout the irrigation season as needed and as desired. Such irrigation shall be by means of pumping for flood, sprinkler, or drip line application. Maximum annual diversions from Bonnie Spring will be limited to 3 acre-feet, with total maximum annual diversions limited to the 10 acre-foot subject of the lease with the Board of Water Works of Pueblo. Depletions. All water diverted from either the Bonnie Spring or from the Arkansas Diversion under this plan for augmentation will be considered 100% percent depletive. Return Flows. Applicants do not claim credit for return flows from any uses under this Application. Location of Depletions. Depletions from the Arkansas Diversion will occur at the point set forth above for the Arkansas Diversion. Depletions caused by the pumping from Bonnie Spring will accrue to Bonnie Spring, which confluences with the Arkansas River in both the NE1/4 of the NW1/4 and the SW1/4 of the NE1/4 of Section 22, Township 50 N, Range 8 E of the N.M.P.M. Replacement Water. Pueblo Water will provide the replacement water described above to augment the Applicants’ diversions. The replacement water provided by Pueblo Water shall be fully consumable and will be available to replace the Applicants’ depletions at the points of depletion on the Arkansas River.

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**CASE NO. 2024CW6 – J. MICHAEL CARTER, 32911 Daniel Road, Pueblo, CO 81006, (719) 250-4110, Spikecarter@hotmail.com**

Application for Simple Change in Surface Point of Diversion

**PUEBLO COUNTY**

**2. Decreed water right for which change is sought:** **A. Name of Structure:** Blunt Ditch No. 2, **B. Date of original and all relevant subsequent decrees:** The Blunt Ditch No. 2 was adjudicated for 2.0 cfs, on June 26, 1893 in Case No. CA2756, District Court, Water District 15, Pueblo County. The point of diversion and place of use for 1.0 cfs of the Blunt Ditch No. 2, including the 0.5 cfs of the Blunt Ditch No. 2 now owned by Applicant and the subject of this application, was changed by decree entered in Case No. 01CW33, District Court, Water Division 2. **C. Legal Description:** A point of diversion located in the NE ¼ of the NE ¼ of Section 6, Township 21 South, Range 63 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado, approximately 4,165 north of the South section line and 175 feet west of the East section line of said Section 6. **D. Decreed source of water:** St. Charles River. **E. Appropriation Date:** January 8, 1867. **F. Total amount decreed to structure in gallons per minute (gpm) or cubic feet per second (cfs):** Absolute: 1.0 cfs. **G. Decreed use or uses:** Irrigation. **H. Amount of water that applicant intends to change:** Absolute: 0.5 cfs. **3. Detailed description of proposed change in a surface point of diversion:** The decree in Case No. 01CW33 locates the diversion point for 1.0 cfs of the Blunt Ditch No. 2 to the current diversion point for that water right. In order to improve and simplify his operations, Applicant seeks to move the diversion point for his 0.5 cfs interest in the Blunt Ditch No. 2 water right to a new diversion point at a pump located approximately ¼ mile upstream from the current location and as shown on the attached **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.) There is no more water physically and legally available at the proposed new point of diversion as compared to the decreed diversion point of diversion from Case No. 01CW33. Further, Applicant will comply with all flow restrictions upon the Blunt Ditch No. 2 Ditch water right imposed by the decree in Case No. 01CW33. Accordingly, this change in the location of the diversion point for Applicant's portion of the Blunt Ditch No. 2 water right will not result in diversion of a greater flow rate or amount of water than has been decreed to the water right or is physically and legally available at the diversion point from which the change is being made. There are no intervening surface diversion points or inflows between the decreed location in Case No. 11CW33 and the new location requested in this application, including any Colorado Water Conservation Instream Flow Rights. Accordingly, the requested location change of the Applicant's 0.5 cfs interest in the Blunt Ditch No. 2 water right will not result in an increase in beneficial use of the rights or otherwise cause injury to any water right. **A. Location of new surface point of diversion:** NW ¼ of the NE ¼ of Section 6, Township 21 South, Range 63 West of the 6<sup>th</sup> P.M. **UTM Coordinates:** Easting: 545292.1; Northing 4234051.4, Zone 13, **Street Address:** 32911 Daniel Road, Pueblo Colorado, 81006. Subdivision: Par B lot line rearrangement no 2001-003 formerly #13-060-14-004 + #13-060-18-001. **Source of UTM:** Colorado DNR site map. <https://dwr.state.co.us/Tools/LocationConverter> **Accuracy of GPS device:** 200 feet. **4. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion structure, or modification to any existing diversion structure is or will be constructed.** Applicant.

