

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING MAY 2021.

(This publication can be viewed in its entirety on the state court website at:

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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during May 2021, 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. 2021CW9; COLEMAN FAMILY RANCH L.L.C, 3289 County Road 119, Westcliffe, CO 81252, (719) 371-5137, MILES L. COLEMAN & KENNETH M. COLEMAN, 1454 County Road 130, Westcliffe, CO 81252, (719) 276-4471

Application for a Change of Water Right

CUSTER COUNTY

2. Decreed water right for which change is sought: **A. Name of Structure:** Pirate Ditch, **B. Date of original and all relevant subsequent decrees:** 5/13/1893, 9/7/1895, 3/12/1896 (final), **C. Case No. 3/12/1896, Court:** Fremont County District Court **C. Legal Description:** "Its head is located on the S.W. bank of the North branch of Colony Creek, whence the S.4 cor. Sec 16, Tp. 23 S. R. 72 W. bears S. 63 deg. 20 min W. 123 ft." **D. Decreed source of water:** North Colony Creek. **E. Appropriation Date:** June 1, 1876 (Priority No. 161). **F. Total amount decreed to structure:** 1.5 cfs, absolute. **G. Decreed use or uses:** Irrigation. **H. Amount of water that applicant intends to change:** 0.5 cfs, absolute, **3. Detailed description of proposed change:** **A. Complete statement of change:** The Pirate Ditch water right was decreed for use on a total of 60 acres of land lying within the west half of the Southeast quarter and within the West half of the Northeast quarter of Section 16, and within the Southeast quarter of the Southwest quarter of Section 9, all within Township 23 South, Range 72 West, 6th P.M. The Pirate Ditch water right has historically been used within the above tracts of land and has additionally been used on 20 acres of land within the adjoining east half of the west half of the same Section 16, Township 23 South, Range 72 West, 6th P.M. The applicants' first-hand and family knowledge and review of aerial photography confirms consistent use of this water right within this additional tract of land since at least 1953. The water commissioner has advised the applicants to adjudicate a change of place of use of the Pirate Ditch water right if continued irrigation of this additional location is sought. Applicants seek the following change of water right. Applicants seek to be allowed to use up to 0.5 cfs of the Pirate Ditch water right on 20 acres of land within the east half of the west half of Section 16, Township 23 South, Range 72 West, 6th P.M. See Figure 1 map attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Applicants Miles and Kenneth Coleman, and non-applicant the Leonard M. Kattnigh Family Testamentary Trust will continue to irrigate the originally decreed parcels of land but will limit such irrigation use to 40 acres. The total irrigated area under the Pirate Ditch water right will

be limited to 60 acres within the above tracts. No other changes to the Pirate Ditch water right are sought. **B. Change or adding a point of diversion:** No change to the Pirate Ditch decreed point of diversion is being claimed in this application. **UTM Coordinates:** Easting: 461148; Northing 4210728, Zone 13. **Accuracy of location displayed on GPS device:** 20 feet. **4. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Leonard M. Kattnig Family Testamentary Trust, 860 Ridgewood Court, Canon City, CO 81212. The Leonard M. Kattnig Family Testamentary Trust is the owner of the point of diversion location of the Pirate Ditch. Although no changes or modifications to this point of diversion or ditch structure or manner of use of the Pirate Ditch by the trust are proposed, the trust is a co-owner of the Pirate Ditch water right and will therefore be provided a copy of this application. The trust's 0.5 cfs ownership portion of the Pirate Ditch is not proposed to be changed by this application.

CASE NO. 2021CW10; ABEL BENAVIDEZ and JUDY BENAVIDEZ, 23465 County Road 105.0, Model, CO 81059, (719) 859-0651

Application for Simple Change in Surface Point of Diversion

LAS ANIMAS COUNTY

2. Decreed water right for which change is sought: **A. Name of Structure:** Blackwell Arroya Ditch (SEO ID 1900614), **B. Date of original and all relevant subsequent decrees:** 1/12/1925, Case No. CA-6118, Court: Las Animas County District Court. **C. Legal Description:** "That the headgate of said ditch is located at a point in the County of Las Animas, state of Colorado, on the North bank of said Blackwell arroya, whence the South ½ west corner of Section 14, Township 31 South, Range 61 West of the Sixth P.M. bears South 21° 50' West, and is distant 1440 feet." **D. Decreed source of water:** Blackwell Arroya. **E. Appropriation Date:** May 26, 1911 **F. Total amount decreed to structure:** 14 cubic feet per second, absolute. **G. Decreed use or uses:** Irrigation. **H. Amount of water that applicant intends to change:** 4 cubic feet per second, absolute, **3. Detailed description of proposed change:** **A. Complete statement of change:** Applicants seek to change the point of diversion for 4.0 cfs of the Blackwell Arroya Ditch water right from its decreed location from CA-6118 (1925) to a new point of diversion located approximately 2,030 feet downstream on Blackwell Arroya. No other type of change to this water right is being sought. The applicants will continue to use this water on the same historic lands for irrigation use. There are no intervening surface diversion points. There are no intervening points of tributary inflow. There are no intervening in-stream flow water rights. There are no intervening right of exchange. **B. Location of new surface point of diversion:** NE ¼, NW ¼ Section 23 Township 31S Range 61 West 6th P.M., A point approximately 2,050 feet from the west section line and 20 feet from the north section line. Source: GIS system from field GPS data, May 20, 2021. UTM Coordinates: Easting: 570539.3, Northing: 4132567.6, Zone 13 NAD 83. See **Figure 1** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **4. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage**

structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool. Mr. George Torres, 2044 County Road 48, Model, CO 81059

****Per Order, Resume to be published by Water Division 1****

CASE NO. 2021CW3025, Water Division 2 and CASE NO. 2021CW3066, Water Division 1; Previous Case No. 99CW119 – PAUL DRIESSEN and KRISTY DRIESSEN, 4045 Walker Road, Colorado Springs, CO 80908 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorney: Ryan W Farr, #39394, Emilie B. Polley, #51296, MONSON, CUMMINS & SHOHEET, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212)

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

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

EL PASO COUNTY

II. Summary of Application. Applicants seek to quantify the Denver Basin groundwater underlying the Applicants’ Property, and approval of a plan for augmentation for the use of one existing well to the not-nontributary Dawson aquifer to provide water service to their property. III. Application for Underground Water Rights. A. Legal Description of Well.

1. Property Description. The well is located on Applicants’ approximately 10.1 acre property (“Applicants’ Property”) subdivided into two lots of 5 +/- acres each. See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

Located in the NW¼ SW¼ SE¼ of Section 11, Township 11 South, Range 66 West of the 6th P.M., known as 4045 Walker Road, Colorado Springs, CO 80908. 2. Existing Wells. There is an existing domestic well with Division of Water Resources Permit No. 139710 (“Driessen Well”), permit attached as **Exhibit B**. It is drilled to a total depth of 300 feet to the Dawson aquifer, and located approximately 990 feet from the South Section Line and 2145 feet from the East Section Line. The well was completed on August 12, 1985. Upon approval of this plan for augmentation, this well will be re-permitted. There is also an existing well with Division of Water Resources Permit No. 269633, permit attached as **Exhibit C**. The well is drilled to a total depth of 1,400 feet to the Denver aquifer, and is located approximately 1301 feet from the South section line, and 2569 feet from the East section line, completed on June 17, 2011 and will retain its exempt status upon approval of this application. Each existing well will serve one lot. B. Water Source.

1. Not-Nontributary. The ground water to be withdrawn from the Dawson aquifer underlying the Applicants’ Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. 2. Nontributary. The groundwater that will be withdrawn from the Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying the Applicants’ Property is nontributary. C. Estimated Rates of Withdrawal and Ground Water Available. 1. Estimated Rates of Withdrawal. Pumping from the well will not exceed 100 g.p.m. The actual pumping rates for the well will vary according to aquifer conditions and well production capabilities. The Applicants request the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of any wells to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 2. Estimated Average Annual Amounts of

Ground Water Available. Applicants request a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicants' Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code §8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to C.R.S. §37-90-137(4). Applicants estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants' Property:

CASE NO. 2021CW3026; Previous Case No. 2009CW103 – CITY OF FOUNTAIN, Colorado, c/o Dan Blankenship, Utilities Director, 116 South Main Street, Fountain CO 80817 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Cynthia F. Covell, Andrea L. Benson, and Gilbert Y. Marchand, Jr., Alperstein & Covell P.C., 1391 Speer Blvd., Suite 730, Denver, CO 80204, (303) 894-8191)

Application for Finding of Reasonable Diligence

EL PASO AND PUEBLO COUNTIES

Names of water rights: Chilcott Exchange to Pueblo Reservoir and Chilcott Exchange to Augment Well Depletions. Description of conditional water rights, with required information from the prior decree: Date of original decree: June 4, 2015, Case No.: 2009CW103 ("Original Decree"), Court: Water Court, Water Division No. 2. Subsequent decrees awarding diligence for all structures: This is the first diligence proceeding. Decreed Locations: The exchange reaches decreed in the Original Decree are as follows: Chilcott Exchange to Pueblo Reservoir: The downstream terminus of the exchange reach is the confluence of Fountain Creek and the Arkansas River, in the NE 1/4 of Section 6, Township 21 South, Range 64 West of the 6th P.M. in Pueblo County, Colorado. The upstream terminus of the exchange reach is located on the Arkansas River at Pueblo Reservoir in the S1/2 of Section 36, Township 20 South, Range 66 West of the 6th P.M. in Pueblo County, Colorado. The exchange reach is shown on **Exhibit A** attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Chilcott Exchange to Augment Well Depletions: The downstream terminus of the exchange reach is the Lower Fountain Metropolitan Sewage Disposal District Wastewater Treatment Plant, located in the NW 1/4 of Section 10, Township 17 South, Range 65 West of the 6th P.M. in El Paso County. The upstream termini of the exchange reach are (1) the point at which depletions from the Venetucci Wells reach Fountain Creek, generally in Section 11, Township 15 South, Range 66 West of the 6th P.M. and (2) the point of depletion of the Cumberland Green Well, located on Jimmy Camp Creek generally in Section 33, Township 15 South, Range 65 West of the 6th P.M. in El Paso County. The exchange reach is shown on Exhibit A. Source of water: Fountain Chilcott Depletion Credits defined in the Original Decree which accrue to Fountain Creek. Appropriation date: Chilcott Exchange to Pueblo Reservoir: August 11, 2009. Chilcott Exchange to Augment Well Depletions: December 28, 2006. Exchange rates: Chilcott Exchange to Pueblo Reservoir: 19 cfs, conditional, provided, however, that the exchange rate decreed in the Original Decree is included within the 19 cfs exchange rate decreed in Case No. 2001CW108. Chilcott Exchange to Augment Well Depletions: 3.6 cfs conditional. Uses: Chilcott Exchange to Pueblo Reservoir: Water from the Fountain Chilcott Depletion Credits that is exchanged to storage in Pueblo Reservoir pursuant to the Original Decree may be released if required for augmentation to the

