

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING MARCH 2025. (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 March 2025, 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. 2024CW3053; RAO INVESTMENTS, LLC, 555 Middle Creek Parkway, #500, Colorado Springs, CO 80921 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Ryan W. Farr and Sedona E. Chavez of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Ste. 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 following changes: (1) the removal of the request to adjudicate an exempt well; (2) the removal to allow the exempt well to continue to operate and provide water to one lot in the subdivision; (3) adding an augmented well to the plan to replace the exempt well; (4) adjustment to the depletion and replacement amounts to account for five augmented wells; and (5) the removal of language referring to a second exempt well on the property and instead referring to the second well as an unpermitted well. Applicant is seeking to quantify the Denver Basin groundwater underlying the Applicant's Property, as defined below, and approval of a plan for augmentation for the use of not-nontributary Denver aquifer wells to serve a five-lot subdivision of the Applicant's Property. **III.** Applicant owns an approximately 39.58-acre property that is depicted 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.) located in the NE1/4 of Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, specifically described as Lots 1 and 2 of the Ward Subdivision ("Applicant's Property"). Existing Wells. There are two existing wells located on the Applicant's Property as shown on **Exhibit A**. Both wells are located in the SW1/4 of the NE1/4 of Section 27, Township 11, Range 67 West of the 6th P.M. The well located in the southern portion of the Applicant's Property at UTM NAD83 Zone 13, Easting: 510806.5, Northing: 4323915.8, is an exempt well permitted under Division of Water Resources Permit No. 114700. Applicant intends to plug and abandon this well. The well in the northern portion of the Applicant's Property, located near the current house at UTM NAD83 Zone 13, Easting: 510791.7, Northing: 4324224.1, is an unpermitted well ("Rickenbacker Well No. 1"). The Rickenbacker Well No. 1 is constructed into the Denver aquifer. Upon completion of this case and the subdivision process, the Rickenbacker Well No. 1 will be permitted to operate pursuant to the

requested plan for augmentation. Proposed Wells. Applicant proposes the construction of up to four additional wells to the Denver aquifer to, along with the Rickenbacker Well No. 1, supply water to the five individual lots, including any additional or replacement wells as needed ("Rickenbacker Wells"). Water Source. Not-Nontributary. The groundwater to be withdrawn from the Dawson and Denver aquifers underlying Applicant's Property is not-nontributary. Pursuant to C.R.S. § 37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson and Denver aquifers require the replacement of actual stream depletions. Nontributary. The groundwater that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's Property is nontributary. Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. per well. The actual pumping rates for the wells will vary according to aquifer conditions and well production capabilities. Applicant requests the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of any wells to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. Estimated Average Annual Amounts of Groundwater Available. Applicant requests a vested right for the withdrawal of all legally available groundwater in the Denver Basin aquifers underlying Applicant's Property. Said amounts may be withdrawn over the 300-year life of the utilized aquifer 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 aquifer life requirement pursuant to C.R.S. § 37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

AQUIFER	NET SAND (Feet)	Total Appropriation (Acre-Feet)	Annual Avg. Withdrawal 100 Years (Acre-Feet)	Annual Avg. Withdrawal 300 Years (Acre-Feet)
Dawson (NNT)	65	520	5.2	n/a
Denver (NNT)	358	2,410	24.1	8.03
Arapahoe (NT)	382	2,570	25.7	n/a
Laramie-Fox Hills (NT)	184	1,090	10.9	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), 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. Applicant requests the right to use the groundwater for beneficial uses upon the Applicant's Property consisting of domestic within a single-family dwelling and guest house, structure and equipment washing, water features, irrigation, commercial, stock water, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. 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, that Applicant shall only be entitled to construct wells or use water from the not-nontributary Dawson and Denver 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 they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field and waive any 600-foot spacing requirements. Averaging of Withdrawals. Applicant requests that it be entitled to withdraw an amount of groundwater 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 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 to 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 Rickenbacker Wells. 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 aquifer wells, together with water rights from the nontributary Arapahoe aquifer for any injurious post-pumping depletions. Statement of Plan for Augmentation. Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Denver aquifer. Uses. Pumping from the Denver aquifer will be a maximum of 6.5 acre-feet of water per year combined for the five wells, with each well pumping a maximum of 1.3 acre-feet per year. Such uses shall be for domestic within a single-family dwelling and guest house, structure and equipment washing, water features, irrigation, commercial, stock water, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. Depletions. Applicant's consultant has determined that maximum stream depletions over the 300-year pumping period for the Denver aquifer amounts to approximately 19.391% of pumping. Maximum annual depletions are therefore 1.26 acre-feet in year 300. Should annual pumping be less than the 6.5 acre-feet total described herein, resulting depletions and required replacements will be correspondingly reduced. Augmentation of Depletions During Pumping. Applicant's consultant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for a non-evaporative septic system is 10% per year. Therefore, at an in-house use rate of 0.30 acre-feet per year from a single-family dwelling and guest house, replacement amounts to 1.35 acre-feet to the stream system annually. Thus, during pumping, stream depletion replacement requirements will be met. Augmentation for Post Pumping Depletions. For the replacement of post-pumping depletions which may be associated with the use of the Rickenbacker Wells, Applicant will reserve 1,990 acre-feet of the Arapahoe aquifer, to be adjusted based on accounting for during-pumping replacement. The amount of nontributary Arapahoe aquifer groundwater reserved may be reduced as may be determined through this Court's retained jurisdiction as described in any decree. If the Court, by order, reduces the Applicant's obligation to account for and replace such post-pumping depletions for any reason, it may also reduce the amount of Arapahoe aquifer groundwater reserved for such purposes, as described herein. 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. Pursuant to C.R.S. § 37-90-137(9)(b), no more than 98% of water withdrawn annually from a nontributary aquifer shall be consumed.

CASE NO. 2025CW3005; Previous Case Nos. 18CW3031, 11CW040, 99CW170(A) – THE CITY OF AURORA, COLORADO, a municipal corporation of the Counties of Adams, Arapahoe and Douglas, acting by and through its Utility Enterprise (“Aurora”) (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Stephen C. Cann and Ian J. Best, 15151 E. Alameda Parkway, Suite 5300, Aurora, CO 80012-1555 (303-739-7030)

Application for a Finding of Reasonable Diligence and to Make Absolute Portions of Conditional Water Rights

LAKE, CHAFFEE, FREMONT, PUEBLO, CROWLEY AND OTERO COUNTIES

This Application seeks a finding of reasonable diligence and to make absolute portions of rights of exchange originally decreed in Consolidated Case No. 99CW170(A) decreed July 28, 2005 (hereinafter referred to as the “Original Decree”). The court has made a finding of reasonable diligence for the exchanges decreed in the Original Decree, in Case Nos. 11CW040 and 18CW3031. The exchanges are on the Arkansas River, extending from the Lake Henry/Lake Meredith Outlet Canal, the Arkansas Gravel Pit Reservoir Outlet and Pueblo Reservoir to Twin Lakes, Turquoise, Clear Creek and Pueblo Reservoirs, and the Otero Pump Station Arkansas River Intake. The water used as a replacement source is the historical consumptive use water under 288.274 shares of stock in the Rocky Ford Ditch Company that is the subject to the change decree entered in Case No. 99CW169(A), Water Division 2. 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.) **2. NAME AND LOCATION OF STRUCTURES (shown on Exhibit A)** 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 in Township 20 South, Range 66 West, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, in Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23 and 25, in Township 20 South, Range 67 West, all in the 6th Principal Meridian 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 Principal Meridian, from which the Northeast corner of said Section bears North 61° 21' 20" East, a distance of 2,511.05 feet, all more particularly described in the decree in Case No. B-42135, District Court, Pueblo County, Colorado, dated June 25, 1962. UTM Coordinates: 524076E, 4235362N. Lake Henry / Lake Meredith Outlet Canal (“Outlet Canal”) (WDID 1709516). Waters released from Lake Henry or Lake Meredith Reservoirs are carried through the Lake Meredith Reservoir Outlet Canal to a point in the South Half of Section 21, Township 22 South, Range 57 West of the 6th P.M., where they can be released to the Holbrook Canal and/or discharged into the Fort Lyon Storage Canal whence they are carried southeasterly approximately one-half mile in the Fort Lyon Storage Canal to a point at which they either continue in said Fort Lyon Storage Canal or are discharged through a headgate on its Southerly bank in the SW¼ of Section 22, Township 22 South, Range 57 West of the 6th P.M., in Crowley County, Colorado whence they travel South-

Southeast approximately one mile to discharge into the Arkansas River in the NW ¼ of the SE ¼ of Section 27, Township 22 South, Range 57 West of the 6th P.M., in Otero County, Colorado. UTM Coordinates: 608527.9E, 4221233.9N. Arkansas Gravel Pit Reservoir ("AGPR") (WDID 1403620). To be located in the S½ of Section 34; and a portion of the SW¼ SW¼ of Section 35, Township 20 South, Range 63 West; and a portion of the N½ of Section 3, Township 21 South, Range 63 West of the 6th P.M., all in Pueblo County, Colorado. The AGPR will receive water from the mainstem of the Arkansas River via the Excelsior Ditch, the headgate of which is located in the SE ¼ SE ¼ of Section 36, Township 20 South, Range 64 West of the 6th P.M. in Pueblo County, Colorado. The AGPR will return water to the mainstem of the Arkansas River via a return outlet to be located in the SE ¼ SE ¼ of Section 34, Township 20 South, Range 63 West of the 6th P.M. in Pueblo County, Colorado. UTM Coordinates (Spotted, Not Built): 550701E, 4234950.5 N. Twin Lakes Reservoir (WDID 1103503). The Reservoir is located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in Township 11 South, Range 80 West of the 6th Principal Meridian, in Lake County, Colorado. Twin Lakes Dam axis and center line of Lake Creek intersect at a point whence the SE corner of Section 23, Township 11 South, Range 80 West of the 6th Principal Meridian bears South 54° 13' 8" East, a direction of 3,803.10 feet, all as more particularly described in the decree in Civil Action No. 5141 (District Court, Chaffee County, Colorado), dated July 9, 1969. UTM Coordinates: 387247E, 4326098N. Turquoise Reservoir (WDID 1103500). 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, all from the 6th P.M., in Lake County, Colorado. The Turquoise Reservoir Dam axis and the centerline of Lake Fork Creek intersect at a point whence the Northwest corner of Section 16, Township 9 South, Range 80 West of the 6th P.M., bears North 44° 46' 18" East a distance of 10,344.35 feet, all as more particularly described in the decree in Civil Action No. 5141 (District Court, Chaffee County). UTM Coordinates: 381548E, 4345718N. Clear Creek Reservoir (WDID 1103504). Clear Creek Reservoir is located in all or part of Sections 7 and 8, Township 12 South, Range 79 West, and Section 12, Township 12 South, Range 80 West, all of the 6th Principal Meridian in Chaffee County, Colorado. The Clear Creek Reservoir Dam axis and the centerline of Clear Creek intersect at a point whence the South corner of Section 8, Township 12 South, Range 79 West, 6th Principal Meridian bears South 27° West a distance of 2,255 feet. UTM Coordinates: 392180E, 4319897N. Otero Pump Station Arkansas River Intake (WDID 1100529). The Otero Pump Station diverts water from the Arkansas River in Chaffee County, Colorado approximately at a point that bears North 30° West a distance of 6,180 feet to the Northeast corner of Section 6, Township 12 South, Range 79 West of the 6th Principal Meridian. UTM Coordinates: 393090E, 4319215N. Lake Meredith Reservoir (WDID 1403525). Lake Meredith Reservoir is located in all or portions of Sections 15, 16, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32 and 33 in Township 21 South, Range 56 West, Sections 1, 6 and 12 in Township 22 South, Range 57 West, and in Sections 24, 25 and 36 in Township 21 South, Range 57 West, all from the 6th P.M., in Crowley County, Colorado. Lake Meredith Reservoir dam axis and the centerline of the outlet canal intersect at a point located in the NW¼ of the SW¼ of Section 12, Township 22 South, Range 57 West of the 6th P.M., at a point from which the West Quarter Corner of said Section 12 bears North 27° 14' West a distance of 564.30 feet. UTM Coordinates (Spotted