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**CASE NO. 2024CW3037; Previous Case Nos. 17CW3054, 07CW47 – COLORADO**

**CENTRE METROPOLITAN DISTRICT, (“Applicant”) Alvaro Tester, Manager, 9686 Flagstone Street Colorado Springs, CO 80925** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Madoline Wallace-Gross, Anthony J. Basile, Lyons Gaddis, PC, PO Box 978, Longmont, CO 80502-0978, (303) 776-9900)

Application to Make Absolute a Conditional Water Right

**EL PASO COUNTY**

**2. Water Rights Name:** 200 Series Wells 1<sup>st</sup> Enlargement 2.1. *Original decree:* Case No. 07CW47, District Court, Water Division No. 2, entered on September 8, 2011. 2.2. *Diligence decree:* Case No. 17CW3054 District Court, Water Division No. 2, entered on September 11, 2018. 2.3. *Decreed Locations:* See **EXHIBIT A** attached to the application for map of the structures (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Locations are as follows:

| WELL NO. | WDID    | PERMIT NO.        | PLSS LOCATION   |
|----------|---------|-------------------|---|
| 201      | 1005330 | 19273-1           | SW1/4 SE1/4, Sec. 10, T. 15 S., R. 65 W., whence SW corner of said Sec. 10 bears S. 69°55' W., 3265 ft  |
| 204      | 1005333 | 19273-4           | NW1/4 NE1/4, Sec. 10, T. 15 S., R. 65 W., whence NW corner of said Sec. 10 bears N. 73°E 24' W., 2958.9 ft  |
| 206      | 1005335 | 19273-6           | NW1/4 NE1/4, Sec. 10, T. 15 S., R. 65 W., whence NW corner of said Sec. 10 bears N. 89°51' W., 3468.9 ft  |
| 210      | 1005340 | 052404-F          | In Water Case No. 98CW125, the District changed the location of Well No. 210 to a point in the SE1/4 of Section 3, T. 15 S., R. 65 W., 6 <sup>th</sup> P.M. commencing at the SE corner of said Section 3 from which the SW corner of said Section 3 bears S. 89°02'55" W. (basis of bearing), thence N. 55°35'17" W., 1422.45 feet to the center of said well. |
| 211      | 1005341 | 052403-F          | In Water court Case No. 96CW189, the District changed the location of Well No. 211 to a point in the SE1/4 of Section 3, T. 15 S., R. 65 W., 6 <sup>th</sup> P.M. at a point whence the SE corner of said Section 3 bears N. 45°22'18" W. 1562.1 feet, which is approximately 200 feet from the decreed location  |
| 214      | 1005344 | 19697-14          | SE1/4 SE1/4, Sec. 3, T. 15 S., R. 65 W., whence SW corner of said Sec. 3 bears S. 72°32' W., 4688 ft  |
| 217      | 1005347 | 12542 and 65212-F | SW1/4 SE1/4, Sec. 3, T. 15 S., R. 65 W., being 4960 ft. S. of the N. line and 3900 ft. E. of the W. line of said Sec. 3   |

