

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

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

Pursuant to C.R.S. 37-92-302, as amended, you are notified that the following is a resume of all applications filed in the Water Court during the month of June 2022.

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

The water right claimed by this application may affect in priority any water right claimed or heretofore adjudicated within this division, and owners of affected rights must appear to object and protest within the time provided by statute, or be forever barred.

CASE NO. 2022CW12. Applicants: John K. Stevenson Jr. and Brenda L. Anderson, 29470 Cactus Park Rd., Cedaredge, CO 81413. Application for Absolute Surface Water Rights: North Willow Spring - NW1/4SE1/4 of Section 3, T14S, R94W, 6TH PM., Easting 249692, Northing 4304902, Zone 13. Source: North Fork Gunnison River, Gunnison River. Appropriation Date: 10/27/2021. Amount Claimed: 3 gpm absolute for irrigation of 5 acres, domestic use, wildlife, stockwater, and fire protection. **DELTA COUNTY.**

CASE NO 2022CW13. Applicant: William Davis, Lazy HX Ranch, 10922 25 Mesa Rd., Delta, CO 81416. Protest to Final Abandonment List: Everlasting Ditch – SW1/4NE1/4 of Section 18, T49N, R13W, N.M.P.M, 2,360 ft from the East section line, and 2,380 ft from the North section line. (Zone 13 UTM, NAD 83, 206873mE, 4267898mN). Source: Cottonwood Creek, Roubideau Creek, Gunnison River. Date of Decree on Abandonment List: 8/11/1969. Case No: CA5873. Court: Division 4. Appropriation Date: 7/1/1964. Decreed use: 22.25 c.f.s. for irrigation and stockwater. Amount listed as having been abandoned: 9 c.f.s. Former District number and page number where listed on Abandonment List: Water District 40, page 1. **DELTA COUNTY.**

CASE NO. 2022CW14. Applicant: Michael Orpi, 10642 3500 Rd., Hotchkiss, CO 81419. Application for Change of Water Right: Orpi Tail Water Ditch – Easting 265410.03, Northing 4299159.3, Zone 13. Source: North Fork of the Gunnison River. Appropriation Date: Appropriation Date: 1901, Historical Ditch registered 1912. Total Amount Decreed to Structure: 7 cfs absolute for agriculture and generation of power. Complete Statement of Change: Change from Hotchkiss to Lake Powell (Coconino County, NW1/4SE1/4, Section 24, T41N, R8E, Gilla-Salt River P.M., Easting 456882.46, Northing 4088051.94, Zone 12.), under Native American Water Rights, Treaty of 1908 Tribes and Reservations. **DELTA COUNTY.**

CASE NO. 2022CW3030 APPLICATION FOR CHANGE OF WATER RIGHT. Name and Address of Applicant: Wolf Land Company, LP, 6805 Highway 62, Ridgway, CO 81432. Send all pleadings and correspondence to: Jeffrey J. Conklin or Danielle T. Skinner, KARP NEU HANLON, P.C., 201 14th Street, Suite 200, P. O. Drawer 2030, Glenwood Springs, CO 81602, (970) 945-2261. *First Claim: Change of Location of Water Right.* Name of structure: Mike Cuddigan Ditch. Date of original decree: April 14, 1961, in Civil Action No. 2440, in the District Court in and for Water Division No. 4. Legal description: (from Civil Action No. 2440): The headgate of the Mike Cuddigan Ditch is located on the south bank of Dallas Creek in Section 8, Twp. 45 N., R. 8 W., N.M. P.M. Source: Dallas Creek, tributary to the Uncompahgre River, tributary to the Gunnison River. Appropriation date: April 1, 1950. Amount: 0.50 c.f.s. Use: Stockwatering. Amount of water to be changed: 0.50 c.f.s. Note: This water right appeared on the Final Revised Abandonment List of Water Rights in Water Division 4, dated December 20,

2021. Applicant has filed or will file a Protest to Final Abandonment with the Court in conjunction with the filing of this Application. Description of proposed change: Applicant proposes to change the location of diversion for the Mike Cuddigan Ditch to the Hyde Sneva Ditch. The Hyde Sneva Ditch, as decreed on December 30, 1999, in Case No. 98CW244, in the District Court in and for Water Division No. 4, is located on Dallas Creek approximately 1,300 feet West of the East section line and 1,000 feet South of the North section line, Section 7, Township 45 North, Range 8 West, N.M.P.M., at a point in the SW1/4NE1/4NE1/4 whence the Northeast corner of said Section 7 bears North 60°39' East 1,679.42 feet. All other aspects of the Mike Cuddigan Ditch shall remain as decreed in Civil Action No. 2440. Names and addresses of owners of land upon which structures are located: Applicant. A map depicting the location of the structures to be decreed is on file with the Water Court (5 pp. with exhibits). **OURAY COUNTY.**

CASE NO. 2022CW3031 APPLICATION FOR FINDING OF DILIGENCE. 1. Name, mailing address, email address and telephone number of applicant: Teck CO, LLC, c/o Leslie Olmstead, 501 N. Riverpoint Blvd., Suite 300, Spokane, WA 99202, (509) 623-4567, Leslie.Olmstead@teck.com; Attorneys: L. Richard Bratton, John P. Justus, Karoline M. Henning, Jewel E. Marsh, HOSKIN FARINA & KAMPF, Professional Corporation, 200 Grand Avenue, Suite 400, Post Office Box 40, Grand Junction, Colorado 81502-0040. **2. Name of structures:** Powderhorn Pump & Pipeline Headgate Nos. 1-3 and Buttes Exchange Plan. **3. Description of conditional water rights: a. Original Decree:** Decree entered April 18, 1980 by the District Court in and for Water Division 4 in Case No. W-2997 ("Original Decree"). **b. Subsequent decrees awarding findings of diligence:** Decrees entered in Case Nos. 84CW59, 88CW41, 94CW61, 01CW36, 09CW7, and 16CW3004 by the District Court in and for Water Division 4. **c. Legal description of point(s) of diversion: i. Powderhorn Pump & Pipeline Headgate No. 1:** Powderhorn Pump & Pipeline Headgate No. 1 is located a point on the northeast bank of Cebolla Creek at the confluence of Cebolla Creek and Beaver Creek, which point bears North 71° 0' 0" east 950 feet from the SW corner of Section 11, Township 46 North, Range 2 West, N.M.P.M. **ii. Powderhorn Pump & Pipeline Headgate No. 2:** Powderhorn Pump & Pipeline Headgate No. 2 is located at a point on the northeast bank of Cebolla Creek at the confluence of Cebolla Creek and Deldorado Creek, which point bears south 8° 30' west 1680 feet from the NE corner of Section 10, Township 46 North, Range 2 West, N.M.P.M. **iii. Powderhorn Pump & Pipeline Headgate No. 3:** Powderhorn Pump & Pipeline Headgate No. 3 is located at a point on the southeast bank of Deldorado Creek, which point bears South 19° 30' west 780 feet from the SW corner of Section 1, Township 46 North, Range 1 ½ West, N.M.P.M. **iv. Buttes Exchange:** Buttes Exchange Plan is located at the points of diversion described above for Powderhorn Pump & Pipeline Nos. 1, 2, and 3 and Blue Mesa Reservoir which is located on the Gunnison River in Gunnison and Montrose Counties. Water will be diverted from Cebolla Creek and Deldorado Creek at Powderhorn Pump & Pipelines Nos. 1, 2 and 3 by exchange for releases from Blue Mesa Reservoir. The initial point of survey for Blue Mesa Dam is located at a point on the right abutment thereof, being the intersection of the centerline of the axis of the dam and the centerline of the outlet works tunnel, whence the SW corner of Section 31, Township 49 North, Range 4 West, N.M.P.M. bears north 78° 36' 44" west a distance of 3,207.07 feet. **d. Sources of water: i. Powderhorn Pump & Pipeline Headgate Nos. 1 and 2:** Cebolla Creek, tributary to the Gunnison River. **ii. Powderhorn Pump & Pipeline Headgate No. 3:** Deldorado Creek, tributary to the Gunnison River. **iii. Buttes Exchange:** Cebolla Creek and Deldorado Creek in exchange for Gunnison River water released from Blue Mesa Reservoir. **e. Appropriation Dates: i. Powderhorn Pump & Pipeline Headgate No. 1:** November 8, 1976. **ii. Powderhorn Pump & Pipeline Headgate No. 2:** November 8, 1976. **iii. Powderhorn Pump & Pipeline Headgate No. 3:** November 8, 1976. **iv. Buttes Exchange Plan:** November 8, 1976. **f.**

Amounts: i. Powderhorn Pump & Pipeline Headgate No. 1: 2.26 c.f.s. cumulative with the Powderhorn Pump & Pipeline Headgate No. 2. ii. Powderhorn Pump & Pipeline Headgate No. 2: 2.26 c.f.s. cumulative with the Powderhorn Pump & Pipeline Headgate No. 1. iii. Powderhorn Pump & Pipeline Headgate No. 3: 2.26 c.f.s. iv. Buttes Exchange Plan: 2.26 c.f.s. **g. Uses:** Mining, domestic, milling, mined land reclamation and irrigation purposes. **4. Detailed outline of what has been done toward completion or for completion of the appropriation and application of the water to beneficial use as conditionally decreed, including expenditures:** a. The conditional water rights which are the subject of this application are necessary for development and operation of Applicant's White Earth Project (the "Project") consisting of an open pit titanium dioxide mine near Powderhorn in Gunnison County. The mine would produce approximately 5,500 tons per day of titanium dioxide ore and other valuable by-products. This ore would be processed in an on-site concentrator, producing a concentrate containing approximately 50% titanium dioxide. The concentrate would be transported to another location for conversion into pigment. Preliminary estimates are that the mining and concentrating portion of the project would cost approximately \$150,000,000. The titanium dioxide from this project would be used primarily in pigments. The concentrate that would be produced at the White Earth Project is from a somewhat unique mineral assemblage requiring a pigment plant specifically designed to convert the concentrate into pigment. Further research and development is necessary to design the process and plant for conversion. Until that is accomplished, marketing arrangements are made, and pigment plant construction is under way, beneficial use of the conditionally decreed water cannot commence. b. During the current diligence period, Applicant expended \$361,395 in accomplishing the activities listed below. These actions and expenditures were necessary to maintain the Project site and prepare for future mining activities, and were prerequisites to the beneficial use of the conditionally decreed water rights. c. In 2016, Applicant expended a total of \$72,650. Applicant received legal opinions regarding the status of its patent application for the Project at the BLM's Denver State Office. This legal work was necessary for Applicant to continue moving forward in the application process. Until a patent determination is completed for the Project, beneficial use of the conditionally decreed water cannot commence. Applicant also expended \$9,268 for mine site safety assessments and reclamation monitoring, \$34,100 on Federal and State claim maintenance fees, \$3,487 on internal company travel expenses to inspect the Project, \$152 on Gunnison and Saguache County claim filing fees, \$9,118 on property taxes for the Project site, and \$7,380 on storage units holding rock core that is integral to the Project. d. In 2017, Applicant expended a total of \$71,696. During this time, Applicant continued to review its patent applications. Additionally, Applicant expended \$5,100 to retain Louis Berger U.S. Inc. to consult regarding hazardous materials at the caretaker's office/residence for the Project site. Applicant also expended \$34,100 on Federal and State claim maintenance fees for the Project site, \$152 on Gunnison and Saguache County claim filing fees, \$9,228 on property taxes for the Project site, and \$7,740 on storage units holding rock core that is integral to the Project. e. In 2018, Applicant expended a total of \$55,198. During this time, Applicant continued to review its patent applications, expending \$1,221 on legal fees. Applicant also expended \$2,636 on travel expenses to oversee asset and maintenance review on the Project site. Finally, Applicant expended \$34,100 on Federal and State claim maintenance fees, \$171 on Gunnison and Saguache County claim filing fees, and \$9,410 on property taxes for the Project Site, and \$7,660 on storage units holding rock core that is integral to the Project. f. In 2019, Applicant expended a total of \$54,627. Applicant expended \$1,433 in legal fees associated with water rights diligence application questions and land transfer. Applicant also expended \$36,300 on Federal and State claim maintenance fees, \$161 on Gunnison and Saguache County claim filing fees, \$8,993 on property taxes for the Project site, and \$7,740 on storage units holding rock core that is integral to the Project. g. In 2020, Applicant expended a total of \$53,471. Applicant expended \$36,300 on Federal and State claim maintenance fees, \$206 on Gunnison

and Saguache County claim filing fees, \$9,143 on property taxes for the Project site, and \$8,100 on storage units holding rock core that is integral to the Project. **h.** In 2021, Applicant expended a total of \$53,749. Applicant expended \$36,300 on Federal and State claim maintenance fees, \$151 on Gunnison and Saguache County claim filing fees, \$8,950 on property taxes for the Project site, and \$8,070 on storage units holding rock core that is integral to the Project. **5. Name(s) and address(es) of owner(s) or reputed owners of the land upon which structures are located:** Applicant: Teck CO LLC, 501 N. Riverpoint Blvd., Suite 300, Spokane, WA 99202; United States of America (managed by the Bureau of Reclamation); 2764 Compass Dr. #106, Grand Junction, CO 81506. Application is 6 pages in length. **GUNNISON AND MONTROSE COUNTIES.**