from quarters): 609899.2E, 4222978.1N. Lake Henry Reservoir (WDID 1403524). Lake Henry Reservoir is located in all or portions of Sections 31 and 32, Township 20 South, Range 56 West, and Sections 5 and 6, Township 21 South, Range 56 West, all from the 6th P.M., in Crowley County, Colorado; the primary outlet works for Lake Henry Reservoir are located in the South Half of said Section 6 and the Lake Henry Reservoir dam axis and the centerline of the outlet canal intersect at a point on the West line of the Southeast Quarter of said Section 6 a distance of 512 feet South of the center of Section 6, Township 21 South, Range 56 West of the 6th P.M., in Crowley County, Colorado. UTM Coordinates (Spotted from quarters): 612088E, 4234275.1N. **3. DESCRIPTION OF CONDITIONAL WATER RIGHTS** Date of Original Decree: June 27, 2005, Case No. 99CW170(A), District Court Water Division 2, Colorado ("Original Decree"). Date of Subsequent Diligence Decree: April 20, 2012, Case No. 11CW040, District Court, Water Division No. 2, Colorado; March 25, 2019, Case No. 18CW3031, District Court, Water Division No. 2, Colorado. Legal Descriptions: See Paragraph 2, above. Sources of Exchange Water: The water to be exchanged pursuant to the rights that are the subject of this Application is the historical consumptive use water diverted and stored in Pueblo Reservoir, diverted at the Excelsior Ditch and stored in the AGPR, and/or diverted at the Colorado Canal Headgate and stored in Lake Henry Reservoir or Lake Meredith Reservoir under 288.274 shares of the total 800 outstanding shares of capital stock of the Rocky Ford Ditch Company. The water right represented by the 288.274 shares that are the subject of this Application (hereinafter, the "Subject Rocky Ford Ditch Water Right") is a portion of Priority No. 1, decreed in the original adjudication for former Water District 17, on April 8, 1905, for 111.76 cfs with an appropriation date of May 15, 1874. Pursuant to a previous purchase, Aurora owns 466.48 shares of the Rocky Ford Ditch Company. A change of those shares was decreed in Water Division 2, Case No. 83CW18. A subsequent decree for exchange was issued in Water Division 2, Case No. 87CW63, and those 466.48 shares are not involved in the exchanges that are the subject of the Original Decree or this Application. The Subject Rocky Ford Ditch Water Right was the subject of the Decree entered on January 28, 2004, and amended on September 21, 2015, in Water Division 2, Case No. 99CW169(A) which case changed, *inter alia*, uses and points of diversion for Applicant's share of the subject Rocky Ford Ditch Company water. The initial diversion and storage of Applicant's share of the subject Rocky Ford Ditch Company water is controlled by the terms and conditions of the Decree in Case No. 99CW169(A), which terms and conditions include but are not limited to limitations upon the amount of water transferred based upon revegetation and dry-up status. Aurora's right to operate the exchanges decreed under the Original Decree is conditioned upon compliance with the terms and conditions of the decree in Case No. 99CW169(A). Exchange Reaches and Amounts: From the Lake Henry/Lake Meredith Outlet Canal ("Outlet Canal") to the following points: Twin Lakes Reservoir 500 cfs Turquoise Reservoir 350 cfs Clear Creek Reservoir 250 cfs Otero Pump Station Arkansas River Intake 165 cfs From the AGPR Outlet to the Arkansas River to the following points: Pueblo Reservoir 500 cfs Twin Lakes Reservoir 500 cfs Clear Creek Reservoir 250 cfs Otero Pump Station Arkansas River Intake 165 cfs From Pueblo Reservoir to the following points: Twin Lakes Reservoir 500 cfs Turquoise Reservoir 350 cfs Clear Creek Reservoir 250 cfs Otero Pump Station Arkansas River Intake 165 cfs The maximum rates of exchange into each specific receiving reservoir or facility shall be limited to the following: Maximum Rate in cfs Turquoise Reservoir 350 Twin Lakes

Reservoir 500 Clear Creek Reservoir 250 Otero Pump Station 165 Pueblo Reservoir 500

The above-stated maximum exchange rates shall apply to the sum of any exchanges made pursuant to the exchange rights granted herein and the exchange rights decreed or that may hereafter be decreed in Water Division 2, Case Nos. 87CW63, 99CW170(A), and 01CW145. Amounts exchanged or diverted upstream of Pueblo Reservoir pursuant to Case Nos. 87CW63 and 01CW145 will be subtracted from the above stated maximum exchange rates to determine the remaining amount of exchange rate available for the operation of the rights herein decreed. Amounts Previously Decreed Absolute: 325 cfs of the appropriative right of exchange from Pueblo Reservoir to Twin Lakes Reservoir, as described in paragraph 3.5.3.1, above. 75 cfs was made absolute in WD-2, Case No. 11CW040 and an additional 250 cfs was decreed absolute in WD-2, Case No. 18CW3031. Appropriation Dates: The date of appropriation for all exchanges, except those described in the following paragraph 3.6.2. below, is December 28, 1999. The date of appropriation for all exchanges from the AGPR is November 22, 2002. Uses: The water exchanged pursuant to this decree may be used for the purposes authorized under the decree in Case No. 99CW169(A) and may be totally consumptively used, successively used, reused and captured for later use. Direct flow and storage for use, reuse, and successive use to extinction, to the extent historically consumed. Municipal and domestic purposes, including but not limited to fire protection, sanitary, irrigation, commercial, manufacturing, mechanical and industrial use, recreational purposes, creation and maintenance of wetlands, stock watering, fish and wildlife propagation, allowable in stream uses, if any, snowmaking, revegetation, storage and maintenance of storage reserves, and to augmentation, exchange and replacement purposes. The water may be totally consumptively used, successively used, reused and recaptured for later use. **4. CLAIMS TO MAKE ABSOLUTE:** During this diligence period, Applicant made absolute the following appropriative rights of exchange. See Exhibit B, attached hereto. Exchange Reach: Pueblo Reservoir to Turquoise Reservoir Exchange. Date: June 21, 2019. Amount: 350 cfs. Entire appropriated conditional exchange of 350 cfs made absolute. Uses: As described in paragraph 3.7, above. Exchange Reach: Pueblo Reservoir to Otero Pump Station Arkansas River Intake (aka Arkansas River Diversion) Exchange. Date: August 26, 2020. Amount: 10.38 cfs made absolute of appropriated conditional exchange of 165 cfs. Uses: As described in paragraph 3.7, above. **5. DETAILED OUTLINE OF WHAT HAS BEEN DONE TOWARD COMPLETION OR FOR COMPLETION OF THE APPROPRIATIONS AND APPLICATION OF WATER TO A BENEFICIAL USE AS CONDITIONALLY DECREED.** Pursuant to the Original Decree, these exchanges are part of a unified extensive system for the collection, treatment and distribution of water operated by Aurora. For the purposes of showing diligence as to completion of the appropriative rights of exchange decreed in the Original Decree, diligence as to any part of the Aurora water rights system used to operate or benefit from these exchanges shall be diligence as to the completion of the exchanges. Project Specific Efforts: During the diligence period of April 2018 through February 2025, Aurora has done at least the following work toward completion of the appropriation and application of the water rights decreed in the Original Decree (expenditure numbers are rounded to the nearest \$1,000). Payment for purchase and lease of Rocky Ford Ditch shares. Aurora spent more than \$584,000 during this diligence period for repayment of bonds, including principal and interest, that were issued or refunded for purchase of original Rocky Ford Ditch shares

changed in Case No. 83CW18, that are a reusable source for the exchanges herein.

Revegetation: Aurora has expended at least \$1,479,000 during this diligence period for revegetation, including expenditures for expert revegetation classifications and reports, actual revegetation and weed control costs, as well as farm equipment purchases, office overhead and personnel costs, under Case No. 83CW18. Aurora also expended an additional \$1,413,000 for revegetation and continued farming of historically irrigated lands pursuant to the decree in Case No. 99CW169(A).

Payments to Otero County: Aurora and Otero County entered into an Intergovernmental Agreement on February 22, 1994, and amended that Agreement on October 29, 2001, under which Amendment Aurora agreed to make annual payments to Otero County concerning the Rocky Ford Ditch shares that are a reusable source for the exchanges herein. During this diligence period, Aurora made payments in excess of \$378,000 pursuant to the Agreement.

Pueblo Reservoir Storage: During the diligence period, Aurora paid the Bureau of Reclamation more than \$6,858,000 for use of Pueblo Reservoir in the storage and exchange of Arkansas River Basin water upstream for transport and use by Aurora in the South Platte Basin.

Intergovernmental Agreement with SECWCD. On October 3, 2003, Aurora entered into an Intergovernmental Agreement with the Southeastern Colorado Water Conservancy District ("SECWCD"), replacing an agreement between the parties dated December 7, 2001. Aurora's use of Fryingpan-Arkansas facilities for certain water rights is discussed under this IGA. During the diligence period, Aurora made payments of more than \$1,295,000 to SECWCD under this IGA.

Arkansas River Basin: Aurora made the following diligent efforts with regard to maintaining and enlarging its water supply system components in the Arkansas River Basin which are necessary for continuation and transport of its reusable supplies from the Arkansas River Basin.

Agreements for Use of the Holbrook Reservoir System Facilities: On March 1, 2005, Aurora entered into two agreements pertaining to the use of the diversion, conveyance and storage facilities of the Holbrook Mutual Irrigating Company ("Holbrook"). These agreements implement a program to recapture and store yield from foregone diversions of senior water rights. During this diligence period, Aurora made payments of approximately \$563,000 to Holbrook under this agreement. Aurora and Holbrook extended the storage Agreement on February 6, 2025 for an additional 5-year term.

Recovery of Yield ("ROY"): On August 17, 2016, Aurora, along with Colorado Springs, the Pueblo Board of Water Works, the City of Fountain, and the Southeastern Colorado Water Conservancy District, obtained a decree in Case No. 06CW120 adjudicating exchanges necessary as a result of the 2004 Regional Intergovernmental Agreement ("IGA") between the various water providers and the City of Pueblo, whereby the water providers agreed to allow certain of their senior flows to pass through Pueblo's RICD reaches on the condition those flows could be removed downstream and exchanged back upstream. This case lays the foundation for those exchanges. Aurora expended significant sums on these efforts during the diligence period. The ROY partners have acquired land to prospectively be used as a reservoir site at a cost of \$1,160,000 to Aurora.