2.4. Source: Jimmy Camp Creek, tributary to Fountain Creek. 2.5. Appropriation date: May 10, 2007. 2.6. Decreed amount: 400 gpm (0.9 cfs), conditional, from any one or combination of the 200 Series Wells. 2.7. Claim to make absolute: 400 gpm (0.9 cfs). Pursuant to DWR Written Instruction 2020-01 a conditional groundwater water right operated under a decreed plan for augmentation can be made fully absolute for all decreed purposes. 2.8. Uses: domestic, municipal (including fire protection), commercial, irrigation, industrial and recreation. 2.9. Place of Use: Use throughout Applicant's service area, as that service area may expand from time to time, as depicted in **EXHIBIT B. 3. Integrated System**: The water right that is the subject of this decree is part of Applicant's integrated water supply system, pursuant to § 37-92-301(4)(b), C.R.S. **4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures**: During the subject diligence period, Applicant spent more than \$1,045,000 on various aspects of its integrated water system. Specifically, among other things, Applicant: 4.1. Spent over \$507,000 on capital improvements and repairs to its water infrastructure, which is necessary for the treatment and delivery of water diverted pursuant to the water right. 4.2. Spent over \$537,000 on legal and engineering consultant expenses associated with developing, operating, and maintaining its water infrastructure, filing applications in Water Division No. 2 and opposing cases to protect its water rights, including this water right. 4.3. Opposed applications that could injure Applicant's water rights, including this water right, in Case Nos. 22CW3040, 23CW3039, 23CW3053, 24CW3008 and 24CW3021 to protect its water rights, including this water right. 4.4. Prosecuted applications in Case No. 19CW3085 (diligence on the original groundwater rights for the 200 Series Wells, which are structures associated with this water right) and Case No. 20CW3053 (change of 10 Fountain Mutual Irrigation Company shares as an augmentation source out-of-priority pumping of the 200 Series Wells, which are structures associated with this water right). **5. Owner of land upon which the structures are located**: 5.1. Well No. 201: BLH No. 2 LLC, 111 S Tejon St., STE 222, Colorado Springs CO, 80903-2246. 5.2. Well No. 204: Tristan R. Lewis, 9308 Jackrabbit Lane, Colorado Spring CO, 80925-8510. 5.3. Well No. 206: Widefield School District No. 3, 1820 Main St., Colorado Springs CO, 80911-1152. 5.4. Well No. 210: BLH No. 2 LLC, 111 S Tejon St., STE 222, Colorado Springs CO, 80903-2246. 5.5. Well No. 211: BLH No. 2 LLC, 111 S Tejon St., STE 222, Colorado Springs CO, 80903-2246. 5.6. Well No. 214: Applicant. 5.7. Well No. 217: Applicant. WHEREFORE, Applicant respectfully requests the Court enter a decree finding that Applicant has made the conditional water right absolute. In the alternative, Applicant requests a finding of reasonable diligence for the water right.

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**\*\*Per Order, Resume to be published by Water Division 1 and Consolidated to Water Division 1 after publication\*\***

**CASE NO. 2024CW3038, Water Division 2 and CASE NO. 2024CW3128, Water Division 1 – GENE W. DUNSTON, JR. AND MATTHEW W. DUNSTON, 1230 Scarsbrook Ct., Monument, CO 80132-8487** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Eric K. Trout, McGeady Becher Cortese Williams, P.C., 450 E. 17<sup>th</sup> Avenue, Suite 400, Denver, CO 80203, (303) 592-4380) Application for Amendment of a Plan for Augmentation in the Nontributary Denver, Arapahoe, and Laramie-Fox Hills Aquifers and the Not-Nontributary Dawson Aquifer