Arkansas River, or delivered from storage in Pueblo Reservoir back to Fountain via the Fountain Valley Conduit and/or the Southern Delivery Pipeline system to be used for all municipal purposes, including domestic, irrigation, recreation, storage, piscatorial, commercial, industrial, replacement, substitution, augmentation, and further reuse and exchange to extinction, storage and release from storage for all of the foregoing purposes, as provided in the Original Decree. Chilcott Exchange to Augment Well Depletions: Water may be exchanged to the points of depletion of the Wells located within the exchange reaches to augment depletions from those Wells. Detailed outline of what has been done toward completion or for completion of the appropriations and application of water to beneficial use as conditionally decreed, including expenditures: During this diligence period, Fountain has continued to improve, operate and maintain its integrated water supply system, of which the exchanges decreed in the Original Decree are a part. To enable Fountain to more effectively provide water service to its existing and future customers, it has expended over \$30,000,000 during this diligence period for capital infrastructure investment to construct, repair and improve its wells, water system infrastructure and related infrastructure and projects that are part of the efficiency, operation and maintenance of its integrated water supply system. Among other things, during this diligence period, Fountain has undertaken costly and extensive efforts to decontaminate wells that were found to contain perfluoralkyl and polyfluoroalkyl substances (PFAS) and has actively participated in legislative hearings regarding regulation of PFAS. These efforts have allowed Fountain to continue to provide reliable water service to its existing customers and to plan for anticipated future demand. The exchanges decreed in the Original Decree are important components of Fountain's integrated water supply system. Fountain has in place infrastructure as well as measuring, accounting, recordkeeping and reporting systems required to operate the exchanges subject to the terms and conditions of the Original Decree. Fountain has agreed to forego operation of the Chilcott Exchange to Pueblo Reservoir under certain circumstances as provided in the *Intergovernmental Agreement among the Cities of Pueblo, Fountain, Colorado Springs and Aurora, Southeastern, and the Board of Water Works of Pueblo, effective May 27, 2004*, as such agreement may be amended from time to time ("Regional IGA"). The Regional IGA allows Fountain to recover as "Foregone Diversions" water that is not exchanged when exchange is foregone pursuant to the Regional IGA. Fountain, together with other parties to the Regional IGA, filed and prosecuted Case No. 06CW120, whereby Foregone Diversions can be captured for later exchange consistent with the Regional IGA. Case No. 06CW120 was decreed during this diligence period, on August 17, 2016, and a corrected decree was entered on April 20, 2017. The decree in Case No. 06CW120 will provide Fountain with greater opportunity to realize the benefit of exchanges to Pueblo Reservoir. Fountain has defended its water rights, including the exchanges decreed in the Original Decree, against applications filed by others in cases in which Fountain determined that injury to its water rights could occur in the absence of appropriate protective terms and conditions. Fountain has also prosecuted applications for new water rights that will be used in conjunction with the exchanges decreed in the Original Decree. During this diligence period, Fountain has expended approximately \$400,000 for costs and attorney fees in applications for water rights used in Fountain's integrated water supply system and for opposition to water court applications filed by others, in order to protect and defend its water rights, and in other

matters related to the development and utilization of Fountain’s water rights and water system infrastructure. During this diligence period, Fountain has also expended approximately \$85,000 in water resource engineering fees. Names and addresses of owners of the land upon which any new diversion structure or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored. Fountain has not constructed any new diversion structure or storage structure, or modification to any existing diversion or storage structure in connection with the exchanges decreed herein. Pueblo Reservoir is located on land or easements owned by the United States Department of Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18-E, Loveland CO 80537-9711. The wells to which water may be exchanged pursuant to the Original Decree are located on land, easements or rights of way owned by Fountain, or on land available to Fountain pursuant to other agreement. WHEREFORE, Applicant City of Fountain, having demonstrated that it has steadily applied effort to complete the appropriation of the conditional exchanges decreed in the Original Decree in a reasonably expedient and efficient manner under all the facts and circumstances, respectfully requests that this Court find that it has exercised reasonable diligence in completing the appropriations and putting to beneficial use the conditional exchanges decreed in the Original Decree, and that said conditional decree for the Chilcott Exchange to Pueblo Reservoir and the Chilcott Exchange to Augment Well Depletions should be continued for another six years, or such period as may otherwise be permitted by law.

CASE NO. 2021CW3027; DEER MOUNTAIN RANCH CONSERVATION ASSOCIATION, (“DMRCA” or “Applicant”), c/o Randy Coen, 265 Fawn Road, Florissant, CO 80816

(Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Madoline Wallace-Gross and Anthony J. Basile; Lyons Gaddis, P.O. Box 978, Longmont, CO 80502-0978, (303) 776-9900)

Application for Approval of an Amended Plan for Augmentation and Conditional and Absolute Rights of Appropriative Exchange

FREMONT, PARK, AND TELLER COUNTIES

2. Description of Application: Applicant has an existing plan for augmentation, including exchange, decreed in Case No. W-4285, District Court, Water Division No. 2 (“Existing Decree”). Applicant seeks to amend the plan for augmentation and to adjudicate additional exchanges to replace **a maximum of 1.34 acre-feet of depletions total annually** from up to 53 in-house use only wells (“Subject Wells”) within Deer Mountain Ranch Subdivision (“Subdivision”) in Teller County. The Subdivision plat and Teller County property map are attached as **Exhibit A** to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Subject Wells pump or will pump tributary water from the alluvium of an unnamed tributary to Hay Creek, tributary to Fourmile Creek (aka Four Mile Creek) and the Arkansas River. The Subject Wells are currently augmented pursuant to W-4285, District Court, Water Division No. 2. 3. **Application for Approval of an Amended Plan for Augmentation:** A. **Existing Decree:** Case No. W-4285, District Court, Water Division No. 2, dated January 12, 1977. B. **Augmented Structures:** i. **Augmented Structures in Existing Decree.** The Existing Decree authorizes augmentation of domestic use for up to 64 in-house use only wells on 64 lots within the Subdivision, in Sections 7 and 18 of

Township 14 South, Range 70 West of the 6th P.M., as generally depicted in **Exhibit A**. The Existing Decree also authorizes augmentation of evaporation depletions from Lichdoe Reservoirs Nos. 1 and 2 (“Lichdoe Reservoirs”). ii. **Reduced Number of Augmented Structures in this Amended Plan for Augmentation**. This amended plan for augmentation seeks to remove augmented structures as detailed below. a) Pursuant to this amendment, Applicant will augment up to 53 in-house use only wells within the Subdivision as depicted in **Exhibit A**. Some of the lots have been combined such that there are 53 developable lots. Of the 53 total lots, owners have already constructed wells on 35 lots (“Existing Wells”). No wells have been constructed on 18 lots (“Future Wells”). A table containing the well permit numbers for the Existing Wells, the well owners and lot numbers is attached is **Exhibit B**. b) Pursuant to this amendment, Applicant will no longer have the obligation to augment evaporation from the Lichdoe Reservoirs. The Lichdoe Reservoirs were breached on or about 2008 and will not be reconstructed. C. **Water Rights or Sources to be Used for Augmentation**. The locations of the Subject Wells and augmentation sources are depicted in **Exhibit C**. i. **Augmentation Water in Existing Decree**. The following water rights are designated as augmentation sources in the Existing Decree. a) Mountain Mutual Contract Water. Applicant owns the perpetual right to delivery of 14 acre-feet annually via a contract with Mountain Mutual Water Company, dated February 7, 1977 (“Mountain Mutual Contract Water”), from the Johnson Ditch water right described in ¶ 3.c.ii.a below. In the Existing Decree, H. B. Landoe and Delbrook Lichtenberg (Applicant’s predecessors-in-interest) changed the Johnson Ditch water withdrawn from the Gillette Wells Nos. 1 and 2, as allowed in Case No. W-3983, to be used for augmentation of well depletions in the Subdivision. This shall remain a source of augmentation water in this amendment. b) Water Stored in the Lichdoe Reservoirs. Pursuant to this amendment, Applicant is removing the Lichdoe Reservoirs as augmentation sources as they no longer exist. ii. **Cripple Creek Contract Water Added as Sources of Augmentation**. Applicant has a long-term contract with the City of Cripple Creek for up to 2.0 acre-feet annually until 2041 (“CC Contract”) from the following sources (collectively “CC Contract Water”). a) **Johnson Ditch**. 1. Source of Water: West Fork of West Beaver Creek, tributary to Beaver Creek, tributary to the Arkansas River. 2. Diversion Rate: 5.58 c.f.s. absolute. 3. Appropriation Date: April 1, 1865 (Beaver Creek Priority No. 10 and Arkansas River Priority No. 24). 4. Original Decree: In the Matter of Adjudication of Priorities of Water Rights in Water District No. 12, District Court, Fremont County, dated on April 14, 1887. 5. Original Decreed Use: Irrigation. 6. Relevant Change Decrees: a. Case No. W-3983, District Court, Water Division No. 2, the Beaver Park Company of Colorado Springs added two wells as alternate points of diversion, the Gillette Well Nos. 1 and 2, which draw from the Beaver Creek alluvium. The water withdrawn from these wells, which could occur up to the originally decreed rate of 2.137 c.f.s., was to be piped to a residential development for domestic, irrigation, municipal, commercial, and recreational purposes. b. Case No. W-4285, District Court, Water Division No. 2. See ¶ 3.C.i.a. c. Case No. 92CW77, District Court, Water Division No. 2, the City of Cripple Creek changed (for year-round diversion at multiple points of diversion) 1 c.f.s. to domestic, municipal, commercial and recreational use, limited to 172 acre-feet annually and awarding the following alternate points of diversion. i. Gillette Well No 1: Located in Section 4, at a point whence the Northwest corner of Section 4, Township 15 South, Range 69 West of the 6th P.M., Teller County, Colorado, bears North 59' 28' 23"