CASE NO. 2022CW3032 APPLICATION FOR FINDING OF DILIGENCE. 1. Name, mailing address, email address and telephone number of applicant: Teck CO, LLC, c/o Leslie Olmstead, 501 N. Riverpoint Blvd., Suite 300, Spokane, WA 99202, (509) 623-4567, Leslie.Olmstead@teck.com; **Attorneys:** L. Richard Bratton, John P. Justus, Karoline M. Henning, Jewel E. Marsh, HOSKIN FARINA & KAMPF, Professional Corporation, 200 Grand Avenue, Suite 400, Post Office Box 40, Grand Junction, Colorado 81502-0040. **2. Name of structure:** Road Beaver Creek Exchange. **3. Description of conditional water rights: a. Original Decree:** Decree entered May 31, 1995 by the District Court in and for Water Division 4 in Case No. 93CW44 ("Original Decree"). **b. Subsequent decrees awarding findings of diligence:** Decrees entered in Case Nos. 01CW37, 09CW08, and 16CW3005 by the District Court in and for Water Division 4. **c. Legal description of point(s) of diversion: i. Road Beaver Creek Headgate No. 3:** Road Beaver Creek Headgate No. 3 is located at a point on the east bank of Road Beaver Creek at latitude 38° 14' 10" North, longitude 107° 02' 02" West (or in Section 14, Township 46 North, Range 1 ½ West, N.M.P.M. at a point 750 feet from the west section line and 910 feet from the south section line). **ii. Blue Mesa Reservoir:** Blue Mesa Reservoir is located on the Gunnison River in Gunnison and Montrose Counties. Water will be diverted from Road Beaver Creek by exchange for releases from Blue Mesa Reservoir. The initial point of survey for Blue Mesa Dam is located at a point on the right abutment thereof, being the intersection of the centerline of the axis of the dam and the centerline of the outlet works tunnel, whence the SW corner of Section 31, Township 49 North, Range 4 West, N.M.P.M. bears north 78° 36' 44" west a distance of 3,207.07 feet. **d. Source of water:** Road Beaver Creek, tributary to Cebolla Creek, tributary to the Gunnison River, in exchange for Gunnison River water released from Blue Mesa Reservoir. **e. Appropriation Date:** June 6, 1992. **f. Amount:** 2.26 c.f.s. **g. Uses:** Mining, milling, industrial, domestic, irrigation, regulating storage, mined land reclamation and other associated beneficial uses. **4. Detailed outline of what has been done toward completion or for completion of the appropriation and application of the water to beneficial use as conditionally decreed including expenditures: a.** The conditional water rights which are the subject of this application are necessary for development and operation of Applicant's White Earth Project consisting of an open pit titanium dioxide mine near Powderhorn in Gunnison County. The mine would produce approximately 5,500 tons per day of titanium dioxide ore and other valuable by-products. This ore would be processed in an on-site concentrator, producing a concentrate containing approximately 50% titanium dioxide. The concentrate would be transported to another location for conversion into pigment. Preliminary estimates are that the mining and concentrating portion of the project would cost approximately \$150,000,000. The titanium dioxide from this project would be used primarily in pigments. The concentrate that would be produced at the White Earth Project is from a somewhat unique mineral assemblage requiring a pigment plant specifically designed to convert the concentrate into pigment. Further research and development is necessary to design the process and plant for conversion. Until that is accomplished, marketing arrangements are made, and pigment plant construction is under way,

beneficial use of the conditionally decreed water cannot commence. **b.** During the current diligence period, Applicant expended \$361,395 in accomplishing the activities listed below. These actions and expenditures were necessary to maintain the Project site and prepare for future mining activities, and were prerequisites to the beneficial use of the conditionally decreed water rights. **c.** In 2016, Applicant expended a total of \$72,650. Applicant received legal opinions regarding the status of its patent application for the Project at the BLM's Denver State Office. This legal work was necessary for Applicant to continue moving forward in the application process. Until a patent determination is completed for the Project, beneficial use of the conditionally decreed water cannot commence. Applicant also expended \$9,268 for mine site safety assessments and reclamation monitoring, \$34,100 on Federal and State claim maintenance fees, \$3,487 on internal company travel expenses to inspect the Project, \$152 on Gunnison and Saguache County claim filing fees, \$9,118 on property taxes for the Project site, and \$7,380 on storage units holding rock core that is integral to the Project. **d.** In 2017, Applicant expended a total of \$71,696. During this time, Applicant continued to review its patent applications. Additionally, Applicant expended \$5,100 to retain Louis Berger U.S. Inc. to consult regarding hazardous materials at the caretaker's office/residence for the Project site. Applicant also expended \$34,100 on Federal and State claim maintenance fees for the Project site, \$152 on Gunnison and Saguache County claim filing fees, \$9,228 on property taxes for the Project site, and \$7,740 on storage units holding rock core that is integral to the Project. **e.** In 2018, Applicant expended a total of \$55,198. During this time, Applicant continued to review its patent applications, expending \$1,221 on legal fees. Applicant also expended \$2,636 on travel expenses to oversee asset and maintenance review on the Project site. Finally, Applicant expended \$34,100 on Federal and State claim maintenance fees, \$171 on Gunnison and Saguache County claim filing fees, and \$9,410 on property taxes for the Project Site, and \$7,660 on storage units holding rock core that is integral to the Project. **f.** In 2019, Applicant expended a total of \$54,627. Applicant expended \$1,433 in legal fees associated with water rights diligence application questions and land transfer. Applicant also expended \$36,300 on Federal and State claim maintenance fees, \$161 on Gunnison and Saguache County claim filing fees, \$8,993 on property taxes for the Project site, and \$7,740 on storage units holding rock core that is integral to the Project. **g.** In 2020, Applicant expended a total of \$53,471. Applicant expended \$36,300 on Federal and State claim maintenance fees, \$206 on Gunnison and Saguache County claim filing fees, \$9,143 on property taxes for the Project site, and \$8,100 on storage units holding rock core that is integral to the Project. **h.** In 2021, Applicant expended a total of \$53,749. Applicant expended \$36,300 on Federal and State claim maintenance fees, \$151 on Gunnison and Saguache County claim filing fees, \$8,950 on property taxes for the Project site, and \$8,070 on storage units holding rock core that is integral to the Project. **5. Name(s) and address(es) of owner(s) or reputed owners of the land upon which structures are located:** Applicant: Teck CO LLC, 501 N. Riverpoint Blvd., Suite 300, Spokane, WA 99202; United States of America (managed by the Bureau of Reclamation); 2764 Compass Dr. #106, Grand Junction, CO 81506. Application is 6 pages in length. **GUNNISON AND MONTROSE COUNTIES.**

CASE NO. 2022CW3033 GUNNISON COUNTY – IN THE GUNNISON RIVER OR ITS TRIBUTARIES. Rocking JL Ranch, LLC c/o Kevin L. Patrick, Esq. and John M. Sittler, Esq., Patrick, Miller & Noto, P.C., 229 Midland Ave., Basalt, CO 81621 (970) 920-1030. APPLICATION FOR FINDINGS OF REASONABLE DILIGENCE AND TO MAKE WATER RIGHTS ABSOLUTE. **First Claim: To Make Water Right Absolute and For Finding of Reasonable Diligence.** Name of structure: J&N Ditch. Date of original decree: January 6, 2010, Case No. 08CW195, Division 4 Water Court. Subsequent diligence decree: June 2, 2016, Case No. 16CW3001, Division 4 Water Court. Legal description: As corrected in Case No. 16CW3002, Division 4 Water Court, the J&N Ditch is located in the NE ¼ SW ¼ NW ¼ of

irregular Section 4, Township 46 North, Range 6 West of the N.M.P.M. at a distance of 3,565 feet from the South section line and 1,264 feet from the West section line (Gunnison County). UTM NAD83 Z13 coordinates: Northing – 4238832, Easting – 278146. A map is on file with the court as Exhibit A. Source: Unnamed stream fed by spring tributary to the Big Cimarron River, tributary to the Gunnison River. Appropriation date: July 31, 2003. Amount: 0.25 c.f.s., conditional. Uses: To fill and refill Rainbow Lake, of which the uses are stockwatering, fire protection, recreation, piscatorial, and wildlife watering. Applicant's Rainbow Lake water right was decreed absolute in Case No. 08CW195, Division 4 Water Court. Claim to make absolute: Date water applied to beneficial use: August 20, 2019. Amount: 0.15 c.f.s. Uses: To fill and refill Rainbow Lake, of which the uses are stockwatering, fire protection, recreation, piscatorial, and wildlife watering. Applicant's Rainbow Lake water right was decreed absolute in Case No. 08CW195, Division 4 Water Court. Applicant requests a finding of reasonable diligence on the amount not made absolute in this case. A list of diligence activities is on file with the court as Exhibit B. Applicant owns the land on which the water right is located and where the water is put to beneficial use. **Second Claim: For Finding of Reasonable Diligence.** Name of structure: J&N Ditch, 1st Enlargement. Date of original decree: January 6, 2010, Case No. 08CW195, Division 4 Water Court. Subsequent diligence decree: June 2, 2016, Case No. 16CW3001, Division 4 Water Court. Legal description: As corrected in Case No. 16CW3002, Division 4 Water Court, the J&N Ditch is located in the NE ¼ SW ¼ NW ¼ of irregular Section 4, Township 46 North, Range 6 West of the N.M.P.M. at a distance of 3,565 feet from the South section line and 1,264 feet from the West section line (Gunnison County). UTM NAD83 Z13 coordinates: Northing – 4238832, Easting – 278146. A map is on file with the court as Exhibit A. Source: Unnamed stream fed by spring tributary to the Big Cimarron River, tributary to the Gunnison River. Appropriation date: July 31, 2009. Amount: 1.25 c.f.s., conditional. Uses: To fill and refill Rainbow Lake, of which the uses are stockwatering, fire protection, recreation, piscatorial, and wildlife watering. Applicant's Rainbow Lake water right was decreed absolute in Case No. 08CW195, Division 4 Water Court. Applicant requests a finding of reasonable diligence on the conditional water right amount and uses. A detailed outline of what Applicant has done towards completion of the appropriation and application of the water to beneficial use is on file with the court as Exhibit B. Applicant owns the land on which the water right is located and where the water will be put to beneficial use. **GUNNISON COUNTY.**

CASE NO. 2022CW3034. Protestant: GPS Land, LLC, c/o Ron White, Ranch Manager, 45362 Needle Rock Road, Crawford, CO 81415, Telephone: (970) 819-8313, ron@smithforkranch.com. Copies of all pleadings to David L. Kueter, #26136, Holsinger Law, LLC, 1800 Glenarm Place, Suite 500, Denver, CO 80202, Telephone: (303) 722-2828, dkueter@holsingerlaw.com. **PROTEST TO FINAL ABANDONMENT LIST IN GUNNISON COUNTY.** Name of Structure: Head and Ferrier Ditch and the Extension and Enlargement of the Head and Ferrier Ditch (collectively listed as the "Head and Ferrier Ditch"). Date of Original Decree: June 20, 1957 in Case No. CA5289, and January 27, 1961 in Case No. CA5990. Decreed Legal Description of Structure Location: The headgate is located on the west bank of Curecanti Creek at a point whence the NW corner of Section 30, Township 15 South, Range 89 West of the 6th P.M. bears North 13 degrees 46 minutes west 8,030 feet in Gunnison County, Colorado. See **Exhibit A.** Source of water: Curecanti Creek. Decreed uses: Irrigation. Appropriation Date: June 30, 1955 in case CA5289, and August 9, 1956 in Case No. CA5990. Decreed Amount: 10.5 c.f.s. total, 8 c.f.s. decreed in Case No. CA5289, and 2.5 c.f.s. decreed in Case No. CA5990. (22.5 c.f.s. of the 25.0 c.f.s. originally decreed to the Extension and Enlargement of the Head and Ferrier Ditch in Case No. CA5990 was canceled by Court order in Case No. W-2493.) Amount and uses listed as having been abandoned: 4.45 c.f.s., of the 8 c.f.s. for irrigation decreed in Case No. CA5289, and all 2.5 c.f.s. for all uses decreed in Case No. CA5990. Former District Number and Page Number where listed on Abandonment List:

District 59, Page 2 of the Revised Abandonment List of Water Rights in Water Division 4, dated December 20, 2021. State factual and legal basis for this Protest: GPS Land, LLC is part owner of the water right which is subject to this protest. GPS Land, LLC purchased the Smith Fork Ranch, including its interest in the Head and Ferrier Ditch, from Liman, LLC, in 2021. Liman, LLC filed an objection to the listings of the Head and Ferrier Ditch on February 25, 2021. GPS Land, LLC endorses and adopts the information set forth in Liman, LLC's objection, see **Exhibit B**. GPS Land, LLC purchased the water rights by deed dated October 1, 2021, see **Exhibit C**. Attempts to sell and purchase of a water right are evidence of lack of intent to abandon the right. *East Twin Lakes v. Lake County*, 76 P.3d 918, 924 (Colo. 2003). The Head and Ferrier Ditch and headgate have been mostly covered in snow since GPS Land, LLC's purchase of its interest in late 2021. GPS Land, LLC intends to repair the ditch ensure it can carry GPS Land, LLC's interests under the decrees. The Head and Ferrier Ditch water right is owned by multiple users, including GPS Land, LLC. During the late season, the users take their water in rotation, so each user can take their full allotment at times when the ditch is not diverting the full decreed amount. (20 pages, including 15 pages of exhibits) **GUNNISON COUNTY.**