## EL PASO COUNTY

**2. Subject Property:** A parcel totaling approximately 19.83 acres generally located in the NE1/4 of the NE1/4 of Section 25, Township 11 South, Range 65 West of the 6th P.M., Lot 1 Thal Subdivision, also known as 5525 Hodgen Road, Colorado Springs, CO, 80908, as shown on **Exhibit A** attached to the application (the “**Subject Property**”) (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **3. Multi-Jurisdiction Consolidation:** This application is being filed concurrently in Water Division 1 and Water Division 2. It is the Applicant’s intention to consolidate both cases into Water Division 1 once the statutory objection period is completed. **4. Lien Holder Certification:** Applicants attest that there are no mortgage or lien holders, therefore no notice is required under C.R.S. § 37-92-302(2)(b). The deed for the Subject Property is attached as **Exhibit B**. **5. Well Permits:** There are two wells on the Subject Property as follows. Additional well permits will be applied for prior to construction of additional wells: Well Permit No. 49431-F is a nontributary Denver Aquifer well, which will continue operating under its existing permit. Well Permit No. 59967-F is a not-nontributary Dawson Aquifer well, which is augmented under the approved augmentation plan in Case No. 2000CW191, Div. 1 (Case No. 2000CW98, Div. 2). This well will be re-permitted under the amended plan for augmentation requested in this application. **6. Source of Water Rights:** The Dawson Aquifer is not-nontributary as defined in C.R.S. § 37-90-103(10.7), and the Denver, Arapahoe, and Laramie-Fox Hills aquifers are nontributary as defined in C.R.S. § 37-90-103(10.5). **7. Decree for Which Amendment is Sought:** Case No. 2000CW191, District Court, Water Division 1, and Case No. 2000CW98, District Court, Water Division 2, decreed on April 26, 2002 (the “**Original Decree**”). **8. Decreed Uses:** All beneficial uses, including augmentation and exchange. **9. Jurisdiction:** The Court has jurisdiction over the subject matter of this application pursuant to C.R.S. §§ 37-90-137(6), 37-92-203(1), 37-92-302(2). **10. Summary of Plan for Augmentation in the Original Decree (the “Original Aug Pan”):** Groundwater to be Augmented: 3 acre-feet per year for 100 years of not-nontributary Dawson Aquifer groundwater. Water Rights to be Used for Augmentation: Return flows from the use of not-nontributary and nontributary groundwater and direct discharge of nontributary groundwater. Original Plan for Augmentation: The Dawson Aquifer groundwater will be used to serve up to three wells. The well(s) will serve an equine facility (1 acre-foot per year), and up to two (2) single-family residences for domestic use (1 acre-foot per year each, 2 acre-feet total). **11. Summary of Amended Plan for Augmentation (the “Amended Aug Plan”):** Groundwater to be Augmented: 5.6 acre-feet per year of not-nontributary Dawson Aquifer groundwater for 300 years. Water Rights to be Used for Augmentation: Return flows from the use of not-nontributary and nontributary groundwater and direct discharge of nontributary groundwater. Statement of Plan for Augmentation: The not-nontributary Dawson Aquifer groundwater will be used in up to seven (7) wells. Each well will provide up to 0.8 acre-feet per year for in-house use in one (1) single-family dwelling (0.3 acre-feet per year), outdoor irrigation of home lawn, garden, and pasture of 9,000 square-feet (0.45 acre-feet per year), watering of up to 4 large domestic animals (0.05 acre-feet per year), fire protection, and storage anywhere on the Subject Property.

Applicants reserve the right to amend the amount and uses without amending the application or republishing the same. Sewage treatment for in-house use will be provided by non-evaporative septic systems. Return flow from in-house use will be approximately 90% of that use and return flow from irrigation use will be approximately 15% of that use. During pumping Applicants will replace actual depletions pursuant to C.R.S. § 37-90-137(9)(c.5). Depletions occur to the South Platte River stream system and return flows accrue to that stream system and are sufficient to replace actual depletions while the subject groundwater is being pumped. Applicants will reserve an equal amount of nontributary groundwater underlying the Subject Property to meet post-pumping augmentation requirements. The proposed Amended Aug Plan is intended to replace the Original Aug Plan in its entirety. Applicants request the Court approve the above requested amended augmentation plan, find that Applicants have complied with C.R.S. § 37-90-137(4) and water is legally available for withdrawal, find there will be no material injury to the owners of or persons entitled to use water under any vested water right or decreed conditional water right, and grant such other and further relief as is appropriate.