West 2041.76 feet. ii. Gillette Well No 2: Located in Section 4, Township 15 South, Range 69 West of the 6th P.M., Teller County, Colorado, at a point whence the Northwest corner of said Section 4 bears North 48' 33' 33" West 2348.53 feet. iii. Gillette Well No 3: Located in the SE ¼ NW ¼ of Section 4, Township 15 South, Range 69 West of the 6th P.M., Teller County, Colorado, at a point 1295 feet from the North section line and 1,940 feet from the West section line on land also known as Block 48 In the Town of Gillette. iv. Gillette Well No 4 (CC) (WB- 1): Located 677 feet North from the South section line and 2,440 feet East from the West section line in the SE ¼ SW ¼, Section 4, Township 15 South, Range 69 West, 6th P.M., Teller County, Colorado v. Gillette Well No 5 (WB-2): Located 300 feet South from the North section line and 1,950 feet East from the West section line in the NE ¼ NW ¼, Section 9, Township 15 South, Range 69 West, 6th P.M., Teller County, Colorado (Remarks: the 92CW077 location for this well changed in 05CW025). b) **Park Center Well.** 1. Legal Description: Point of diversion SW¼ SW¼, Section 34, Township 17 South, Range 70 West, of the 6th P.M. 2. Original Decree: Case No. 81CW192, District Court, Water Division 2. 3. Appropriation Date: May 29, 1936. 4. Decreed Rate: 2.67 c.f.s. absolute. 5. Decreed Source: Groundwater tributary to Fourmile Creek. 6. Decreed Uses: Domestic, municipal, and irrigation. 7. Subsequent Decree: Case No. 97CW169, District Court, Water Division 2. 8. Source of Water: Changed to withdraw nontributary groundwater. 9. Rate and Volume: 2.67 c.f.s., limited to 227 acre-feet per year for the newly decreed uses, of which Cripple Creek owns 16 acre-feet. 10. Decreed Uses: Domestic, municipal, and irrigation, with augmentation. 11. Remarks: The Bureau of Land Management is the owner of the Park Center Well and may provide the water available to DMRCA under the CC Contract pursuant to Cripple Creek's no-cost perpetual lease interest via stipulation. c) **Quantified Historical Consumptive Use Credits.** Historical consumptive use credits ("HCU") attributable to Cripple Creek's interest in the water rights decreed to the Howard Ditch, George Ditch, and Spring Ditch. 1. Howard Ditch. A. Original Decree: There was no case number, but the case was entitled: "In the District Court of the Eleventh Judicial District of the State of Colorado, in and for the County of Fremont," entered February 3, 1894. B. Appropriation Date: June 1, 1869. C. Decreed Flow Rate: 1 c.f.s. D. Source: West Fourmile Creek, tributary to Fourmile Creek, tributary to the Arkansas River. E. Original Decreed Use: Irrigation. F. Decreed Point of Diversion: North side of West Fourmile Creek in the SE ¼ SW ¼ of Section 3, Township 15 South, Range 71 West, of the 6th P.M. G. Subsequent Change Decree: Case No. 96CW190, District Court, Water Division No. 2, entered December 10, 2009. H. Decreed Uses: All beneficial uses, including, without limitation, domestic, stock watering, irrigation, wildlife habitat, fish propagation, commercial, industrial, municipal, and also for exchange and augmentation. 2. George Ditch. A. Original Decree: There was no case number, but the case was entitled: "In the District Court of the Eleventh Judicial District of the State of Colorado, in and for the County of Fremont," entered February 3, 1894. B. Appropriation Dates: June 1, 1870 and June 1, 1873. C. Decreed Flow Rate: 1 c.f.s. and 0.8 c.f.s. for each appropriation date respectively. D. Source: West Fourmile Creek, tributary to Fourmile Creek, tributary to the Arkansas River. E. Original Decreed Use: Irrigation. F. Decreed Point of Diversion: South side of West Fourmile Creek in the NE ¼ NW ¼ of Section 10, Township 15 South, Range 71 West, of the 6th P.M. G. Subsequent Change Decree: Case No. 96CW190, District Court, Water Division No. 2, entered December 10, 2009. H. Decreed Uses: All beneficial uses, including, without limitation, domestic, stock watering,

irrigation, wildlife habitat, fish propagation, commercial, industrial, municipal, and also for exchange and augmentation. 3. Spring Ditch. A. Original Decree: There was no case number, but the case was entitled: "In the District Court of the Eleventh Judicial District of the State of Colorado, in and for the County of Fremont," entered February 3, 1894. B. Appropriation Date: June 1, 1876. C. Decreed Flow Rate: 1 c.f.s. D. Source: West Fourmile Creek, tributary to Fourmile Creek, tributary to the Arkansas River. E. Original Decreed Use: Irrigation. F. Decreed Point of Diversion: North side of West Fourmile Creek. The point of diversion is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, Township 15 South, Range 71 West, of the 6th P.M. G. Subsequent Change Decree: Case No. 96CW190, District Court, Water Division No. 2, entered December 10, 2009. H. Decreed Uses: All beneficial uses, including, without limitation, domestic, stock watering, irrigation, wildlife habitat, fish propagation, commercial, industrial, municipal, and also for exchange and augmentation. 4. Point of Delivery. The point of delivery of the West Fourmile Creek Water described in ¶ 3.C.ii.c shall be at the City of Cripple Creek's West Fourmile Creek augmentation station, in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$, Section 3, Township 15 South, Range 71 West, of the 6th P.M., Teller County, Colorado, at a point 300 feet from the South section line and 1,580 feet from the West section line. d) **West Fourmile Creek Reservoir**. 1. Decree: 96CW190, District Court, Water Division 2, entered December 10, 2009. 2. Appropriation Date: June 15, 1995. 3. Amount: 147 acre-feet conditional with right to refill. 4. Source: West Fourmile Creek tributary to Fourmile Creek, tributary to the Arkansas River. 5. Legal Description of Center of Dam: In the S $\frac{1}{2}$ SW $\frac{1}{4}$ Section 3, Township 15 South, Range 71 West of the 6th P.M., 390 feet north of the south line of said Section 3 and 1,450 feet east of the west line of said Section 3. 6. Decreed Use: All beneficial uses, including without limitation, domestic, stock watering, irrigation, recreational, wildlife habitat, fish propagation, commercial, industrial, municipal, and also for exchange and augmentation. e) **Oil Creek Reservoir**. 1. Decree: 96CW233, District Court, Water Division 2, entered April 10, 2015. 2. Appropriation Date: June 26, 1996. 3. Amount: A. Original Location: 252 acre-feet, conditional. B. Alternate Location: 240 acre-feet, conditional. 4. Source: Oil Creek, tributary to Fourmile Creek, tributary to the Arkansas River. 5. Legal Description of Center of Dam: A. Original Location: An on-channel reservoir, in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28, Township 14 South, Range 69 West of the 6th P.M., approximately 145 feet west of the east line and 1,250 feet north of the south line of said Section 28. B. Alternate Location: An off-channel reservoir in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4, Township 15 South, Range 69 West of the 6th P.M., approximately 2,470 feet west of the east line and 100 feet south of the north line of said Section 4. 6. Decreed Use: Municipal beneficial use, including without limitation, domestic, stock watering, irrigation, recreational, wildlife habitat and fish propagation, commercial, industrial, and also for exchange and augmentation. f) **Oil Creek Pipeline**. 1. Decree: 98CW174, District Court, Water Division 2, entered December 2, 2015 Decree: 96CW233, District Court, Water Division 2, entered April 10, 2015 (amended to add alternate point of diversion). 2. Appropriation Date: December 7, 1998, June 26, 1996, respectively. 3. Amount: 3 c.f.s. conditional, above what was decreed to the Oil Creek Pipeline Alternate Point of Diversion in 96CW233. (4.6 c.f.s.) 4. Source: Oil Creek, tributary to Fourmile Creek, tributary to the Arkansas River. 5. Legal Description: NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 14 South, Range 69 West of the 6th P.M., Teller County Colorado, lying 1,815 feet west of the east line and 20 feet south of the north line of said Section 33, coincident