CASE NO. 2022CW3035 OURAY COUNTY 1. Applicant Tri-County Water Conservancy District, P.O. Box 347, Montrose CO 81402, 970-249-3369, a political subdivision of the State of Colorado, by Aaron R. Clay, P.O. Box 38, Delta CO 81416, 970-874-9777. APPLICATION TO MAKE ABSOLUTE SURFACE WATER RIGHTS 2. Name of Structure: Hydroplant - Ridgway Reservoir Dam Enlargement. 3. Legal Description of decreed point of diversion: The centerline of the crest of Ridgway Reservoir Dam at its east abutment is located at a point whence the south quarter corner of Section 16, Township 46 North, Range 8 West, N.M.P.M. bears South 37°11'22.8" East 2,680.38 feet; The centerline of the crest of Ridgway Reservoir Dam at its west abutment is located at a point whence the south quarter corner of Section 16, Township 46 North, Range 8 West, N.M.P.M. bears South 74°10'42" East 4252.33 feet; The centerline of the crest of Ridgway Reservoir Dam between the east and west abutments bears South 74°10'42" West 2,466.0 feet. 4. Date of Appropriation: May 16, 2012; 5. Amount: 190 c.f.s. conditional. 6. Use: hydropower production. 7. Source of Water: Uncompahgre River. 8. Prior Case: 2015CW3095, entered June 21, 2016; 9. Basis of claim: Applicant has storage and direct flow rights for the Ridgway project for hydroelectric generation. A direct flow right for 300 c.f.s. was entered in 96CW139 and made absolute in case 2015CW3093. Applicant completed the hydropower plant and began generating electricity in 2014. On June 4, 2014, 560 c.f.s. was diverted through the plant, while the reservoir was storing water. In case 2015CW3095, the Court decreed 260 c.f.s. of this amount as absolute (the first 300 c.f.s. was by the senior hydropower right decreed in 96CW139, made absolute in 2015CW3093.) Another 190 c.f.s. was made conditional until such time as the full diversion occurred. On August 1, 2019, 575.8 c.f.s. was diverted and used for hydropower, when the inflow to the Reservoir was 703 c.f.s. Thus, Applicant is entitled to have another 15.8 c.f.s. made absolute. Applicant requests to have the balance of 174.2 c.f.s. continued conditional. **OURAY COUNTY.**

CASE NO. 2022CW3036 DELTA COUNTY 1. Applicant: **Gregory J. Knight** by Clay, Dodson & Skarka, PLLC, 415 Palmer St., Delta CO 81416, 970-874-9777. APPLICATION FOR FINDING OF REASONABLE DILLIGENCE 2. Name of Structure: **KNIGHT SPRING PONDS NO. 1 AND NO. 2**, 3. Legal description of location: The Knight Spring No. 1 is located in the SW1/4SE1/4 of Section 17, T14S, R93W in the 6th P.M., at a point 586 feet north of the south Section line and 1539 feet west of the east section line, UTM coordinates Easting 0256455, Northing 4301770 Zone 13; Knight Spring No. 2 is located in the SW1/4SE1/4 of Section 17, T14S, R93W in the 6th P.M., at a point 114 feet north of the south Section line and 2599 feet west of the east section line, UTM coordinates Easting 0256128, Northing 4301623 Zone 13. 4.

Date of Appropriation: January 29, 2014. Amount: 2.0 acre-feet in each pond conditional. 5. Use: Storage water right for the irrigation of 20 acres, recreation, fish culture and stock water. 6. Source of Water: Springs tributary to the Gunnison River. **Applicant has built one-quarter mile of the access road needed to build the ponds. Applicant requests a finding of reasonable diligence for Knight Spring Ponds No. 1 and No. 2. DELTA COUNTY.**

CASE NO. 2022CW3037, San Miguel County, San Miguel River, or its tributaries. Application for Absolute Water Storage Right. Wilson Mesa at Telluride Metropolitan District, c/o Johnston Van Arsdale Martin PLLC, 305 Gold Rivers Court, Suite 200, Basalt 970-922-2122. Applicants request confirmation of an absolute water storage right described as follows. Name of structure: Metro District Pond. Location: The point on the dam where the Agri-Drain is located is described as the SE¼, Sec 6, T 42 N, R 10 W, N.M.P.M. at GPS NAD 83 UTM 12S 763033mE, 4201897mN. This point is depicted on the location map attached as Fig. 1. Note that said Sec 6 is an irregular section. Source: inflow, run-off, precipitation and irrigation return flows tributary to Elk Creek, tributary to Fall Creek, tributary to the San Miguel River. Appropriation Date: September 30, 2021. How appropriation was initiated: construction of Metro District Pond. Amount: 4.51 af, absolute with the right to fill and refill when water is physical and legally available. Use: wildlife, stock watering, recreation, piscatorial and for the replacement of depletions, including augmentation. Surface area of high water line: 1.02 acres. Maximum height of dam: less than 10 feet to base of spill channel. Length of dam: 540 feet. Total Capacity: 4.51 af. Active capacity: 4.51 af, pond is equipped with an Agri-drain with 12" outlet. Dead Storage: none. Owner of land upon which the structure is or may be located: Wilson Mesa Ranch Homeowners Assn. PO Box 1919, Telluride, CO 81435-1919. Remarks: Exhibit A is the Metro District Pond as-built survey drawing with a stage storage table. The Metro District Pond is lined and equipped with controllable outlet works including an Agri-drain system and corresponding staff gage within the pond. Table 1 is a separate stage storage table, with the depths shown in 0.25-foot increments. Applicant also has a 4.0 af lease contract in Trout Lake with Public Service Company of Colorado; this water storage right is known as the Trout Lake Reservoir, Wilson Mesa Metro Enlargement. The lease contract is for replacement of depletions, including augmentation, along the mainstem of the San Miguel River. (4 pages with 3 exhibits) **SAN MIGUEL COUNTY.**

CASE NO. 2022CW3038 bifurcated protest to Case No. 21CW3067. GUNNISON COUNTY. PROTEST TO FINAL ABANDONMENT LIST. 1. Name and address of Protestant: Trappers Crossing at Crested Butte Association, Inc., P.O. Box 3748, Crested Butte, CO 81224, with a copy of all pleadings to Mark E. Hamilton, Esq. and Susan M. Ryan, Esq., Holland & Hart LLP, 600 E. Main St., Suite 104, Aspen, CO 81611, (970)925-3476, mehamilton@hollandhart.com, smryan@hollandhart.com. 2. Description of the Water Right: a. Name of Structure: Bench Ditch. b. Decree Information (all District Court, Water Div. 4): Original Decree: 89CW219, entered on August 8, 1991. Subsequent decrees: 97CW133, 04CW50, 11CW78, and 18CW3013. c. Location: on the E. bank of Trapper Creek, being the trib. of Coal Creek immediately E. of Wildcat Creek, in the NW1/4 SE1/4 of Section 4, T. 14 S., R. 86 W. of the 6th P.M., 1901 feet from the South Section Line, 1560 feet from the East Section Line (NAD83, Zone 13, Easting 0326009m, Northing 4303627m). d. Source: Trapper Creek, a trib. of Coal Creek immediately E. of Wildcat Creek, which is not trib. to Wildcat Creek. e. Decreed Uses: filling Bench Pond for recreation and augmentation. f. Appropriation date: September 9, 1989. g. Decreed amount: 2.0 c.f.s, absolute for one annual filling of Bench Pond for recreation and augmentation uses. h. Amount and use or uses listed as having been abandoned: 1.9 c.f.s. for all decreed uses. i. Water District where listed on Abandonment List: District 59. 3. Factual and legal basis for the Protest: a. The Protestant is the owner of the Bench Ditch and the water right described above. b. The Protestant has no intent to abandon the water right described

above. c. The Bench Ditch water right is part of the Protestant's integrated water supply system and augmentation plan for Trapper's Crossing at Crested Butte, which is a residential development. The augmentation plan is a critical component of the water supply for the development. d. The Bench Ditch is used to fill the Bench Pond via pipeline. The water court decreed 2.0 c.f.s. as absolute for the Bench Ditch in Case No. 04CW50 for recreation uses. e. The remaining conditional portion of the Bench Ditch water right was very recently decreed as absolute for all uses in Case No. 18CW3013 on August 3, 2020. f. In the summary of consultation filed in Case No. 18CW3013, the Division Engineer recommended that 1.9 c.f.s. of the Bench Ditch water right be cancelled based on the current pipe size of two-inches. In response to the summary of consultation, the Protestant's engineer discussed the issue with undersigned counsel and the Division Engineer. Everyone involved, including the Division Engineer, reached the conclusion that the Bench Ditch water right was correctly tabulated as absolute in the amount of 2.0 c.f.s. to fill the Bench Pond. The Protestant and the Division Engineer for Water Division 4 agreed that the Bench Ditch water right was decreed as part of the Bench Ditch Pond storage right and should be made absolute in its entirety. g. The existing pipeline capacity can carry up to 0.25 c.f.s. In addition, the Protestant has the intent and ability to increase the existing capacity to carry the full amount of the Bench Ditch water right. On June 11, 2020, the Protestant adopted a resolution authorizing the replacement of the existing pipeline to "more effectively utilize the [Protestant's] water rights and replace this aging infrastructure." h. The water court in Case No. 18CW3013 specifically found that the "Bench Ditch may continue to divert water at a rate of up to 2.0 c.f.s. to fill the Bench Pond for all decreed storage purposes (recreation and augmentation)." i. The Protestant has filed for and been granted a finding of reasonable diligence for the Bench Ditch water right several times, including twice during the 10-year abandonment period. j. As described in Case No. 18CW3013, the Protestant will continue to increase its use and diversions under the Bench Ditch water right as the development reaches full build-out. k. The Protestant has also pursued civil litigation to address access and easement issues related to the Bench Ditch from September 2019 to September 2020 in Case No. 19CV30042, Gunnison County District Court. The critical issue in the civil case was whether the Protestant could increase the capacity of the pipeline to carry up to 2.0 c.f.s. The settlement reached in the case recognized the need for an easement to accommodate a larger pipeline sufficient to carry 2.0 c.f.s. l. The Protestant has continuously used the Bench Ditch water right and intends on continuing that use. m. The Protestant reserves the right to provide an additional factual and legal basis for its position. Any person who may be affected by the subject matter of this protest or by any ruling thereon and desiring to participate in any hearing pursuant to C.R.S. § 37-92-401(6) must file an entry of appearance by August 31, 2022. (5 pages) **GUNNISON COUNTY.**

CASE NO. 2022CW3039. Telluride Regional Airport Authority, c/o Scott C. Miller, Esq. and Jason M. Groves, Esq. Patrick, Miller & Noto, P.C., 229 Midland Ave. Basalt, CO 81621, (970) 920-1030. APPLICATION FOR FINDINGS OF REASONABLE DILIGENCE. Name of structures: TRAA Well No. 1, TRAA Well No. 2, TRAA Well No. 3, TRAA Well No. 4. Conditional water rights description: Original decree information: TRAA Well No. 1: October 11, 1995, Case No. 94CW118A, Water Division 4. TRAA Well Nos. 2-4: August 14, 1996, Case No. 94CW118B, Water Division 4. Subsequent diligence decrees: May 15, 2003, Case No: 02CW155, Water Division 4. December 1, 2009, Case No. 09CW61, Water Division 4. June 6, 2016, Case No. 15CW3114, Water Division 4. Legal descriptions: TRAA Well No. 1: NE ¼, SW ¼ of the SE ¼ of Section 30, Township 43 North, Range 9 West of the New Mexico Prime Meridian at a point approximately 1,142 feet north of the south section line and 1,895 feet west of the east section line of said section 30 in San Miguel County. TRAA Well No. 2: SW ¼ of the SE ¼ of Section 30, Township 43 North, Range 9 West of the New Mexico Prime Meridian approximately 1,225 feet north of the south section line and 2,525 feet west of the east section line of said section 30

(San Miguel County). TRAA Well No. 3: SE ¼ of the SE ¼ of Section 30, Township 43 North, Range 9 West of the New Mexico Prime Meridian approximately 475 feet north of the south section line and 1,040 feet west of the east section line of said section 30 (San Miguel County). TRAA Well No. 4: SE ¼ of the SE ¼ of Section 30, Township 43 North, Range 9 West of the New Mexico Prime Meridian approximately 200 feet north of the south section line and 100 feet west of the east section line of said section 30 (San Miguel County). Map on file with the Court. Source: Fractured Mancos, tributary to the San Miguel River. Appropriation dates: TRAA Well No. 1: April 15, 1985. TRAA Well Nos. 2-4: January 19, 1994. Amounts: TRAA Well No. 1: 0.034 cfs, conditional. TRAA Well Nos. 2-4: 0.067, conditional. Uses: Municipal (for those uses to which the Authority is empowered to serve), commercial, industrial, irrigation, fire protection, and placement into storage. Well depths: TRAA Well No 1: approx. 636 feet. TRAA Well No. 2: approx. 700 feet. TRAA Well Nos. 3 and 4: TBD. Well permits: TRAA Well No 1: 49528-F-R. TRAA Well No 2: 76833-F. TRAA Well Nos. 3 and 4: TBD. Detailed outline of diligence work performed on file with Court. Applicant owns the land where the structures are located and upon which the water is used. Remarks: The TRAA Well Nos. 1-4 are components of the Applicant's integrated water supply system that serves the Applicants' property. **SAN MIGUEL COUNTY.**