Other Arkansas Diligence Activities:

Intergovernmental Agreement with LAVWCD: Pursuant to an Intergovernmental Agreement with the Lower Arkansas Valley Water Conservation District ("LAVWCD"), Aurora paid approximately \$750,000 to LAVWCD for the identification and implementation of infrastructure improvements, research, and investigations designed to assist in the permitting or implementation of water leasing programs in the Lower Arkansas Valley, as well as

remediation and restoration efforts in the Fountain Creek Corridor. Systemwide Efforts: During the diligence period, Aurora has accomplished at least the following systemwide efforts that will be used to operate or benefit the conditional rights (expenditure numbers are rounded to the nearest \$1,000). South Platte River Basin: Aurora made the following diligent efforts with regard to its water supply system components in the South Platte River Basin which are necessary for continuation of its reusable supplies from the South Platte River Basin. Metro Wastewater Reclamation District Charges: Aurora expended at least \$230,105,000 during this diligence period for fees for wastewater treatment of its water at the Metro Wastewater Reclamation facility. Such treatment is necessary for release of this water into the South Platte River Basin as a replacement source under exchanges herein. Sand Creek Water Reuse Plant Improvements: Aurora operates this 5-million-gallon per day facility that provides treated water used for irrigation throughout the City and for discharge into Sand Creek for use as a replacement source for the exchanges herein. Improvements of this facility and operating costs completed during this diligence period cost at least \$23,627,000. These improvements are necessary for use of this water as a substitute supply under the rights decreed herein. Quantification and Determination of Lawn Irrigation Return Flows: Aurora obtained a decree in Case No. 02CW341, Water Division 1, on September 25, 2008, quantifying LIRFs from its municipal system (and subsequent requantifications as required by the Decree in 02CW341), generated as a result of use of transmountain water rights, fully consumable inbasin water rights, decreed and permitted non-tributary sources and any other fully consumable water available to Aurora. During this diligence period, Aurora has expended over \$62,000 in engineering costs requantifying the LIRFs adjudicated in Case No. 02CW341 available for exchange. Spinney Mountain Reservoir: Aurora expended substantial sums for facility upgrades during the diligence period, including internal outlet works inspections, applications of protective coatings on outlet pipes, assessment, design and extension of the storm drainage systems below the dam, installation of filter trench drains, measurement devices, and installation of heater jackets over valve operators. Griswold Water Treatment Plant Renovations. This facility treats a portion of the raw water that is a replacement source herein before it is delivered to Aurora's customers. More than \$76,538,000 was spent by Aurora during this diligence period for improvements to this facility. This includes expenditures directly by Aurora for renovation of the facility. Wemlinger Water Treatment Plant Improvements. During this diligence period, Aurora spent more than \$40,398,000 for improvements to the Wemlinger Water Treatment Plant. This facility treats a portion of the raw water that is a replacement source herein before it is delivered to Aurora's customers. Rampart Reservoir Improvement. More than \$20,611,000 was spent by Aurora during this diligence period for improvements to the Rampart Reservoir delivery system, including improvements to the 54" raw water transmission pipeline between Rampart Reservoir and storage and water treatment facilities within the city. Rampart Reservoir is used to store the water that has been exchanged from the Arkansas and Colorado River Basins and transported to the South Platte River before it is transported through the parallel 54" and 40" pipelines to Aurora. Rampart Reservoir is important for regulation of the flow through these parallel pipelines. Improvements to Extend or Improve Water Service in and to Aurora: More than \$123,494,000 was spent by Aurora during this diligence period for extension and upgrade of its water transmission and distribution system necessary to deliver the water that is the

subject of the exchange herein to Aurora's customers. **Prairie Waters Project:** The Prairie Waters Project is a large comprehensive water recapture, supply, storage and treatment project which in part recovers reusable return flows from Aurora's water sources from the South Platte River. To facilitate this project Aurora obtained various decrees in Case Nos. 06CW104, 03CW414, and 03CW415, Water Division 1. This project allows further reuse of much of the water decreed to Aurora. Reuse water recovered by this project is one of the sources at Aurora's water treatment plants for replacement under the operations at issue here. During the diligence period, Aurora obtained a decree in Case No. 20CW3058, WD-1, finding reasonable diligence for the water rights decreed conditionally in 03CW414 (decreed April 22, 2014) and 13CW3088 (decreed 11/4/2020), Aurora obtained a decree in Case No. 21CW3028, WD-1, (decreed 12/09/2021) finding reasonable diligence for the water rights decreed conditionally in 03CW415 (decreed March 2, 2015) and in 14CW3065, and Aurora filed an application in Case No. 23CW3175 seeking to make absolute portions of the rights decreed conditionally in Case No. 06CW104, and 15CW3064, WD-1, and seeking a finding of reasonable diligence on the remainder. Aurora has expended at least \$28,259,000 on elements of the Prairie Waters Project during this diligence period. **Automated Meter Reading System:** Aurora spent more than \$18,729,000 during this diligence period for upgrades to its automated utility reading system. **South Platte Exchange:** On June 24, 2020, Aurora obtained a decree in Case No. 19CW3185, Water Division 1, granting a finding of reasonable diligence and making absolute portions of conditional exchange rights originally decreed in 79CW375 and decreed as to diligence and partially absolute in Case Nos. 89CW078, 98CW294 and 08CW253. These water rights allow Aurora to exchange certain reusable water from the confluence of Tarryall Creek and the South Platte River to Spinney Mountain Reservoir. **Binney Water Purification Facility:** This state-of-the-art water purification and recycling plant owned and operated by Aurora treats water for use throughout the city. Over \$17,148,000 was spent by Aurora during the diligence period for improvements to this facility. **Colorado River Basin:** Aurora made the following diligent efforts with regard to its water supply system components in the Colorado River Basin that are necessary for continuation of its reusable supplies from the Colorado River Basin. Aurora has continued to pursue development of a joint project or projects as contemplated in a 1998 Memorandum of Understanding with Vail Associates, Upper Eagle River Regional Water Authority, Eagle River Water and Sanitation District, Cypress Climax Mining Company and the Colorado River Water Conservation District. On June 21, 2004, the City of Aurora entered into an additional Water Exchange Agreement with the Eagle Park Reservoir Company, the Colorado River Water Conservation District, the Eagle River Water and Sanitation District, the Upper Eagle Regional Water Authority, and Vail Associates, Inc. to supplement a 1998 Water Exchange Agreement. This agreement affects operations of the Homestake water rights and deliveries of reusable water to Aurora for use in the exchanges herein. On January 5, 2010, the City of Aurora entered into a Consolidated Water Exchange Agreement to supplement, merge and consolidate the 1998 and 2004 agreements. Aurora seeks to further maximize the operations of the Homestake water rights with these projects. A diligence application was filed by the parties to the agreements in regard to the subject exchange rights in 2023. **Homestake Project:** During this diligence period, work was done on the Homestake Arkansas River Diversion Channel to reduce erosion, including riprap and installation of a new roadway culvert.

Additionally, Homestake Reservoir underwent resurfacing and improvement. Once water is transported over the Continental Divide through the Otero Pump Station and Homestake Pipeline, it is then transported to Spinney Mountain Reservoir in the South Platte Basin. During this diligence period, Aurora prosecuted Case No. 2023CW3031, 2020CW3024 and 23CW3087 in Water Division 5 through the Homestake Partners, comprising the City of Aurora and the City of Colorado Springs Utility. These water court matters seek a decree confirming diligence and continuing in effect the conditional water rights originally decreed in Case No. 98-CW-270, which comprise part of the Homestake Project. On March 31, 2017, Aurora and the City of Colorado Springs jointly filed Case No. 17CW3064 seeking diligence on the Homestake Project exchanges originally decreed in Case No. 95CW272(A), Water Division 5. During this diligence period a decree was entered by the court on June 10, 2018. During this diligence period, Aurora executed a Recovery Agreement (3-27-20) with the United States and Wildlife Service regarding the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (Recovery Program). The purpose of the Recovery Agreement is to formalize Aurora's participation in the Recovery Program, provide certainty that Aurora's Colorado River depletions can occur consistent with the Endangered Species Act, and provide that Aurora will take reasonable actions to support implementation for the Recovery Elements specified in the 1999 Programmatic Biological Opinion. During the previous diligence period, the Upper Colorado River Endangered Fish Recovery Program, Recovery Implementation Program and Recovery Action Plan Participation Agreement (11-01-13) was executed with Northern Colorado Water Conservancy District, and a Ruedi Insurance Water Cost Participation Agreement (11-01-13) with the City and County of Denver. Through implementation of these agreements, the east slope water users' commitment for 5412.5 acre-feet of water annually to the Recovery Program is being met. Aurora has and continues to provide its annual prorata share of operation and maintenance costs associated with these agreements. In addition, Aurora participates and annually contributes to the Colorado Water Congress Colorado River Project for collaboration and support of the Recovery Program by the water users in Colorado, Utah, and Wyoming. Non-Basin Specific: Protection Efforts: During this diligence period, Aurora spent more than \$5,000,000 on legal services for participation in Water Divisions 1, 2 and 5 cases to protect the rights and interests of Aurora with regard to its water supply system and prosecution of changes of water rights to integrate acquired water rights into Aurora's municipal water rights portfolio. Aurora reserves the right to identify additional relevant efforts that may be later discovered or to make upward adjustments to amounts expended on certain projects. Aurora has an extensive water rights portfolio, an extensive and complex water supply, collection, treatment and reuse system, and an extensive number of agreements, contracts, leases, etc. related to its facilities and the use, reuse and storage of its water rights. It is involved in many legal actions related to the collection, treatment, reuse and protection of its water rights. Further, the management, protection, and operation of the water rights and the facilities system involve numerous City of Aurora departments and staff members throughout the state. Aurora made diligent efforts with regard to this application to determine and quantify all efforts made by the City toward completion of the appropriations and application of the water rights decreed in the Original Decree to beneficial use. However, it is reasonably possible that relevant efforts or expenditures may have been overlooked or need further upward adjustment. 6.

CONDITIONAL APPROPRIATIVE RIGHTS OF EXCHANGE FOR WHICH DILIGENCE IS CLAIMED:

Applicant respectfully requests a finding of reasonable diligence for those parts of the originally decreed conditional rights described above in paragraph 3 that have not previously been made absolute. **7. NAMES AND ADDRESSES OF 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.** Structure Lake Henry/Lake Meredith Outlet Canal Owner City of Aurora owns shares in both the Lake Henry and Lake Meredith Reservoir Companies, so has a right to use the Outlet Canal. Lake Henry and Lake Meredith Reservoir facilities are owned by the Colorado Canal Companies. Address City of Aurora, 15151 East Alameda Parkway, Suite 3600, Aurora, CO 80015-1555 The Colorado Canal Companies 331 Main Street, P.O. Box 8 Ordway, CO 81063 Structure Twin Lakes Reservoir, Turquoise Reservoir, Pueblo Reservoir Owner U.S. Department of the Interior, Bureau of Reclamation Address 11056 W. County Road, 18E, Loveland, CO 80537-9711 Structure Clear Creek Reservoir Owner Pueblo Board of Public Works Address 319 West 4th St., Pueblo, CO 81003 Structure Otero Pump Station Arkansas River Intake Owner 50% owned by City of Aurora; 50% owned by City of Colorado Springs Address City of Aurora, 15151 East Alameda Parkway, Suite 3600, Aurora, CO 80015-1555 City of Colorado Springs Address 121 S. Tejon Street, Colorado Springs, CO 80903 Structure AGPR Owner Martin Marietta Materials Inc., c/o Baden Tax Management Address PO Box 8040 Ft. Wayne, IN 46898 Martin Marietta Materials Real Estate Investments, Inc. Address 1627 Cole Boulevard, Ste 200, Lakewood, CO 80401 Preferred Materials, Inc Address 4636 Scarborough Drive, Lutz, FL 33559 Triview Metropolitan District Address 16055 Old Forest Point, Ste 302, Monument, CO 80132 Colorado Interstate Gas Co. Address PO Box 4372, Houston, TX 77210 Kirkland Property Holdings, LLC Address PO Box 580, Rye, CO 81069 WHEREFORE, Applicant respectfully requests that the Court find diligence in the development of those portions of the appropriative rights not made absolute and continue the conditional decree for said structures and remaining conditional amounts for the statutory period and provide any other relief it finds just and appropriate in these circumstances.