with the Alternate Point of Diversion of the Oil Creek Pipeline subject of the decree in Case No. 96CW233. 6. Decreed Use: Municipal beneficial use, including without limitation, domestic, stock watering, irrigation, recreational, wildlife habitat, fish propagation, commercial, industrial, and also for exchange and augmentation for such beneficial uses. g. **Reusable Effluent or Wastewater Treatment By-Passes.** Fully consumable single use water by-passed at Cripple Creek's Waste Water Treatment Plant or treated effluent from any fully-reusable source owned by Cripple Creek. The outfall is located in the NE ¼ NW ¼ Section 24, Township 15 South, Range 70 West of the 6th P.M., Teller County, Colorado, at a point approximately 1,190 feet from the North section line and 2,160 feet from the West section line. iii. **Wholesale Water Deliveries Added as Sources of Augmentation.** Applicant may purchase and truck water from wholesale water provider to the Storage Vessel identified in ¶ 3.D.iv.b. prior to release for augmentation. iv. **Additional Sources:** Additional sources authorized pursuant to C.R.S. §37-92-305(8). D. **Complete Statement of Plan for Augmentation:** Applicant seeks an amended plan for augmentation to replace in-house only depletions from the Subject Wells described in ¶ 3.B.ii, which deplete an unnamed tributary of Hay Creek, using the sources set forth in ¶ 3.C. in time, place and amount to prevent injury. Because the Existing Decree did not award and Applicant is not seeking junior underground water rights for the Subject Wells, lagged well depletions will always be treated as out-of-priority. i. **Diversions.** All diversions from the Existing Wells are or the Future Wells will be separately metered and read monthly. For the purpose of this amended plan for augmentation, Applicant assumed each well diverts a maximum of 0.27 acre-feet annually ($53 \times 0.27 = 13.4$ acre-feet). However, based on the last 8 years (2013–2020) of meter data, the maximum pumping has been 853,100 gallons or approximately 2.6 acre-feet annually. ii. **Depletions.** All water utilized for in-door residential use will be treated using on-lot non-evaporative septic systems. Applicant shall calculate depletions associated with such use as 10 percent of metered diversions on a monthly basis. Return flows from the septic systems return to the unnamed tributary to Hay Creek, and Applicant shall continue credit for such return flows in this case. For the purpose of this amended plan for augmentation, Applicant assumed each well depletes a maximum of 0.027 acre-feet annually ($53 \times 0.027 = 1.34$ acre-feet). Based on the last 8 years, the maximum depletion has been 85,310 gallons or approximately 0.26 acre-feet annually. iii. **Lagged Depletions.** Depletions from the 35 Existing Wells have achieved a steady state of timing to the local stream system due to their long period of use and the consistent diversion timing of in-house use. The 18 Additional Wells will conservatively be fully augmented following their first month of operation. iv. **Exchange Operations to Storage.** When the exchanges described in ¶ 4 are in-priority, Cripple Creek will make deliveries of up to 2.0 acre-feet of the CC Contract Water for augmentation use by Applicant on Fourmile Creek and its tributaries. The CC Contract Water will be exchanged to and stored in the following reservoirs and/or storage vessels for subsequent release for augmentation purposes. a) Wright's Reservoir, a/k/a Mt. Pisgah Reservoir, a/k/a Pisgah Reservoir ("Pisgah Reservoir") with a dam in the SE ¼ of the NW ¼, Section 31, Township 14 South, Range 70 West of the 6th P.M., Teller County, Colorado, UTM x 476424.0, UTM y 4293948.0. Applicant has a 2 acre-foot storage contract with Catlin Canal Company ("Catlin"). Catlin owns 1,927.82 acre-feet of storage in Pisgah Reservoir. b) Deer Mountain Ranch Storage Vessel ("Storage Vessel") located in Lot 1 in the Deer Mountain Ranch

Subdivision, located in Section 7, Township 14 South, Range 70 West of the 6th P.M. in Teller County, Colorado. Applicant has installed a storage vessel on Lot 1 that can pump water from and release water to the unnamed tributary of Hay Creek. c) West Fourmile Creek Reservoir, the center of the dam is in the S $\frac{1}{2}$ SW $\frac{1}{4}$ Section 3, Township 15 South, Range 71 West of the 6th P.M., 390 feet north of the south line of said Section 3 and 1,450 feet east of the west line of said Section 3. d) Oil Creek Reservoir, in its Original Location, is an on-channel reservoir, in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28, Township 14 South, Range 69 West of the 6th P.M., approximately 145 feet west of the east line and 1,250 feet north of the south line of said Section 28. e) Oil Creek Reservoir, in its Alternate Location, is an off-channel reservoir in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4, Township 15 South, Range 69 West of the 6th P.M., approximately 2,470 feet west of the east line and 100 feet south of the north line of said Section 4. v. **Storage Vessel Operations.** In addition to the exchanges described in paragraph ¶ 4, the Storage Vessel may also be filled using water purchased from and trucked by a wholesale water provider; or water stored in Applicant's account in Pisgah Reservoir and trucked to the Storage Vessel. All diversions by, deliveries to and releases from the Storage Vessel will be metered. vi. **Plan for Augmentation Operations.** The plan for augmentation will make replacements to Fourmile Creek or an unnamed tributary of Hay Creek to protect water users from injury. a) Call on the Arkansas River and Fourmile Creek Below Pisgah Reservoir, Below West Fourmile Creek Reservoir or Park Center Well. When there is a downstream call on the Arkansas River and/or Fourmile Creek below Pisgah Reservoir, West Fourmile Creek Reservoir and/or the Park Center Well, Applicant will replace well pumping depletions by causing CC Contract Water: stored in Pisgah Reservoir to be released to Fourmile Creek; stored in Oil Creek Reservoir to be released to Oil Creek and delivered to Fourmile Creek; pumped from Oil Creek Pipeline to be released to Oil Creek and delivered to Fourmile Creek; stored in West Fourmile Reservoir to be released to West Fourmile Creek and delivered to Fourmile Creek; pumped from the Park Center Well and discharged to Fourmile Creek; or discharged from Cripple Creek's Waste Water Treatment Plant as fully-reusable effluent or fully-consumable single use water by-passed to the Plant from any source owned by Cripple Creek. During this operation, Applicant will operate the exchange project rights described in ¶ 4.C. b) Call on Fourmile Creek Between Pisgah Reservoir and the Hay Creek Confluence. When there is a downstream call on the Fourmile Creek between Pisgah Reservoir and the confluence with Hay Creek, Applicant will replace well pumping depletions by causing water: stored in the Storage Vessel to be released to the unnamed tributary to Hay Creek for delivery to Hay Creek and Fourmile Creek; or stored in Oil Creek Reservoir to be released to Oil Creek and delivered to Fourmile Creek. During this operation, Applicant will operate the exchange project rights described in ¶ 4.C. c) Call on Hay Creek. When there is a downstream call on Hay Creek, Applicant will replace well pumping depletions by causing water stored in the Storage Vessel to be released to the unnamed tributary to Hay Creek for delivery to Hay Creek. Augmentation water shall be pre-placed in the Storage Vessel before each irrigation season. During this operation, Applicant will operate the exchange project rights described in ¶ 4.C. 4. **Application for Conditional and Absolute Appropriative Rights of Exchange.** Applicant claims the following exchanges and exchange project rights. The exchange reaches are depicted in **Exhibit D. A. DMRCA-CC-Pisgah Exchange.** i. Downstream Termini: a) Confluence of Cripple Creek and Fourmile Creek located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 9, Township 16

South, Range 70 West of the 6th P.M., Teller County, Colorado, at a point 1,560 feet from the South section line and 2,040 feet from the East section line. b) Confluence of West Fourmile Creek and Fourmile Creek described as follows: NE ¼ NE ¼ of Section 12, Township 15 South, Range 71 West of the 6th P.M., Teller County, Colorado, at a point 90 feet from the North section line and 830 feet from the East section line. c) Point of discharge in the Park Center Well on Fourmile Creek located in the SW ¼ SW ¼ of Section 34, Township 17 South, Range 70 West of the 6th P.M., Teller County, Colorado, at a point 712 feet from the South section line and 1,080 feet from the West section line.

ii. Upstream Terminus: Pisgah Reservoir. See ¶ 3.D.iv.a. iii. Sources: See ¶¶ 3.C.ii.a to 3.C.ii.d and 3.C.ii.g. iv. Date of appropriation: February 3, 2021. v. The appropriation was initiated by execution of a Water Supply Agreement with the City of Cripple Creek, by execution of a Water Storage Agreement with Pisgah Reservoir Company, hiring of Kastner Engineering, operating the exchange; and filing this application. vi. Date water applied to beneficial use: May 18, 2021 from the point described in ¶ 4.A.i.b. vii. Amount claimed: 1 c.f.s. conditional and of that, 0.14 c.f.s. absolute from operations commencing on May 18, 2021 as of the date of filing this application. viii. Use: Augmentation and storage for subsequent release for augmentation. ix. Operation: Applicant will cause CC Contract Water to be exchanged from one or more of the downstream termini up Fourmile Creek for storage in Pisgah Reservoir. **B. DMRCA-Pisgah-Storage Vessel Exchange.**

i. Downstream Termini: a) Pisgah Reservoir. See ¶ 3.D.iv.a. b) Confluence of Hay Creek and Fourmile Creek located in the SW ¼ SW ¼ Section 20, Township 14 South, Range 70 West of the 6th P.M. Teller County, Colorado, at a point 190 feet from the South section line and 310 feet from the West section line. ii. Upstream Terminus: Storage Vessel. See ¶ 3.D.iv.b. iii. Source: See ¶¶ 3.C.ii.e and f. iv. Date of appropriation: February 3, 2021. v. The appropriation was initiated by execution of a Water Supply Agreement with the City of Cripple Creek, by execution of a Water Storage Agreement with Pisgah Reservoir Company, hiring of Kastner Engineering, and filing this application. vi. Date water applied to beneficial use: Not applicable. vii. Amount claimed: 0.25 c.f.s. conditional. viii. Use: Augmentation and storage for subsequent release for augmentation. ix. Operation: Applicant will exchange CC Contract Water from Pisgah Reservoir or the confluence of Hay Creek and Fourmile Creek to a pump in an unnamed tributary of Hay Creek directly adjacent to the Storage Vessel (as identified in ¶3.D.iv.b.) for storage. **C. DMRCA Exchange Project Right.** Other than the Storage Vessel, the augmentation sources identified in ¶ 3.C. are located at or below the confluence of Hay Creek and Fourmile Creek. The points of depletion for the Subject Wells identified in ¶3.B.ii. are located on an unnamed tributary of Hay Creek above the confluence of Hay Creek and Fourmile Creek. Use of the proposed replacement supplies for the identified augmentation plan will reduce the flow of water in stream reaches along the unnamed tributary of Hay Creek and Hay Creek and Fourmile Creek. Accordingly, Applicant requests approval of the following exchange project rights as part of this claim. i. Downstream Termini: a) Pisgah Reservoir. See ¶ 3.D.iv.a. b) Confluence of Hay Creek and Fourmile Creek. See ¶ 4.B.i.b. c) Storage Vessel located ¶ 3.D.iv.a. ii. Upstream Termini: Point of depletion of most upstream Existing Well or Future Well on an unnamed tributary of Hay Creek located in the SW ¼ NW ¼ of Section 7, Township 14 South, Range 70 West of the 6th P.M., Teller County, Colorado, at a point 2,280 feet from the North section line and 0 feet from the West section line. iii. Sources: See ¶ 3.C.ii. iv. Date of appropriation: February 3, 2021.