CASE NO. 2022CW3040. Applicant: Michael Boyd and Linda Glascock Boyd, 1707 N. Waterfront Pkwy, Wichita, KS 67206, (316) 685-9898. Please direct all correspondence to: Law of the Rockies, Kendall K. Burgemeister, Atty. Reg. #41593, 525 North Main Street, Gunnison, CO 81230, 970-641-1903, kburgemeister@lawoftherockies.com. Application to Make Conditional Rights Absolute and for Finding of Reasonable Diligence. Names of structures: Jordan Ditch No. 2 First Enlargement Alternate Point of Diversion, Boyd Pond No. 1, Boyd Ditch, and Boyd Pond No. 2. Original Decree: 07CW207, entered October 9, 2009, by the District Court, Water Division No. 4. Subsequent decrees: 15CW3076, entered June 6, 2016, by the District Court, Water Division No. 4. Description of water rights from the Decree in Case No. 15CW3076: Jordan Ditch No. 2 First Enlargement Alternate Point of Diversion is located within the NE¼SW¼NE¼, Section 7, Township 14 South, Range 84 West, 6th P.M. The headgate will be located on the left bank of an unnamed stream flowing off the southeast side of Double Top Mountain, at a point located approximately 1671 ft. west of the east section line and 1827 ft. south of the north section line (UTM Zone 13S, Easting 342247, Northing 4301984). This conditional water right is decreed for 0.5 c.f.s. with an appropriation date of December 6, 2007 to fill Boyd Pond No. 1 and for piscatorial and recreational uses and irrigation of 0.25 acre located within the NE¼SW¼NE¼ Section 7, Township 14 South, Range 84 West, 6th P.M. Boyd Pond No. 1 is located within the SW¼SE¼NE¼, Section 7, Township 14 South, Range 84 West, 6th P.M. The outlet for Boyd Pond No. 1 will be located approximately 1315 feet west of the east section line and 1873 feet south of the north section line (UTM Zone 13S, Easting 342357, Northing 4301958). This conditional storage right is decreed in the amount of 6.0 acre-feet with an appropriation date of December 6, 2007 for recreation, piscatorial, replacement of depletions (augmentation 2.36 acre-feet) and irrigation of 0.25 acre located within SE¼NE¼, Section 7, Township 14 South, Range 84 West, 6th P.M. Boyd Pond No. 1 will be filled from an unnamed stream flowing off the southeast side of Double Top Mountain, tributary to Cement Creek, tributary to the East River, via the Jordan Ditch No. 2 First Enlargement Alternate Point of Diversion. Boyd Ditch is located within the SE¼SE¼NE¼, Section 7, Township 14 South, Range 84 West, 6th P.M. The headgate will be located on the right bank of an unnamed stream which flows off of the mountainside on the east side of Cement Creek, at a point located approximately 476 ft. west of the east section line and 2363 ft. south of the north section line (UTM Zone 13S, Easting 342608, Northing 4301781). This right is conditionally decreed 0.5 cfs with an appropriation date of December 6, 2007 for piscatorial and recreational uses, and to continuously fill and maintain the level in Boyd Pond No. 2. The source for this water right is an unnamed stream which flows off of the mountainside on the east side of Cement Creek,

tributary to Cement Creek, tributary to the East River. Boyd Pond No. 2 is in the SE¼SE¼NE¼, Section 7, Township 14 South Range 84 West, 6th P.M. The outlet for Boyd Pond No. 2 will be located approximately 588 feet west of the east section line and 2064 feet south of the north section line (UTM Zone 13S, Easting 342576, Northing 4301876). Boyd Pond No. 2 will be an off-channel reservoir and is decreed in the amount of 6.0 acre-feet with an appropriation date of December 6, 2007 for piscatorial and recreational uses. The source for this water right is an unnamed stream which flows off of the mountainside on the east side of Cement Creek, tributary to Cement Creek, tributary to the East River. Boyd Ditch will be used to fill Boyd Pond No. 2. The locations of the structures are illustrated on Exhibit A to the Application on file with the Water Court. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use: The four structures were all constructed (including lining of the ponds), and water was diverted through the respective diversion structures to fill both ponds. Boyd Pond No. 1 was constructed to a maximum surface area of 24,077 square-feet and a maximum volume of 3.45 acre-feet. Boyd Pond No. 2 was constructed to a maximum surface area of 8,144 square-feet and a maximum volume of 0.85 acre-feet. Stage-area-capacity tables were developed for both ponds. Applicant submitted an application for augmentation to the Upper Gunnison River Water Conservancy District. Relief Requested. The Applicants seek to make absolute: Jordan Ditch No. 2 First Enlargement Alternate Point of Diversion, in the amount of 0.5 cfs; Boyd Pond No. 1 in the amount of 3.45 acre-feet; Boyd Ditch in the amount of 0.5 cfs; and Boyd Pond No. 2 in the amount of 0.85 acre-feet. The Applicants seek a finding of reasonable diligence for any portions of the above-described conditional water rights that are not made absolute in this proceeding. **GUNNISON COUNTY.**

CASE NO. 2022CW3041 DISTRICT COURT, WATER DIVISION NO. 4, STATE OF COLORADO, 200 E Virginia, Gunnison, CO 81230. IN THE MATTER OF THE PROTEST OF: COLUMBINE PARTNERS RANCH, INC. TO THE FINAL ABANDONMENT LIST OF WATER RIGHTS, IN DELTA COUNTY, COLORADO. **PROTEST TO FINAL ABANDONMENT LIST.** Columbine Partners Ranch, Inc. ("Columbine"), through undersigned counsel, protests the inclusion of portions of Columbine's Columbine Ditch water rights on the Final Revised Abandonment List of Water Rights in Water Division 4 dated December 20, 2021 (the "Final Abandonment List"). Water Rights Descriptions. Following are descriptions of the portions of Columbine Ditch water rights proposed for abandonment and that are the subject of this protest. Columbine Ditch No. 1. The Columbine Ditch No. 1 water right was decreed to divert a total of 3.8 cfs from Beaver Creek under Priority J347 for irrigation purposes on March 20, 1954 in Case No. CA3503 in Delta County District Court with an appropriation date of September 23, 1949. The Division Engineer included 1.9 cfs of the 3.8 cfs decreed to the Columbine Ditch No. 1 water right on the Final Abandonment List. The administration number is 36425.00000, and the WDID is 4001100. Columbine Ditch No. 2. The Columbine Ditch No. 2 water right was decreed to divert a total of 3.0 cfs from Fawn Creek under Priority J348 for irrigation purposes on March 20, 1954 in Case No. CA3503 in Delta County District Court with an appropriation date of September 23, 1949. The Division Engineer included 1.5 cfs of the 3.0 cfs decreed to the Columbine Ditch No. 2 water right on the Final Abandonment List. The administration number is 36425.00000, and the WDID is 4001101. Columbine Ditch No. 3. The Columbine Ditch No. 3 water right was decreed to divert a total of 6.0 cfs from Fawn Creek under Priority J349 for irrigation purposes on March 20, 1954 in Case No. CA3503 in Delta County District Court with an appropriation date of September 23, 1949. The Division Engineer included 3.0 cfs of the 6.0 cfs decreed to the Columbine Ditch No. 3 water right on the Final Abandonment List. The administration number is 36425.00000, and the WDID is 4001102. Columbine Ditch No. 4. The Columbine Ditch No. 4 was decreed to divert a total of 20.0 cfs from Cow Creek under Priorities J350 (5 cfs, conditional) and J351 (15 cfs, conditional) for irrigation purposes on March 20, 1954

in Case No. CA3503 in Delta County District Court with an appropriation date of September 23, 1949. On January 18, 1963, upon Supplemental Statement of Claim in the same Case CA3503, the 5 cfs decreed to Priority J350 was made absolute; and 10 cfs decreed to Priority J351 was also made absolute, the remaining 5 cfs under Priority J351 being continued conditional. On March 10, 1975, the remaining conditional 5 cfs under Priority J351 was abandoned by order of the court. The Division Engineer included 7.5 cfs of the remaining 15.0 cfs decreed to the Columbine Ditch No. 4 on the Final Abandonment List. The administration number is 36425.00000, and the WDID is 4001103. Columbine Ditch No. 5. The Columbine Ditch No. 5 water right was decreed to divert a total of 3.33 cfs from Fawn Creek under Priority J352 for irrigation purposes on March 20, 1954 in Case No. CA3503 in Delta County District Court with an appropriation date of September 23, 1949. The Division Engineer included 1.83 cfs of the 3.33 cfs decreed to the Columbine Ditch No. 5 water right on the Final Abandonment List. The administration number is 36425.00000, and the WDID is 4001104. Factual Grounds. The points of diversion for the Columbine Ditch Nos. 1-5 are all on Forest Service lands. See map attached to protest as Exhibit A. Getting equipment and tools to the headgates over the rough terrain along the course of the ditches is a substantial endeavor from the standpoint of time, labor, and resources. Columbine's ranch managers walked the Columbine ditches to inspect them in 2018 and determine what work needed to be done to irrigate. At that time, the managers determined that it was too expensive, so repairs were deferred. Economic obstacles to diverting water rebut the presumption of abandonment. In subsequent years, the managers also were unable to afford the work. In 2020, the ranch manager put a tarp in Fawn Creek in an attempt to divert water to Columbine Ditch No. 3. This attempt to divert water rebuts the claim of intent to abandon the water rights. *Twin Lakes*, 76 P.3d at 922. Columbine has diverted water from Cow Creek at its Larson and Larson No. 2 Ditches, and the Galpin No. 3 Ditch taking as much water as possible to those ditches when it was available. Columbine intended these diversions from Cow Creek to include water available to the Columbine Ditch Nos. 1 - 5 water rights since those ditches head on Cow Creek tributaries and it was the same water. Columbine made efforts to spread this water around the ranch as much as possible and to areas that could have otherwise been irrigated from the Columbine Ditches. This effort to divert the Columbine Ditches water rights at an undecreed changed point of diversion rebuts the claim of abandonment. *Lengel v. Davis*, 347 P.2d 142, 145 (Colo. 1959). In 2010, Columbine obtained a special use permit from the Forest Service to maintain and repair the headgates and ditches. In that year, the managers took a dozer and a backhoe to the headgates and cleaned the ditches. In 2018, when it was time to maintain the ditches again, the managers contacted the Forest Service about Columbine's special use permit. All of the managers' contacts with the District Ranger's office were by phone. After a long period, the Forest Service staff let the managers know they could not find the special use permit or any records of it. The District Ranger told the managers over the phone to go ahead and do the work that was necessary. However, as noted above, the repairs would have been too expensive and too labor-intensive, so the work was deferred. By obtaining a special use permit and seeking permission from the Forest Service for follow-up maintenance work, Columbine showed its intent *not* to abandon the Columbine Ditches water rights. *Twin Lakes*, 76 P.3d at 922. Columbine has, on numerous occasions, had to curtail diversions by neighboring owners in the Twin Spruce Ditch. This has been done with the knowledge of the water commissioner. The Twin Spruce Ditch heads on Cow Creek above Columbine's Larson Ditch Larson No. 2 Ditch and the Galpin Ditch No. 3. Columbine had to turn the Twin Spruce headgate down to allow water to flow to Columbine's Cow Creek ditches below, including water that was available to the Columbine Ditch Nos. 1-5 that Columbine intended to divert at its Larson Ditches and Galpin Ditch No. 3. This effort to make more Cow Creek water available for Columbine shows an intent to not abandon any portion of the Columbine Ditch Nos. 1-5 water rights. The ranch managers recently have been able to repair the Beaver Creek and Fawn Creek headgates and divert water under the Columbine Ditch

rights to beneficial use. Based on the foregoing, Columbine respectfully requests the Court remove all portions of the Columbine Ditch Nos. 1-5 water rights from the abandonment list.
DELTA COUNTY.