CASE NO. 2025CW3006; Previous Case Nos. 18CW3032, 11CW041, 99CW170(B) – THE CITY OF AURORA, COLORADO, A municipal corporation of the Counties of Adams, Arapahoe and Douglas, acting by and through its Utility Enterprise (“Aurora”) (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Stephen C. Cann and Ian J. Best, 15151 E. Alameda Parkway, Suite 5300, Aurora, CO 80012-1555 (303-739-7030)

Application for a Finding of Reasonable Diligence

LAKE, CHAFFEE, FREMONT, PUEBLO, CROWLEY AND OTERO COUNTIES

This Application seeks a finding of reasonable diligence on rights of exchange originally decreed in Consolidated Case No. 99CW170(B) decreed July 28, 2005 (hereinafter referred to as the “Original Decree”). The court has made a finding of reasonable diligence for the exchanges decreed in the Original Decree in Case Nos. 18CW3032 and 11CW041. These exchanges on the Arkansas River extend from the proposed Arkansas Gravel Pit Reservoir upstream to either Box Creek Reservoir or its Arkansas River Intake,

the Upper River Ditch or the Derry Ditch No. 1. The water used as a replacement source is the historical consumptive use water under 288.274 shares of stock in the Rocky Ford Ditch Company that is the subject to the change case decree entered in Case No. 99CW169(A), Water Division 2. 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.) **2. NAME OF STRUCTURES:** Arkansas Gravel Pit Reservoir ("AGPR"): To be located in of the S½ of Section 34; and a portion of the SW¼ SW¼ of Section 35, Township 20 South, Range 63 West; and a portion of the N½ of Section 3, Township 21 South, Range 63 West of the 6th P.M., all in Pueblo County, Colorado. The AGPR will receive water from the mainstem of the Arkansas River via the Excelsior Ditch, the headgate of which is located in the SE ¼ SE ¼ of Section 36, Township 20 South, Range 64 West of the 6th P.M. in Pueblo County, Colorado. The AGPR will return water to the mainstem of the Arkansas River via a return outlet to be located in the SE ¼ SE ¼ of Section 34, Township 20 South, Range 63 West of the 6th P.M. in Pueblo County, Colorado. Box Creek Reservoir: To be located in all or portions of Sections 32 and 33, Township 10 South, Range 80 West and Sections 4 and 5, Township 11 South, Range 80 West of the 6th P.M., all in Lake County, Colorado. The exact location of Box Creek Reservoir Dam is not yet established. The Box Creek dam axis may intersect the approximate centerline of the Box Creek valley at a point approximately 2,000 feet West and 300 feet South of the Northeast corner of said Section 4, Township 11 South, Range 80 West of the 6th P.M. in Lake County, Colorado. Arkansas River Intake to Box Creek Reservoir: To be located in Sections 22, 27 and 34, Township 10 South, Range 80 West; and Section 3, Township 11 South, Range 80 West of the 6th P.M., in Lake County, Colorado. Upper River Ditch: Located on the west bank of the Arkansas River at point whence the Southeast corner of Section 16, Township 10 South, Range 80 West of the 6th P.M. bears South 23° 28' East, a distance of 2,008.5 feet, in Lake County, Colorado. Water diverted into the Upper River Ditch may be stored in Box Creek Reservoir. Derry Ditch No. 1 Headgate: At a point on the Right bank of the Arkansas River whence the quarter-corner of Section 16, Township 10 South, Range 80 West of the 6th P.M. bears South 22° 1' East, a distance of 3,753 feet, in Lake County, Colorado. Water diverted at the Derry Ditch No. 1 may be stored in Box Creek Reservoir. **3. DESCRIPTION OF CONDITIONAL WATER RIGHTS:** Date of Original Decree: July 28, 2005, Case No. 99CW170(B), District Court Water Division 2, Colorado ("Original Decree"). Date of Subsequent Diligence Decrees: April 20, 2012, Case No. 11CW041, District Court, Water Division No. 2, Colorado; March 25, 2019, Case No. 18CW3032, District Court, Water Division No. 2, Colorado. Legal Descriptions: See Paragraph 2, above. Sources of Exchange Water: The water to be exchanged pursuant to the rights that are the subject of this Decree is the historical consumptive use water diverted at the Excelsior Ditch and stored in AGPR pursuant to Aurora's ownership of 288.274 shares of the total 800 outstanding shares of capital stock of the Rocky Ford Ditch Company. The water right represented by the 288.274 shares that are the subject of this Decree ("Subject Rocky Ford Ditch Water Right") is a portion of Priority No. 1, decreed in the original adjudication for former Water District 17, on April 8, 1905, for 111.76 cfs with an appropriation date of May 15, 1874. Pursuant to a previous purchase, Aurora owns 466.48 additional shares of the Rocky Ford Ditch Company. A change of those shares was decreed in Water Division 2, Case No. 83CW18. A subsequent decree for exchange was issued in Water

Division 2, Case No. 87CW63, and those 466.48 shares are not involved in the exchange that is the subject of the Original Decree or this Decree. The Subject Rocky Ford Ditch Water Right was the subject of the Decree entered on January 28, 2004, and amended on September 21, 2015, in Water Division 2, Case No. 99CW169(A) which case changed, inter alia, uses and points of diversion for Applicant's share of the subject Rocky Ford Ditch Company water. The initial diversion and storage of Applicant's share of the subject Rocky Ford Ditch Company water is controlled by the terms and conditions of the Decree in Case No. 99CW169(A), which terms and conditions include but are not limited to limitations upon the amount of water transferred based upon revegetation and dry-up status. Aurora's right to operate the exchanges decreed under the Original Decree is conditioned upon compliance with the terms and conditions of the decree in Case No. 99CW169(A). Exchange Reaches and Amounts: From the AGPR Outlet to the Arkansas River to the following points: Box Creek Reservoir 50 cfs Arkansas River Intake for Box Creek Reservoir 200 cfs Upper River Ditch 200 cfs Derry Ditch No. 1 200 cfs The rates of exchange listed above are the maximum rates of exchange that shall apply to the sum of any exchanges made pursuant to the exchange rights granted herein and the exchange rights decreed or that may hereafter be decreed in Water Division 2, Case Nos. 87CW63, 99CW170(A), and 01CW145. Amounts exchanged or diverted upstream of Pueblo Reservoir pursuant to Case Nos. 87CW63, 99CW170(B) and 01CW145 will be subtracted from the above stated maximum exchange rates to determine the remaining amount of exchange rate available for the operation of the rights herein decreed. Appropriation Date: November 22, 2002. Uses: The water exchanged pursuant to this decree may be used for the purposes authorized under the decree in Case No. 99CW169(A) and may be totally consumptively used, successively used, reused and captured for later use. Direct flow and storage for use, reuse, and successive use to extinction, to the extent historically consumed. Municipal and domestic purposes, including but not limited to fire protection, sanitary, irrigation, commercial, manufacturing, mechanical and industrial use, recreational purposes, creation and maintenance of wetlands, stock watering, fish and wildlife propagation, allowable in stream uses, if any, snowmaking, revegetation, storage and maintenance of storage reserves, and to augmentation, exchange and replacement purposes. The water may be totally consumptively used, successively used, reused and recaptured for later use.

4. DETAILED OUTLINE OF WHAT HAS BEEN DONE TOWARD COMPLETION OR FOR COMPLETION OF THE APPROPRIATIONS AND APPLICATION OF WATER TO A BENEFICIAL USE AS CONDITIONALLY DECREED.

Pursuant to the Original Decree, these exchanges are part of a unified extensive system for the collection, treatment and distribution of water operated by Aurora. For the purposes of showing diligence as to completion of the appropriative rights of exchange decreed in the Original Decree, diligence as to any part of the Aurora water rights system used to operate or benefitting from these exchanges shall be diligence as to the completion of the exchanges. Project Specific Efforts: During the diligence period of April 2018 through February 2025, Aurora has done at least the following work toward completion of the appropriation and application of the water rights decreed in the Original Decree (expenditure numbers are rounded to the nearest \$1,000). Payment for purchase and lease of Rocky Ford Ditch shares. Aurora spent more than \$584,000 during this diligence period for repayment of bonds, including principal and interest, that were issued or refunded for purchase of original Rocky Ford Ditch shares changed in Case No.

83CW18, that are a reusable source for the exchanges herein. Revegetation: Aurora has expended at least \$1,479,000 during this diligence period for revegetation, including expenditures for expert revegetation classifications and reports, actual revegetation and weed control costs, as well as farm equipment purchases, office overhead and personnel costs, under Case No. 83CW18. Aurora also expended an additional \$1,413,000 for revegetation and continued farming of historically irrigated lands pursuant to the decree in Case No. 99CW169(A). Payments to Otero County: Aurora and Otero County entered into an Intergovernmental Agreement on February 22, 1994, and amended that Agreement on October 29, 2001, under which Amendment Aurora agreed to make annual payments to Otero County concerning the Rocky Ford Ditch shares that are a reusable source for the exchanges herein. During this diligence period, Aurora made payments in excess of \$378,000 pursuant to the Agreement. Pueblo Reservoir Storage: During the diligence period, Aurora paid the Bureau of Reclamation more than \$6,858,000 for use of Pueblo Reservoir in the storage and exchange of Arkansas River Basin water upstream for transport and use by Aurora in the South Platte Basin. Intergovernmental Agreement with SECWCD. On October 3, 2003, Aurora entered into an Intergovernmental Agreement with the Southeastern Colorado Water Conservancy District ("SECWCD"), replacing an agreement between the parties dated December 7, 2001. Aurora's use of Fryingpan-Arkansas facilities for certain water rights is discussed under this IGA. During the diligence period, Aurora made payments of more than \$1,295,000 to SECWCD under this IGA. Arkansas River Basin: Aurora made the following diligent efforts with regard to maintaining and enlarging its water supply system components in the Arkansas River Basin which are necessary for continuation and transport of its reusable supplies from the Arkansas River Basin. Agreements for Use of the Holbrook Reservoir System Facilities: On March 1, 2005, Aurora entered into two agreements pertaining to the use of the diversion, conveyance and storage facilities of the Holbrook Mutual Irrigating Company ("Holbrook"). These agreements implement a program to recapture and store yield from foregone diversions of senior water rights. During this diligence period, Aurora made payments of approximately \$563,000 to Holbrook under this agreement. Aurora and Holbrook extended the storage Agreement on February 6, 2025 for an additional 5-year term. Recovery of Yield ("ROY"): On August 17, 2016, Aurora, along with Colorado Springs, the Pueblo Board of Water Works, the City of Fountain, and the Southeastern Colorado Water Conservancy District, obtained a decree in Case No. 06CW120 adjudicating exchanges necessary as a result of the 2004 Regional Intergovernmental Agreement ("IGA") between the various water providers and the City of Pueblo, whereby the water providers agreed to allow certain of their senior flows to pass through Pueblo's RICD reaches on the condition those flows could be removed downstream and exchanged back upstream. This case lays the foundation for those exchanges. Aurora expended significant sums on these efforts during the diligence period. The ROY partners have acquired land to prospectively be used as a reservoir site at a cost of \$1,160,000 to Aurora. Other Arkansas Diligence Activities: Intergovernmental Agreement with LAVWCD: Pursuant to an Intergovernmental Agreement with the Lower Arkansas Valley Water Conservation District ("LAVWCD"), Aurora paid approximately \$750,000 to LAVWCD for the identification and implementation of infrastructure improvements, research, and investigations designed to assist in the permitting or implementation of water leasing programs in the Lower Arkansas Valley, as well as remediation and