v. The appropriation was initiated by execution of a Water Supply Agreement with the City of Cripple Creek, by execution of a Water Storage Agreement with Pisgah Reservoir Company, hiring of Kastner Engineering, and filing this application. vi. Date water applied to beneficial use: Not applicable. vii. Amount claimed: 1 g.p.m., conditional. viii. Use: Augmentation. ix. Operation: Applicant will operate the exchange project right to the points of depletion of the Subject Wells when augmentation water is provided to meet the calling water right downstream of the point of depletions of the Subject Wells. D. **Existing Exchanges in W-4285.** To the extent that Mountain Mutual Contract Water described in ¶3.C.i.a is the substitute supply for augmentation of well depletions, Applicant shall rely on the exchanges decreed in Case No. W-4285 from the confluence of Hay Creek and Fourmile Creek described in ¶ 4.B.i.b. to the points of depletion of the Subject Wells. 5. **Owners of structures involved in this application:** A. **Subject Wells.** PAJ 2016 Revocable Trust, 141 N. Deer Mountain Rd., Florissant, CO 80816; David Ballinger, 281 N. Deer Mountain Rd., Florissant, CO 80816; David & Martha Quick, 51 Mule Dr., Florissant, CO 80816; Keri R Dunn, 102 Mule Dr., Florissant, CO 80816; Vickie Smith, 7899 SW Cedar Lane, Augusta, KS 67010; Paul Rasmussen, 491 N Deer Mountain Rd., Florissant, CO 80816; Martin & Lana S. Ellis, 115 Whitetail Lane, Florissant, CO 80816; David & Jane Hallert, 233 Whitetail Lane, Florissant, CO 80816; Jack & Geri Lynn Silverton, 200 Whitetail Lane, Florissant, CO 80816; Chris & Tresse Kjeldsen, 80 Whitetail Lane, Florissant, CO 80816; Richard & Lenora Powers, 631 N Deer Mountain Rd., Florissant, CO 80816; Allen & Mary Sonnenberg, 701 N Deer Mountain Rd., Florissant, CO 80816; Carl & Elaine Brugger, 104 N Overhill Dr., Bloomington, IN 47408; David & Silvia Vargas, 4439 Paula Ave., Lakewood, CA 90713-3321; Kenneth & Susan Carbaugh, 9960 Thornydale Dr., Colorado Springs, CO 80920; Eric Chandler, 816 N Deer Mountain Rd., Florissant, CO 80816; Robert & Janet Walter, 2880 Manorwood Trail, Fort Worth, TX 76109; Sharyll Thomas, 6729 Hampton Dr., Colorado Springs, CO 80918; WCB Ventures, LLC, PO Box 3375, Parker, CO 80134; Wayne O Taber , 2542 Wheeler Ave., Colorado Springs, CO 80904; Violet Pierce, 4243 E Geddes Ave., Centennial, CO 80122; Ramiro Rosales, 10224 County Rd. 1, Florissant, CO 80816; Randall King, 10336 County Rd. 1., Florissant, CO 80816; Ronald Huffine, 1203 Parkview Blvd., Colorado Springs, CO 80905; Thomas Scanlon, 537 S Deer Mountain Rd., Florissant, CO 80816, James Beaver, 583 S Deer Mountain Rd., Florissant, CO 80816; Warren Gaskil, 5780 N Calico Dr., Beverly Hills, FL 34465; Gary Lanlois, 740 Omaha St. NE, Albuquerque, NM 87123; Joseph & Tiana Colasanto, 566 S Deer Mountain Rd., Florissant, CO 80816; Aaron Jacobs, 145 Fawn Rd., Florissant, CO 80816; Coen Living Trust Randy & Michilyn Coen, 265 Fawn Rd., Florissant, CO 80816; Jackson & Dakota Pedziwiatr, 484 S Deer Mountain Rd., Florissant, CO 80816; Charles & Catherine Kniffin, PO Box 2540, Carefree, AZ 85377; Cassie Reese c/o Denise Norris, 1325 Northface Ct., Colorado Springs, CO 80919; Rodney & Sharon Saunders, 180 S Deer Mountain Rd., Florissant, CO 80816; Tommy & Darline Manfred, 145 S Deer Mountain Rd., Florissant, CO 80816; Richard & Danielle Bowers, 405 Forest Edge Lane, Woodland Park, CO 80863; Guy & Marlene Bolen, 650 Road 28, Wallace, KS 67761; Thomas Sedlecky, 272 Deer Lodge Lane, Florissant, CO 80816; Daniel & Molly Campbell, PO BOX 1706, Pinetop, AZ 85935; Dan and Rebecca Duffy-Campbell, 340 Deer Lodge Lane, Florissant, CO 80816; David & Tina Staat, 405 Deer Lodge Lane, Florissant, CO 80816; Rogelio Ayala, 1410 Darby St., Colorado Springs, CO 80907; Ron Roth, 558 N Deer Mountain Rd., Florissant, CO

80816; John & Anne Jalowiec, 346 N Deer Mountain Rd., Florissant, CO 80816 B. **Storage Vessel.** PAJ 2016 Revocable Trust, 141 North Deer Mountain Road Florissant, CO 80816. C. **Pisgah Reservoir.** Pisgah Reservoir and Ditch Company, P.O. Box 328, Rocky Ford, CO 81067. D. **Oil Creek Reservoir - Original:** Daniel & Shelli Tezak, 1229 Tezak Dr., Canon City, CO 81212 and/or Steven W. & Rhonda K. Lewis, 354 S Golfwood Ct., Pueblo West, CO 81007-3699 and/or Marianne S. Kutsche a'k'a Marianne L. Stoller, 1327 N. Tejon, Colorado Springs, CO 80903. E. **Oil Creek Reservoir – Alternate.** Janice M. Wallace, 10878 W Evans Ave., Apt 67, Lakewood, CO 80227-2078. F. **Oil Creek Pipeline.** Pike National Forest, Forest Supervisor's Office, 2840 Kachina Drive, Pueblo, CO 81008 and/or Terry P. & Kimberly A. Boyd, 23 Oak Moss, New Braunfels TX, 78132-3862. G. **West Fourmile Reservoir and West Fourmile Augmentation Station.** City of Cripple Creek, PO Box 430, Cripple Creek, CO 80813. H. **Gillette Well No. 1.** Colorado Department of Transportation, 4201 E. Arkansas Ave., Denver, CO 80222. I. **Gillette Well Nos. 2 and 3.** Colorado Department of Transportation, 4201 E. Arkansas Ave., Denver, CO 80222 and/or Ernest N. Snare Living Trust, 14195 County Road 1, Florissant, CO 80816. J. **Gillette Well No. 4.** Cripple Creek & Victor Gold Mining CO LLC, c/o Newmont CC&V Mining Corp. 6363 S. Fiddlers Green Cir. Ste. 800, Greenwood Village, CO 80111-5011 and/or City of Cripple Creek, PO Box 430, Cripple Creek, CO 80813. K. **Gillette Well No. 5.** Cripple Creek & Victor Gold Mining CO LLC, c/o Newmont CC&V Mining Corp. 6363 S. Fiddlers Green Cir. Ste. 800, Greenwood Village, CO 80111-5011 L. **Park Center Well.** Bureau of Land Management, Royal Gorge Field Office, 3028 E. Main Street, Canon City, CO 81212. 6. WHEREFORE, Applicant respectfully requests that this Court: 1) approve Applicant's amendment to the plan for augmentation; and 2) award Applicant conditional and absolute rights of appropriative exchange, with Applicant reserving the right to modify the amount claimed absolute in 4.A.vi for operations conducted during the pendency of this application.

CASE NO. 2021CW3028; Previous Case Nos. 00CW108, 07CW34, 15CW3000 – C. EDWARD FULTON, 12411 West Fielding Circle, #4538, Playa Vista, CA 90094

(Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Jefferson Houpt, Ryan Jarvis, Eric Theile, Beattie Houpt & Jarvis, PO Box 1669, Basalt, 970-945-8659)

HUERFANO COUNTY, NORTH MIDDLE CREEK

Amended Application for Findings of Reasonable Diligence.

All structures: Original decree entered on 05/07/01 in 00CW108; subsequent decrees entered in 07CW34 and 15CW3000. Source: Natural springs, trib to North Middle Creek. Appropriation date: 06/13/98. Amount: 15 g.p.m., conditional, each spring. Uses: Livestock and wildlife purposes. Livestock and wildlife can access the springs at the seep area and at points along the channel created thereby. Field Spring, WDID 1602118: Location: In the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec 1, T 29 S, R 70 W 6th PM in Huerfano County, approx 1,837 ft W of E Sec Line, and 2,100 ft S of N Sec Line of said Sec 1. UTM coordinates: 13S Easting 0485250, Northing 4156650. Field Spring is a natural spring that consists of seep area approx 5 ft in diameter with the described point at the approximate center. Corral Spring, WDID 1602120: Location: In the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec 1, T 29 S, R 70 W 6th PM in Huerfano County, approx 1,350 ft E of W Sec Line, and 801 ft N of S Sec line of said Sec 1. UTM coordinates: 13S Easting 0484590, Northing: 4155890. Corral Spring is

a natural spring that flows from a ravine in a forested hillside approx 18" wide. Big Pine Spring, WDID 1602119: Location: In the NE¼ SW¼ of Sec 1, T 29 S, R 70 W 6th PM in Huerfano County, approx 1,450 ft E of W Sec Line, and 1,818 ft N of S Sec Line of Sec 1. UTM coordinates: 13S Easting 0484570, Northing 4156200. Big Pine Spring is a natural spring that flows from a ravine in a forested hillside approx 18" wide. See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Application on file with the court includes a list of activities demonstrating diligence. Owner of land: Applicant.