CASE NO. 2022CW3042 San Miguel County. Prospect Creek and San Miguel River. Application for Findings of Reasonable Diligence. Applicants: TSG Ski & Golf, LLC; Town of Mountain Village, c/o Christopher L. Geiger and Ryan J. Mitchell, Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602; 970-945-6546. Applicants seeks a finding of reasonable diligence in the development of their interests in the Upper Prospect Creek Reservoir Nos. 1 and 2, described below and collectively referred to herein as the "Subject Water Rights." A map depicting the location of the Subject Water Rights as Exhibit A is on file with the Water Ct. Name of Water Rights: Upper Prospect Creek Reservoir Nos. 1 and 2. Original Decree: Case No. 90CW112 in Dist. Ct., Water Div. 4, entered on 08/07/1996. Subsequent findings of reasonable diligence: At regular intervals as required by law, the Div. 4 Water Ct. has entered findings of reasonable diligence in the development of the conditional water rights described herein: Case No. 02CW153 on 06/09/2003; Case No. 09CW171 on 11/25/2009; and Case No. 15CW3081 on 06/02/2016. Legal Description: In Dist. Ct., Water Div. 4, Case No. 96CW232, the Upper Prospect Creek Reservoir Nos. 1 and 2 were changed to alternate points of storage at the following locations in any combination. Prospect Creek Reservoir Alternate No. 1: A point located in the N1/2 N1/2, Sec. 11, T. 42 N., R. 9 W., N.M.P.M., San Miguel Cty., CO described as follows: Commencing at the NW corner of said Sec. 11, from which the NW corner of Sec. 2, T. 42 N., R. 9 W., N.M.P.M. bears N. 01 deg., 15' 39" E., 5,266.63 ft. (basis of bearing) thence S. 79 degs. 02' 56" E., 2,420 ft. to said point. The location may also be described as a point in the NE1/4 NW1/4, Sec. 11, T. 42 N., R. 9 W. of the N.M.P.M., 644 ft. from the N. sec. line and 2,275 ft. from the W. sec. line of said Sec. 11. Also described as NAD 1983 UTM Zone 13N, 250,945 meters E. and 4,200,929 meters N. Storage capacity: 30 AF. Prospect Creek Reservoir Alternate No. 2: A point located in the S1/2 S1/2 of Sec. 2, T. 42 N., R. 9 W., N.M.P.M., San Miguel Cty., CO described as follows: Commencing at the SW corner of said Sec. 2 from which the NW corner of said Sec. 2 bears N. 01 deg. 15' 39" E., 5,266.63 ft. (basis of bearing) thence N. 84 degs. 22' 05" E., 2,675 ft. to said point. The location may also be described as a point in the SE1/4 SW1/4, Sec. 2, T. 42 N., R. 9 W. of the N.M.P.M., 65 ft. from the S. sec. line and 2,590 ft. from the W. sec. line of said Sec. 2. Also described as NAD 1983 UTM Zone 13N, 251,047 meters E. and 4,201,143 meters N. Storage capacity: 10 AF. Prospect Creek Reservoir Alternate No. 3: A point located in the S1/2 S1/2 of Sec. 2, T. 42 N., R. 9 W., N.M.P.M., San Miguel Cty., CO, described as follows: Commencing at the SW Corner of said Sec. 2 from which the NW Corner of said Sec. 2 bears N. 01 deg. 15' 39" E., 5,266.63 ft. (basis of bearing) thence N. 74 degs. 17' 27" E., 2545 ft. to said point. The location may also be described as a point in the SE1/4 SW1/4, Sec. 2, T. 42 N., R. 9 W. of the N.M.P.M., 500 ft. from the S. sec. line and 2,393 ft. from the W. sec. line of said Sec. 2. Also described as NAD 1983 UTM Zone 13N, 250,991 meters E. and 4,201,277 meters N. Storage capacity: 25 AF. Surface Area: The surface area of the three alternate facilities combined will not exceed 15.5 acres, per the decree in 96CW232. Source: Prospect Creek, filled and refilled continually when in priority by the Prospect Creek Reservoir Pumping Plant and Pipeline at its alternate points decreed in 96CW232; Upper Prospect Creek Snowmaking Pumping Plant & Pipeline, Telco Well Nos. 9, 10 and 11 (San Miguel River and alluvium); Telco Well Nos. 6 and 8 (Prospect Creek alluvium), including at their alternate points decreed in 90CW112 and 96CW232, Dist. Ct., Water Div. 4. Additional Decreed Source: In 08CW191, this Ct. decreed an additional supply source for the Upper Prospect Creek Reservoir Nos. 1 and 2 by surface diversion from the San Miguel River in the amt. of 9.0 c.f.s. under and through the water right decreed to the Oak Street Pump and Pipeline, Storage Enlargement in that case. Date of Approp.: 12/30/1991. Amt.: 20 AF was decreed conditional to each of the Upper Prospect Creek

Reservoir Nos. 1 and 2 in 90CW112. 5.5 AF was decreed absolute to each of the Upper Prospect Reservoir Nos. 1 and 2, with 14.5 AF remaining conditional to each of the Upper Prospect Reservoir Nos. 1 and 2 in 02CW153. Uses: The right to fill and refill continually when in priority for snowmaking, aesthetic, aug., muni., irr. and dom. purposes. A portion of the storage capacity is reserved to allow peak pumping rates for Upper Prospect Creek Snowmaking Pumping Plant and Pipeline. This Ct.'s decree in 90CW112 specifically provides that water stored under the Upper Prospect Creek Reservoir Nos. 1 and 2 water rights may be used for replacement purposes under the plan for augmentation approved in that case (see 90CW112 Decree, paragraph 8.B, page 23). Note: this Ct.'s decree in 02CW210 changed the original, erroneously decreed, use of "industrial" to "irrigation" use (see 02CW210 Decree, paragraph I.5.A). Integrated System: As decreed in 90CW112, 02CW153, 08CW191, 09CW71, and 15CW3081, the water rights described herein are part of Applicants' integrated water supply system. "When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of the water rights for all features of the entire project or system." C.R.S. § 37-92-301(4)(b). Name and address of owners of land on which structures are or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use: Applicants and United States Forest Service, PO Box 388, Norwood, CO 81423. In six years preceding the filing of the Application, Applicants have diligently pursued development of the Subject Water Rights. The application on file with the Ct. contains a detailed outline of the work performed during the diligence period. (7 pages of original application, Exh. A) **SAN MIGUEL COUNTY.**

CASE NO. 2022CW3043. Protestor: Mika Ag, Corp., d/b/a Escalante Land & Cattle Corp., 7105 Escalante Canyon Rd., Delta, CO 81416. **Attorneys for Applicant:** James D. Brown of Brown & Camp, LLC, P.O. Box 43, Delta, CO 81416 (970) 874-4451. **PROTEST TO FINAL ABANDONMENT LIST:** Protestor requests that South Fork Ditch WDID 40000906 be removed from the Final Abandonment List for Water Division No. 4. **South Fork Ditch information:** Date Decree: 01/31/1964, Case No: CA4808, District Court, Water Division 4, made ABSOLUTE 03/22/1971, Case No. W-0072, District Court Water Division No. 4, together with alternate points of diversion decreed in Case No. 2002CW266, 10/2/2008. **Source of water:** Escalante Creek, tributary to the Gunnison River. **Decreed uses:** irrigation and livestock. **Appropriation Date:** 11/15/1959. **Decreed Amount:** 5.0 c.f.s. **Amount and use or uses listed as having been abandoned:** 5.0 c.f.s. irrigation and livestock. **Decreed Original Point of Diversion:** located on the East bank of said Escalante Creek abutting against a granite rim at a point whence the East Quarter Corner of Section 2, Township 50 North, Range 14 West, N.M.P.M. bears North 15 East 1050 feet, thence due East 1320 feet and runs northeasterly for approximately 8000 feet. Protestor concedes that the original point of diversion has been abandoned, but claims right to divert at alternate points of diversion decreed in Case No. 2005CW266 including without limitation: Blumberg Ditch No. 1, situate at a point 612 feet S. and 537 feet E. from the NW corner of the NW¼ of the NW¼ of section 4, in T. 50 N., R. 14 W of the N.M.M. Blumberg Ditch No. 2, situate at a point 330 feet N. and 329 feet E. from the SW corner of the SW¼ of the NE¼ of section 5, in T. 50 N., R. 14 W. of the N.M.M. Tatum Burton Ditch and Tatum Burton Ditch Enlargement, situate on the west bank of Escalante Creek on the SW ¼ of the SE¼ of section 15, T. 51 N. R. 13 W., N.M.M., at a point 200 feet SE. of a point of sandstone rock, and about 7/8 of a mile S. from the 3rd correction line. Elkhorn Ditch, situate at a point whence the corner to sections 4, 5, 32 and 33, in Ts. 51 and 50 N., R. 14 W., N.M.M., bears S.14° and 24' W. 2375 feet distant. McCarthy Ditch and McCarthy Ditch Enlargement, situate on the left bank of Escalante Creek whence the corner to sections 20-21-28-29, in T. 15 S., R. 97 W. of the 6th P.M., bears N. 59°40' E., 310 feet distant; Mow Ditch and Mow Ditch Enlargement, situate on the west bank of Escalante Creek, at a point 105 chains S., and 8

chains W. from the $\frac{1}{4}$ section corner between sections 8 and 17, in T. 50 S., R. 97 W. of the 6th P.M. John W. Musser Ditch, situate at a point 934 feet N. and 2505 feet W. from the corner to sections 2 and 3, in T. 50 N., R. 14 W., and sections 34 and 35 in T. 51 N., R. 14 W. of the N.M.M.; Boise Ditch, situate on the west bank of Escalante Creek at a point whence the SW corner of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of section 31, in T. 15 S., R. 97 W. of the 6th P.M., bears southerly 42 rods distant; Campbell Ditch, situate on the left bank of Escalante Creek, at a point whence the corner to sections 2, 3, 34 and 35, in Ts. 50 and 51 N., R. 14 W., N.M.M., bears S. 48°44' E., 1390 feet distant; Hadler Ditch, situate at a spring arising on claimant's land, about midway between the center and the SW corner of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of section 7, in T. 50 N., R. 14 W. of the N.M.M.; Blumberg Ditch No 3, situate at a point 400 feet W., and 535 feet N, from the SE. corner of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of section 5, in T. 50 (error in decree 15) N., R. 14 W. of the N.M.M.; Granite Rock Ditch, situate on a branch of the Escalante Creek at a point whence the corner to sections 2, 3, 10 and 11, in T. 50 N., R. 14 W., N.M.M., bears N 50°20' E, 2101.7 feet distant; Wilbur Ditch, and Wilbur Ditch Enlargements, a point situate in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, Township 50 North, Range 14 West, N.M.P.M. on the left bank of the Escalante Creek; UTM NAD83, Zone 13, E200167, N4281076 (as changed by decree in Case No. 2020CW30035); Harvey Ditch, situate at a spring in the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of section 5, in T. 50 N., R. 14 W. of the N.M.M.; Poverty Ditch and Poverty Ditch Enlargement, situate on the left bank of Escalante Creek, in the SW portion of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of section 36, in T.15 S., R. 98 (error in original decree "96") W. of the 6th P.M.; McCarthy Ditch No. 2, on the N. bank of the North Branch of Escalante Creek at a point whence the corner to sections 5, 6, 7, 8, in T. 50 N., R. 14 W., of the N.M.M., bears N. 32°10' E., 31 chains distant; South Fork Ditch (WDID 40000905) on the left bank of said South Fork of Escalante Creek at a point 780 feet Northeasterly from the Southwest corner of the Northeast Quarter of the Southwest Quarter of Section 26, Township 51, North of Range 14, West of the N.M.M.; Sawtell Ditch, located on the left or West bank of said North Fork of Escalante Creek at a point from which the Northeast corner of Section 7, Township 50 North of Range 14, West of the N.M.M. bears North 48°00' East 4840 feet; Bass Ditch, at a point approximately 495 feet east and approximately 150 feet south of the NE corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 17, T. 15 S., R. 97 W., 6th P.M.; Bridge Ditch, on the right bank of said Escalante Creek 172 yards East and 5 yards North of the SW corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$, sec. 30, T. 15 S., R. 97 W., 6th P.M. **MESA, DELTA, AND MONTROSE COUNTIES.**

CASE NO. 2022CW3044 PROTEST TO FINAL ABANDONMENT. Name and address of Protestant/Owner: Wolf Land Company, LP, 6805 Highway 62, Ridgway, CO 81432, Please direct all pleadings and correspondence to: Jeffrey J. Conklin, Esq., Danielle T. Skinner, Esq., Karp Neu Hanlon, P.C., 201 14th St., Suite 200, P.O. Drawer 2030, Glenwood Springs, CO 81602. Phone #: (970) 945-2261, Fax #: (970) 945-7336. Name of Structure: *Mike Cuddigan Ditch*. Date of Original Decree: April 14, 1961. Case No: Civil Action No. 2440. Court: The District Court within and for the County of Ouray in the State of Colorado. Decreed Legal Description of Structure Location: Its headgate is located on the south bank of said Dallas Creek in Section 8, Twp. 45 N., R. 8 W., N.M. P.M., and is about 650 feet westerly from the subdivision corner located by a cedar post which is 80 rods north of the center of said Sec. 8. Source of water: Dallas Creek. Decreed use: stockwatering purposes. Appropriation Date: April 1, 1950. Decreed Amount: 0.500 c.f.s. Amount and use or uses listed as having been abandoned: 0.1500 c.f.s. for all decreed uses. Former District Number: Water District No. 68. Page Number on Abandonment List: Final Revised Abandonment List of Water Rights in Water Division 4, December 20, 2021, Page 3 of Factual and legal basis for this Protest: Owner owns the subject water rights. The water rights have been put to actual use and there is no intent to abandon them. Owner has diverted this water right at the Hyde Sneva Ditch where it has been used for stockwatering. Owner's irrigation water rights decreed to the Mike Cuddigan Ditch under

Priority No. 39 were previously changed to the Hyde Sneva Ditch; however, the stockwatering right under Priority No. 35 was not changed. Owner intends to correct this issue and has filed an Application for Change of Water Right (Filing ID No.: A1FF98DD26E1B) with the Court. Accordingly, consistent with the factors in *E. Twin Lakes Ditches & Water Works, Inc. v. Bd. of Cnty. Comm'rs of Lake Cnty.*, 76 P.3d 918 (Colo. 2003), the Owner has rebutted a presumption of abandonment by establishing an intent not to abandon the water right through its attempts to put the water to beneficial use, filing documents to change the water right, and obstacles in utilizing the Mike Cuddigan Ditch. Remarks: Owner requests confirmation that the Mike Cuddigan Ditch for 0.1500 c.f.s. for all decreed uses has not been abandoned and must be removed from the Abandonment List. A map depicting the location of the structure is on file with the Water Court (5 pp. with exhibits) **OURAY COUNTY.**