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**CASE NO. 2024CW3039 – POWROY FAMILY LIVING TRUST, c/o Mark Powers, 2295 Old Ranch Road, Colorado Springs, CO 80908** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Ryan W. Farr and Paul J. Raymond of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, CO 80921 (719) 471-1212)

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

**EL PASO COUNTY**

**II.** This Amended Application is a restatement of the initial Application with the inclusion of the acreage of the property, the address of the property, and the parcel number for the property. Applicant desires to adjudicate the Denver Basin groundwater underlying its property in El Paso County and to obtain a plan for augmentation for the subdivision of the Applicant’s Property into two parcels. The plan for augmentation involves a well constructed to the Arapahoe and Denver aquifers of the Denver Basin. **III. Property Description.** Applicant’s property contains approximately 10.72 acres and is located in the NE1/4 and the SE1/4 of the NW1/4 of Section 28, Township 12 South, Range 66 West of the 6<sup>th</sup> Prime Meridian, El Paso County, Colorado, as shown on attached **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) and specifically described as Lot 2 of Kettle Creek Estates, also known as 2295 Old Ranch Road, Colorado Springs, Colorado 80908, with Parcel ID 6228005049 (“Applicant’s Property”). Existing Well. There is an existing domestic well with Division of Water Resources Permit No. 172654-A (“Powroy Well No. 1”). It is drilled to a total depth of 425 feet to the Denver aquifer, and located 1,767 feet from the South Section Line, and 2,590 feet from the West Section Line. However, the current well permit has the well located 3,293 feet from the South Section Line and 3,582 feet from the East Section Line, which is incorrect. Upon completion of this case and the subdivision process, the Powroy Well No. 1 will be re-permitted to operate pursuant the decreed plan for augmentation and with the correct location. Proposed Wells. Applicant proposes to construct an additional well on the

Applicant's Property at a specific location not yet determined, to be constructed to the Arapahoe aquifer ("Powroy Well No. 2"). Not-Nontributary. The groundwater to be withdrawn from the Denver and Arapahoe aquifers underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. § 37-90-137(9)(c.5), the augmentation requirements for wells in these aquifers will require the replacement of actual stream depletions. Nontributary. The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicant's Property is nontributary. Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. Estimated Average Annual Amounts of Ground Water Available. Applicant requests the vested right for the withdrawal of all legally available groundwater in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code § 8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to C.R.S. § 37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

| <b>Aquifer</b>         | <b>Net Sand (Feet)</b> | <b>Total Appropriation (Acre Feet)</b> | <b>Annual Avg. Withdrawal 100 Years (Acre Feet)</b> | <b>Annual Avg. Withdrawal 300 Years (Acre Feet)</b> |
|------------------------|------------------------|--|---|---|
| Denver (NNT)*          | 165.60                 | 301.79                                 | 3.02  | 1.01  |
| Arapahoe (NNT)         | 244.3                  | 445.21                                 | 4.45  | 1.48  |
| Laramie Fox Hills (NT) | 185.10                 | 297.64                                 | 2.98  | N/A   |

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to C.R.S. § 37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. Requested Uses. The Applicant requests the right to use the groundwater for beneficial uses upon the Applicant's Property consisting of domestic, commercial, irrigation (indoor and outdoor), stock water, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of C.R.S. § 37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct wells or use water from the not-nontributary Denver or Arapahoe aquifers pursuant to a decreed plan for augmentation entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. § 37-90-137(9)(c.5). Well



Fields. Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. Averaging of Withdrawals. Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are and will be located as well as the underlying groundwater is owned by the Applicant. **IV. Structures to be Augmented.** The structures to be augmented are the planned Powroy Well No. 1 and Powroy Well No. 2, which will be placed on the Applicant's Property, and any additional or replacement wells associated therewith ("Powroy Wells"). Applicant intends to subdivide the Applicant's Property into two parcels with one well serving each parcel. Powroy Well No. 1 will remain constructed to the Denver aquifer and the Powroy Well No. 2 will be constructed into the Arapahoe aquifer. 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 Denver and Arapahoe aquifers from the Powroy Wells, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post-pumping depletions. Statement of Plan for Augmentation. Applicant seeks to augment stream depletions attributable to the pumping of the not-nontributary Denver and Arapahoe aquifers. Uses. Pumping from the Denver aquifer will be a maximum of 0.4 acre-feet of water per year. Pumping from the Arapahoe aquifer will be a maximum of 0.65 acre-feet of water per year. Such uses shall be for domestic, commercial, irrigation (indoor and outdoor), stock water, fire protection, and also for storage and augmentation purposes associated with such uses. Depletions. Applicant's consultant has determined that maximum annual stream depletions over a 300-year pumping period for the Denver aquifer amounts to approximately 24.64% of pumping and depletions over a 300-year pumping period for the Arapahoe aquifer amounts to 22.55% of pumping. Therefore, Maximum annual depletions are 0.098 acre-feet in year 300 from the Denver aquifer and 0.146 acre-feet in year 300 from the Arapahoe aquifer. Should Applicant's pumping be less than as described herein, resulting depletions and required replacements will be correspondingly reduced. Augmentation of Depletions During Pumping. Pursuant to C.R.S. § 37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping from the Denver and Arapahoe aquifers. Depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year. At a household use rate of 0.20 acre-feet per year, 0.18 acre-feet is replaced to the stream system annually utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be more than adequately augmented. Augmentation of Post-Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Powroy Wells, Applicant will reserve up to the entirety of the nontributary Laramie-Fox Hills aquifer, accounting for actual stream depletions replaced during the plan pumping