restoration efforts in the Fountain Creek Corridor. Systemwide Efforts: During the diligence period, Aurora has accomplished at least the following systemwide efforts that will be used to operate or benefit the conditional rights (expenditure numbers are rounded to the nearest \$1,000). South Platte River Basin: Aurora made the following diligent efforts with regard to its water supply system components in the South Platte River Basin which are necessary for continuation of its reusable supplies from the South Platte River Basin. Metro Wastewater Reclamation District Charges: Aurora expended at least \$230,105,000 during this diligence period for fees for wastewater treatment of its water at the Metro Wastewater Reclamation facility. Such treatment is necessary for release of this water into the South Platte River Basin as a replacement source under exchanges herein. Sand Creek Water Reuse Plant Improvements: Aurora operates this 5-million-gallon per day facility that provides treated water used for irrigation throughout the City and for discharge into Sand Creek for use as a replacement source for the exchanges herein. Improvements of this facility and operating costs completed during this diligence period cost at least \$23,627,000. These improvements are necessary for use of this water as a substitute supply under the rights decreed herein. Quantification and Determination of Lawn Irrigation Return Flows: Aurora obtained a decree in Case No. 02CW341, Water Division 1, on September 25, 2008, quantifying LIRFs from its municipal system (and subsequent requantifications as required by the Decree in 02CW341), generated as a result of use of transmountain water rights, fully consumable in-basin water rights, decreed and permitted non-tributary sources and any other fully consumable water available to Aurora. During this diligence period, Aurora has expended over \$62,000 in engineering costs requantifying the LIRFs adjudicated in Case No. 02CW341 available for exchange. Spinney Mountain Reservoir: Aurora expended substantial sums for facility upgrades during the diligence period, including internal outlet works inspections, applications of protective coatings on outlet pipes, assessment, design and extension of the storm drainage systems below the dam, installation of filter trench drains, measurement devices, and installation of heater jackets over valve operators. Griswold Water Treatment Plant Renovations. This facility treats a portion of the raw water that is a replacement source herein before it is delivered to Aurora's customers. More than \$76,538,000 was spent by Aurora during this diligence period for improvements to this facility. This includes expenditures directly by Aurora for renovation of the facility. Wemlinger Water Treatment Plant Improvements. During this diligence period, Aurora spent more than \$40,398,000 for improvements to the Wemlinger Water Treatment Plant. This facility treats a portion of the raw water that is a replacement source herein before it is delivered to Aurora's customers. Rampart Reservoir Improvement. More than \$20,611,000 was spent by Aurora during this diligence period for improvements to the Rampart Reservoir delivery system, including improvements to the 54" raw water transmission pipeline between Rampart Reservoir and storage and water treatment facilities within the city. Rampart Reservoir is used to store the water that has been exchanged from the Arkansas and Colorado River Basins and transported to the South Platte River before it is transported through the parallel 54" and 40" pipelines to Aurora. Rampart Reservoir is important for regulation of the flow through these parallel pipelines. Improvements to Extend or Improve Water Service in and to Aurora: More than \$123,494,000 was spent by Aurora during this diligence period for extension and upgrade of its water transmission and distribution system necessary to deliver the water that is the

subject of the exchange herein to Aurora's customers. **Prairie Waters Project:** The Prairie Waters Project is a large comprehensive water recapture, supply, storage and treatment project which in part recovers reusable return flows from Aurora's water sources from the South Platte River. To facilitate this project Aurora obtained various decrees in Case Nos. 06CW104, 03CW414, and 03CW415, Water Division 1. This project allows further reuse of much of the water decreed to Aurora. Reuse water recovered by this project is one of the sources at Aurora's water treatment plants for replacement under the operations at issue here. During the diligence period, Aurora obtained a decree in Case No. 20CW3058, WD-1, finding reasonable diligence for the water rights decreed conditionally in 03CW414 (decreed April 22, 2014) and 13CW3088 (decreed 11/4/2020), Aurora obtained a decree in Case No. 21CW3028, WD-1, (decreed 12/09/2021) finding reasonable diligence for the water rights decreed conditionally in 03CW415 (decreed March 2, 2015) and in 14CW3065, and Aurora filed an application in Case No. 23CW3175 seeking to make absolute portions of the rights decreed conditionally in Case No. 06CW104, and 15CW3064, WD-1, and seeking a finding of reasonable diligence on the remainder. Aurora has expended at least \$28,259,000 on elements of the Prairie Waters Project during this diligence period. **Automated Meter Reading System:** Aurora spent more than \$18,729,000 during this diligence period for upgrades to its automated utility reading system. **South Platte Exchange:** On June 24, 2020, Aurora obtained a decree in Case No. 19CW3185, Water Division 1, granting a finding of reasonable diligence and making absolute portions of conditional exchange rights originally decreed in 79CW375 and decreed as to diligence and partially absolute in Case Nos. 89CW078, 98CW294 and 08CW253. These water rights allow Aurora to exchange certain reusable water from the confluence of Tarryall Creek and the South Platte River to Spinney Mountain Reservoir. **Binney Water Purification Facility:** This state-of-the-art water purification and recycling plant owned and operated by Aurora treats water for use throughout the city. Over \$17,148,000 was spent by Aurora during the diligence period for improvements to this facility. **Colorado River Basin:** Aurora made the following diligent efforts with regard to its water supply system components in the Colorado River Basin that are necessary for continuation of its reusable supplies from the Colorado River Basin. Aurora has continued to pursue development of a joint project or projects as contemplated in a 1998 Memorandum of Understanding with Vail Associates, Upper Eagle River Regional Water Authority, Eagle River Water and Sanitation District, Cypress Climax Mining Company and the Colorado River Water Conservation District. On June 21, 2004, the City of Aurora entered into an additional Water Exchange Agreement with the Eagle Park Reservoir Company, the Colorado River Water Conservation District, the Eagle River Water and Sanitation District, the Upper Eagle Regional Water Authority, and Vail Associates, Inc. to supplement a 1998 Water Exchange Agreement. This agreement affects operations of the Homestake water rights and deliveries of reusable water to Aurora for use in the exchanges herein. On January 5, 2010, the City of Aurora entered into a Consolidated Water Exchange Agreement to supplement, merge and consolidate the 1998 and 2004 agreements. Aurora seeks to further maximize the operations of the Homestake water rights with these projects. A diligence application was filed by the parties to the agreements in regard to the subject exchange rights in 2023. **Homestake Project:** During this diligence period, work was done on the Homestake Arkansas River Diversion Channel to reduce erosion, including riprap and installation of a new roadway culvert.

Additionally, Homestake Reservoir underwent resurfacing and improvement. Once water is transported over the Continental Divide through the Otero Pump Station and Homestake Pipeline, it is then transported to Spinney Mountain Reservoir in the South Platte Basin. During this diligence period, Aurora prosecuted Case No. 2023CW3031, 2020CW3024 and 23CW3087 in Water Division 5 through the Homestake Partners, comprising the City of Aurora and the City of Colorado Springs Utility. These water court matters seek a decree confirming diligence and continuing in effect the conditional water rights originally decreed in Case No. 98-CW-270, which comprise part of the Homestake Project. On March 31, 2017, Aurora and the City of Colorado Springs jointly filed Case No. 17CW3064 seeking diligence on the Homestake Project exchanges originally decreed in Case No. 95CW272(A), Water Division 5. During this diligence period a decree was entered by the court on June 10, 2018. During this diligence period, Aurora executed a Recovery Agreement (3-27-20) with the United States and Wildlife Service regarding the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (Recovery Program). The purpose of the Recovery Agreement is to formalize Aurora's participation in the Recovery Program, provide certainty that Aurora's Colorado River depletions can occur consistent with the Endangered Species Act, and provide that Aurora will take reasonable actions to support implementation for the Recovery Elements specified in the 1999 Programmatic Biological Opinion. During the previous diligence period, the Upper Colorado River Endangered Fish Recovery Program, Recovery Implementation Program and Recovery Action Plan Participation Agreement (11-01-13) was executed with Northern Colorado Water Conservancy District, and a Ruedi Insurance Water Cost Participation Agreement (11-01-13) with the City and County of Denver. Through implementation of these agreements, the east slope water users' commitment for 5412.5 acre-feet of water annually to the Recovery Program is being met. Aurora has and continues to provide its annual prorata share of operation and maintenance costs associated with these agreements. In addition, Aurora participates and annually contributes to the Colorado Water Congress Colorado River Project for collaboration and support of the Recovery Program by the water users in Colorado, Utah, and Wyoming. Non-Basin Specific: Protection Efforts: During this diligence period, Aurora spent more than \$5,000,000 on legal services for participation in Water Divisions 1, 2 and 5 cases to protect the rights and interests of Aurora with regard to its water supply system and prosecution of changes of water rights to integrate acquired water rights into Aurora's municipal water rights portfolio. Aurora reserves the right to identify additional relevant efforts that may be later discovered or to make upward adjustments to amounts expended on certain projects. Aurora has an extensive water rights portfolio, an extensive and complex water supply, collection, treatment and reuse system, and an extensive number of agreements, contracts, leases, etc. related to its facilities and the use, reuse and storage of its water rights. It is involved in many legal actions related to the collection, treatment, reuse and protection of its water rights. Further, the management, protection, and operation of the water rights and the facilities system involve numerous City of Aurora departments and staff members throughout the state. Aurora made diligent efforts with regard to this application to determine and quantify all efforts made by the City toward completion of the appropriations and application of the water rights decreed in the Original Decree to beneficial use. However, it is reasonably possible that relevant efforts or expenditures

may have been overlooked or need further upward adjustment. **5. CONDITIONAL APPROPRIATIVE RIGHTS OF EXCHANGE FOR WHICH DILIGENCE IS CLAIMED:** Applicant respectfully requests a finding of reasonable diligence for those parts of the originally decreed conditional rights described above in paragraph 4 that have not previously been made absolute. **6. NAMES AND ADDRESSES OF 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.** Structure Box Creek Reservoir Owner The Reservoir is proposed to be built on Hallenbeck Ranch lands, owned by the City of Aurora. Depending on the final reservoir configuration and location, it may also inundate lands owned by the U.S. Forest Service, the State of Colorado, and additional private entities. Address City of Aurora, 15151 East Alameda Parkway, Suite 3600, Aurora, CO 80012-1555 Address Bureau of Land Management, U.S. Dept of Interior, 3028 East Main Street, Canon City, CO 81212 Address U.S. Forest Service, P.O. Box 970, Leadville, CO 80461 Address State of Colorado, 1313 Sherman Street, Rm 618, Denver, CO 80203 Address Joseph and Christine Louth, 13538 Ducat Court, Corpus Christi, TX 78418 Structure Arkansas River Intake for Box Creek Reservoir Owner City of Aurora Address City of Aurora, 15151 East Alameda Parkway, Suite 3600, Aurora, CO 80012-1555 Owner State of Colorado Address State of Colorado, Division of Parks and Wildlife, 1313 Sherman Street, Denver, CO 80203 Structure Upper River Ditch headgate Owner State of Colorado Address 1313 Sherman Street, Suite 620, Denver, CO 80203 Structure Derry Ditch No. 1 headgate Owner Colorado State Land Board Address 1127 Sherman Street, Denver, CO 80203 Structure AGPR Owner Martin Marietta Materials Inc, c/o Baden Tax Management Address PO Box 8040, Ft. Wayne, IN 46898 Owner Martin Marietta Materials Real Estate Investments, Inc. Address 1627 Cole Boulevard, Ste. 200, Lakewood, CO 80401 Owner Preferred Materials, Inc. Address 4636 Scarborough Drive, Lutz, FL 33559 Owner Triview Metropolitan District Address 16055 Old Forest Point, Ste. 302, Monument, CO 80132 Owner Colorado Interstate Gas Co. Address PO Box 4372, Houston, TX 77210 Owner Kirkland Property Holdings, LLC Address PO Box 580, Rye, CO 81069 WHEREFORE, Applicant respectfully requests that the Court find diligence in the development of those portions of the appropriative rights not made absolute and continue the conditional decree for said structures and remaining conditional amounts for the statutory period and provide any other relief it finds just and appropriate in these circumstances.