CASE NO. 2022CW3045. Application for Finding of Reasonable Diligence, in San Miguel County. I. **Name, Address and Telephone Number of Applicants.** Alley Oop, LLC, a Colorado limited liability company, and, Genesee Properties, Inc., a Wyoming corporation, c/o Nicole Champine, San Miguel Valley Corporation, 7800 E. Dorado Place, Suite 250 Englewood, Colorado 80111, (303) 220-8330, ("Applicants" or "SMVC"). **Name, Address, and Telephone Number of Applicants' Attorney.** Chris D. Cummins, #35154 Emilie B. Polley, #51296, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, II. **Summary of Application.** Alley Oop Holdings, LLC and Genesee Properties, Inc., ("Applicants" or "SMVC"), seek a finding of reasonable diligence for a conditional surface water right for Alley Oop Diversion No. 1 in Case No. 08CW147, Water Division No. 4. III. **Surface Water Right.** A. Name of Structure: Alley Oop Diversion No. 1. 1. Legal Description of Point of Diversion: The legal description of the point of diversion for Alley Oop Diversion No. 1, is located on Applicant's property, in the NE¼ NW¼ of Section 32, Township 43 North, Range 9 West of the N.M.P.M., approximately 2,100 feet from the west line and 165 feet from the north line of said Section 32; GPS coordinates of NAD83, UTM Zone 13, Easting 0246358, Northing 4204434. 2. Source: The Alley Oop Diversion No. 1 diverts from an unnamed intermittent water course tributary to the San Miguel River. This intermittent water source carries primarily stormwater and snowmelt, and at times is substantially dry. 3. Appropriation Date: December 2, 2008. 4. Date of Original Decree: January 7, 2010, Case No. 08CW147, District Court, Water Division 4. 5. Subsequent Decrees Finding Diligence: June 1, 2016, Case No. 16CW3000, District Court, Water Division 4. 6. Amounts of Water: 0.066 cfs (30 gallons per minute), conditional. 7. Uses: Water diverted at Alley Oop Diversion No. 1 is decreed for stockwater, wildlife, and fire protection purposes, and flows so diverted in priority are likewise decreed for storage in one or more stock ponds which may be constructed on the Applicants' property of such size as necessary to provide the requested stockwater, wildlife and fire protection uses, provided that the capacity of such incidental storage structures shall be limited to a combined total of 2 acre-feet or less. IV. **Detailed Outline of Diligence.** Per the decree entered in 08CW147 on January 7, 2010, the above-described surface water right is a conditional water right awarded to the Applicants for various purposes outlined above. Pursuant to C.R.S. §37-92-301(4)(b), work on one component of an integrated system shall be considered in finding that reasonable diligence has been shown for all components of the integrated system. The conditional water rights described in Case No. 08CW147 are part of such an integrated system, in conjunction with the water rights decreed in Case No. 10CW192. During the subject diligence period, Applicants have outlaid the following expenditures or completed the following work related to the conditional water right: 1. Applicant, and related entities, have expended extensive time and resources since the decree in 08CW147 in the prosecution and completion of related adjudications of conditional water rights and plan for augmentation, which provides and water supply and plan for augmentation for residential development on the same property upon which the Alley Oop Diversion No. 1 is to be located.

Part of Applicants' diligence in pursuing and maintaining this conditional surface water right during the diligence period, therefore, includes these related adjudication activities concerning water usage on the same property, as well as expenditures on engineering and construction estimates, as necessary to place all such water to beneficial use. 2. Engineering expenditures amounting to approximately \$62,000 for surveying, design and evaluation, permit applications, and easements development; and created and revised applicable engineering models and reports for diversion, Water Supply Plan, and water resources. 3. Ongoing briefings, correspondence, and meetings with the San Miguel County Board of County Commissioners. 4. Expenditures of approximately \$560,000 for legal fees and associated costs for development of parcels to be served by the Alley Oop Diversion No. 1. 5. Continued maintenance and cleaning of Applicant's water system for greater water efficiency for decreed uses. V. **Name and address of the owners of land on which structures are located.** Applicants own the land where the point of diversion is located and the beneficial use of the water from this source will be upon the Applicants' land. **SAN MIGUEL COUNTY.**

CASE NO. 2022CW3046 (2021CW3067) DELTA AND MONTROSE COUNTIES. Protest to Final Abandonment List. Protestor: City of Delta, 360 Main Street, Delta, CO 81416, c/o Garfield & Hecht, P.C., 910 Grand Ave., Suite 201, Glenwood Springs, CO 81601, (970)947-1936. Description of Water Right. The water right proposed for abandonment in Case No. 2021CW3067 and subject to this protest is 40 c.f.s. (out of 50 c.f.s.) decreed to the Gunnison Pipeline, Priority No. J-383, for all decreed uses, at the following locations: WDID 4001631 (original point of diversion) and WDID 6200617 (alternate point of diversion at East Portal of Gunnison Tunnel). Decreed information for the subject water right and locations is provided below. Decree Information: The Gunnison Pipeline was originally decreed in Civil Action No. 3503, Delta County District Court, entered on March 20, 1954 in the amount of 50 c.f.s., conditional. An alternate point of diversion for the Gunnison Pipeline water right was decreed on August 31, 1977 in Case No. W-30(76), District Court, Water Division No. 4, at the East Portal of the Gunnison Tunnel. The Gunnison Pipeline water right was made absolute in its full amount of 50 c.f.s. by decree entered on October 19, 1978 in Case No. W-3419, District Court, Water Division No. 4. Locations (see Exhibit A map submitted with Protest): Original decreed location: Left bank of the Gunnison River, at a point which is approximately 1320 feet west and 1000 feet south of the E1/4 corner of Sec. 24, Twp. 15 S., R. 94 W., 6th P.M. Alternate point of diversion: Located at the East Portal of the Gunnison Tunnel in Montrose County, State of Colorado. Source: Gunnison River. Use: Municipal. Date of Appropriation: January 15, 1951. Factual and Legal Basis for Protest. Abandonment is the "termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or part of the water available thereunder." C.R.S. § 37-92-103(2). A finding of abandonment requires two elements: (i) a sustained period of nonuse; and (ii) an intent to abandon. E. Twin Lakes Ditches and Water Works, Inc. v. Bd. of County Comm'rs of Lake County, 76 P.3d 918, 921 (Colo. 2003). The Court should find neither element to be satisfied here. The "failure for a period of ten years or more to apply to a beneficial use the water available under a water right *when needed by the person entitled to use same* shall create a rebuttable presumption of abandonment of a water right . . ." C.R.S. § 37-92-402(11) (emphasis added). Such presumption of abandonment may be rebutted by evidence that excuses the nonuse or demonstrates an intent not to abandon. E. Twin Lakes Ditches and Water Works, 76 P.3d at 921. The element of intent is the touchstone of an abandonment analysis. Id. The City of Delta ("City" or "Protestor") protests the proposed abandonment of the Gunnison Pipeline water right based on both required elements: It (1) refutes the alleged non-use and (2) asserts that it has no intent to abandon the water right. As described above, the City obtained an alternate point of diversion for the Gunnison Pipeline water right at the East Portal of the Gunnison Tunnel. It is from that location that the water right was first placed to beneficial use in 1978 by delivery of water through the Gunnison Tunnel and

South Canal to Fairview Reservoir and applied to municipal use. See Ruling of the Referee and Decree of the Water Court, Case No. W-3419 (Reference No. W-30), District Court, Water Division No. 4, *In re Application of the City of Delta*. Since that time, water has continued to be diverted at the Gunnison Tunnel and South Canal to Fairview Reservoir for municipal use by the contracting entities of the Project 7 Water Authority, including the City of Delta. The City cannot explain why the Division Engineer has failed to credit those diversions, particularly those occurring in the non-irrigation season, to the Gunnison Pipeline water right, as it was available in priority. To the extent the Court finds insufficient evidence to prove that the Gunnison Pipeline water right was diverted and used, the Court should still find no intent to abandon because the water right was not actually needed by the City so long as other water was available to satisfy the City's municipal use, which it was during all relevant time periods. Water is delivered for municipal use of the Project 7 Water Authority contracting entities, including the City of Delta, under the United States of America's water rights in Taylor Park Reservoir and the Gunnison Tunnel, as documented by exchange decreed in Case No. 08CW150, District Court, Water Division No. 4. Thus, to the extent that the City's Gunnison Pipeline water right was not used, it was not due to an intent to abandon the water right; rather, the water right was not needed because the City's demands (via the Project 7 treatment system) were met by such other water supply. Should the United States' water rights or supplies be unavailable for any reason, the City would rely on its Gunnison Pipeline water right to meet its municipal treated water demands. That the Gunnison Pipeline water right was not used when/because it was not needed to meet the City's demands evidences the City's intent not to abandon the water right. See, e.g., *In re Water Rights of Masters Inv. Co., Inc. v. Irrigationists Ass'n*, 702 P.2d 268, 272 (Colo. 1985) (evidence that water rights were not used because they were not needed is probative of the question of intent). It also flies in the face of any presumption of abandonment raised under C.R.S. § 37-92-402(11), as the water was not "needed" by the City to meet its municipal demands. Thus, the elements of abandonment are not met, and the Gunnison Pipeline water right should be removed from the Final Abandonment List. Remarks. An additional alternate point of diversion for 10 c.f.s. of the Gunnison Pipeline water right was decreed on July 26, 1989 in Case No. 88W135, District Court, Water Division No. 4, from the Uncompahgre River at the City of Delta's Confluence Park. Such diversion amount and location are not proposed for abandonment on the Final Abandonment List and are not addressed by this protest. Protestor requests the Court to remove the Gunnison Pipeline water right, including its alternate point of diversion at the East Portal of the Gunnison Tunnel, from the Final Abandonment List. **DELTA AND MONTROSE COUNTIES.**

CASE NO. 2022CW3047 bifurcated protest to Case No. 21CW3067. MESA COUNTY. PROTEST TO FINAL ABANDONMENT LIST. Name, mailing address, email address and telephone number of Protestor: John S. Hendricks and Western Sky Investments, LLC ("Hendricks") Attn: Alan Sisson, 43200 Highway 141, Gateway, CO 81522. Please direct all pleadings and correspondence to Applicants' counsel: Mark E. Hamilton, Bill Caile, and Susan Ryan Holland & Hart, LLP 600 E. Main St., Suite 104, Aspen, CO 81611. Telephone: (970) 429-6890; email: mehamilton@hollandhart.com. 2. Water Right Description: a. Name of Structure: Roc Creek Diversion. b. Date of Original Decree: November 25, 2009, in Case No. 07CW220, Water Division 4. c. Decreed Legal Description of Structure Location: on the west bank of the Dolores River in the SE¼ SE¼ NW¼ of Section 4, T. 48 N., R. 18 W. of the N.M.P.M., Mesa County, at a point 2,600 ft. S. of the N. section line and 2,830 ft. W. of the E. section line. See map on file with the Court. d. Source: Dolores River. e. Decreed Use(s): Supplemental Irrigation of 57 acres located within the NW¼ NE¼, NE¼ SE¼, and NW¼ of Section 4, T. 48 N., R. 18 W., N.M.P.M., Mesa County. f. Appropriation Date: July 10, 2006. g. Decreed Amount: 1.43 cfs. h. Amount and Use(s) Listed as Having Been Abandoned: 1.43 cfs, all decreed uses. i. Page Number on Abandonment List: Page 3 of 4 on the on the Final Revised Abandonment List. j.