period, as necessary to replace any injurious post-pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for such post-pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post-pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a new well permit for the Powroy Wells for the uses in accordance with this Application and otherwise in compliance with C.R.S. § 37-90-137.

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**CASE NO. 2024CW3040; Previous Case No. 16CW3101 – TOWN OF BUENA VISTA, c/o Brian Berger, Town Administrator, PO Box 2002, Buena Vista, CO 81211** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Andrea L. Benson and Gilbert Y. Marchand, Jr., Alperstein & Covell P.C., 2299 Pearl Street., Suite 400-C, Boulder, CO 80304 (303) 894-8191)

Application to Make Absolute or in the Alternative for Finding of Reasonable Diligence  
**CHAFFEE COUNTY**

**2. Name of Water Right/Structure:** McPhelemy Pond ("Pond") (WDID 1103558). **3. Description of conditional water rights, with required information from prior decree.** a. Date of original decree: September 14, 2018. b. Case No: 2016CW3101 ("Original Decree"). c. Court: Water Court, Water Division No. 2. **4. Subsequent decrees awarding diligence:** This is the first diligence proceeding. **5. Decreed location:** Legal description of location of dam centerline: The on-channel Pond is located within the Town's McPhelemy Park at the intersection of Highway 24 and Main Street, and is created by a 5.8-foot high dam. The centerline of the dam for the pond is located in the SW ¼ of the SE ¼ of Section 8, Township 14 South, Range 78 West of the 6<sup>th</sup> P.M., 845 feet from the South section line and 1555 feet from the East section line, in Chaffee County, Colorado. The UTM coordinates sourced from the survey performed on May 17, 2016 for this location are as follows: Northing: 4299839 meters, Easting: 401647 meters, Zone 13, Datum NAD 83. The location of the Pond is depicted on the attached map marked as Exhibit 1 (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **6. Source of Water.** On-channel pond, Cottonwood Creek, a tributary of the Arkansas River. **7. Information regarding appropriation:** a. In-pond municipal uses including recreation, fishery, piscatorial, and aesthetic: Date of appropriation: March 24, 1905. b. Out-of-pond municipal uses including domestic, commercial, industrial, fire protection, and augmentation: Date of appropriation: December 30, 2016. **8. Amount:** 4.16 acre-feet, with right to fill and one refill, for a total of 8.32 acre-feet per year. The 8.32 acre-feet is absolute for recreation, fishery, piscatorial, aesthetic uses, and conditional for the remaining uses. **9. Uses.** a. In-pond: Municipal uses, including, without limitation, recreation, fishery, piscatorial, and aesthetic. These uses shall be made within the high-water line of McPhelemy Pond. Applicant has agreed it will not place a call for aesthetic uses, including a call for aesthetic uses against CWCB's decreed instream flow rights on Cottonwood Creek. b. Out-of-pond: Municipal uses, including, without limitation, domestic, commercial, industrial, fire protection, and for augmentation within the Town's service area as it now exists and as it may exist in the future, or extraterritorially by contract with the Town. These uses shall be made after the water is stored in-priority or