CASE NO. 2025CW3007; The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2.

CASE NO. 2025CW3008; CRIPPLE CREEK & VICTOR GOLD MINING COMPANY ("CC&V"), c/o Katie Blake, Sustainability & External Relations Manager, 100 North 3rd Street, Victor, CO 80860 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Gabe Raczy, Esq., Clark Hill PLC, 2595 Canyon Blvd, Suite 400, Boulder, CO 80302 (303-301-2925) and Alexandra Timbas, Esq., Clark Hill PLC, 1400 Wewatta St., Suite 550, Denver, CO 80202 (303-943-9278)
Application for Approval of Plan for Augmentation

TELLER COUNTY

2. Names of Structures to be augmented: GVMW-27, GVMW-25, GVMW-28, GVMW-34, GVMW-35B, GVMW-33, and GVMW-36 (collectively, the “Well Field”). A. Location of structures: 1. Public Land Survey System (PLSS): GVMW-27: SE1/4 of the SW1/4 Section 16 Township 15S Range 69W of the 6th Principal Meridian, Teller County. GVMW-25: SE1/4 of the SW1/4 Section 16 Township 15S Range 69W of the 6th Principal Meridian, Teller County. GVMW-28: SW1/4 of the SW1/4 Section 16 Township 15S Range 69W of the 6th Principal Meridian, Teller County. GVMW-34: NE1/4 of the SE1/4 Section 17 Township 15S Range 69W of the 6th Principal Meridian, Teller County. GVMW-35B: NE1/4 of the SE1/4 Section 17 Township 15S Range 69W of the 6th Principal Meridian, Teller County. GVMW-33: SW1/4 of the SW1/4 Section 16 Township 15S Range 69W of the 6th Principal Meridian, Teller County. GVMW-36: SW1/4 of the NE1/4 Section 17 Township 15S Range 69W of the 6th Principal Meridian, Teller County. 2. UTM Coordinates. GVMW-27: Easting 489423 Northing 4288065, Zone 13, Street Address: N/A, Source of UTMs: Trimble R10 GNSS System. Accuracy of location displayed on GPS device: Accuracy to within 1 meter. GVMW-25: Easting 489606 Northing 4287965, Street Address: N/A, Source of UTMs: Trimble R10 GNSS System. Accuracy of location displayed on GPS device: Accuracy to within 1 meter. GVMW-28: Easting 489311 Northing 4288176, Zone 13, Street Address: N/A, Source of UTMs: Trimble R10 GNSS System. Accuracy of location displayed on GPS device: Accuracy to within 1 meter. GVMW-34: Easting 488773 Northing 4288720, Zone 13, Street Address: N/A, Source of UTMs: Trimble R10 GNSS System. Accuracy of location displayed on GPS device: Accuracy to within 1 meter. GVMW-35B: Easting 488660 Northing 4288754, Zone 13, Street Address: N/A, Source of UTMs: Trimble R10 GNSS System. Accuracy of location displayed on GPS device: Accuracy to within 1 meter. GVMW-33: Easting 489310 Northing 4288054, Zone 13, Street Address: N/A, Source of UTMs: Trimble R10 GNSS System. Accuracy of location displayed on GPS device: Accuracy to within 1 meter. GVMW-36: Easting 488382 Northing 4288887, Zone 13, Street Address: N/A, Source of UTMs: Trimble R10 GNSS System. Accuracy of location displayed on GPS device: Accuracy to within 1 meter. The locations of structures are marked on a USGS topographic map and attached to application as **Exhibit A**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

3. Water right(s) to be used for augmentation: A. City of Victor’s Altman Company Water Rights (Glendale Ditch, Callen Ditch, Upper & Lower Altman Pipelines, Upper Altman Reservoir, Middle Altman Reservoir, and Lower Altman Reservoir). 1. Original and all relevant subsequent decrees: February 3, 1894, District Court for the 11th Judicial District; February 14, 1916, District Court, Fremont County District Court Case No. CA2637. Colorado Springs Utilities: June 16, 1987. 2. Type of water right: surface and storage water rights. 3. Legal description of each point or diversion storage structure: In the NE 1/4 of the NW 1/4 of Sec. 15, Tp. 15S, R. 69W, 6th P.M. Provide a verbatim legal description of each structure from the most recent decree that adjudicated the location. The location of the Altman Pump Station is marked on a USGS topographic map and attached to this application within as **Exhibit A**. 4. Source of water: City of Victor’s Altman Company: West Beaver Creek. 5. Appropriation Dates, Adjudication Dates, and decreed amounts:

A.	Appropriation Date	Adjudication Date	Amount
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Glendale Ditch	4-15-1861	2-03-1894	1.0 cfs ¹
Callen Ditch	5-30-1861	2-03-1894	
Upper & Lower	9-24-1893	2-14-1916	1.0 cfs
Upper Reservoir	9-24-1893	2-14-1916	7.97 ac-ft
Middle Reservoir	9-24-1893	2-14-1916	1.53 ac-ft
Lower Reservoir	9-24-1893	2-14-1916	12.28 ac-ft

¹The City of Victor owns 0.296 cfs in the Glendale Ditch and 0.92 cfs in the Callen Ditch. In Case No. 2637, the diversions under the two water rights are limited to a total of 1.0 cfs. 6. Decreed uses: Case No. 2637, "domestic, manufacturing, municipal, mining, sprinkling, fire protection, power, and household purposes, and other kindred beneficial uses." B. Colorado Springs Utilities fully consumable sewered and non-sewered return flows. CC&V has an agreement with Colorado Springs Utilities for lease of up to 300 acre-feet per year of fully consumable raw water. a. Decrees: 84CW203, District Court for Water Division No. 2, Colorado, June 16, 1987; 86CW118, 89CW36, July 17, 1991. Modified Decree entered January 8, 1998. b. Type of water right: Sewered and non-sewered fully consumable return flows. c. Legal description of each point or diversion storage structure: Colorado Springs Pikes Peak Collection System – South Slope: i. Big Horn Reservoir, located on the East Fork of West Beaver Creek in the Southeast quarter of Section 13 and the Northeast quarter of Section 24, Township 14 South, Range 69 West of the 6th PM. A point located at the intersection of the creek and the dam axis bears South 19° West 2896 feet to a point, thence South 66° West 1590 feet to the Northwest corner of Section 26, Township 14 South, Range 69 West of the 6th PM. ii. Wilson Reservoir, located on the East Fork of West Beaver Creek in the Southeast quarter and the Southeast quarter of the Northeast quarter of Section 23, the West half of the Southwest quarter and the Southwest quarter of the Northwest quarter of Section 24, Township 14 South, Range 69 West of the 6th PM Station 65 near the dam bears South 53° East a distance of 19,280 feet to the Southeast corner of Section 32, Township 14 South, Range 68 West of the 6th PM. iii. Boehmer Reservoir, located on the Main Fork of Middle Beaver (Boehmer) Creek in the South half of Section 19 and the North half of Section 30, Township 14 South, Range 68 West of the 6th PM. iv. Mason Reservoir, located on Middle Beaver Creek in Sections 32 and 33 of Township 14 South, Range 68 West of the 6th PM, and Sections 4 and 5 of Township 15 South, Range 68 West of the 6th PM in Teller County. Station 0 of the dam bears North 6°49' West a distance of 950.62 feet to the Southeast Corner of Section 32, Township 14 South, Range 68 West of the 6th PM. v. McReynolds Reservoir, located on a tributary of Middle Beaver Creek in Section 4, Township 15 South, Range 68 West of the 6th PM in Teller County. Station 0 of the dam bears North 34°35' West a distance of 2,166.2 feet to the Southeast corner of Section 32, Township 14 South, Range 69 West of the 6th PM. d. Source of Water: Sewered and non-sewered fully consumable return flows exchanged to Colorado Springs's Pikes Peak Collection System – South Slope. e. Appropriation Dates: 84CW203: November 24, 1981; 86CW118, March 20, 1985; 89CW36, N/A. f. Decreed uses: Municipal uses, including irrigation and some industrial uses, use in plans for augmentation, use by sale to other water users or in such other ways as may be allowed by law. **4. Does the Applicant intend to change a water right to provide a source of augmentation?** No. **5. Complete statement of plan for augmentation.** A. CC&V has constructed shallow monitoring wells in Grassy Valley, near Grassy Creek and Beaver Creek. Pursuant to agreement with the Division of Reclamation, Mining, and Safety, CC&V will pump water

from the monitoring wells to capture seepage from the East Cresson Overburden Storage Area at the Cresson Project Mine. The attached figures show the locations of the subject wells, collectively referred to herein as the "Well Field." The wells are currently permitted as monitoring wells, but CC&V will apply for new well permits to allow mining use of water under the augmentation plan. CC&V is proposing to pump water from the Well Field on a daily basis to withdraw the water, temporarily store the water in above-ground tanks, and then deliver this water by truck or pipeline to other Cresson Project facilities for fully consumptive mining use. As a result of water being pumped at the Well Field, out-of-priority lagged depletions associated with such well pumping will occur to Grassy Creek and must be fully replaced. CC&V may add additional wells in Grassy Valley to the Well Field, with a cumulative annual withdrawal from all wells expected to be less than 20 acre-feet. CC&V proposes to provide replacement water for these depletions at the appropriate time, location, and amount. Sources of replacement available under the plan will include the City of Victor's Altman Company (Altman) water rights, available for use by CC&V under a water lease agreement; and from Colorado Springs Utilities (CS-U), which are available to CC&V under a water lease agreement. Replacement water will be provided from Grassy Creek Augmentation Station and from Altman Pump Station/Augmentation Station, both of which can be used to release Altman and CS-U fully consumable water. In addition, water from CS-U is delivered by pipeline to CC&V's mining water system, including to the Altman and Grassy Creek augmentation stations. The CS-U water is deliverable during summer, but such water can also be stored in City of Victor reservoirs (Bison Reservoir and Reservoir No. 2) for delivery on an as-needed basis throughout the year. Please refer to the USGS topographic map, attached as Exhibit A. Diversion records of the Altman water rights are attached as Exhibit B. B. Does the plan for augmentation include an exchange that the Applicant desires to adjudicate? No. **6. 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, no new diversion structures will be constructed other than on land owned by CC&V. No existing diversion structures will be modified.