Water District where listed on Abandonment List: District 63. The Roc Creek Diversion is listed on Page 3 of 4 on the on the Final Revised Abandonment List of Water Rights in Water Division 4. The Factual and Legal Basis for this Protest is set forth in detail in the Protest on file with the Water Court. Hendricks respectfully requests that the Court remove the Roc Creek Diversion water right from the abandonment list. Any person who may be affected by the subject matter of this protest or by any ruling thereon and desiring to participate in any hearing pursuant to C.R.S. § 37-92-401(6) must file an entry of appearance by August 31, 2022. **MESA COUNTY.**

CASE NO. 2022CW003048 PROTEST TO FINAL ABANDONMENT LIST 1. Applicant: Town of Olathe, Copies of all pleadings to Bo James Nerlin, Esq., Devor & Plumhoff, LLC, PO Box 3310, Montrose, Colorado 81402. 2. Name of Structure: East Fork FRP Pipeline Description of Water Right: 1 c.f.s. – domestic, commercial and irrigation, East Fork Dry Creek and West Fork Dry Creek . Original Decree: 12/4/1941. B. Location: Section 27, Township 48 North, Range 11 West, N.M.P.M. C. Source: East Fork Feeder Pipeline. D. Appropriation Date: 10/25/1933. E. Amounts and Uses: 1 c.f.s. domestic, commercial and irrigation to connect to and supplement the West Fork Pipeline (Dry Creek Water System) water supply for the Town of Olathe F. Integrated System: Dry Creek Water System. This pipeline lies some 20 miles south of the Town of Olathe, and the pipeline is over 70 years old and is in direpair. The location of the water right and the infrastructure necessary to tie it into the Town's system have made it fiscally difficult to put the water to use. Based on the 2019 Water Efficiency Plan, the Town is forecast to exceed the Project 7 water allocation in the year 2025 without additional water conservation and the year 2035 with a mid-range water population forecast and implementation of water conservation measures. Preservation of the Towns Dry-Fork water rights including the East Fork Feeder Pipeline was adopted as a Water Efficiency Goal in the final Water Efficiency Plan adopted by the Town and approved by the Colorado Water Conservation Board. The Town has conducted maintenance and replacement of the Dry Fork System. The Town has also contracted for engineering studies on improvements, replacements, and alternatives analysis on placing the Dry Fork Water System (including the East Fork FRP Pipeline) to beneficial use. The facts in this protest show that there has never been an intention by the Town to abandon this water right. Any person who may be affected by the subject matter of this protest or by any ruling thereon and desiring to participate in any hearing pursuant to C.R.S. § 37-92-401(6) must file an entry of appearance by August 31, 2022. Rule 12, Colorado Water Court Rules. **MONTROSE COUNTY.**

CASE NO. 2022CW3049 Idarado Mining Company ("Idarado") c/o Devon Horntvedt Director of Legacy Site Management 570 Palomino Trail Ridgway, CO 81432 Devon.Horntvedt@newmont.com; Please direct all correspondence and pleadings in this matter to: James S. Witwer and Andrea M. Bronson, Davis Graham & Stubbs LLP; 1550 Seventeenth Street, Suite 500, Denver, Colorado 80202; Telephone: (303) 892-9400; Facsimile: (303) 893-1379; E-mail: james.witwer@dgsllaw.com andrea.bronson@dgsllaw.com. **PROTEST TO FINAL ABANDONMENT LIST** (Pennsylvania Tunnel Water Supply Pipeline, Priority No. 420). 1. Name, mailing address, email address and home telephone number of Protestant/Owner: (see above). 2. Describe the Water Right: A. Name of Structure: Pennsylvania Tunnel Water Supply Pipeline, Priority No. 420. B. Original Decree: i. Date: July 10, 1952 ii. Case No: CA5882 iii. Court: District Court of Montrose County; C. Other Decrees: i. Case No. W-2619, January 27, 1976, District Court, Water Division No. 4. ii. Case No. 96CW313, December 12, 2002, District Court, Water Division No. 4. D. Decreed Legal Description of Structure Location: The point of diversion is described in the 1952 decree as being located at the portal of the Pennsylvania Tunnel s/k/a the Penn Tunnel on the Pennsylvania Lode Mining Claim, Survey No. 1787, whence the U.S.L.M. No.3 bears North 47°50' East 1614 feet. In a subsequent decree entered by the Water Court on January 8, 1976 in Case No. W-2619, the Court found that said water

right was diverted through various mine workings underground to the portal of the Mill Level Tunnel. As confirmed in the decree in Case No. W-2619, water diverted at the Mill Level Tunnel is considered water diverted under the water right decreed to the Pennsylvania Tunnel Water Supply Pipeline. Attached as Figure 1 to the Protest is an aerial photograph showing the location of the Mill Level Tunnel portal as well as other site features and improvements described below.

E. Source of water: Water developed in underground mine workings, tributary to the San Miguel River. The decree in Case No. W-2619 confirmed that such water was discharged at the portal of the Mill Level Tunnel.

1. A second water right priority decreed to the Pennsylvania Tunnel Water Supply Pipeline, No. 376 for 1.0 cfs, was not placed on the Abandonment List for Water Division No. 4, and thus is not the subject of this protest. References herein to “water rights” associated with this structure may from time to time include both priorities; references to a single “water right” are to Priority No. 420.

F. Decreed use or uses: i. Decreed uses: mining, milling, power, fire protection, and municipal use. ii. Additional uses described in Case No. 96CW313: Mining reclamation and remediation, described as follows: Idarado may have ongoing irrigation, dust suppression, or other water needs related to (a) any reclamation activities that Idarado, or the Colorado Department of Health and Environment and the presiding federal court determine may be required to satisfy the terms of the Consent Decree, Order, Judgement and Reference to Special Master entered in State of Colorado v. Idarado Mining Company, 83C-2385 (June 19, 1992), and all exhibits and Appendix I thereto (“Consent Decree”); or (b) any reclamation activities that may be required or reasonably determined by Idarado to be necessary to satisfy any requirements of governmental agencies having jurisdiction over Idarado’s property; or (c) any reclamation activities which are reasonably determined by Idarado to be necessary or appropriate for protection of public health, safety, welfare or the environment. See Findings of Fact, Conclusions of Law, Judgment and Decree in Case No. 96CW313 (“96CW313 Decree”), at ¶ 30.

E. Appropriation Date: September 4, 1945; Decreed Amount: 10 cfs.

F. Amount and use or uses listed as having been abandoned: 10 cfs for all decreed uses.

G. Former District Number and Page Number where listed on Abandonment List: Former Water District No. 60; Case No. 21CW3067, Water Division 4; listed on Page 3 of Abandonment List.

3. State factual and legal basis for this Protest: As the remainder of this Protest explains, there has been no non-use of the Pennsylvania Tunnel Water Supply Pipeline water right, much less any intent to abandon that right. To the contrary, Idarado continues to use water developed pursuant to the extensive infrastructure associated with this right for mining reclamation and remediation use, consistent with the decrees governing the use of that right and the consent decree entered in Superfund litigation originally brought by the State of Colorado.

A. Background and Summary

1. Original Decree and Decree Making Absolute. The Pennsylvania Tunnel Water Supply Pipeline water right was originally decreed for mining, milling, power and fire protection uses. It was developed water that flowed via the Pennsylvania Tunnel after it was opened for mining, which began in 1899. This developed water was transported through a pipeline from the portal of the Pennsylvania Tunnel, located on the Pennsylvania Lode Mining claim, to the applicant’s (Telluride Mining Company) milling plant. See Decree in Case No. CA5882 at 49. In the decree in Case No. W-2619, entered on January 27, 1976, the Court found that, because of various underground workings, the water that was planned to flow from the Pennsylvania Tunnel under the Pennsylvania Tunnel Water Supply Pipeline water rights actually flowed through the underground various mine workings and out the portal of the Mill Level Tunnel. The Mill Level Tunnel is at a lower elevation than the Pennsylvania Tunnel (approximately 9,062 feet vs. approximately 10,220), with its portal near the former Pandora mill. The decree in Case No. W-2619 thus confirmed that water diverted at the Mill Level Tunnel is considered water diverted under the water right decreed to the Pennsylvania Tunnel Water Supply Pipeline.

2. Remediation Per CERCLA Litigation Consent Decree. In 1992, Idarado entered into a Consent Decree with the State of Colorado to remediate the mine facilities, in order to resolve litigation brought by the State

pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in the U.S. District Court for Colorado, No. 83C-2385. Idarado subsequently undertook extensive environmental remediation pursuant to the Remedial Action Plan ("RAP") attached as Appendix I to the Consent Decree. The RAP implementation included management of water, including management of water flowing out of the Penn Tunnel as well as the Mill Level Tunnel, to ensure protection of the environment. Starting at the time of the RAP implementation, and continuing through the present, Idarado has constructed and maintained significant infrastructure to allow it to deliver water both from the Penn Tunnel to the Mill Level Tunnel, and from the Mill Level Tunnel to its water management system below the Mill Level Tunnel portal for proper remediation in compliance with the RAP. This water is attributed to the Pennsylvania Tunnel Water Supply Pipeline water right. 3. Continuing Right to Use Pennsylvania Tunnel Water Supply Pipeline Water Right under Water Court Change Decree. Pursuant to the 2002 decree entered in Case No. 96CW313, noted above and discussed in more detail below, Idarado may use the water from the Mill Level Tunnel (under the Pennsylvania Tunnel Water Supply Pipeline water right priority that is the subject of this protest) for mining reclamation and remediation. Water diverted to Idarado's water management system below the Mill Level Tunnel is used for such mining reclamation and remediation. Idarado's water management system below the Mill Level Tunnel continues to operate in compliance with the requirements of the terms of the Consent Decree, RAP, and 96CW313 decree. Since entry of the Consent Decree, and particularly in the last 10 years, Idarado has developed significant infrastructure to operate and improve this water management system. Specifically, and as will be discussed in more detail below, in the last 10 years Idarado has: (1) constructed a flow-control bulkhead at the Mill Level Tunnel, (2) installed a pressure transducer at the Mill Level Tunnel portal to track flows that are going into Idarado's water management system; (3) installed a new headgate at the Mill Level Tunnel portal; and (4) improved the road to the Pennsylvania Tunnel to allow better access. Using the pressure transducer, Idarado has been able to track the water that flows to Idarado's water management system for passive treatment, and has thus been using all water attributable to the Pennsylvania Tunnel Water Supply Pipeline water right for its decreed use of mining reclamation and remediation. B. Case No. 96CW313 and Ongoing Mining Reclamation and Remediation Uses of Water from Pennsylvania Tunnel Water Supply Pipeline Water Right. In Case No. 96CW313, the Pennsylvania Tunnel Water Supply Pipeline water right was changed to add municipal uses incident to distribution throughout the Town of Telluride's municipal system or to use on Idarado's property. See 96CW313 Decree, at ¶¶ 15.j(1); 15.k(1)-(2); 17. Importantly, the 96CW313 Decree also allows Idarado to continue to use water from the Mill Level Tunnel portal for mining reclamation and remediation. The 96CW313 Decree describes such uses of certain water rights, including the Pennsylvania Tunnel Water Supply Pipeline water rights: Idarado may have ongoing irrigation, dust suppression, or other water needs related to (a) any reclamation activities that Idarado, or the Colorado Department of Health and Environment and the presiding federal court determine may be required to satisfy the terms of the Consent Decree..., and all exhibits and Appendix I [(i.e. the RAP)] thereto; or (b) any reclamation activities that may be required or reasonably determined by Idarado to be necessary to satisfy any requirements of governmental agencies having jurisdiction over Idarado's property; or (c) any reclamation activities which are reasonably determined by Idarado to be necessary or appropriate for protection of public health, safety, welfare or the environment. Irrigation or other water use for such purposes may continue under any of the Non-Bridal Veil Water rights, including the Blue Lake Supply Pipeline Water Right diverted at the San Miguel River alternate point of diversion decreed in Case No. W-60, the Taylor Ditch and Water Right (Deer Trail water system), the Marshall Creek Water Right, and the Pennsylvania Tunnel Water Supply Pipeline Water Rights. Such rights may be used by Idarado at their presently-decreed points of diversion for their presently-decreed uses as if they had not been included in the change of water rights application in this case... No separate

consumptive use accounting will be required of Idarado if it uses the water rights at their existing, decreed points of diversion as unchanged. The applicants shall provide notice to the parties, the State and Division Engineers and the Court when such rights are no longer to be used for reclamation or remediation by Idarado. 96CW313 Decree, ¶ 30 (emphasis added). The State Engineer and Division Engineer for Water Division No. 4 had initially opposed the application filed in Case No. 96CW313, but on information and belief, stipulated to the entry of a decree containing the foregoing provision by stipulation dated October 28, 2002, and are otherwise bound by the findings of fact, conclusions of law, and judgment and decree entered therein. As noted, pursuant to the Decree in Case No. W-2619, water diverted at the Mill Level Tunnel is considered water diverted under the water rights decreed to the Pennsylvania Tunnel Water Supply Pipeline. Therefore, under the 96CW313 Decree, the Pennsylvania Tunnel Water Supply Pipeline water right priorities may be, and have been, continuously used by Idarado to deliver water discharging at the Mill Level Tunnel portal for remediation and reclamation-related activities in compliance with the Consent Decree.

C. Idarado's Improvements to Mill Level Tunnel and Pennsylvania Tunnel Water Management System. The water from the Mill Level Tunnel portal is diverted to Idarado's water management system for passive treatment and thus continues to be used for mining reclamation and remediation-related purposes as authorized by the 96CW313 Decree. Idarado has operated this water management system since it was constructed in the 1990s pursuant to the RAP. Since 2016, Idarado has made significant improvements to allow it to better manage water at the Pennsylvania Tunnel and Mill Level Tunnel, and thus effectively operate its water management system – thus, continuously using its Pennsylvania Tunnel Water Supply Pipeline water right for mining reclamation and remediation uses.

1. 2016 Installation of Pressure Transducer: As part of its water management system at the Mill Level Tunnel, Idarado monitors the flows at the Mill Level Tunnel portal. In 2016, Idarado installed a pressure transducer to measure flows prior to delivery into the various components of Idarado's water management system. Idarado has also installed flow transducers at three outlets: the primary lagoon pipe, the 15" infiltration ditch pipe, and the 24" infiltration ditch pipe. A photograph of the flume from the Mill Level Tunnel outfall is attached as Exhibit A.

2. Bulkhead at Mill Level Tunnel: In 2020, Idarado completed installation of a flow-control bulkhead in the Mill Level Tunnel. During periods of extremely high flows during runoff season, this bulkhead allows for the attenuation of surge peaks in order to partially discharge later, at times of lower flow, which ensures the predictable and efficient operation of the Idarado water management system. A photograph of the Mill Level Tunnel bulkhead is attached as Exhibit B.