pursuant to the plan for augmentation decreed in Case No. 17CW3022, Water Division 2, and will be delivered to the place of use upon release from McPhelemy Pond to Cottonwood Creek. As of the date of the Original Decree, the only augmentation use of this junior storage right was being made pursuant to the augmentation plan decreed in Case No. 17CW3022. **10. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to beneficial use as conditionally decreed, including expenditures:** During this diligence period, Buena Vista has continued to improve, operate, repair and maintain its integrated water supply system, of which the McPhelemy Pond decreed in the Original Decree is a part. To enable Buena Vista to more effectively provide water service to its existing and future customers, it has spent approximately \$8.3 million in the construction, repair and improvement of its water system infrastructure and related infrastructure and projects that are part of the efficiency, operation and maintenance of its integrated water supply system. These efforts have allowed Buena Vista to continue to provide reliable water service to its existing customers and to plan for anticipated future demand. The Town has spent an additional \$91,200 for improvements to McPhelemy Pond park, including improvements to the McPhelemy Trail, tree pruning, tables and bench replacements, signage and stage upgrade. Applicant has also expended approximately \$42,000 for engineering for creation and preparation of accounting and construction and materials for water control level weir for McPhelemy Pond. Buena Vista has continued to purchase and use Project Water allocated by Southeastern for us in the plan for augmentation decreed in Case No. 17CW3022, through which out of priority depletions of McPhelemy Pond are augmented. Buena Vista has defended its water rights, including the McPhelemy Pond, against applications filed by others in cases in which Buena Vista has determined that injury to its water rights could occur in the absence of appropriate protective terms and conditions. During this diligence period, Buena Vista has expended approximately \$130,000 in water counsel fees, in opposition to water court applications filed by others, in order to protect and defend its water rights. In addition to the accounting for McPhelemy Pond, Buena Vista has expended approximately \$700,000 in engineering fees related to prosecution and protection of Buena Vista's water rights in water court and on other water related projects. **11. Claim to Make Absolute.** a. Pursuant to C.R.S. §§ 37-92-103(4) and 37-92-301(e), based on past diversions and storage in McPhelemy Pond for the full decreed amount, Applicant seeks to make all remaining conditional decreed uses absolute in the full decreed amount (4.16 acre-feet, with right to fill and one refill, for a total of 8.32 acre-feet per year). b. In the alternative, Buena Vista seeks to make the first fill and a portion of the second fill for the remaining conditional uses absolute. During Water Years 2018 – 2024, Buena Vista has continued to operate and store in McPhelemy Pond an initial fill of 4.16 acre-feet, plus at least a portion of the refill. In May, 2023, Buena Vista stored 4.16 acre-feet of the initial fill and by the end of the water year, October, 2023, an additional 1.39 are-feet of the re-fill was made. All diversions into storage were fully augmented pursuant to Case No. 17CW3022. Attached as Exhibit 2 is a spreadsheet showing the 2023 diversions into storage and augmentation. c. Use: All remaining conditional decreed uses (municipal, including but not limited to domestic, commercial, industrial, fire protection, and augmentation) should be made absolute pursuant to C.R.S. §§ 37-92-103(4) and 37-92-301(e). **12. Names and addresses of owners of the land upon which any new diversion structure 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. Buena Vista has not constructed any new diversion structure or storage structure, or modified any existing diversion or storage structure in connection with its operation of McPhelemy Pond. Applicant Town of Buena Vista, having demonstrated that it has completed appropriation of the McPhelemy Pond water storage right, requests that the McPhelemy Pond water right be made absolute for all remaining decreed uses for the full decreed amount (4.16 acre-feet, with right to fill and one refill, for a total of 8.32 acre-feet per year), or in the alternative in the amount of 4.16 acre-feet of the initial fill and 1.39 acre-feet of the re-fill, and for a finding of reasonable diligence.

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THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT AND PROTEST WITHIN THE TIME PROVIDED BY STATUTE, OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of November 2024, (forms available at Clerk's office or at [www.coloradojudicial.gov](http://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.

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Witness my hand and the seal of this Court this 14th day of October 2024.



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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