CASE NO. 2025CW3009; Previous Case No. 18CW3008 – CITY OF SALIDA, C/O David Lady, Director of Public Works, 448 E. First Street, Suite 112, Salida, Colorado 81201 (Please address all pleadings and inquiries regarding this matter to

Applicant's attorneys: Jennifer M. DiLalla, Evan R. Weis, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Blvd., Suite 240, Boulder, CO 80302 (303-443-8782)

Application for Finding of Reasonable Diligence and to make Partially Absolute

CHAFFEE COUNTY

2. Golf Course Ponds: 2.1 Original decree: March 14, 2019, Case No. 18CW3008, District Court, Water Division No. 2. 2.2 Description of storage structures: The Golf Course Ponds originally comprised eight unlined, excavated ponds, each approximately two feet deep. The Golf Course Ponds do not expose groundwater, are not dammed, and are not designed to release water except by seepage and evaporation. Pond 2 has been converted to a grass bunker and is abandoned by this Application. 2.3 Location: A map showing the general location of the Golf Course Ponds is attached to application as

Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) A map showing the location of the Golf Course Ponds in greater detail is attached as **Exhibit B.** All UTM coordinates in this Application are NAD 83, Zone 13. 2.3.1 Street address: 404 N. Grant Street, Salida, CO 81201. 2.3.2 PLSS: The Golf Course Ponds are located in the E 1/2 of the SE 1/4 of Section 31, Township 50 North, Range 9 East of the New Mexico P.M. 2.3.3 Approximate UTM coordinates of Golf Course Pond centroids (all NAD 83, Zone 13): 2.3.3.1 Pond 1 (WDID 1103382): 411990 E, 4266131 N. 2.3.3.2 Pond 2: Abandoned; converted to grass bunker. 2.3.3.3 Pond 3 (WDID 1103384): 411926 E, 4265918 N. 2.3.3.4 Pond 4 (WDID 1103385): 412087 E, 4265887 N. 2.3.3.5 Pond 5 (WDID 1103386): 412116 E, 4265875 N. 2.3.3.6 Pond 6 (WDID 1103387): 412123 E, 4265864 N. 2.3.3.7 Pond 7 (WDID 1103388): 411953 E, 4265714 N. 2.3.3.8 Pond 8 (WDID 1103389): 411935 E, 4266312 N. 3. Source: South Arkansas River, tributary to the Arkansas River. 4. Point of diversion: The Golf Course Ponds are filled from the Briscoe Ditch, the headgate of which is located on the North bank of the South Arkansas River at a point whence the NW corner of Section 12, Township 49 North, Range 8 East of the New Mexico P.M. bears North 15° 39' West a distance of 550 feet, and being approximately 147 feet East of the West line and 530 feet South of the North line of said Section 12, and lying in the NW 1/4 of the NW 1/4 of said Section 12, as shown on **Exhibit A.** The UTM coordinates of the Briscoe Ditch headgate are 409006 E, 4263830 N. 5. Appropriation date: February 6, 2018. 6. Amount: 6.1 Storage volume: 2.4 acre-feet with the right to refill as needed to replace evaporation and seepage losses, up to a total volume of 10 acre-feet per year, cumulative for all eight Golf Course Ponds, CONDITIONAL. 6.2 Diversion rate: 2.8 c.f.s., CONDITIONAL. 7. Uses: Use, reuse, and successive use to extinction for the purposes described in paragraphs 7.1 and 7.2 below: 7.1 Use within Golf Course Ponds: Recreational, aesthetic, wildlife, and seepage and evaporation replacement purposes. 7.2 Use of return flows accruing to Arkansas River system from carriage in the Briscoe Ditch and storage in the Golf Course Ponds: Augmentation within Salida's plan for augmentation decreed in Case No. 84CW158 and amended in Case Nos. 04CW125 and 18CW3008. 8. Surface area at high water line: When completely full, the Golf Course Ponds have a combined surface area of 1.11 acres. The surface area of each pond is as follows: 8.1 Pond 1: 0.65 acres. 8.2 Pond 2: Abandoned; converted to grass bunker. 8.3 Pond 3: 0.03 acres. 8.4 Pond 4: 0.16 acres. 8.5 Pond 5: 0.01 acres. 8.6 Pond 6: 0.04 acres. 8.7 Pond 7: 0.15 acres. 8.8 Pond 8: 0.07 acres. 9. Total capacity: The Golf Course Ponds have a combined storage capacity of 2.26 acre-feet, with 0 acre-feet of active storage. The storage capacity of each pond is as follows: 9.1 Pond 1: 1.30 acre-feet. 9.2 Pond 2: Abandoned; converted to grass bunker. 9.3 Pond 3: 0.05 acre-feet. 9.4 Pond 4: 0.33 acre-feet. 9.5 Pond 5: 0.02 acre-feet. 9.6 Pond 6: 0.09 acre-feet. 9.7 Pond 7: 0.30 acre-feet. 9.8 Pond 8: 0.13 acre-feet. 10. Outline of work and expenditures during the diligence period towards completion of the appropriation and application of water to beneficial use: The diligence period for the Golf Course Ponds is March 2019 through March 2025 ("Diligence Period"). During the Diligence Period, Salida worked diligently to develop the conditional water right, complete the appropriation, and place the water to beneficial use, as demonstrated by the following activities and expenditures: 10.1 Salida leased the Golf Course Ponds water right to the Greater Salida Recreation Corporation for beneficial use at the Golf Course. 10.2 The

Greater Salida Recreation Corporation operated and maintained the Golf Course, including the Golf Course Ponds. 10.3 The Greater Salida Recreation Corporation filled the ponds for their decreed beneficial uses, as described in paragraph 11 below. 10.4 The Greater Salida Recreation Corporation removed Pond 2 from the Golf Course, converting that area to a grass bunker. 10.5 Salida spent approximately \$22,368 in engineering consulting fees related to accounting for Salida's operation of Salida's augmentation plan and its water rights, including without limitation the Golf Course Ponds. 10.6 Salida spent approximately \$69,022 in legal fees related to development and protection of Salida's water rights, including without limitation the Golf Course Ponds. **11. Claim to make absolute:** 11.1 Statutory requirement: Section 37-92-301(4)(e), C.R.S., provides that "a decreed conditional water storage right shall be made absolute for all decreed purposes to the extent of the volume of the appropriation that has been captured, possessed, and controlled at the decreed storage structure." Accordingly, the claim to make absolute for all decreed uses is based on Salida's in-priority diversion of water to storage on the specified dates, as documented in the report from Hendrix Wai Engineering, Inc., attached as **Exhibit C** ("HWE Report"). 11.2 Dates water stored: April 5, 2018 – July 11, 2018. 11.3 Fill rate made absolute: 2.13 c.f.s. 11.4 Storage volume made absolute: 9.86 acre-feet (10.0 acre-feet, reduced by the abandoned 0.14 are-feet associated with Pond 2, as described in paragraph 12 below). 11.5 Use: All beneficial uses described in paragraph 7 above. 11.6 Evidence in support of claim to make absolute: The HWE Report; see *also* Colo. Div. Water Res. Written Instruction 2020-01 – DWR Position on Making Water Rights Diverted Out of Priority Absolute (July 21, 2020). **12. Abandonment of storage volume associated with Pond 2:** Salida hereby abandons the 0.14 acre-feet associated with Pond 2, leaving a total of 9.86 acre-feet per year decreed to the Golf Course Ponds. **13. Names and addresses of 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:** Salida. Based on the foregoing, Salida requests that the Court enter a decree (i) granting this Application; (ii) finding that Salida has exercised reasonable diligence in developing the appropriation of the Golf Course Ponds during the Diligence Period; (iii) making the Golf Course Ponds partially absolute in the amounts and for the uses claimed in paragraph 11 above; (iv) abandoning 0.14 acre-feet per year associated with Pond 2; and (v) continuing in full force and effect for an additional diligence period any portions of the Golf Course Ponds that are not made absolute in this case.

CASE NO. 2025CW3010; Previous Case Nos. Chaffee County District Court Case No. 5141, W-958, W-958(76), 80CW27, 81CW2, 84CW43, 88CW27, 94CW61, 01CW113, 18CW3053 – CITY OF COLORADO SPRINGS COLORADO SPRINGS UTILITIES, C/O Kim Gortz, 1521 Hancock Expressway, Mail Code 1825, Colorado Springs, CO 80903 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Michael J. Gustafson, Senior Attorney, Nathan Endersbee, Senior Attorney, City Attorney's Office-Utilities Division 30 South Nevada Ave., MC 510 Colorado Springs, CO 80903 (719-385-5909)

Second Amended Application for a Finding of Reasonable Diligence
LAKE COUNTY

2. Summary of Application: This is a Second Amended Application for a Sexennial Finding of Reasonable Diligence for the conditional storage rights of the City of Colorado Springs, acting by and through its enterprise, Colorado Springs Utilities ("Applicant") which were originally decreed by the District Court of Chafee County, Colorado on July 9, 1969 in Case No. 5141 and known as the Upper Sugar Loaf Reservoir and Sugar Loaf Reservoir Enlargement and Amendment, (collectively the "Subject Storage Rights"). Applicant requests a finding that Applicant has exercised reasonable diligence in the development of the Subject Storage Rights.

3. Names of Structures and Description of Conditional Water Rights.

A. Upper Sugar Loaf Reservoir, Priority No. A-28(C) I. Original Decree: July 9, 1969, Case No. 5141, District Court of Chafee County Colorado. II. Subsequent decrees awarding diligence: Diligence decrees were entered in Case Nos. 81CW2, 84CW43, 88CW27, 94CW61, 01CW113, and 18CW3053. III. Legal Description: The Decree in Case No. 5141 specifies the place of storage to be the channel of the Lake Fork of the Arkansas River, Sections 11, 12, 13 and 14, Township 9 South, Range 81 West of the Sixth Principal Meridian, Lake County, Colorado, the North end of said dam being located at a point whence the Northeast Corner of Section 13 of Township 9 South, bears North 66° 05' East, 2860 feet. IV. Appropriation Date: July 2, 1892. V. Source: Lake Fork of the Arkansas River. VI. Amount: 3,120 acre feet, conditional. VII. Decreed Use: Irrigation, fish propagation, and other beneficial purposes.