CASE NO. 2021CW3029; Previous Case No. 2017CW3009 – SILOAM WELL ASSOCIATION, 1965 Pope Valley Ranch Rd. Pueblo, CO 81005 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Steven L. Janssen, Esq., 410 Main St., Longmont, CO 80501, Telephone: 303-717-7667)

Amended Application to Amend Plan for Augmentation to Add Covered Well

PUEBLO COUNTY

2. Description of Applicant: Applicant, Siloam Well Association ("SWA") is a Colorado Nonprofit Corporation organized exclusively for the nonprofit use of its members, a group of well users in the Siloam Road –Highway 96 area, southwest of Pueblo Reservoir ("Pueblo Complex Area") in Pueblo County. SWA was established to develop technical hydro-geological reports regarding ground water flows in the Pueblo Complex Area, obtain replacement water through a group lease from the Board of Water Works of Pueblo, Colorado (Pueblo Water), pursue an Augmentation Plan Decree for member wells, seek additional long-term water augmentation sources and protect SWA member well supplies through continuing aquifer monitoring and reporting. **3. Prior Decrees:** On July 20, 2018, in case no. 2017CW3009, this Court entered its Findings of Fact, Conclusions of Law, Amended Ruling of Referee, Judgment and Decree ("2017CW3009 Decree") approving a Plan for Augmentation for SWA member wells. Paragraph 12.10 of the 2017CW3009 Decree provides, inter alia, as follows: "12.10. Addition of Covered Wells: If Applicant seeks to add a SWA member's well as a Covered Well under this plan for augmentation, either as a new well, supplemental well or an alternate point of diversion for an existing well, Applicant or the well owner shall file an Application with the Water Court to add said well to this plan for augmentation. A SWA Member's well may be added to this plan under such appropriation date and priority as the Court may determine, so long as the well is operated and used, and out-of-priority depletions are replaced, pursuant to terms and conditions at least as restrictive as those decreed herein. If said added well is located within Zones 1, 2 or 3 of the SWA Inclusion Area as shown on **Exhibit A**, (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.), attached hereto, and withdraws water from the Dakota aquifer, the lagged depletions to the Arkansas River shall be calculated based on the parameters set forth in Table 1 above. If said added well is outside Zones 1, 2 or 3 of the SWA Inclusion Area as shown on **Exhibit A**, attached to the application, or withdraws water from other than the Dakota aquifer, the Applicant shall submit its

calculation of lagged depletions to the Arkansas River along with the Application to add said well to this plan of augmentation.” On June 9, 2020, in case no. 2019CW3063, and pursuant to paragraph to paragraph 12.10 of the 2017CW3009 Decree, this Court entered its Findings of Fact, Conclusions of Law, Ruling of Referee, Judgment and Decree amending the 2017CW3009 Decree to approve the Gonzales Domestic Well AKA K & S Well #1 as an additional structure to be augmented as a “Covered Well” in the 2017CW3009 Decree. **4. Purpose of Application:** Applicant has a new member whose name is Southern Flow Property Holdings, Consulting, and Management LLC (“Southern Flow”) also doing business as Newco Ventures. Southern Flow is the contract purchaser and authorized agent for Lynn and Kristina Armbruster (“Armbrusters”). The Armbrusters are the owners of the West 1/2 of East 1/2 of Southeast 1/4 of Section 2, Township 21 South, Range 68 West of the 6th P.M., and also own an existing well known as the Menely Well, DWR Permit #193140. The Menely Well is located within Zone 3 of the SWA Inclusion Area as shown on attached **Exhibit A**. The Menely Well is currently permitted and approved pursuant to C.R.S. sec. 37-92-602(3)(b)(II)(A) as the only well on a tract of land of 39.17 acres. The Applicant and its member, Southern Flow, seek to add the Menely Well as a “Covered Well” under the 2017CW3009 Decree and agree that thereafter this well shall be operated and used, and its out-of-priority depletions replaced, pursuant to the terms and conditions of the 2017CW3009 Decree. Upon approval of this Application, Southern Flow, as the contract purchaser and authorized agent for the Armbrusters, will seek to re-permit this well as a commercial irrigation well, to be deepened and improved to withdraw water from the Dakota aquifer, with its depletions to the Arkansas River calculated based on the parameters set forth in the 2017CW3009 Decree and to be augmented by Applicant pursuant to the terms and conditions of the 2017CW3009 Decree. **5. Name of Structure to be Augmented:** Menely Well (WDID 1408324), DWR Permit #193140. 5.1. The Menely Well is not decreed. 5.2. The Menely Well is located within the West 1/2 of the East 1/2 of the Southeast 1/4 of Section 2, Township 21 South, Range 68 West of the 6th P.M., at a point 1,520 feet from the South section line and 980 feet from the East section line. Source of PLSS information is the approved well permit and CDSS Map Viewer. 5.3. The point of diversion of the Menely Well is located at UTM Coordinates (Meters, Zone:13, NAD83) Easting: 503406, Northing: 4233582. Source of UTM Coordinates is the approved well permit and GPS device. 5.4 The location of the Menely Well and the location of use of the Menely Well is as shown on attached Exhibit B. **6. Quantity of Depletions for Well Sought to be Added to Augmentation Plan:** 10 acre feet per year. **7. Water right(s) to be used for Augmentation:** 7.1. Pueblo Water Lease. Applicant has entered a Water Lease Agreement with Pueblo Water dated January 31, 2017 (“Lease”), amended February 21, 2017 (“First Amendment”), amended November 1, 2017 (“Second Amendment”) and supplemented by Letters dated September 11, 2017, October 2, 2017, September 4, 2018, September 6, 2019, and September 18, 2020 (collectively: “Pueblo Water Lease”).

The Pueblo Water Lease, as amended and supplemented, is attached as **Exhibit C**. All replacement water supplied and delivered by Pueblo Water to Applicant is subject to the terms and conditions of the Pueblo Water Lease and consists of fully consumable decreed water for the augmentation of depletions from all SWA member wells authorized under the 2017CW3009 Decree, or any amendments thereto, including the Decree sought by this Application.

7.2. Amount of Augmentation Water. The Pueblo Water Lease is for a specific amount of fully consumable replacement water annually, however such amount may be modified annually upon request of SWA and in the discretion of Pueblo Water. This amount may be increased or decreased for subsequent water years, depending upon demand from SWA members and upon Pueblo Water's approval. The amount of replacement water leased by Applicant from Pueblo Water is 65 acre feet for Water Year 2021.

7.3. Annual Water Report. Pursuant to the 2017CW3009 Decree, SWA files an Annual Water Report with the Water Court by October 1st of each year, which includes: the total amount of proposed SWA member withdrawals and depletions to occur in the following water year; the source and quantity of replacement water available to replace these depletions (attaching a current copy of the Pueblo Water Letter demonstrating the amount of water leased by SWA for the following water year); a current table of SWA's members showing the amount of replacement water allocated to each SWA member for the following water year; the amount of allowable pumping for all SWA members based on the quantity and source of replacement water available to replace depletions for the following water year and lagged depletions resulting from all previous pumping; and the projected total stream depletions from projected pumping in the following water year and previously authorized pumping and identifying the entities responsible for replacement of said depletions.

7.4. Division Engineer Review: Pursuant to the 2017CW3009 Decree, the Division Engineer shall review the Annual Notice during the month of October so that approval will be complete before the following water year commences. In the event the Division Engineer does not approve the Annual Notice due to a determination that injury to other water rights will occur, then SWA members are not allowed to withdraw water from any SWA member wells during the following water year, until and unless acceptable modifications have been made.

7.5. Replacement of Depletions: Replacement of depletions from all SWA member wells, during pumping and post-pumping, is achieved by the delivery of fully consumable replacement water owned or controlled by Pueblo Water. All replacement water to be used by Applicant in the 2017CW3009 Decree, as amended by the 2019CW3063 Decree, including the Decree sought by this Application, must be decreed or otherwise legally available for augmentation purposes and deliverable upstream of the point of depletion.

7.6. Sources of Replacement Water: The sources of fully consumable replacement water provided to Applicant by Pueblo Water are unspecified in the Pueblo Water Lease, and such sources are at the option of Pueblo Water, as long as they are legally available for augmentation purposes at the point of replacement, but such sources do not currently include

Fryingpan-Arkansas Project Water. Fully consumable replacement water provided by Pueblo Water and available for use under the 2017CW3009 Decree, as amended, including the Decree sought by this Application, may include, without limitation: 7.6.1. Water stored in Twin Lakes Reservoir located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in T11S, R81W, 6th P.M., in Lake County, if allowed hereafter by the Bureau of Reclamation; 7.6.2. Water stored in Turquoise Reservoir located on Lake Fork Creek in Sections 7, 8, 17, 18, 19, and 20, T9S, R80W, 6th P.M. and Sections 10, 11, 12, 13, 14, and 15, T9S, R81W, 6th P.M., in Lake County, if allowed hereafter by the Bureau of Reclamation; 7.6.3. Water stored in Clear Creek Reservoir located in Sections 7 and 8, T12S, R79W, and Section 12, T12S, R80W, 6th P.M. in Chaffee County; 7.6.4. The sources of such replacement water may also include, but are not limited to, the water rights decreed in Case Nos.: 84-CW-177 & 84-CW-177(B), Water Div. 2, including the reusable return flows decreed therein; 90-CW-340, District Court, Water Div. 5; W-1901, District Court, Water Div. 5; 95-CW-321, District Court, Water Div. 5; 90-CW-55, District Court, Water Div. 2; and 04-CW-130, District Court, Water Div. 2.