3. Mill Level Tunnel Portal Headgate: In 2017, Idarado installed a new headgate at the Mill Level Tunnel portal to control flow into the inlet pipes. Idarado also installed a new gate on the Mill Level Tunnel portal to protect componentry. Photographs of the new headgate and access gate are attached as Exhibit C.

4. Access Improvements to Pennsylvania Tunnel: In the spring of 2021, Idarado completed access improvements to the Pennsylvania Tunnel. Specifically, Idarado reconstructed a road to the Pennsylvania Tunnel to allow vehicle access and allow Idarado's continued maintenance of the Pennsylvania Tunnel water management infrastructure. These improvements and Idarado's continued significant investments in its water management system at the Mill Level Tunnel have allowed it to continuously use its Pennsylvania Tunnel Water Supply Pipeline water right for mining reclamation and remediation by diverting this water to its water management system.

D. Idarado's Ongoing Measurement and Beneficial Use of Water Right As described herein, the water from the Mill Level Tunnel portal diverted to Idarado's water management system has been and continues to be used for mining reclamation and remediation-related purposes as it is diverted from the portal for passive treatment. The 96CW313 Decree does not require Idarado to maintain or submit accounting when the Pennsylvania Water Supply Pipeline water right (and other water rights) are used for mining reclamation and remediation uses. See 96CW313 Decree at ¶ 30. Nonetheless, Idarado monitors the flows at the Mill Level Tunnel portal using a pressure transducer, installed in 2016

and described above, to measure such flows prior to delivery into the various components of Idarado's water management system. For the period of June 2017 to July 2020, flows at the tunnel portal reached 11 cfs (the total flow rate decreed to both of Idarado's Pennsylvania Tunnel Water Supply Pipeline water rights) on numerous occasions. Specifically, the flows reached 11 cfs on 25 days in 2017, 55 days in 2019, and 5 days in 2020. All of this water was put to beneficial use of mining reclamation and remediation by being diverted into Idarado's water management system. Idarado documented this use and attached the recent 2017-2020 flow measurements related thereto to its informal Statement of Objection to Decennial Abandonment List submitted to the Division Engineer in June 2021. A copy of those flow measurements is attached as Exhibit D to the Protest; a graph of all such measurements from September 2015 to December 2021 is attached as Exhibit E to the Protest. In denying Idarado's informal objection to placement of the Pennsylvania Tunnel Water Supply Pipeline water right priority on his abandonment list, the Division Engineer ignored the documentation of Idarado's actual use of the water diverted under that priority. Contrary to his erroneous assumption that Idarado's failure to include diversions on that priority in the change of use accounting submitted by Idarado and the Town of Telluride per the change case terms and conditions of the 96CW313 Decree was somehow relevant to the abandonment question, Paragraph 30 of that same decree plainly authorized Idarado's actual and continuous use of water on that priority "at [its] presently-decreed point[] of diversion for [its] presently-decreed use[] as if [it] had not been included in the change of water rights application . . . as unchanged," 96CW313 Decree ¶ 30 (emphasis added). Idarado's actual, well-documented beneficial use of water, and its major infrastructure investments demonstrating its intent to maintain that use, preclude any finding of abandonment here. E. Conclusion and Request for Relief Over the last 10 years, Idarado has continued to put the water diverted under the Pennsylvania Tunnel Water Supply Pipeline water right to beneficial uses of mining reclamation and remediation as authorized by all applicable decrees. Idarado has also constructed significant improvements described above to allow it to better manage water at the Pennsylvania Tunnel and Mill Level Tunnel to effectively operate its water management system. Because of its continuous beneficial use of water under its Pennsylvania Tunnel Water Supply Pipeline water right and ample evidence of its intent not to abandon such right, the Court should: 1. Grant Idarado's Protest; 2. Find that the full 10 c.f.s. of Pennsylvania Tunnel Water Supply Pipeline Water Right Priority No. 420 has not been abandoned, and instead remains in full force and effect; and 3. Grant such other relief as the Court deems proper. **SAN MIGUEL COUNTY.**

CASE NO. 2022CW3050. Application for Surface Water Rights, Surface Water Storage Rights, Underground Water Rights, and for Approval of Plan for Augmentation, in San Miguel County. I. **Name, Address and Telephone Number of Applicants.** Genesee Properties, Inc., a Wyoming corporation, c/o Nicole Champine, San Miguel Valley Corporation, 7800 E. Dorado Place, Suite 250, Englewood, Colorado 80111, (303) 220-8330, ("Applicant") **Name, Address, and Telephone Number of Applicants' Attorney.** Chris D. Cummins, #35154, Emilie B. Polley, #51296, W. James Tilton, #50213, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, II. **Summary of Application.** The Applicant seeks conditional surface water, storage, and underground water rights for irrigation on its approximately 20-acre parcel, and approval of a plan for augmentation associated therewith. III. **Application for Surface Water Rights.** A. Name of Structure: ST Diversion. 1. *Legal Description of Point of Diversion:* In the NE¼ NE¼, Section 32, Township 43 North, Range 9 West, N.M.P.M., UTM E 4204149.797, N 247127.08, (Zone 13, NAD83), as depicted on the attached Exhibit A map. 2. *Source:* Remine Creek, tributary to the San Miguel River. 3. *Date of Initiation of Appropriation:* June 30, 2022, the date of filing of this application. 4. *Amount Claimed:* 0.5 c.f.s., conditional. 6. *Uses:* Diversion to storage for augmentation, irrigation, fish and wildlife, and firefighting purposes, including the right to store for later release, and for the fill

and re-fill of the water storage right applied for herein. IV. **Application for Surface Water Storage Rights.** A. Name of Structure: ST Aug Pond. 1. Legal Description of Pond: the centerline of the dam will be located in the NE¼ NE¼ of Section 32, Township 43 North, Range 9 West of the N.M.P.M., UTM E 247046.21, N 4204106.25 (Zone 13, NAD83), as depicted on the attached **Exhibit A** map. 2. Source: the ST Diversion, as requested herein, which will divert from Remine Creek, tributary to San Miguel River. 3. Date of Initiation of Appropriation: June 30, 2022, the date of filing of this application. 4. Amount Claimed: 2.5 acre-feet, conditional, with the right to fill and refill. 5. Approximate Surface Area at High-Water Line: 0.40 acres. 6. Number of Acres Proposed to Be Irrigated: Up to 1.8 acres located on Applicant's property. 7. Uses: augmentation and replacement for irrigation, fish and wildlife, and firefighting purposes, including the right to store for later release. V. **Application for Under Ground Water Rights.** A. Name of Structure: ST Well No. 1. 1. Legal description of well: The well is located in NE¼ NE¼ of Section 32, Township 43 North, Range 9 West of the N.M.P.M., UTM E 247115.85, N 4204119.94 (Zone 13, NAD83), as depicted on the attached **Exhibit A** map. 2. Permit No. 318806, attached as **Exhibit B**. 3. Date of Initiation of Appropriation: June 30, 2022, the date of filing of this application. 4. Source: alluvial groundwater of Remine Creek. 5. Depth: 260 feet. 6. Amount Claimed: 50 g.p.m., or 3.04 annual acre-feet. 7. Uses: irrigation and firefighting. VI. **Application for Approval of Plan for Augmentation.** A. Property Description. Applicant is the owner of property located in the NE¼ NE¼ of Section 32, Township 43 North, Range 9 West of the N.M.P.M., San Miguel County, Colorado containing approximately 20-acres, as shown as attached **Exhibit A** ("Applicant's Property"). B. Structure to be Augmented. Applicant seeks approval to provide augmentation of injurious out-of-priority stream depletions which may be associated with pumping of the ST Well No. 1 for irrigation and firefighting purposes on Applicant's Property. Applicant seeks to utilize irrigation return flows resulting from such use, as well as the ST Diversion and ST Pond requested herein to provide for replacement of depletions associated with the ST Well No. 1. C. Water Rights to be Used for Augmentation: The water rights to be used for augmentation consist of an augmentation pond filled with in-priority diversions on Remine Creek, as more particularly described above in Section III and Section IV. D. Statement of Plan for Augmentation. 1. Use. Applicant intends to pump 3.04 annual acre-feet from the ST Well No. 1 for irrigation upon Applicant's Property utilizing varying irrigation methods, including sprinkler irrigated grasses and drip irrigated landscape. Consumptive use is estimated to be 1.55 acre-feet per acre annually, assuming an irrigation efficiency between 80% and 95% as established in District Court, Water Division 4, Case No. 09CW190 for standard sprinkler irrigation and drip irrigation on Applicant's Property. 2. Return Flows. Based on an 80%-95% irrigation efficiency, irrigation return flows resulting from Applicant's use of water from the ST Well No. 1 are estimated to be 0.26 acre-feet annually, while surface return flows will amount to 0.09 acre-feet annually and groundwater return flows will amount to 0.17 acre-feet annually, resulting in total annual return flows of 0.35 acre-feet. Return flows from irrigation will occur to the San Miguel River upstream of Remine Creek. Additionally, using the Glover Analysis, Applicant's consultants have estimated lagged irrigation return flows to be 0.26 acre-feet annually. Accordingly, total return flows will amount to 0.52 acre-feet annually. 3. Augmentation of Depletions. Applicant seeks approval of a plan for augmentation for replacement of any out-of-priority depletions resulting from pumping the ST Well No. 1 for Applicant's requested uses. Applicant's consultants estimate that augmentation requirements for net annual depletions from pumping the ST Well No. 1 will amount to 1.49 annual acre-feet. In order to replace depletions, the Applicant will make releases from the ST Pond, filled by in-priority diversions through the ST Diversion, to Remine Creek at a point located on Applicant's property in the NE¼ NE¼ of Section 32, Township 43 North, Range 9 West of the N.M.P.M., San Miguel County, Colorado, approximately 123 feet north of the confluence of the San Miguel River and Remine Creek, as depicted on the attached **Exhibit A** map. The point of replacement is approximately 175 feet downstream on Remine Creek from

the point of diversion for the ST Diversion. Total annual depletions of 3.04 acre-feet will be replaced by 0.52 acre-feet in total return flows from irrigation uses, including lagged return flows, with remaining replacement provided for by releases from the ST Aug Pond of at least 1.49 acre-feet annually. Therefore, pumping from the ST Well No. 1 will be adequately augmented. E. Pond Evaporation. Applicant's consultants have determined, utilizing local climate data to the standards of the State Engineer's Office for the determination of pond evaporation, that annual evaporation on the ST Aug Pond will amount to approximately 1.17 acre-feet, allocated on a monthly basis. Applicant will reduce such evaporations from the total ST Aug Pond augmentation supplies to account for evaporation losses, resulting in a monthly net total of augmentation supplies in the pond from diversions to storage. Should evaporation of the ST Aug Pond result in an end of month storage below the minimum augmentation requirement, the ST Well No. 1 will reduce pumping accordingly. F. Potential Out-of-Priority Diversions from ST Diversion. It is Applicant's intent to divert from the ST Diversion into the ST Pond only at times when such structure is in priority and therefore does not require any augmentation. To the extent that inflows of Remine Creek native water may occur at this structure into the ST Pond at times when not in priority, Applicant shall release like quantities of stored water in the ST Pond so as to effectuate no storage of native flows occurring when out of priority. G. Remarks. Additional remarks are as follows: 1. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of depletions in order to protect other water rights. 2. The Applicant requests a finding that the vested water rights of others will not be materially injured by the ST Diversion, ST Pond, and ST Well No. 1, as long as those depletions are augmented as set forth herein. 3. Applicant may also seek a term and condition in any final decree requesting the Water Court to retain perpetual jurisdiction over the plan for augmentation for the sole purpose to add new or additional sources of augmentation. 4. The ST Pond shall be metered/measured/monitored as reasonably required by the State and Division Engineers. The Applicant shall provide accounting to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan for augmentation. 5. The transit loss from the delivery point to the point of augmentation/replacement will be assessed on the delivered water as determined by the Division Engineer's Office. **VII. Name and address of the owners of land on which structures are or will be located.** Applicant owns the land where ST Aug Pond and ST Well No. 1 are and will be located. The ST Diversion will be located on land owned by the Colorado Department of Transportation, whose address is 2829 W. Howard Place, Denver, CO 80204. The Applicant is the owner of the land where the water will be placed to beneficial use. **SAN MIGUEL COUNTY.**

YOU ARE HEREBY NOTIFIED that any party who wishes to support or oppose a protest to the final revised abandonment list may file with the Division 4 Water Clerk an entry of appearance, under Water Court Rule 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List, such entry of appearance must be filed by August 31, 2022.

YOU ARE FURTHER NOTIFIED THAT you have until the last day of August 2022 to file with the Water Clerk a Verified Statement of Opposition setting forth facts as to why a certain application should not be granted or why it should be granted only in part or on certain conditions. A copy of such a Statement of Opposition must also be served upon the applicant or the applicant's attorney and an affidavit of certificate of such service shall be filed with the Water Clerk, as prescribed by C.R.C.P. Rule 5. (Filing fee: \$192.00; Forms may be obtained from the Water Clerk's Office or on our website at www.courts.state.co.us). (This publication can be viewed in its entirety on the state court website at: www.courts.state.co.us). FRED CASTLE, Water Clerk, Water Division 4, 1200 N. Grand Ave., Bin A, Montrose, CO 81401