B. Sugar Loaf Reservoir Enlargement and Amendment, Priority No. A-55(C) I. Original Decree: July 9, 1969, Case No. 5141, District Court of Chafee County Colorado. II. Subsequent decrees awarding diligence: Diligence decrees were entered in Case Nos. 81CW2, 84CW43, 88CW27, 94CW61, 01CW113, and 18CW3053. III. Legal Description: The Decree in Case No. 5141 specifies that the place of storage to be the channel of the Lake Fork of the Arkansas River, Water District No. 11, Irrigation Division No. 2, State of Colorado, situated in the Northeast Quarter of Section 19, Township 9 South, Range 80 West of the Sixth Principal Meridian, Lake County, Colorado. By Decree entered in Case No. W-3994 of the District Court in and for Water Division 2 on August 22, 1975, a change in place of storage, and means and location of diversion was awarded with respect to the Sugar Loaf Reservoir Enlargement and Amendment to the effect that "the net amount of water to which applicant is entitled will be stored directly in Pueblo Reservoir, in Sugar Loaf Reservoir or Twin Lakes Reservoir, the latter two by exchange, or diverted through the Minnequa Canal, or any combination thereof." IV. Appropriation Date/Source/Amount: a. May 1, 1902, Lake Fork of the Arkansas River – 10,238 Acre Feet, April 27, 1931, Lake Tennessee Fork and the East Fork of the Arkansas River – 10,238 acre feet, the rate of fill being 200 c.f.s. by way of the Tennessee Fork Feeder Canal and 200 c.f.s. by way of the East Fork Feeder Canal, which unite in what is designated as the Tennessee Fork Canal with a combined total of 400 c.f.s. b. In Case No. 81CW2 (W-31) the District Court in and for Water Division 2, decreed that 3,900 acre feet be made absolute and that 150 c.f.s. out of the East Fork Feeder Canal and 150 c.f.s. out of the Tennessee Fork Feeder Canal with a combined total of 300 c.f.s. through the Tennessee Fork Canal be made absolute, leaving a balance of 6,338 acre feet conditional with 50 c.f.s. out of the East Fork Feeder Canal, and 50 c.f.s. out of the Tennessee Fork Feeder Canal with a combined total of 100 c.f.s. out of the Tennessee Fork Canal conditional. No additional portions of the conditional water rights have been made absolute since the Decree was entered in Case No. 81CW2 (W-31). V. Decreed Use: Irrigation, domestic, municipal and

other beneficial purposes. C. WDID and UTMs: The WDID and UTM for the Subject Storage Rights are as follows: Sugar Loaf Reservoir (Turquoise Reservoir): WDID 1103500; UTM (NAD83)(GPS): Easting: 381722.0, Northing: 43456690. D. A map depicting the approximate location of the Subject Storage Rights is attached to application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 4. **Diligence**: Applicant seeks a finding of reasonable diligence for the full amount of all conditional portions of the Subject Storage Rights as set forth in the Decree. A. Integrated System. Applicant owns and operates an integrated system for water diversions, transmission, storage, treatment, and distribution, as well as collection and treatment of the resultant wastewater for release, exchange, and reuse. The conditional storage rights described herein are a part of this integrated water system comprising all water rights decreed and used for development and operation of the City of Colorado Springs' municipal water supply system which also comprises and includes other absolute and conditional water rights, and collection, storage, and diversion and delivery systems including, but not limited to, the structures (and/or interests therein) described in paragraph 3 above. Reasonable diligence in the development of one component of the system comprises reasonable diligence in the development of all components. B. Diligence Activities. Provide a 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. I. During the period from August 31, 2018 (end of the prior diligence period) through February 28, 2025 (the "Diligence Period"), Applicant acquired fee interests in at least seven parcels and entered into at least two easements across other parcels that are necessary for the siting, design, construction and operation of Upper Williams Creek Reservoir. Utilities also performed asbestos abatement, hazardous waste management, demolition and removal of existing structures, removal of septic systems, and well abandonment on some of the parcels it acquired or obtained interests in during the diligence period. Additionally, Applicant conducted cultural resource and geotechnical evaluations, made modifications to agreements with Federal agencies and prepared a 30% design for Upper Williams Creek Reservoir. The Colorado Springs City Council also passed a resolution renaming Upper Williams Creek Reservoir to Gary M. Bostrom Reservoir. A drop/diversion structure in Fountain Creek was also constructed by Applicant to help mitigate potential impacts to senior water rights holders resulting from the operation of Williams Creek Reservoir in the future. In addition, Applicant has also undertaken numerous projects and activities for the improvement and enlargement of its water supply and distribution systems in order to facilitate the completion of the appropriation of the conditionally decreed rights of storage, substitution and exchange that are the subject of this Application including, but not limited to: completion of the SDS Project Phase 1; construction and establishment of certain wetlands along Fountain Creek as required per the SDS Project environmental mitigation requirements; improvements to the raw water pipeline between Pikeview Reservoir and the Tollefson (Mesa) water treatment plant, improvements to the Northfield Reservoir dam and spillway; completion of upgrades to the 33rd Street Pump Station; completion of upgrades to the Manitou Intake diversion structure on Ruxton Creek; improvements to the French Creek Intake diversion structure; improvements to Gold Camp and South Suburban Reservoirs; investigations into seepage from Rampart Reservoir dam; investigations regarding system water losses; install water quality improvements on its

Northfield and Pikeview Systems, replacement of the South Catamount transfer pipeline, design for refacing of the Crystal Creek Reservoir dam; improvements to the Nichols Reservoir dam and spillway; design for refacing of the South Catamount Reservoir dam; pipeline repair and replacement of certain sections of the Homestake Pipeline; operation and development of its Arkansas River exchange program and its Colorado Canal reuse program; development and completion of the Integrated Water Resources Plan which identified a portfolio of water supply projects, policies, and processes that will be necessary to provide a reliable and sustainable supply of water for its customers for the next 50 years; continued pursuit of development of a joint project(s) as contemplated by the 1998 MOU between the cities of Aurora and Colorado Springs, Vail Associates, Upper Eagle River Regional Water Authority, Eagle River Water and Sanitation District, Cypress Climax Mining Company, and the Colorado River Water Conservation District; and pursuit of a project to maximize the yield of the Blue River System. Applicant also purchased shares in the Lower Arkansas Water Management Association and the Fort Lyon Canal Company. II. During the Diligence Period, Applicant also filed applications for, prosecuted and completed several adjudications of water rights that comprise portions of Applicant's integrated municipal water supply system. These activities include, but are not limited to, filing of applications in Water Division 2 (Arkansas River Basin) and/or pursuit of adjudication of decrees in: Case No. 15CW3001 (Water Division No. 2) involving a change of water rights in the Chilcott Ditch Company ("Chilcott") (decree entered on September 5, 2018); Case No. 15CW3002 (Water Division No. 2) involving a change of water rights in the Fountain Mutual Irrigation Company ("FMIC") (decree entered on September 5, 2018); Case No. 16CW3056 (Water Division No. 2) involving an augmentation plan, replacement plan, and appropriative right of exchange involving Applicant's FMIC and Chilcott water rights (decree entered on January 29, 2020); Case No. 18CW3042 (Water Division No. 2) regarding Applicant's claims of diligence for rights of exchange and substitution involving Lake Meredith, Pueblo Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, and Clear Creek Reservoir (Decree entered on June 19, 2019); Case No. 18CW3053 (Water Division No. 2) regarding Applicant's conditional storage Rights for Upper Sugar Loaf Reservoir and Sugar Loaf Reservoir Enlargement and Amendment (decree entered on March 8, 2019); Case No. 19CW3026 (Water Division No. 2) involving claims for diligence related to Applicant's appropriative rights of exchange originally decreed in Case No. 86CW118A (decree entered on April 29, 2020); 19CW3052 (Water Division No. 2) involving an augmentation plan, replacement plan, and appropriative rights of exchange on Fountain Creek (Decree entered April 26, 2022); Case No. 19CW3053 (Water Division No. 2) involving an augmentation plan, and appropriative rights of exchange (decree entered October 4, 2022); Case No. 20CW3033 (Water Division No. 2) involving claims for diligence related to Applicant's appropriative rights of substitution and exchange in the Fountain Creek watershed originally decreed in Case No. 1984CW202 (decree entered on August 5, 2021); Case No. 20CW3047 (Water Division No. 2) involving claims for diligence for the Quail Lake conditional storage right decreed in Case No. 07CW122 (Water Division No. 2) (decree entered on February 17, 2021); Case No. 20CW3048 (Water Division 2) involving claims for diligence related to Applicants water rights decreed in Case No. 07CW121 for the Fountain Creek Recovery Project (decree entered May 18, 2022); Case No. 20CW3056 (Water Division 2) involving a change in legal description of a portion of the Fountain Creek Recovery Project (decree

entered March 22, 2021); Case No. 21CW3009 (Water Division 2) involving claims for diligence related to Applicant's Denver Basin groundwater exchange program decreed in Case No. 04CW132 (decree entered on March 3, 2022); Case No. 21CW3015 (Water Division 2) involving a claim for appropriative rights of exchange associated with water available under Applicant's shares in the Lower Arkansas Water Management Association (pending); Case No. 21CW3055 (Water Division 2) involving claims for diligence related to Applicant's water rights decreed in Case No. 12CW31 for Upper Williams Creek Reservoir (decree entered on April 4, 2022); Case No. 23CW3087 (Water Division 5) involving claims for diligence related to Applicant's water rights decreed in Case No. 98CW270 for the Homestake Project (pending); Case No. 23CW3138 involving claims for diligence related to Applicant's water rights decreed in Case No. 88CW449 for the Homestake Project (pending); Case No. 23CW3052 (Water Division 2) involving a claim for appropriative rights of substitution and exchange associated with water available under Applicant's shares in the Fort Lyon Canal Company (pending); Case No. 24CW3010 (Water Division 2) involving claims for diligence related to Applicant's appropriative rights of exchange of Applicant's non sewerer reusable return flows decreed in cases 84CW202, 84CW203, 86CW118(B) (pending), and 89CW36; and Case No 24CW3116(Water Division 5) involving a change of water rights for Lower Blue Lake Reservoir (pending). III. Applicant has also acted to preserve and protect all its water rights by filing statements of opposition to, and participating in, many judicial and administrative proceedings. For example, Applicant has consistently opposed water court applications that seek approval of plans for augmentation that operate on Fountain Creek. Applicant has participated in these cases to ensure that the out-of-priority depletions are replaced in time, amount, and location, and that the Division Engineer assesses transit losses on the replacement water supply. Applicant has undertaken endeavors to improve the accuracy of the Fountain Creek Transit Loss Model. C. Expenditures. Applicant's total capital expenditures in connection with the activities described above on its integrated system during the Due Diligence Period have exceeded \$488,276,708. In addition to that amount, over \$475,701,358 was expended on the operation and maintenance of Applicant's local system. Applicant reserves the right to identify additional relevant efforts that may be later discovered or to make upward adjustments to amounts expended on certain projects. Applicant made diligent efforts regarding this Application to determine and quantify all efforts made toward completion of the appropriations and application of the water rights decreed in Case No 5141 to beneficial use. However, it is reasonably possible that relevant efforts or expenditures may have been overlooked or need further upward adjustment. **5. Claim to make absolute in whole or in part:** N/A **6. Landowners**. Names and addresses of 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: The structures described in section 3 above are owned by: United States of America Department of Interior Bureau of Reclamation Eastern Colorado Area Office 11056 W. County 18-E Loveland, CO 80537 **7. Remarks or other pertinent information:** A. PLSS Descriptions and UTM Coordinates. PLSS descriptions and UTM Coordinates are included herein in compliance with Water Court forms. In the event of a discrepancy between the decreed location and the PLSS descriptions and UTM Coordinates herein, the decreed location is controlling. B. Any person reading this Application should rely on the Terms of the Decree. C. The

WDIDs included in this Decree are for administration purposes only. In the event of a discrepancy between a legal description herein and a WDID number herein, the legal description shall control. WHEREFORE, Applicant requests that the Court enter a finding of reasonable diligence for the remaining conditional Upper Sugar Loaf Reservoir and Sugar Loaf Reservoir Enlargement and Amendment water rights originally decreed in Case No. 5141 and that they be continued in force.

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 May 2025, (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 14th day of April 2025.



Michele M. Santistevan, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
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(Court seal)
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