8. Applicant does not intend to change a water right to provide a source of augmentation. 9. The plan for augmentation does not include an exchange of water right(s). 10. Complete Statement of Plan for Augmentation: 10.1. Purpose: This Application seeks to add the Menely Well as a Covered Well under the 2017CW3009 Decree and thereby augmenting the lagged stream depletions caused to the Arkansas River by the pumping of the Menely Well, including any replacement wells to be constructed for said Menely Well, in time, location and amount. 10.2. Diversions: The Menely Well will make out-of-priority withdrawals of ground water from the Dakota aquifer which is tributary to the Arkansas River. 10.3. Uses: The entirety of the diversions from the Menely Well will be used for supply of hemp or marijuana grow operations, including beneficial use for indoor and outdoor irrigation, greenhouse operations and cooling, processing facilities, and related commercial, drinking, sanitary, domestic or residential purposes. The location of such uses is shown on attached **Exhibit B**. 10.4. Depletions: Ground water diversions from the Menely Well will be considered one hundred percent (100%) consumptive. As such, Applicant is not claiming any return flows resulting from the diversion and uses of water withdrawn from the Menely Well. Applicant reserves the right to claim such return flows in the future through a Water Court proceeding to amend the 2017CW3009 Decree. 10.5. Point of Depletions: The pumping of the Menely Well, results in depletions to the Arkansas River in Section 36, Township 20 South, Range 66 West of the 6th P.M., Pueblo County, Colorado. A general area map depicting Zones 1, 2 and 3 of the SWA Augmentation Plan Area and lines from centroids to the point of depletion is shown on attached Exhibit A. 10.6. Timing of Depletions: The Menely Well is within Zone 3 of the SWA Member Inclusion Area as shown on attached Exhibit A. Replacement timing for all lagged depletions was based on a Glover method analysis which was used to create a unit response function (“URF”) for the centroid of each of

Zones 1, 2 and 3 of the SWA Inclusion Area. Applicant retained Leonard Rice Engineers, Inc. to provide an engineering report, supporting figures and tables which calculate and describe such URFs for each of Zones 1, 2 and 3. Said engineering report is attached hereto as **Exhibit D**.

10.7. Point of Replacement: Replacement water is delivered to the Arkansas River at or above Section 36, Township 20 South, Range 66 West of the 6th P.M., Pueblo County, Colorado. Replacement water is provided by fully consumable water owned or controlled by Pueblo Water that is decreed or otherwise legally available for augmentation purposes and further described in paragraph 7.6 above.

10.8. Limitation of Pumping: Withdrawals from all SWA member wells, including the Menely Well, shall be limited so that monthly depletions do not exceed the replacement water delivered to the Arkansas River at or above the point of depletion, taking into account transit losses on deliveries of replacement water, and that the total amount of annual depletions of all SWA members, including Southern Flow, do not exceed the amount of replacement water available to Applicant under the Pueblo Water Lease.

10.9. Transit Losses: Any replacement water that is released to the Arkansas River upstream of the point of depletion shall be subject to river transit losses on delivery to the point of depletions, as determined by the Division Engineer. Applicant shall account for transit losses on replacement water provided pursuant to the 2017CW3009 Decree at the time of such releases from storage or to the system and shall release to the river system additional amounts to make up for such transit losses, based on the most recent transit loss calculations accepted and used by the Division Engineer for the applicable reach of the Arkansas River, and estimated distances from the applicable structure to the point of depletion on the stream.

10.10. Credit for Replacement Water: Applicant will only claim credit for its fully consumable replacement water at the point of depletion, after assessment of all transit losses. Transit losses shall be assessed in accordance with the standard administrative procedures used by the Division Engineer. The Division Engineer's Office and the State Engineer's Office will administer the replacement water decreed herein from the point it enters the river system to the point of depletion, less the above transit losses. The replacement water will not be considered native water available for diversion by other water rights until it reaches the point of depletion. Applicant shall not seek any credits, off-sets, reductions in obligations, etc. for transit losses when Pueblo Water supplied replacement water is released from whatever source Pueblo Water determines it will release from.

10.11. Single Credit: Applicant shall only claim a single credit for the augmentation use of fully consumable replacement water made available under the 2017CW3009 Decree.

10.12. Measurement: Applicant requires all SWA members to install and maintain totalizing flow meters on all SWA member wells, including the Menely Well, or any additional or replacement wells associated therewith, and thereafter to maintain records and provide reports to the State Engineer or Division Engineer by the 10th day of the month following the month of pumping.

10.13. Accounting: Applicant prepares and provides accounting forms subject to approval and revision at the

direction of the Division Engineer. Applicant has established an on-line data base (http://siloam-data.com/depletions_accounting) accessible to the State and Division Engineers and Opposers, containing all reporting information required by the 2017CW3009 Decree. These accounting forms and their format adhere to all applicable policy, guidelines, and protocol established by the State and Division Engineers for such accounting consistent with the terms of the 2017CW3009 Decree and Colorado law. All accounting shall be submitted monthly, unless required more often at the request of the Division Engineer or Water Commissioner. The accounting for the month shall be submitted to the Division Engineer and Water Commissioner no later than ten (10) days following the last day of any given month. Applicant shall provide to the Division Engineer proposed accounting for the upcoming plan year on or before October 1 of each year.

10.14. Administration: Applicant's use of the fully consumable water provided by Pueblo Water under the Pueblo Water Lease, and amendment(s) and supplement(s) thereto, pursuant to the 2017CW3009 Decree, including the Decree sought by this Application, for replacement of depletions of the Menely Well will ensure that the Applicant has provided all replacement water necessary to meet the lawful requirements of senior diverters at the time and location and to the extent that seniors would be deprived of their lawful entitlement by the Applicant. **11. Names and address of owner land upon which structure is located:** Lynn & Kristina Armbruster, 8440 W. State Hwy. 96, Pueblo, CO 81005.

CASE NO. 2021CW3030; Previous Case Nos. 05CW51, 96CW17, 13CW3036. THE UPPER ARKANSAS WATER CONSERVANCY DISTRICT, ("UAWCD") P.O. Box 1090, Salida, CO 81201; TOWN OF BUENA VISTA, ("Buena Vista") P.O. Box 2002, Buena Vista, CO 81211; SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT, ("SECWCD") 31717 United Ave. Pueblo, CO 81001 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: UAWCD: Law of the Rockies, Kendall K. Burgemeister, Atty. Reg. #41593, 525 North Main Street, Gunnison, CO 81230, 970-641-1903; SECWCD: BURNS, FIGA & WILL, P.C., Stephen H. Leonhardt, Atty. Reg. #15122, April D. Hendricks, Atty. Reg. #45546, 6400 S. Fiddlers Green Circle, Suite 1000, Greenwood Village, CO 80111, 303-796-2626; Buena Vista: Alperstein & Covell P.C., Cynthia F. Covell, Atty. Reg. #10169, Andrea L. Benson, Esq., Reg. No. 33176, Gilbert Y. Marchand, Jr., Esq., Reg. No. 19870, 1391 Speer Boulevard Suite 730, Denver, CO 80204, 303-894-8191)

Application for Finding of Reasonable Diligence and to Make Absolute in Part

CHAFFEE COUNTY

Applicants seek a finding of reasonable diligence for the following conditional appropriative right of exchange, and a finding that a portion of the exchange has been made absolute: Name of right: Cottonwood Creek Exchange. Original Decree: Case No. 96CW17, entered July 12, 1999, by the District Court, Water Division No. 2, Colorado. Subsequent decrees: Case No. 05CW51 (District Court, Water Division 2, August 7, 2007): 5.0 cfs of the 10 cfs appropriative right of exchange for UAWCD made absolute, the balance continued. Case No. 13CW3036 (District Court, Water Division 2, May 7,

2015): Additional 4.98 cfs appropriative right of exchange for UAWCD made absolute, for a total of 9.98 cfs, the balance continued. Exchange Reach (all in Chaffee County, Colorado): Lower Terminus: The confluence of the Arkansas River and Cottonwood Creek. Upper Termini: Rainbow Lake located in the S½ Sec. 19 and N½ Sec. 30, T.14S., R.79W., 6th P.M.; Cottonwood Reservoir located in Sec. 36, T.14S., R.80W., 6th P.M.; Buena Vista Town Intake located at a point whence the NE corner of Sec. 13, T.14S., R.79W., 6th P.M. bears N.32°03'33" E. 2944.64 feet; Buena Vista Infiltration Gallery located in SW¼NE¼ and the NW¼SE¼ Sec. 13, T.14S., R.79W., 6th P.M. Source of exchange water: Fryingpan-Arkansas Project ("Fry-Ark Project") water ("Project Water") that is legally available to Applicants, up to 75 acre-feet per year for UAWCD and 75 acre-feet per year for Buena Vista. SECWCD's water rights for the Fry-Ark Project's West Slope Decrees and East Slope Decrees are described in the above-referenced Decree in Case No. 96CW17. See general location map attached to the application. (General location map or Exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court). Appropriation Date: February 10, 1939. Amount: 20 c.f.s. and 150 acre-feet per year, allocated as follows: UAWCD: 10 c.f.s (9.98 cfs absolute, 0.02 cfs conditional).; 75 acre-feet per year Buena Vista: 10 c.f.s. (conditional), 75 acre-feet per year Uses: UAWCD: use within the SECWCD boundaries as a supplemental supply for augmentation, municipal, industrial, and irrigation uses. The augmentation use is only to augment depletions from structures located within SECWCD boundaries, the water from which is applied to beneficial use within SECWCD boundaries; and Buena Vista: use within the Town of Buena Vista service area as a supplemental supply for municipal purposes; augmentation as provided in Case Nos. 98CW38 and 17CW3022. Project Water Allocations: UAWCD and Buena Vista are eligible to receive annual allocations of Project Water, which they may purchase and use after it is allocated to them by SECWCD. SECWCD allocates Project Water annually based on its principles, policies, rules and regulations, as they may be amended. Pursuant to the decree in Case No. 96CW17, UAWCD may exchange up to 75 acre-feet per year of Project Water when such water is allocated to it by SECWCD, and Buena Vista may exchange up to 75 acre-feet per year of Project Water when such water is allocated to it by SECWCD. Any and all use of Project Water in these exchanges is pursuant to and subject to the above-referenced Decrees for the Fry-Ark Project, and to all lawful rules, regulations, policies, and contract obligations of SECWCD. Project Water shall be used only to supply water to or replace depletions from structures and uses within SECWCD boundaries, and to replace evaporation losses on Project Water stored in Cottonwood Reservoir and Rainbow Lake pursuant to the decree in Case No. 96CW17. Any decree entered in this case will not give UAWCD and Buena Vista any rights to use Fry-Ark Project structures, or any rights of ownership or rights to purchase or receive allocations of Project Water or return flows therefrom, but will not alter any existing rights they may otherwise have. UAWCD and Buena Vista may use and exchange Project Water only if, when, and to the extent they have purchased such water after it is allocated to them by SECWCD. Any decree herein does not in any way modify SECWCD's decrees for Project Water. The description of or reference to the structures and water rights herein, other than the proposed exchanges described herein, does not in any way seek to amend or limit the decrees for those structures and water rights, and omissions in such descriptions and references shall in no way prejudice the owners of those structures and water rights.

Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: UAWCD has developed its rights in the Cottonwood Creek Exchange as part of its integrated augmentation system. Pursuant to C.R.S. § 37-92-301(4)(b), when an integrated system is composed of several features, as is the case here, work on one feature of the system is considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire system. UAWCD uses water stored in Rainbow Lake and Cottonwood Lake pursuant to the Cottonwood Creek Exchange as part of this system. UAWCD frequently receives allocations of Fryingpan-Arkansas Project water, which, along with various other water rights, it uses to replace depletions to wells and reservoirs pursuant to augmentation plans approved in Case Nos. 92CW84, 94CW5, 94CW41, 94CW42, 03CW55 and 06CW32, Rule 14 replacement plans, and other plans for augmentation, substitute water supply plans, and replacement plans through leases to third parties. UAWCD performed, inter alia, the following activities since the entry of the decree in Case No. 13CW3036: Exercised its rights in the Cottonwood Creek Exchange. UAWCD operated an exchange of Project water to Rainbow Lake at a rate of 14 cfs on May 17 and 18, 2020, including UAWCD's entire 10 cfs share of the 96CW17 exchange. The maximum annual volume was 75 acre-feet in 2020. UAWCD also stored water in Cottonwood Lake and Rainbow Lake pursuant to this exchange in each year from 2015 through 2019. Enrolled additional structures in its plans for augmentation, including the plan for augmentation on Cottonwood Creek (94CW5/06CW32); Actively engaged in replacement of depletions by wells and ponds for participants in its augmentation plans; Routinely performed inspection, maintenance, and operation activities at its facilities, such as internal inspections, channel and spillway clearing, installation, maintenance, and operation of measurement and recording devices and systems; Obtained approval of, and operated, annual Rule 14 Replacement plans each year; Pursued and completed purchases or other agreements for the use of water resources, including but not limited to purchase of annual allocations of Fryingpan-Arkansas Project Water; Obtained approval from the U.S. Forest Service of special use permits for North Fork Reservoir and O'Haver Reservoir; Applied for a new special use permit for Cottonwood Lake; Defended UAWCD's and its constituents' water rights by participation as an opposer in water court applications filed by others; UAWCD, including its water activity enterprise, made expenditures of approximately \$1,291,210 in 2015; \$1,194,970 in 2016; \$1,428,374 in 2017; \$1,677,111 in 2018; \$1,645,515 in 2019; and \$1,716,831 in 2020 to directly and indirectly support the development and operation of its water system, including operation of this exchange and the facilities used therein. Town of Buena Vista. The Cottonwood Creek Exchange is part of Buena Vista's integrated water supply and distribution system. Pursuant to C.R.S. § 37-92-301(4)(b), when an integrated system is composed of several features, as is the case here, work on one feature of the system is considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire system. During this diligence period Buena Vista has: Exercised its rights in the Cottonwood Creek Exchange to Cottonwood Lake in 2017, 2018, 2019 and 2021, with the maximum rate of exchange being 5.0 cfs on May 21, 2019. The maximum amount stored in one year in Cottonwood Lake was 10 acre-feet, stored in May 2019. The amount of storage capacity available to Buena Vista in Cottonwood Lake is currently limited by

agreements with UAWCD due to operational constraints. Operated its Well No. 2 and the exchange and augmentation plan decreed in Case No. 98CW38, including making absolute a portion of its Well No. 2 exchange in Case No. 19CW3074. Water stored in Cottonwood Lake and/or Rainbow Lake pursuant to the Cottonwood Creek Exchange decreed in Case No. 96CW17 is an integral part of the augmentation plan decreed in Case No. 98CW38; Obtained decrees in Case No. 16CW3101 (decreeing a conditional storage right for McPhelemy Pond) and Case No. 17CW3022 (decreeing an augmentation plan and conditional exchange of Project Water to McPhelemy Pond). Water stored in Cottonwood Lake pursuant to the Cottonwood Creek Exchange in Case No. 96CW17 is an integral part of the augmentation plan decreed in Case No. 17CW3022; Finalized an Agreement Regarding Cottonwood Lake with UAWCD to evaluate additional usable storage space in Cottonwood Lake to enable both parties to more fully and effectively use Cottonwood Lake pursuant to the Cottonwood Creek Exchange decreed in Case No. 96CW17, to facilitate pursuit of a new or renewed Special Use Permit with the United States Forest Service, with terms that specifically recognize Buena Vista's right to store water in Cottonwood Lake, and to set forth the parties' agreements regarding Cottonwood Lake operations and protocols; Continued to acquire annual allocations of Fryingpan-Arkansas Project water to be used for augmentation and exchanges, including this one; Performed regular routine maintenance, repairs and upgrades on its water system infrastructure, and constructed Well No. 3, tributary to the Arkansas River.; Committed to provide water service to new developments within the Buena Vista service area, and negotiated terms on which such service would be provided; Defended Buena Vista's water rights by participation as an opposer in water court applications filed by others, and undertook efforts to protect the quality of Buena Vista's water supply; Expended legal fees in excess of \$61,000 during this diligence period in connection with general water rights and water supply matters, including review of resumes and relevant water court applications, prosecuting the Buena Vista's water court applications, defending Buena Vista's water rights in opposition to water court applications of others, protecting its right to demonstrate dry up of historically irrigated lands, investigation of storage options, negotiations, and other matters related to Buena Vista's water rights and water supplies, including review of water rights opportunities and assistance with acquisition agreements; and participating in presentations to the Town Board of Trustees; and Expended engineering fees in excess of \$313,000 during the last diligence period for general water rights consulting, review of resumes and Cottonwood Creek applications, assistance with monthly water rights accounting; planning, design and construction services for an Arkansas Well; planning for a second Arkansas well, augmentation for Buena Vista's McPhelemy Pond; review of various water rights opportunities for Buena Vista; review of water rights applications and opposition to some applications; and presentations to the Town Trustees. SECWCD: As this Court has previously found, the Fry-Ark Project, which is the source of the exchange water involved in this application, is part of an integrated water supply and delivery system that is operated by the United States Bureau of Reclamation and co-applicant SECWCD, such that reasonable diligence in the construction, operation and maintenance of the Fry-Ark Project constitutes reasonable diligence for the development of the Cottonwood Creek Exchange. See, e.g., Decree in Case No. 13CW3036, at 7, 10.c. Work in connection with the Fry-Ark Project and its decreed diversions has been prosecuted with reasonable diligence. See Decree,

Case No. 18CW3063 (August 4, 2019, Water Division No. 5); and Decree, Case No. 16CW3079 (November 14, 2018, Water Division No. 2). West Slope components of the Fry-Ark Project have been operated to divert water through the Boustead Tunnel to the East Slope reservoirs of the Fry-Ark Project, and thereafter to decreed beneficial uses for Fry-Ark Project constituents, including for exchange by UAWCD and Buena Vista. SECWCD has contractual agreements with the United States Bureau of Reclamation for planning, construction, operation, maintenance and repayment of the Fry-Ark Project. The operation, maintenance, and repayment of the Fry-Ark Project systems and sub-systems, of which this exchange is a part, constitutes reasonable diligence for this exchange right. Relief Requested. UAWCD requests that the final 0.02 cfs of its rights in the Cottonwood Creek Exchange be made absolute in this case. That is, UAWCD requests that its rights in the Cottonwood Creek Exchange be made absolute in its entirety. Buena Vista requests that its rights in the Cottonwood Creek Exchange be made absolute in this case in the amount of 5.0 cfs, the greatest rate at which the exchange was operated during this diligence period, as shown in paragraph 3.b.i. Applicants request that all portions of the Cottonwood Creek Exchange not already made absolute or made absolute in this case be continued in full force and effect. Names and addresses of owners or reputed owners of the land upon which water is or will be stored or exchanged to: Cottonwood Reservoir is located on land owned by the United States Forest Service, 5575 Cleora Rd, Salida, CO 81201; Rainbow Lake is located on land owned by Rainbow Lake Resort, Inc., P.O. Box 17450, Oklahoma City, OK, 73136; and Buena Vista Town Intake, and Buena Vista Infiltration Gallery are owned by Applicant, Town of Buena Vista.

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 July 2021, (forms available at Clerk's office or at www.courts.state.co.us, 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 15th day of June 2021.

Michele Santistevan

Michele M. Santistevan, Clerk
District Court, Water Div. 2



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